



Judgment

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

CRIMINAL APPEAL NO.391 OF 2014

State of Maharashtra,
through Station Officer, Police Station,
Achalpur, taluka Achalpur,
district Amravati. **Appellant.**

:: V E R S U S ::

Venkatrao Latuji Kawas,
aged about 41, occupation service,
r/o Amhora, taluka Deori,
district Gondia. **Respondent.**

Shri M.J.Khan, Additional Public Prosecutor for the Appellant/State.
Shri B.M.Kharkate, Counsel for the Respondent.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 24/07/2025

PRONOUNCED ON : 18/09/2025

JUDGMENT

1. By this appeal, the appellant/State has challenged judgment and order dated 28.2.2014 passed by learned Additional Sessions Judge and Special Judge, Achalpur (learned Judge of the trial court) in Special

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(ACB) Case No.3/2009 whereby learned Judge of the trial court acquitted the respondent (the accused) of offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (the PC Act).

2. Brief facts of the prosecution case are as follows

A crime was registered against the accused on the basis of report lodged by Rupesh Lahane (the complainant). The accused was serving as police officer attached to the Achalpur Police Station. An offence was registered against one Rahul Shingne, the relative of the complainant and the accused was investigating officer of that crime. Said Rahul was arrested in the crime and applied for bail. However, his three bail applications were rejected by the court. Therefore, the complainant

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approached the accused on 6.10.2018 in connection with release of his relative on bail. As per the allegations, the accused advised the complainant that if within 90 days, chargesheet is not filed, the accused can get bail. But, the complainant requested the accused to file chargesheet without waiting for completion of 90 days. For the purpose of filing the chargesheet, the accused allegedly demanded Rs.5000/- from the complainant. The complainant shown his inability to pay the amount and, therefore, the accused suggested the complainant to pay the amount in two installments, i.e. first installment of Rs.2000/- before grant of bail and second installment of Rs.3000/- after his relative is released on bail. The complainant assured the accused that he will think over the said proposal. The complainant received various calls from the accused and he assured the accused he would arrange the money.

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3. On 13.10.2008, the complainant received call of the accused asking him when the chargesheet is to be filed or not and asked about the demand. The complainant assured him that he would pay Rs.2000 on the same day. However, as the complainant was not desiring to pay the amount, he approached the office of the Anti Corruption Bureau at Amravati (the bureau) and filed a complaint. The officer of the bureau called two panchas. In presence of panchas, he narrated grievance made by him in the complaint. The panchas also verified the contents of the complaint. The complainant produced 4 currencies of Rs.500/- denomination. The officer of the bureau explained the characteristics of anthracene powder and demonstration as to use of the anthracene powder and ultra violet lamp. Accordingly, a pre-trap panchanama was drawn. After the trap panchanama, the complainant, panchas, officers of the bureau, and other

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raiding party members proceeded towards Nagar Parishad Market in front of Achalpur Police Station. The complainant gave call to the accused on his cell phone informing his location. The accused came in front of Anand Driving School. Pancha No.1 was introduced as husband of sister of Rahul Shingne. During communication, the accused demanded the amount. On his demand, the complainant took out the amount from his shirt pocket and handed over the same to the accused. Thereafter, he gave pre-determined signal as instructed to him. The pancha No.1 has also narrated the incident as observed by him. The amount was recovered by the pancha No.2 from the shirt pocket of the accused and, thereafter, the hands of the accused are examined by using ultra violet lamp. Bluish glazing was found on his shirt pocket and hands. His personal search was carried out. Accordingly, post-trap panchanama was drawn.

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During the investigation, the investigating officer has seized various documents, obtained sanction from the appropriate authority, and after obtaining the sanction, filed chargesheet against the accused.

4. The charge was framed against the accused vide Exh.50. The accused pleaded not guilty and claimed to be tried. In support of the prosecution case, the prosecution has examined in all 7 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Rupesh Lahane, the complainant	32
2	Ramdas Ingale, pancha No.1	40
3	Sopandeo Mahajan, pancha No.2	51
4	Ramesh Tayde, Police Officer	53
5	Dalbir Bharati, Sanctioning Authority	66
6	Uttamrao Narwas, ASI	72
7	Latif Tadavi, Investigating Officer	75

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5. Besides the oral evidence, the prosecution place reliance on complaint Exh.33, prep-trap panchanama Exh.31, seizure memo Exhs.42 to 43, post-trap panchanama Exh.44, seizure memo Exh.45, check list Exh.54, letter addressed to SDPO for verification of chargesheet Exh.55, final report in another crime registered against Rahul Shingne, forwarding letter to the Sanctioning Authority Exh.66; the sanctioned order Exh.67, FIR Exh.73, and report Exh.78.

6. After appreciating the evidence, learned Judge of the trial court held that the prosecution failed to prove that the accused demanded the money and accepted the amount as gratification and by giving benefit of doubt, the accused was acquitted.

7. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the State on the ground

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that learned Judge of the trial court failed to appreciate the evidence of prosecution witnesses and erroneously acquitted the accused. The demand as well as acceptance is already proved by the prosecution.

8. Heard learned Additional Public Prosecutor Shri M.J.Khan for the State and learned counsel Shri B.M.Kharkate for the accused. They took me through the entire evidence on record.

9. Learned Additional Public Prosecutor for the State submitted that the prosecution has proved the sanction by examining Sanctioning Authority PW5 Dalbir Bharati, who categorically stated that after application of mind, he accorded the sanction. Learned Judge of the trial court has ignored the evidence of the prosecution witnesses. The prosecution has also adduced the evidence by examining complainant PW1 Rupesh Lahane whose

evidence states that the accused, who was serving as police officer, demanded gratification amount of Rs.2000/- for filing the chargesheet and accepted the same. Pancha No.1 PW2 Ramdas Ingale has also deposed as to the demand by the accused. The amount was recovered from the accused and pancha No.2 PW3 Sopandeo Mahajan has taken out the said amount from the pocket of the accused. The accused was investigating officer in crime registered against Rahul Shingne, who is relative of the complainant. The evidence as to the demand is consistent and not shattered during the cross examination. The evidence is consistent and sufficient to warrant the conviction and, therefore, the judgment impugned in the appeal requires to be quashed and set aside.

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10. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

1. State of Andhra Pradesh vs. R.Jeevaratam reported in AIR 2005 SC 4095;

2. State of W.B. vs. Kailsh Chandra Pandey, reported in (2004)12 SCC 29; and

3. Krishna Ram vs. State of Rajasthan, reported in (2009)11 SCC 708.

11. *Per contra*, learned counsel for the accused supported the judgment impugned in the appeal and submitted that the demand as well as acceptance is not proved by the prosecution. Mere recovery of tainted amount in absence of any proof of demand and acceptance cannot be the basis to convict the accused.

12. In support of his contentions, learned counsel for the accused has placed reliance on following decisions:

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1. State of Maharashtra vs. Ravindra s/o Jairam Randive, reported in 2024 All MR (Cri) 4121;

2. N.Vijaykumar vs. State of Tamil Nadu, reported in (221)3 SCC 687;

3. Mohinder Singh vs. State of Punjab, reported in (2018)18 SCC 540;

4. Bhupatbhai Bachubhai Chavda and anr vs. State of Gujarat, reported in 2024 SCC OnLine SC 523;

5. Roopwanti vs. State of Haryana and ors, reported in AIR 2023 SC 1199;

6. Mohan alias Srinivas alias Seena alias Tailor Seena vs. State of Karnataka, reported in (2022)12 SCC 619, and

7. Mohan Singh vs. Prem Singh and anr, reported in AIR 2022 SC 3582.

13. It is well settled that while exercising appellate powers, especially while dealing with appeals against acquittal, cardinal principle, to be kept in mind, is that

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there is a presumption of innocence in favour of the accused unless the accused is proved guilty. The presumption continues and finally culminates into a fact when the case ends in acquittal. The possibility of two views in criminal case is not an extraordinary phenomenon while considering appeals against the acquittal. The trial court has appreciated the entire evidence and reversal of an order of acquittal is not to be based on mere existence of a different view or mere difference of opinion. Normally, while exercising appellate jurisdiction, it is duty of the appellate court whether decision is correct or incorrect on law and facts. While dealing with appeals against acquittal, the court cannot examine the impugned judgment only to find out whether view taken was correct or incorrect. After re-appreciating oral and documentary evidence, the appellate court must first decide whether trial court's view

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was possible view. The appellate court cannot overturn acquittal, and order of acquittal cannot be reversed, only on the ground that after re-appreciating evidence, it is of the view that guilt of the accused was established beyond reasonable doubt.

14. The Hon'ble Apex Court, in the case of **N.Vijaykumar** *supra*, held that the appellate court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. If two reasonable conclusions are possible on the basis of the evidence on

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record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

The similar ratio is laid down by the Hon'ble Apex Court in the cases of **Mohinder Singh *supra*** and **Bhupatbhai Bachubhai Chavda and anr *supra***.

15. Learned Additional Public Prosecutor for the State submitted that in the light of the above well settled principle of law, if the evidence adduced by the prosecution witnesses is considered, the factor of sanction is proved by the prosecution by examining Pancha No.1 PW2 Ramdas Ingale. While considering whether sanction accorded by Sanctioning Authority PW5 Dalbir Bharati is valid sanction or not, it is necessary to discuss an aspect of sanction. Learned Additional Public Prosecutor for the State submitted that Sanctioning Authority PW5 Dalbir Bharati has categorically stated as to grant of sanction.

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He invited my attention to the evidence of Sanctioning Authority PW5 Dalbir Bharati which shows that at the relevant time, he was serving as Special Inspector General of Police, Amravati. The office of the bureau had forwarded him papers for according sanction against the accused serving as PSI. He perused the papers and after his subjective satisfaction, he accorded the sanction. Accordingly, he forwarded the sanction order, which is at Exh.68. His cross examination shows that he has received draft sanction order. He is unable to recollect as to the particulars which forwarded to him along with the draft sanction order. He further admitted that he has not specifically mentioned in his sanction order as to what appealed him to accord sanction. His cross examination further shows that on the date of lodging of the complaint, the investigation was already completed and chargesheet is to be sent to the SDPO for scrutiny.

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Thus, an attempt was made to show that the sanction was accorded without application of mind.

16. The Honourable Apex Court, 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.

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17. The Honourable 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 Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance

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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

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authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

18. Thus, it is now well settled that according sanction is a sacrosanct act and it is to be accorded after apprising of all relevant materials and taking conscious decision as to whether facts show commission of offence under relevant provisions. Admittedly, elaborate discussion is not required, however, the decision making on relevant materials should be reflected in the order.

19. Perusal of the evidence of Sanctioning Authority PW5 Dalbir Bharati nowhere shows that on what basis he came to conclusion that the sanction is to be accorded. From his evidence it nowhere reveals that after application of mind, he has accorded the sanction.

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Thus, the prosecution failed to prove that the sanction was accorded after application of mind.

20. Learned Additional Public Prosecutor for the State further pointed out that the evidence adduced on the demand and acceptance is not shattered during the cross examination.

Whereas, it is submitted by learned counsel for the accused that the demand as well as acceptance is required to be proved. Proof of demand is *sine qua non* to establish the offence. Mere recovery itself is not sufficient to establish the guilt of the accused. Perusal of the evidence of complainant PW1 Rupesh Lahane shows that on 28.6.2008 the offence was registered against Rahul Shingne and his bail applications were rejected thrice. Therefore, he approached to the accused with a request to file chargesheet. The accused demanded the

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amount of Rs.5000/- for filing the chargesheet. The complainant shown his inability to pay the amount and, therefore, the accused suggested the complainant to pay the amount in two installments, i.e. first installment of Rs.2000/- before grant of bail and second installment of Rs.3000/- after his relative is released on bail. As the complainant was not willing to pay the amount, he approached the office of the bureau and lodged the complaint. After lodging of the complaint, formalities are completed by drawing pre-trap panchanama.

21. As to the demand, the evidence of complainant PW1 Rupesh Lahane shows that he along with pancha No.1 PW2 Ramdas Ingale approached to the accused. During communication, the accused has demanded the amount from the complainant. The complainant paid the same and the accused accepted the same. Thereafter, he gave per-determined signal and the accused was caught.

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The amount was recovered from him. The formality of arresting the accused, after verifying his hands and shirt pocket, wherein blue glaze was found, and by completing the investigation, chargesheet was submitted against the accused. The cross examination shows that he was given an understanding by the Advocate that if within 90 days chargesheet is filed, the bail could be granted. It was discussion with him and his Advocate that if favourable reply is filed by the State, bail can be granted. The material omissions are brought on record that he has not stated while lodging the complaint that the accused has demanded Rs.5000/- to Rs.6000/-. He has received call from the accused. He further admitted that he has no personal knowledge about grant or rejection of third bail application. He further admitted that it was brought to his knowledge that bail applications are rejected and the accused strongly opposed for the same.

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22. The evidence of pancha No.1 PW2 Ramdas Ingale shows that he was called along with pancha No.2 to the police station. He has verified the contents of the complaint. The demonstration as to the anthracene powder was shown to them. Complainant PW1 Rupesh Lahane produced the tainted notes. After applying the anthracene powder, the tainted amount was kept in the shirt pocket of the complainant and instructions were given to them. Thereafter, they proceeded to Achalpur. After reaching to Achalpur, they went in front of the police station. The complainant made a phone call to the accused. The accused came in front of Anand Driving School. The communication was between the complainant and the accused. The accused demanded the amount and accepted the same. During his cross examination also, he admitted that he is unable to recollect where panchanama No.2 was prepared. He

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further admitted that part panchanama Exh.44 was written in the police station. They have visited the office of the accused, driving school and residential quarter of the accused. He also admitted that it is not mentioned in the panchanama that chargesheet was seized from the accused.

23. The evidence of pancha No.2 PW3 Sopandeo Mahajan is only to the extent that amount was recovered from the shirt pocket of the accused.

24. The evidence of PW4 Ramesh Tayde, serving as Police Inspector at Achalpur Police Station, shows that on 31.3.2008 the accused arrested Rahul Shingne and sought his police custody. On 19.9.2008, after completion of investigation, the investigation papers were sent to SDPO Achalpur for scrutiny. As per the directions of the police of Amravati he sent police party headed by PSI Kawas to

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Morshi on bandobast duty. In the evening of 13.10.2008, he came to know that the accused has been arrested by officials of the bureau. His cross examination shows that he had no personal knowledge about the incident occurred at Anand Driving School at Nagar Parish Market, Achalpur. The photocopies attested by him were seized from his custody under seizure memo Exh.45. After scrutiny, the investigation papers were sent to the Deputy Superintendent of Police. He further admitted that after completion of scrutiny, the investigation papers are sent back to the police station. He has checked the investigation papers and, thereafter, sent for scrutiny.

Thus, from his evidence, it brought on record at the relevant time, the investigation was already completed and chargesheet was prepared by the accused and sent for the scrutiny.

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25. The evidence of ASI PW6 Uttamrao Narwas is formal in nature.

26. PW7 Latif Tadavi, is the Investigating Officer who has narrated about the investigation carried out by him. Admittedly, he was not a witness on demand. In his presence, the amount was recovered from the accused. During cross examination, he admitted the conversation between the complainant and the accused on cell phone on 13.10.2008 was at around 11:00 hours. He further admitted that in call details, date and time are not mentioned. As per the evidence of the Investigating Officer that initial talk between the complainant and the accused was on 6.10.2008 and the complaint was lodged on 13.10.2008.

27. Learned Additional Public Prosecutor for the State submitted that the demand and acceptance is

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proved. Admittedly, as far as first demand is concerned, except the evidence of the complainant, there is no other evidence. On the contrary, the prosecution evidence shows that the investigation was already completed and the chargesheet was already referred for scrutiny to the SDPO by the accused. As far as second demand is concerned, the evidence of the complainant and pancha No.1 shows that the accused communicated with the complainant and asked whether money is brought. The exact words used by the accused, while demanding money, are neither stated by the complainant nor by pancha No.1 PW2 Ramdas Ingale.

28. This aspect is dealt with by the Hon'ble Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**, reported in 2017(7) **SCALE 702** wherein it is held that the statement of the inspector and the complainant, the shadow witness in

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isolation, the accused had enquired as to whether the 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.

29. The evidence of complainant PW1 Rupesh Lahane shows that first demand was made on 6.10.2008 and, thereafter, he received various phone calls from the accused. Admittedly, the investigating officer has collected call details. The call details nowhere show date and time of the calls. The investigating officer has not collected the details as to the customer details to show that the complainant was in possession of the mobile phone and there was communication between the accused and the complainant.

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30. It is settled that the statement of the complainant or other witnesses 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.

31. In the present case, the evidence of complainant PW1 Rupesh Lahane , pancha No.1 PW2 Ramdas Ingale, and investigating officer PW7 Latif Tadavi only states that the accused made enquiry as to whether money had been brought. In view of the observations of the Hon'ble Apex Court such stray query *ipso fact*, in absence of any other cogent and persuasive evidence on record cannot amount to demand to be constituent of the offence.

32. Though it is the prosecution case that the accused has made various calls to the complainant

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demanding the amount, call details collected nowhere disclose the details that the mobile number used by the complainant is in his name and the said call details nowhere show date and time as to the calls between the complainant and the accused. Though the demand was on 6.10.2008, the complaint is filed on 13.10.2008. There is no evidence that on 13.10.2008 there was communication between the accused and the complainant. The allegations of the demand by the accused is genuine or not, is not verified by the investigating officer by drawing verification panchanama.

33. Thus, the Trap Officer has not verified genuineness of the allegations made by the complainant.

34. It is well settled that mere possession and recovery of currency notes from the accused without proof of demand would not establish an offence under

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Section 7 as well as Section 13(1)(d) and 13(i) and (ii) of the P.C.Act

35. The Honourable Apex Court, in the case of **Jagtar Singh vs. State of Punjab**, reported in 2023 SCC OnLine SC 320 also, by considering the judgment of the Constitution Bench in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)**, reported in 2023 SCC OnLine SC 280 summarized discussion and reproduced paragraph No.74, which is as under:

“74. What emerges from the aforesaid discussion is summarized as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections and 13(1)(d)(i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the

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subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of Criminal Appeal No.1669 of 2009 illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the

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demanding gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is Criminal Appeal No.1669 of 2009 a payment made which is received by the public servant, would be an offence of obtainment under

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Section 13(1)(d) and (i) and (ii) of the Act.

(e) The 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.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far 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. Of course, the said Criminal Appeal No.1669 of 2009 presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d) (i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.”

36. The Constitution Bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)** *supra* held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in

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issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. The Honourable Apex Court, while discussing expression “accept”, referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat, reported in (2002)5 SCC 86** observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). In Sections and 13(1) and (b) of the said Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. In sub clauses (i) and (ii) (iii) of Section 13(1)(d), the emphasize is on the word “obtains”. Therefore, there must be evidence on record that accused 'obtained' for

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himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

While discussing the expression “accept”, the Honourable Apex Court observed that “accepts” means to take or receive with “consenting mind”. The ‘consent’ can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would

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certainly amount to 'acceptance' and, therefore, it cannot be said that as an abstract proposition of law, that without a prior demand there cannot be 'acceptance'. The position will however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Sections, the prosecution has to prove that the accused 'obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the 1947 Act as it is available only in respect of offences under Section 5(1)(a) and (b) and not under Section 5(1)(c), (d) or (e) of the 1947 Act. According to this court, 'obtain' means to secure or gain (something) as the result of request or effort. In case of obtainment the initiative vests in the person who

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receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the 1947 Act unlike an offence under Section 161 of the Indian Penal Code, which can be established by proof of either 'acceptance' or 'obtainment'.

37. Thus, it is well settled that to prove offences under Sections 7 and 13(1)(d) of the said Act, proof of demand is *sine qua non*. As far as applicability of presumption is concerned, it would be attracted 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

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by the accused and in the absence of rebuttal presumption stands.

38. In the present case, as observed earlier, prior demand by the accused is not proved by the prosecution. The genuineness of the allegations is not verified. The sanction accorded by Sanctioning Authority PW5 Dalbir Bharati is also without application of mind. According to the prosecution, the demand was made firstly on 6.10.2008 for filing the chargesheet. On the contrary, the evidence of PW4 Ramesh Tayde, serving as Police Inspector at Achalpur Police Station, shows that on 19.9.2008 itself, after completion of the investigation, the accused sent the investigation papers to the SDPO, Achalpur for scrutiny. There is no evidence that the accused received papers after scrutiny from the SDPO. Though it is stated that the chargesheet was seized from the accused, the evidence shows already on 19.9.2008 the

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investigation was completed and the papers were sent for scrutiny to the superior officers. The prosecution has not adduced evidence showing that after scrutiny, the papers were again sent back to the police station and, therefore, the evidence as to the seizure of the chargesheet from the accused is improbable and unacceptable.

39. Thus, the defence of the accused appears to be more probable than that as he has opposed the bail application strongly, he is implicated falsely.

40. Since proof of demand is *sine qua non* for convicting accused in such cases, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt. The sanction accorded is without application of mind and, therefore, it is not a valid sanction.

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41. After appreciating the evidence on record, I do not find any error committed by learned Judge of the trial court. The appreciation of the evidence is on the basis of sifting and weighing of material facts and on that ground, the appeal of the State deserves to be dismissed. The judgment impugned in the appeal appears to be legal and correct and nothing is on record to arrive at a finding to show that the judgment impugned is perverse or illegal. The view taken by learned Judge of the trial court is a possible view and, therefore, no interference in the judgment impugned in the appeal is called for. As such, the appeal deserves to be dismissed and the same is **dismissed**.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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