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

CRIMINAL APPEAL NO.265 OF 2005

Mohan Bhaiyyalal Shrivastava,
aged about 46 years,
occupation : service – Sub
Registrar (under suspension)
resident of Harihar Peth,
Akola. ..... Appellant.

:: V E R S U S ::

The State of Maharashtra,
through its Police Inspector
Anti Corruption Bureau, Akola. ..... Respondent.

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Shri Ved Deshpande, Counsel for the Appellant.
Shri A.M.Kadukar, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 31/07/2023
PRONOUNCED ON : 04/09/2023

JUDGMENT

1. By this appeal, the appellant (the accused) has challenged judgment and order of conviction and sentence dated 25.4.2005 passed by learned Special Judge, Akola in Special Case No.4/1998 whereby the accused is convicted for offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (the said Act).

For offence under Section 7 of the said Act, the accused is sentenced to suffer rigorous imprisonment for six

months and to pay fine Rs.500/-, in default, to suffer simple imprisonment for two months.

For offence under Section 13(2) of the said Act, the accused is sentenced to suffer rigorous imprisonment for one year and to pay fine Rs.500, in default, to suffer simple imprisonment for two months.

2. Brief facts of the prosecution case emerges as under:

Keshavrao Ghatage, is complainant and an agriculturist by profession. The accused, at the material time, was serving as Sub Register, Barshitakli, district Akola. On 15.10.1997, the complainant visited office of the Sub Register for execution of Sale Deed of land which he was intending to purchase from one Sitaram Mahadeorao Ghonge. He enquired with one stamp vendor viz. Ismail as to expenses of the sale deed and he was informed that he has to incur expenses of Rs.850/- towards stamp, scribbing documents, and photocopies. A draft of the sale deed was prepared and he, along with the vendor and witnesses, approached to the Sub Registrar i.e. the accused. The accused informed him that for

executing sale deed for 34R land, permission of the Sub Divisional Officer is required. The complainant told him that in the previous year, in similar type of transaction, no permission was obtained and requested the accused to register the sale deed. As per allegations, the accused demanded Rs.700/- from him for execution of the sale deed as a gratification amount. The complainant shown his readiness. However, he was not having money. As the complainant was not willing to pay the amount, he approached the office of the Anti Corruption Bureau on 16.10.1997 and lodged a report.

3. After receipt of the report, officers of the Anti Corruption Bureau called two panchas. In presence of the panchas, the complainant narrated the incident which was verified by the panchas from the First Information Report. After following due procedure, it was decided to conduct a raid and the panchas and complainant were called on the next date i.e. 17.10.1997. On 17.10.1997, the complainant produced tainted currency notes of Rs.700/- i.e. seven currency notes of Rs.100/- denomination. A demonstration, as to use and characteristics of phenolphthalein powder and

sodium carbonate, was shown. The said solution was applied on the tainted amount and kept in the shirt pocket of the complainant. Some instructions were given to pancha No.1 Kisan Bodiram Rathod to stay with the complainant and pancha No.2 was asked to stay along with the raiding party members. The complainant was further instructed to hand over the amount only on demand. Accordingly, a pre-trap panchanama was drawn.

4. After pre-trap panchanama, the complainant along with the panchas and raiding party members went at the office of the accused and the accused demanded the amount and the complainant handed over the same to him. The accused was caught after the complainant gave signal to the raiding party members. On enquiry, pancha No.1 disclosed as to demand and acceptance. The hands of the accused were examined and the tainted amount was recovered from the shirt pocket of the accused. Accordingly, post-trap panchanama was drawn. The officers of the Anti Corruption Bureau lodged report about the said incident, seized relevant documents, and sanction was obtained to prosecute the

accused. After completion of investigation, chargesheet was filed against the accused.

5. During trial, the prosecution examined in all four witnesses i.e. Keshavrao Chitrangad Ghatage (PW1) vide Exhibit-23, the complainant; Kisan Bodiram Rathod (PW2) vide Exhibit-28, the shadow pancha; Arvindrao Shankarrao Surve (PW3) vide Exhibit-43, the sanctioning authority, and Subhash Mahadeorao Dhok (PW4) vide Exhibit-45, the investigating officer.

6. Besides the oral evidence, the prosecution relied upon complaint (Exhibit-24) filed by the complainant; pre-trap panchanama (Exhibit-29); post-trap panchanama (Exhibit-30); seizure memos Exhibits-31 to 39; Chemical Analyzer's Report (Exhibit-41); letter address to the Principal, Industrial Training Institute to depute two employees to act as panchas (Exhibit-46); letter to the Police Inspector of the Anti Corruption Bureau (Exhibit-47); the First Information Report lodged (Exhibit-48) lodged by PW4, and forwarding letter to the Police Station Barshitakli (Exhibit-49).

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

8. I have heard learned counsel Shri Ved Deshpande for the accused and learned Additional Public Prosecutor Shri A.M.Kadukar for the State. I have been taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

9. Learned counsel for the accused submitted that the judgment and order of conviction impugned is not in accordance with law. There was no valid sanction. Moreover, cross examination of complainant PW1 Keshavrao Ghatage shows that he did not supported the prosecution case. Admittedly, Sitaram Ghonge, who accompanied the complainant and is the best witness to prove earlier demand, was not examined. Two employees, namely Anil Kale and Haridas Ratnaparkhi, present in the office of the Sub Register, were also not examined. The defence of the accused was that there was a loan transaction between the complainant and the accused. The accused has demanded the amount from the

complainant which was given to the complainant as a hand loan. The complainant has admitted that he was acquainted by the accused prior to the incident in question. There was hand loan transaction between them. The complainant has obtained amount Rs.500/- from the accused which he had repaid. Shadow pancha PW2 Kisan Rathod also stated that the accused demanded the amount which was his own. This admission is sufficient to show that the accused is falsely implicated in the alleged offence. He further submitted that the sanction was also not valid sanction. Sanctioning authority PW3 Arvindrao Surve admitted that he received a draft sanction. There is no reference of the documents which are considered by the sanctioning authority while according the sanction. Thus, for all the above reasons, the case of the prosecution fails and the accused is to be acquitted of the charges levelled against him.

10. In support of his contentions, learned counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT**

of Delhi)[1]; **N.Vijaykuamr vs. State of Tamil Nadu[2],** and **Uttam s/o Ramaji Shere vs. State of Maharashtra[3].**

11. *Per contra*, learned Additional Public Prosecutor for the State submitted that the tainted amount was recovered from the possession of the accused. The complainant as well as pancha No.1 categorically stated about the demand and in pursuance of the said demand, the amount was accepted. The evidence of sanctioning authority PW3 Arvindrao Surve shows about the material which he had considered at the time of according the sanction. He also placed reliance on the decision of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi**) cited *surpa* submitted that presumption is attracted and the accused has to rebut presumption which he had not rebutted. The sanction order is valid and, therefore, no interference is called for in the judgment and order passed by learned Judge of the trial court.

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

1 2023 4 SCC 731
2 (2021)3 SCC 687
3 2018 ALL MR (Cri) 2393

of sanction. The sanction order was challenged on the ground that the sanction was accorded without application of mind and mechanically and, therefore, it is not a valid sanction..

13. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning authority PW3 Arvindrao Surve, examined vide Exhibit-43. As per his evidence, he was working as Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune. He received the report from the Anti Corruption Bureau, Akola regarding trap case against the accused for demanding bribe Rs.500/-. He received the report of the Investigating Officer, pre-trap and post-trap panchanamas, statements of witnesses and the panchas. He examined papers and accorded the sanction to prosecute the accused. The sanction order is Exhibit-44. He stated that the accused was falling under Grade III of Government Servant. He was empowered to appoint and remove him. During his cross examination, he admitted that a draft sanction order was also forwarded to him along with the report of the Anti Corruption Bureau. There was a request by the Anti Corruption Bureau to grant sanction if found fit. He further admitted that duty of

the accused is to ensure that document is not against the public policy.

Thus, the evidence of the above said witness shows that after application of mind, he accorded the sanction and at the same time he admitted that draft sanction order was also forwarded to him.

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

14. Perusal of the sanction order reveals that in first paragraph, designation of the accused is mentioned and it is also mentioned that he is a public servant within the meaning of Section 2(c) of the said Act. In paragraph No.2, the alleged incident is mentioned. In paragraph Nos.4 and 5, it is mentioned that the accused has obtained pecuniary advantage a sum of Rs.500/- and committed an offence. It further reveals that upon careful reading and evaluating of papers, he satisfied that there is an adequate evidence to prosecute the accused and the sanction was accorded.

15. Thus, the entire sanction order nowhere discloses, as deposed by sanctioning authority PW3 Arvindrao Surve, PW3 perused the complaint, pre-trap and post-trap panchanamas, statements of the witnesses and, thereafter, accorded the sanction.

16. 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 Honourable Apex Court as well as this court.

17. The Honourable Apex Court in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[4] 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

4 1979 AIR 677

therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

18. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[5] 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

5 2014 Cri.L.J.930

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.

19. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**[6], as relied upon by learned Senior Counsel for the accused, 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

6 (2007)11 SCC 273

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.

20. The view in the case of **State of Karnataka vs. Ameerjan** cited *supra* is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**[7].

21. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**[8] 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

7 2021 SCC OnLine Bom 237
8 2016 ALL MR (Cri) 3697

other than complaint were taken into consideration those documents should have been referred in the sanction order. The sanction order is illegal and invalid.

22. In view of the settled principles of law, it is crystal clear that the sanctioning authority has to apply his own independent mind for generation of its satisfaction for sanction. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his own independent mind on the basis of the evidence which came before it. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required, the same is to be borne in mind. In fact, the sanctioning authority is the best person to judge as to whether public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

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

24. After going through the evidence of sanctioning authority PW3 Arvindrao Surve, though he stated that he has applied his mind and perused the investigation papers, the sanction order nowhere discloses that he received the said investigation papers including the complaint, pre-trap and post-trap panchanamas. The wording used in the sanction order only discloses regarding the allegations made in the complaint and evaluation of the documents on record. He further admitted that draft sanction order was also received by him. Admittedly, the grant of sanction is a serious exercise of power by the competent authority. He has to be apprised of all the relevant materials and on such material, the authority has to take a conscious decision as to whether facts would show commission of offence under relevant provisions. No doubt, elaborate discussion is not required, however, decision making on relevant materials should be reflected in order.

25. After going through the evidence of Sanctioning authority PW3 Arvindrao Surve, admittedly, the sanction order nowhere reflects that he has applied his mind by considering the documents which he has mentioned in his deposition and

it also not discloses on what basis he came to conclusion that the sanction is to be accorded to launch prosecution against the accused. There is no finding by learned Judge of the trial court as to the validity of the sanction.

26. Besides the issue of sanction, the prosecution claims that the accused has demanded gratification amount and accepted the same.

27. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Keshavrao Ghatage, examined vide Exhibit-23, and shadow pancha PW2 Kisan Rathod, examined vide Exhibit-43.

The evidence of complainant PW1 Keshavrao Ghatage, reflects that he is an agriculturist. He approached the office of the accused at Barshitakli, district Akola for execution of sale deed on 15.10.1997. He got prepared draft of sale deed and approached the accused for registration of the same. However, the accused informed him that for execution of sale deed of 34R land, permission of the Sub Divisional Officer is required. On his insistence to register the

sale deed, the accused allegedly demanded Rs.700/- as gratification amount and, therefore, he approached the office of the Anti Corruption Bureau on the next day i.e. 16.10.1997 and lodged report. His evidence further discloses about the procedure carried out by the officers of the Anti Corruption Bureau to conduct the raid.

As far as the subsequent demand is concerned, his evidence is that he along with shadow pancha PW2 Kisan Rathod visited the office of the accused and the accused made demand and he handed over the amount. As per his evidence, initially he handed over Rs.200/- and the accused has issued him receipt of Rs.186/- against registration fee for the execution of the sale deed and, thereafter, the sale deed was executed. After execution of the sale deed, the accused demanded Rs.500/- and he handed over the same to the accused. The accused accepted the amount and kept it in his shirt pocket. On giving signal, the other raiding party members came and caught the accused. The tainted amount was recovered from the shirt pocket of the accused by the officers of the Anti Corruption Bureau.

During his cross examination, he admitted the entire case put up by the defence. He admitted that he was acquainted with the accused. He borrowed hand loan of Rs.500/- from the accused. Accordingly, he handed over Rs.500/- to him as borrowed amount. He further admitted that he also threatened the accused that he will take action against him if the sale deed is not executed.

Thus, the entire cross examination shows that during the cross examination he has left loyalty towards the prosecution and admitted the defence of the accused that the amount, which was recovered from accused, was hand loan amount taken from the accused. His evidence further shows that at the time of initial demand, one Sitaram Ghonge was present along with him in the office of the accused. The evidence further shows that employees namely Anil Kale and Haridas Ratnaparkhi were present in the office of the Sub Registrar.

28. To corroborate the version of complainant PW1 Keshavrao Ghatage, the prosecution has also examined

shadow pancha PW2 Kisan Rathod, who acted on pre-trap and post-trap panchanamas and seizure memos.

The evidence of shadow pancha PW2 Kisan Rathod, as to the pre-trap panchanama, shows that as per the direction of his superior, he approached the office of the Anti Corruption Bureau as pancha. He has verified contents of the complaint as well as the complainant has also narrated the said contents. He further narrated about events carried out during the pre-trap panchanama and he visited the office of the accused along with the complainant. There was a communication between the complainant and the accused. Though he stated that the accused demanded the amount for execution of sale deed, his evidence shows that the accused demanded amount Rs.500/- as his own amount and, thereafter, the complainant handed over the said amount. He also admitted that as far as amount of Rs.200/- is concerned, which was accepted for registration of the sale deed, receipt of the same was passed by the accused. It further appears from the evidence that the sale deed was registered by the accused and, thereafter, the demand was made as his own amount.

29. Learned counsel for the accused submitted that, as far as the evidence of complainant PW1 Keshavrao Ghatage is concerned, he specifically stated that he handed over the amount to the accused as he obtained the amount from him as a hand loan. The said fact is also corroborated by shadow pancha PW2 Kisan Rathod, who also stated that the accused demanded the amount as his own. There is no dispute that the complainant in specific words admitted that the amount of Rs.200/- was paid towards the registration of the sale deed and amount of Rs.500/- was paid which was obtained by him from the accused as a hand loan. Shadow pancha PW2 Kisan Rathod has also corroborated the said fact as his evidence shows that after execution of sale deed, the original sale deed and photocopies were given by the Sub Registrar to the clerk for putting stamp and, thereafter, the Sub Registrar demanded amount Rs.500 as his own amount. Thus, the defence of the accused is also supported by the evidence of Shadow pancha PW2 Kisan Rathod. If the evidence of the complainant is considered on the aspect of the demand, it reveals that it was the complainant who handed over the same amount to the accused. There was no demand from the accused.

As far as the earlier demand is concerned, which was made in front of one Sitaram Ghonge, who was accompanying the complainant at the relevant time, said Sitaram is not examined by the prosecution.

30. While deciding the issue involving the offence under the said Act, a fact required to be considered is that the evidence of complainant PW1 Keshavrao Ghatage will have to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

31. The Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**[9] held that 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 means 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.

9 2017 SCC ONLine SC 742

32. In the case of **M.O.Shamsudhin vs. State of Kerala**[10], 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.

33. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**[11] 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

10 (1995)3 SCC 351
11 1963 Mh.L.J. (SC) 273

> 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."

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

35. In the present case, learned counsel for the accused rightly pointed out that not only complainant PW1 Keshavrao Ghatage but also shadow pancha PW2 Kisan Rathod has also admitted that the accused has demanded and obtained the amount as his own amount which supports the defence of the accused that the complainant obtained hand loan from him and the amount Rs.500 was paid against the said hand loan.

36. Insofar as the earlier demand is concerned, complainant PW1 Keshavrao Ghatage was accompanied by Sitaram Ghonge, who is not examined by the prosecution. The Investigating Officer neither recorded statement of said Sitaram nor any explanation was given by the prosecution for

non recording of his statement. Not only the prosecution has chosen not to examine said Sitaram but also the Investigating Officer has not recorded statement of said Sitaram during the course of investigation and no attempt was made by the Investigating Officer to get himself satisfied regarding the complainant's assertion of the demand having come from the accused for illegal gratification. While considering evidence of the prosecution, it is necessary to bear in mind an importance of evidence of prior demand, which if trustworthy makes trap a legitimate to eradicate a corruption, otherwise it could be an illegitimate trap.

37. The Honourable Apex Court has considered the aspect of non examination of independent witness in the case of **State of Punjab vs. Sohan Singh**[12] and held that independent witness drawn by the raiding party not examined on the ground that he was won over is fatal to the prosecution.

38. In the present case, the evidence of complainant PW1 Keshavrao Ghatage also shows that he was accompanied by Sitaram Ghonge in the office of the accused. Said Sitaram,

12 (2009)6 SCC 444

who is independent witness, is not examined by the prosecution to prove the earlier demand.

39. The evidence of complainant PW1 Keshavrao Ghatage and shadow pancha PW2 Kisan Rathod shows that the amount was seized from the shirt pocket of the accused. There is no dispute that the amount was recovered from the shirt pocket of the accused. The Chemical Analyzer's Report is also showing and supporting the said fact.

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

41. 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.”

42. In the present case, as noted above, the evidence as to the demand of illegal gratification is not supported either by complainant PW1 Keshavrao Ghatage or shadow pancha PW2 Kisan Rathod, who specifically admitted that the accused demanded the amount as his own.

43. Thus, the evidence regarding the demand of illegal gratification is not satisfactory and convincing.

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

45. It is pertinent to note that the accused registered the sale deed and issued receipt towards fees of registration of the sale deed prior to the alleged demand. Complainant PW1 Keshavrao Ghatage and shadow pancha PW2 Kisan Rathod both admitted that the sale deed was registered and, thereafter, the demand was made. The aspect of the demand was washed out during the cross examination of the complainant as observed earlier and the same is also supported by the admission of shadow pancha PW Kisan

Rathod, which sufficiently shows that the accused has accepted the amount as his own which was given to the complainant as a hand loan.

46. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**[13] this court has held that when a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. It is further held that the reason being that the complainant is also considered to be an interested witness or a witness who is very much interested to get his work done from a public servant at any cost and, therefore, whenever a public servant brings to the notice of such an interested witness certain official difficulties, the person interested in work may do something to tempt the public servant to bye-pass the rules by promising him some benefit. Since the proof of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against accused. Whereas, burden on accused is only to show probability and he is not required to prove facts beyond reasonable doubt.

13 2017 ALL MR (Cri) 3269

47. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**[14] held that the primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that what the accused received was gratification. The word "gratification" is not defined in the Act. Hence it must be understood in its literal meaning. In the Oxford Advanced Learner's Dictionary of Current English, the word "gratification" is shown to have the meaning "to give pleasure or satisfaction to". The word "gratification" is used in Section 4(1) to denote acceptance of something to the pleasure or satisfaction of the recipient. If the money paid is not for personal satisfaction or pleasure of the recipient it is not gratification in the sense it is used in the section. In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the court cannot take recourse to the presumption of law contemplated in Section 4(1) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at may stage.

14 (1997)10 SCC 600

48. In the case of **State of Maharashtra vs. Rashid B.Mulani**[15] 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.

49. Learned counsel for the accused as well as 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)** cited *surpa* wherein it has been held that presumption

15 (2006)1 SCC 407

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.

50. Learned counsel for the accused further placed on the decision in the case of **N.Vijaykuamr vs. State of Tamil Nadu** cited *supra* wherein also in paragraph No.26 it is reiterated by the Honourable Apex Court that mere recovery

by itself cannot prove charge of the prosecution against accused. The Honourable Apex Court referred judgments in the case of **C.M.Girish Babu vs. CBI, Cochin, High Court of Kerala**[16] and in the case of **B.Jayaraj vs. State of Andhra Pradesh**[17] wherein it is held that in absence of proof of demand for illegal gratification, currency notes are not sufficient to constitute such offence. It s further held that even presumption under Section 20 of the Act can be drawn only after demand for an acceptance of illegal gratification is proved.

51. As far as the evidence of investigating Officer PW4 Subhash Dhok is concerned, it is formal in nature.

52. In the instant case, as observed earlier that the prior demand by the accused is not proved by the prosecution, a doubt is created as to the demand of the amount as the independent witness is not examined and the evidence adduced by complainant PW1 Keshavrao Ghatage and shadow pancha PW2 Kisan Rathod is not sufficient to prove the

16 (2009)3 SCC 779
17 (2014)13 SCC 55

charges. I have already observed that the principles for according the sanctions are also not taken into consideration.

53. As it has been already observed that it is well settled that granting of sanction is a solemn sacrosanct act which affords protection to the government servants against frivolous prosecutions, there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The sanctioning authority to exercise powers strictly keeping in mind all relevant facts and material and accord the sanctions.

54. In the present case, sanction order Exhibit-44 discloses that there is no reference as to which documents are considered by sanctioning authority PW3 Arvindrao Surve to come to conclusion to accord the sanction. The sanction order nowhere shows *prima facie* application of mind. 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 a *sine qua non* to prove charges.

55. In the light of the aforesaid position, since the appeal deserves to be allowed, I pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 25.4.2005 passed by learned Special Judge, Akola in Special Case No.4/1998 convicting and sentencing the accused is hereby quashed and set aside.

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

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!