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

CRIMINAL APPEAL NO.444 OF 2014
AND
CRIMINAL APPEAL NO.448 OF 2014

CRIMINAL APPEAL NO.444 OF 2014
Prabhat s/o Ram Ambhurkar,
aged about 56 years,
occupation service at district T.B.
Hospital, Chandrapur.
r/o Jeshtha Apartments, Parsodi
Ring Road, Nagpur. ..... Appellant.

:: V E R S U S ::

State of Maharashtra,
through Deputy Superintendent of
Police, Anti Corruption Bureau,
Chandrapur. ..... Respondent.

==========

Shri Prakash Naidu, Counsel & Shri J.D.Bastian, Adv. for the Appellant.
Shri A.M.Kadukar, Additional Public Prosecutor for the State.

==========

CRIMINAL APPEAL NO.448 OF 2014
Prashant s/o Shankar Chatreshwar,
aged about 42 years, occupation service,
r/o Babupeth, ward No.2,
Chandrapur, tahsil and district Chandrapur. ..... Appellant.

:: V E R S U S ::

The State of Maharashtra,
through its Dy.Superintendent of
Police, Anti Corruption Bureau,
Chandrapur, taluka and district Chandrapur. ..... Respondent.

==========

Shri A.K.Waghmare, Counsel for the Appellant.
Shri A.M.Kadukar, Additional Public Prosecutor for the State.

==========

.....2/-

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 09/08/2023
PRONOUNCED ON : 09/10/2023

COMMON JUDGMENT

1. These two appeals are heard together and disposed of by this common judgment since these appeals arise out of the same judgment and order of conviction and sentence dated 21.7.2014 passed by learned Special Judge, Chandrapur (learned Judge of the trial court) in Special ACB Case No.10/2008.

2. By the said judgment and order of conviction, appellant Prabhat s/o Ram Ambhulkar is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (of the said Act) and sentenced him to suffer rigorous imprisonment for one year and to pay fine Rs.500/-, in default, to suffer rigorous imprisonment for three months.

Appellant Prabhat s/o Ram Ambhulkar, is also convicted for offence punishable under Section 13(1)(d) read with Section 13(2) of the said Act and sentenced him

to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment for six months.

Appellant Prashant s/o Shankar Chatreshwar, is convicted for offence punishable under Section 12 of the said Act and sentenced him to suffer rigorous imprisonment for one year and to pay fine Rs.500/-, in default, to suffer rigorous imprisonment for three months.

3. Criminal Appeal No.444/2014 is filed by Prabhat s/o Ram Ambhulkar, accused No.1. Whereas, Criminal Appeal No.448/2014 is filed by Prashant s/o Shankar Chatreshwar, accused No.2.

4. In this judgment, the appellants (the accused persons) will be referred to by their original positions in charge.

5. The brief facts leading to the above appeals are as follows:

Dr.Prakash Shankar Ramteke (complainant) was serving as medical officer with the District T.B. Hospital at Chandrapur since 18.6.2006 on monthly salary of Rs.22,600/- and was getting Rs.2500/- towards travelling fuel allowances. Every month, he used to submit bills of the said allowances for sanction to the said hospital. Accused No.1 was the authority to sanction the bills and was serving as District Tuberculosis Officer. Accused No.2 was serving as Senior T.B. Supervisor at the said hospital. As per allegations of the complainant, accused No.1 was not paying him amount towards travelling allowance and used to obtain his signatures on the said bills through accused No.2 and was keeping the said amount with him. In the month of November 2006, the complainant submitted his bills towards the said allowances for the months May, June, and September 2006 for sanction. Instead of sanctioning the bills, accused No.1 sanctioned the bill for the month of November 2006 and the complainant had received Rs.2500/- towards the bill. As accused No.1 did not received the amount from the complainant, on 14.12.2006

the complainant was called by accused No.1 in his chamber and demanded Rs.2500/- and informed the complainant that unless amount Rs.2500/- is paid to him, he will not sanction the other bills. The complainant was further told that the said amount should be paid till the noon of 15.12.2006. As the complainant was not ready to pay the said amount, he approached the office of the Anti Corruption Bureau, Chandrapur (the bureau) on 15.12.2006 and lodged report. After receipt of the report, officer of the bureau called two panchas. The complainant narrated his grievance to the panchas and the panchas read the complaint. The complainant produced five currency notes of Rs.500 as gratification amount to officers of the bureau. The demonstration as to use and characteristics of phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the gratification amount and was kept in the shirt pocket of the complainant. Some necessary instructions were given to the complainant and both the panchas. The complainant was instructed to hand

over the amount only on demand. Accordingly, the pre-trap panchanama was drawn.

6. After the pre-trap panchanama, the complainant along with the panchas and raiding party members went to the office of accused No.1. The complainant along with pancha No.1 entered in the said hospital. Pancha No.1 obtained OPD Card and went along with the complainant towards room No.9. Accused No.1 was busy in a meeting and, therefore, the complainant along with pancha No.1 was waiting outside room No.9. Accused No.1 came near to the door and the complainant communicated with him. Accused No.1 told the complainant to wait in room No.2 and, thereafter, accused No.2 came there and the complainant handed over the amount to accused No.2. Accused No.2 accepted the amount and, thereafter, the raiding party members came there and accused No.2 was caught. Subsequently, accused No.1 was also arrested. Accused No.2 explained that he had accepted the amount for accused No.1. The right hand fingers of accused No.2 were examined in the solution and colour of the solution was

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

7. During trial, the prosecution examined in all five witnesses; i.e. Prakash Shankar Ramteke (PW1) vide Exhibit-13, the complainant; Mahadeo Bhikaji Duryodhan (PW2) vide Exhibit-36, shadow pancha; Dr.Vipin Ramgopal Sharma (PW3), vide Exhibit-42, the sanctioning authority for accused No.2; Shriram Mahadeorao Todase (PW4) vide Exhibit-47, the Investigating Officer; and Subhashchandra Tatyasaheb Magar (PW5) vide Exhibit-61, the sanctioning authority for accused No.1.

8. Besides the oral evidence, the prosecution relied upon complaint (Exhibit-14); personal search panchanama of the complainant after trap (Exhibit-15); seizure memo (Exhibit-16); letter by the complainant for exemption

(Articles-C to G); letters by the complainant requesting for not taking action against him (Exhibits-31 and 34); pre-trap panchanama (Exhibit-37); seizure memos (Exhibits-38 and 39); post-trap panchanama (Exhibit-40); sanction order (Exhibits-43 and 62); show cause notice to accused No.2 (Exhibit-44), explanation by accused No.2 to the sanctioning authority (Exhibit-45); complaint by investigating officer PW4 Shriram Todase (Exhibit-51); letter to Chemical Analyzer (Exhibit-54).

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

10. I have heard learned counsel Shri M.B.Naidu for accused No.1, learned counsel Shri A.K.Waghmare for accused No.2, and learned Additional Public Prosecutor Shri A.M.Kadukar for the respondent/State.

11. Learned counsel for the accused persons submitted their written submissions as well as their oral

submissions. It is submitted that the judgment and order of conviction impugned is not in accordance with law. Learned Judge of the trial court had not considered that complainant PW1 Dr.Prakash Ramteke was not punctual in his work and filed various applications for exemption whenever he was deputed for training and, therefore, show cause notice was issued to him and he requested not to take action against him. Accused No.1 was superior to the complainant. The complainant was apprehending that action would be taken against him and, therefore, this false complaint is lodged. It is further submitted that there was no valid sanction and the prosecution also failed to prove demand and acceptance of the bribe. It is submitted that accused No.2 was not aware that amount handed over to him is a bribe amount. The evidence of shadow pancha PW2 Mahadeo Duryodhan shows that there was no communication between the complainant and accused No.1. In fact, the demand and acceptance are not proved. The entire prosecution case fails when the demand is not proved. Mere recovery of the amount is not sufficient to prove charges against the accused persons.

.....10/-

12. In support of their contentions, learned counsel appearing for the accused persons placed reliance on following decisions:

1.B.Jayaraj vs. State of Andhra Pradesh[1];

2.C.Sukumaran vs. State of Kerala[2];

3.Dattatraya s/o Rajaram Trhaokar vs. The State of Maharashtra[3];

4.Gajanan s/o Lobhaji Dahale vs. The State of Mah., thr.Anti Corruption Bureau, Yavatmal[4];

5.Chandrasen s/o Kisanrao Chauhan vs. State of Mah. and anr[5];

6.State of Maharashtra vs. Shivram Bhikaji Pawar anr[6];

7.Arjun Bajirao Kale vs. State of Maharashtra[7];

8. The State of Maharashtra vs. Ashok Tukaram Gavai and anr[8];

9.Jaysing Nayrana Bidgar vs. The State of Maharashtra[9], and

1 (2014)13 SCC 55
2 2015(1) Bom.CR (Cri) 635
3 2017 ALL MR (Cri) 4184
4 2017(5) Mh.L.J. (Cri.) 723
5 Criminal Appeal No.104/1999 decided by this court on 4.3.2011
6 Criminal Appeal No.11/2000 decided on 17.2.2011 by this court.
7 2009 ALL MR (Cri) 85
8 2012 ALL MR (Cri) 2894
9 2016 ALL MR (Cri) 2079

10.Mr.Khushalchand Yashwant Gaikwad vs. The State of Maharashtra[10].

13. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW1 Dr.Prakash Ramteke corroborated by shadow pancha PW2 Mahadeo Duryodhan sufficiently proves that there was a demand and in pursuance of the said demand, the amount was accepted by accused No.2. The sanction order is valid and no interference is called for in the judgment.

14. Since question of validity of the sanction has been raised as primary point, it is necessary to discuss an aspect of sanction. The sanction order was challenged on the ground that the sanction was accorded without application of mind and mechanically and, therefore, it is not a valid sanction.

15. On the point of valid sanction, it is submitted that the evidence of sanctioning authority PW5 Subhashchandra Magar, who accorded the sanction to prosecute accused No.1, nowhere shows the application of mind.

10 2018 ALL MR (Cri) 3711

16. The evidence of sanctioning authority PW5 Subhashchandra Magar shows that he was working as under Secretary, Public Health Department, Mantralaya, Mumbai. On 14.2.2008, he received papers in Crime No.3243/2006 registered under Sections 7, 12, and 13(1)(d) read with Section 13(2) of the said Act. He had gone through all the documents and also called the record of arrest of accused No.1. On the basis of the documents, he found that there was a *prima facie* case for the prosecution and, therefore, he sent the matter to the Law and Judiciary Department for opinion. The said department had also opined that the said case is fit for according the sanction and, thereafter, he prepared proposal and submitted the same to the Honourable Deputy Chief Minister to accord the sanction. The said Honourable Minister accorded the sanction and, thereafter, under his signature, he accorded the sanction which is at Exhibit-62.

The cross examination of the said witness shows that he had also received draft sanction order.

17. Perusal of the sanction order shows that in paragraph No.1, designation of accused No.1 is mentioned. In paragraph No.2, details regarding the crime are mentioned. In paragraph Nos.3 to 5, it is mentioned that the Government of Maharashtra, having fully examined the material placed before it and considered all facts and circumstances, was satisfied that there is a *prima facie* case made out against the accused persons and accorded the sanction. In a schedule, the prosecution case is mentioned.

18. Perusal of the sanction order nowhere discloses that who has applied his mind while according the sanction. After going through the evidence of sanctioning authority PW5 Subhashchandra Magar, though he stated that he applied his mind and perused the investigating papers, the sanction order nowhere discloses that it was he who applied his mind by perusing the investigating papers. The wordings used in the sanction order are that the Government of Maharashtra, having fully examined material before it, was satisfied that there is a *prima facie* case made out against the accused persons and the sanction is accorded. 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 Government of Maharashtra applied its mind and accorded the sanction. It further discloses that an opinion of the Law and Judiciary Department was obtained. However, there is no reference of these activities in the sanction order. The sanction order discloses that the material was examined by the Government of Maharashtra and 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 subjective satisfaction in this regard on behalf of the Government of Maharashtra. It is not known as to who applied his/her mind and by what process exactly an opinion was formed that a *prima facie* case was made out for according the sanction. The opinion of the Law and Judiciary Department was not produced in the evidence by the prosecution. If it would have been produced, sufficient

light perhaps could have been thrown on the exercise undertaken for according of sanction of the accused persons by the Government of Maharashtra. Admittedly, 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.

19. Sanctioning Authority PW3 Dr.Vipin Sharma, was examined vide Exhibit-42 to prove the sanction which is accorded to prosecute accused No.2. His evidence shows that he studied all the papers and issued a notice to Prashant Chatreshwar, accused No.2, and found *prima facie* case against accused No.2 and accorded the sanction. Though he is cross examined, nothing incriminating is brought on record. Insofar as the sanction order is concerned, which is at Exhibit-43, in paragraph No.1 of the

said sanction order, designation of accused No.2 is mentioned and in paragraph Nos.2 to 8 the entire prosecution case is mentioned and in paragraph No.9 he mentioned that he satisfied beyond doubt to the fact that he is the appointing authority and granted the sanction on the basis of statement and documents on record.

20. Perusal of the record shows that he issued the show cause notice to accused No.2 and accused No.2 submitted his explanation which shows that he was not aware about the amount handed over to him is a bribe amount. In fact, application filed by complainant PW1 Dr.Prakash Ramteke for not taking action against accused No.2 also shows that accused No.2 was not aware that the amount handed over to him, which was to be handed over to accused No.1, is a bribe amount. The complainant has filed his application on 20.12.2006 whereas the sanction was accorded on 8.10.2008. The sanctioning authority had not considered the said aspect. The explanation submitted by accused No.2 on issuance of show cause notice is supported by the application filed by complainant PW1 Dr.Prakash

Ramteke stating that accused No.2 was not aware that the amount handed over to him is a bribe amount. Perusal of the sanction order nowhere discloses that which documents are considered by the sanctioning authority while according the sanction. There is no reference in the sanction order that which documents are considered by the sanctioning authority.

21. Whether sanction is valid or not and when sanction can be called as valid, the same is settled by various decisions of the Honourable Apex Court as well as this Court.

22. The Honourable Apex Court in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[11] has held that what Court has to see is whether or not sanctioning authority at the time of giving sanction was aware of facts constituting offence and applied its mind for the same and any subsequent fact coming into existence after resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a

11 1979 AIR 677

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 Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[12] 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 sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft chargesheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the

12 2014 Cri.L.J.930

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.

.....20/-

24. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**[13] has 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** cited *supra* is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**[14]**.**

13 (2007)11 SCC 273
14 2021 SCC OnLine Bom 237

26. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**[15] 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 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

15 2016 ALL MR (Cri) 3697

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

29. After going through the evidence of sanctioning authorities PW3 Dr.Vipin Sharma as well as PW5 Subhashchandra Magar, admittedly, the sanction order nowhere reflects who has applied mind and which documents are considered by the sanctioning authority and what was the basis to come to conclusion that the sanction is to be accorded to launch prosecution against the accused persons.

30. Besides issue of the sanction, the prosecution claimed that the accused persons have demanded gratification amount and accepted the same.

31. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Dr.Prakash Ramteke and shadow pancha PW2 Mahadev Duryodhan.

The evidence of the complainant reflects that he was serving as medical officer with the District T.B. Hospital at Chandrapur. Accused No.1 was his superior and serving as a as District Tuberculosis Officer and was serving as Senior T.B. Supervisor at the said hospital. As per allegations of the complainant, accused No.1 is the sanctioning authority who used to sanction travelling allowance bills of the complainant. It is further alleged that though accused No.1 was sanctioning bills towards travelling allowances, he was not paying the same to the complainant and was keeping with him. The bill for the month of November 2006 was received by the complainant, but he has not deposited it to accused No.1 and, therefore, accused No.1 demanded the same by informing him that if the amount is not paid, he will not sanction further bills and, thereafter he approached the office of the bureau and filed

the complaint. His evidence further discloses the procedure carried out by the officers of the bureau prior conducting of the raid. As far as subsequent demand is concerned, his evidence is that he along with pancha No.1 visited the said hospital. At the relevant time, accused No.1 was sitting in room No.9 of the hospital and was in meeting. He shown accused No.1 to the pancha. After seeing him, accused No.1 came outside the room and, thereafter, he communicated to accused No.1 that he is having some work with him. At the relevant time, accused No.1 asked him to wait in room No.2 and informed him that he is sending Chatreshwar, accused No.2 and the amount should be handed over to accused No.2. Thereafter, accused No.2 came there and he handed over the amount to accused No.2. Thereafter, the officers of the bureau came there and caught accused No.2 and the amount was recovered from accused No.2.

The cross examination of complainant PW1 Dr.Prakash Ramteke shows that he was receiving petrol allowances for visiting area which was under his jurisdiction.

In the month of October 2006 he paid Rs.10,000/- by cheque to accused No.1. He further admitted that prior to two-three days of the trap, he quarreled with accused No.1 on account of refund of Rs.10,000/-. The attempts were made that he was asked to attend the training on 26.7.2005, but he has not completed the training. After showing the letter dated 27.7.2005, he accepted the fact that the said letter was issued by him showing his inability to attend the training. Another letter dated 9.5.2005 was shown to him by which he shown his inability to attend the meeting.

As far as the alleged incident is concerned, he admitted that when he went to meet accused No.1 along with pancha No.1, near about 5-6 people were present in the meeting. He further admitted that in that meeting accused No.2 was also present. He further admitted that as he was suffering from mental torture, he lodged the report against the accused persons. He specifically admitted that he had no grievance against accused No.2. He further admitted that when he visited to hand over the bribe money

to accused No1, that fellow was busy in meeting. Accused No.2 never demanded bribe from him. He handed over the money to accused No.2 for giving it to accused No.1.

32. To corroborate the versions of complainant PW1 Dr.Prakash Ramteke, the prosecution also examined shadow pancha PW2 Mahadeo Duryodhan, pancha No.1.

The evidence of shadow pancha PW2 Mahadeo Duryodhan, on the pre-trap panchanama, shows that the complainant has orally narrated his complaint to him and, thereafter, he produced the tainted notes. The demonstration as to the use of the phenolphthalein powder and the sodium carbonate was shown to them. The said solution was applied on the notes and the said notes were kept in shirt pocket of the complainant. Accordingly, the pre-trap panchanama was drawn. After the pre-trap panchanama, he along with the complainant and the other raiding party members proceeded towards the said hospital and, thereafter, he along with the complainant entered into the hospital. A message was given by the complainant to

accused No.1 and also about the money. His evidence shows that after entering into the hospital, he obtained OPD Card and the complainant has given him prescription of medicine and, thereafter, the complainant informed him that he will confirm whether his superior is present and till then he shall take medicines. Meanwhile, the complainant went to see his superior and after some time informed that his superior told him to hand over the amount to his assistant in room No.2 and they have to go in room No.2 and, thereafter, they went to room No.2 wherein one person came there and the complainant handed over the same amount to the said person.

33. Thus, if the evidence of shadow pancha PW2 Mahadeo Duryodhan is taken into consideration, he has narrated completely different story which shows that he was not accompanied the complainant when he met accused No.1. He has not witnessed any communication between accused No.1 and complainant PW1 Dr.Prakash Ramteke. During cross examination, he specifically admitted that the complainant met him in the corridor after verifying

availability of accused No.1. At that time, the complainant told him that he has given the message and accused No.1 told him that he should pay the amount to his assistant as he is in meeting. This evidence clearly shows that there was no demand in presence of shadow pancha PW2 Mahadeo Duryodhan and there was no communication between the complainant and accused No.1 in presence of pancha No.1.

34. Complainant PW1 Dr.Prakash Ramteke has filed an application on 20.12.2006 requesting to the Deputy Director of Tuberculosis and and BCG, Mumbai for not initiating action against accused No.2. The said application is at Exhibit-31. Recital of the said application shows that on 15.12.2006 accused No.1 has demanded the amount from him and, therefore, he approached the office of the bureau. When he went to hand over the amount to accused No1, accused No.1 was busy in a meeting and, therefore, he called accused No.2 and handed over the same amount to accused No.2 to hand over the same to accused No.1. This communication itself shows that there was no communication between the complainant and accused No.1

as far as the demand on 15.12.2006 is concerned. The same shows that when the complainant went in the hospital, after lodging the complaint with the office of the bureau to hand over the amount, he could not meet accused No.1 and accused No.2 was not aware that the amount is a gratification amount. Exhibit-34 is another application which also shows the similar contention that there was no communication between accused No.1 and accused No.2. However, the complainant merely handed over the amount to accused No.2 without any demand.

35. As far as the first demand is concerned, except the bare statement of complainant PW1 Dr.Prakash Ramteke, no other evidence is on record. The investigating officer has not verified the said demand before laying the trap. Thus, the earlier demand is not proved by the prosecution and as far as the demand on the day of the trap is concerned, the evidence of pancha and Exhibits-31 and 34 show that there was no demand by any of accused persons. However, the complainant handed over the said amount and accused No.2 accepted the same without any knowledge.

This evidence is to be appreciated in the light of the admission given by the complainant that there was previous quarrel between him and accused No.1 as well as he was fed up with harassment at the hands of accused No.1, he lodged the complaint. Admittedly, there is absolutely no cogent and reliable evidence as far as the demand is concerned.

36. Learned counsel appearing for the accused persons rightly placed reliance on the decision of the Honourable Apex Court in the case of **B.Jayaraj vs. State of Andhra Pradesh** cited *supra* wherein it is held that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that accused voluntarily accepted money knowing it to be a bribe. The said ratio is laid down in the case of **C.Sukumaran vs. State of Kerala** cited *supra*.

37. There is variance in the evidence of complainant PW1 Dr.Prakash Ramteke and shadow pancha PW2 Mahadeo Duryodhan.

As per the evidence of the complainant, when he approached accused No.1, along with pancha No.1, accused No.1 was in a meeting and he came out of the meeting room and communicated with him and demanded the amount. Whereas, as per the evidence of pancha No.2, he was not present along with the complainant when he met accused No.1.

38. It is held by the Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**[16] 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

16 (1979)4 SCC 526

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 Honourable Apex Court held that it should corroborate to each other.

39. The same aspect is considered by the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**[17] wherein also it is held that statement of complainant and 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

17 2017 SCC ONLine SC 742

record cannot amount to a demand to be a constituent of the offence.

40. In the case of **M.O.Shamsudhin vs. State of Kerala**[18], 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.

41. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**[19] wherein it has been held that the combine effect of Sections 133 and 114, illustration (b) may be stated as follows:

18 (1995)3 SCC 351
19 1963 Mh.L.J. (SC) 273

> "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."

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

43. In the present cases, admittedly, there is a variance in the evidence of complainant PW1 Dr.Prakash Ramteke and shadow pancha PW2 Mahadeo Duryodhan on material particulars as far the communication between the complainant and accused No.1 is concerned.

44. The evidence of investigating officer PW4 Shriram Todase is formal in nature. Admittedly, he has not verified the demand prior to the trap. So, he is not the witness as far as the demand is concerned.

45. After appreciating the evidence on record, it reveals that as per the prosecution case, the accused persons have demanded the amount for sanctioning bills. The evidence shows that accused No.1 has demanded the amount, however the communications Exhibit-31 and 34 of complainant PW1 Dr.Prakash Ramteke itself show that there was no communication between him and accused No.1 on the day of the trap i.e. 15.12.2006.

The evidence of shadow pancha PW2 Mahadeo Duryodhan also shows that he was not present when the complainant met accused No.1.

46. Thus, the evidence of complainant PW1 Dr.Prakash Ramteke is also not helpful to prove the demand.

47. The evidence of complainant PW1 Dr.Prakash Ramteke and shadow pancha PW2 Mahadeo Duryodhan is not corroborating to each other on material particulars. If this evidence is taken into consideration, in the light of the evidence of PW2 and Exhibits-31 and 34, it sufficiently shows that the prosecution failed to prove the demand.

.....36/-

48. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**[20] 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.

49. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of**

20 2017 ALL MR (Cri) 3269

Maharashtra[21] 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.

21 (1997)10 SCC 600

50. In the case of **State of Maharashtra vs. Rashid B.Mulani**[22] 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.

51. It is well settled that while deciding the offence under said 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.

22 (2006)1 SCC 407

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

52. As far as applicability of presumption is concerned, in the decision of the constitution bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**[23] 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

23 2023 SCC OnLine SC 280

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.

53. In the instant cases, as observed earlier, prior demand is not proved by the prosecution and the demand on the day of the trap is also falsified by Exhibits-31 and 34 and the evidence of shadow pancha PW2 Mahadeo Duryodhan. It is already observed that there is no valid sanction to prosecute the accused persons.

54. 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.

55. Thus, the entire exercise carried out, as far as the sanction by sanctioning authority PW5 Subhashchandra Magar is concerned, is in secrecy and it is not known as to who has applied his/her mind and accorded the sanction. The sanction order showing *prima facie* application of mind is valid sanction.

56. Thus, on the ground of the sanction also, the prosecution in the present cases fails. The evidence as to the demand is not satisfactory and proof of demand is a *sine qua non* to prove the charge. As such, as appeals deserve to be allowed, I proceed to pass following order:

ORDER

(1) The criminal appeals are **allowed**.

(2) The judgment and order of conviction and sentence dated 21.7.2014 passed by learned Special Judge,

.....42/-

Chandrapur in Special ACB Case No.10/2008 convicting and sentencing accused No.1 and accused No.2 is hereby quashed and set aside.

(3) Accused No.1 and accused No.2 are acquitted of offences for which they were charged and sentenced.

The appeal stand **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

...../-