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

CRIMINAL APPEAL NO.333 OF 2014

Vijay s/o Wasudeo Shende,
aged about 47 years, occupation : service,
Junior Engineer (Construction Department),
Municipal Council, Bramhapuri,
tahsil Bramhapuri, district Chandrapur. ….. **Appellant.**

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

The State of Maharashtra,
through Dy.Superintendent of Police,
Anti-Corruption Bureau, Chandrapur,
tahsil and district Chandrapur. ….. **Respondent**.

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Shri R.M.Daga, Counsel for the Appellant.
Shri R.V.Sharma, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/04/2024
PRONOUNCED ON : 02/05/2024

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order of conviction and sentence dated 7.5.2014 passed by learned Special Judge, Chandrapur (learned Judge of the trial court) in Special (ACB) Case No.10/2007 whereby the accused is convicted for offence punishable under Section 7 of the

Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer rigorous imprisonment for one year and to pay fine Rs.500/-, in default, to suffer rigorous imprisonment for three months.

The accused is further convicted for offence punishable under Section 13(1)(d) read with Section 13(2) of the said Act and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment for six months.

Learned Judge of the trial court directed that all sentences shall run concurrently.

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

Complainant Jitendra Gadiwan, is a businessman and running a shop under name and style as “Rolling Shutters and Engineering Workshop at Bramhapuri”. He used to obtain welding and fabrication works from the Government, Semi-Government, and so also privately. Two months before 17.7.2006, he filled up a tender in the office of the Bramhapuri

Municipal Council for manufacturing gate of compound wall of the Municipal Council. Accordingly, he completed the work as per the tender on 7.7.2006 and the gate was installed. The accused, who was Junior Engineer at the relevant time, inspected the work and approved it and therefore, the complainant submitted his bill of Rs.14,900/-. As per allegation, the complainant was called by the accused saying that he helped him during the tender process, otherwise he would not have got the said tender and demanded Rs.2500/- for taking entry of the bill of the complainant in M.B.Register. It is alleged that the accused told him that if he pays the amount, he would obtain signature of the Chief Officer and would forward the bill to the Accounts Office.

3. On 17.7.2006, the complainant again visited the office of the accused and requested him to send the bill, but the accused told him that unless and and until he pays the amount, he would not process the bill. As the complainant was not desiring to pay the amount, he approached the office of the Anti Corruption Bureau at Chandrapur (bureau) and lodged a report on 17.6.2006.

4. After receipt of the report, the office of the bureau called panchas to remain present in the office of the bureau on 20.7.2006. Accordingly, panchas were present as well as the complainant. The complainant narrated the incident which was verified by panchas from the complaint. After following a due procedure, it was decided to lay a trap. The complainant produced four currencies of Rs.500/- denomination. A demonstration as to phenolphthalein powder and sodium carbonate was shown to the complainant and panchas. The instructions were given to panchas as well as the complainant. The solution was applied on currency notes and the amount was handed over to the complainant to keep it in his shirt pocket. Accordingly, a pre-trap panchanama was drawn.

5. The squad for the trap along with panchas and the complainant proceeded to Bramhapuri. The complainant and pancha namely Meshram proceeded towards the office of the accused and another pancha Tilakchand Khandekar was along with other raiding party members. In the office of the accused, the complainant communicated with the accused whether his bill

was sent to the Account Section and the accused disclosed that the bill is not as per quotation and he has to correct the bill and, thereafter, the accused and the complainant went to a pan stall and returned after some time. The complainant was told by the accused that he has to attend a meeting and, thereafter, he would come to his shop and he proceeded to attend the meeting and, therefore, the complainant and pancha Meshram returned towards the trap party.

6. The Trap Officer suspended the trap for some time and at about 4:20 by replacing pancha Meshram, sent pancha Khandekar along with the complainant at his shop. Accordingly, instructions were given. At about 4:30 pm, trap party members received a signal. Accordingly, the accused was caught. The amount was recovered from the accused. On enquiry with the pancha, it revealed to the Trap Officer that the accused demanded the amount and accordingly the amount was handed over. The amount was seized from the accused. Accordingly, a post-trap panchanama was drawn. The officer of the bureau lodged a

report about the said incident. After obtaining sanction, chargesheet was filed.

7. To substantiate allegations, the prosecution examined in all five witnesses viz. Jitendra Shivshankar Gadiwan vide Exhibit-15, the complainant (PW1); Tilakchand Khandekar vide Exhibit-23, shadow pancha (PW2); Bandu Bagaji Meshram vide Exhibit-.35, the pancha (PW3); Pramod Uttamrao Wankhede vide Exhibit-36, the Sanctioning Authority (PW4), and Bhimrao More vide Exhibit-56, the Trap Officer (PW5).

8. Besides the oral evidence, the prosecution further placed reliance on complaint Exhibit-16; seizure memo Exhibit-17, bills Exhibits-18 and 19; pre-trap panchanama Exhibit-24; seizure memos Exhibits-30 to 32; personal search of the accused Exhibit-33; post-trap panchanama Exhibit-34, complaint by the accused against Corporator Exhibits-41 to 44, Resolution for black listing contractor Exhibit-49, Sanction Order Exhibit-37, personal search of the complainant Exhibit-58, report Exhibit-59, First Information Report Exhibit-61, letter to the Chemical Analyzer Exhibit-63, and seizure memo Exhibit-68.

9. 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.

10. I have heard learned counsel Shri R.M.Daga for the accused and learned Additional Public Prosecutor 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.

11. Learned counsel for the accused submitted that learned Judge of the trial court erred in convicting the accused in absence of any cogent and reliable evidence on the point of demand and acceptance of the alleged illegal gratification of Rs.2000/-. It is submitted that mere possession and recovery of currency notes from the accused without proof of demand will not bring home the offence under Section 7 or 13(1)(d) of the said Act. It is submitted that demand and acceptance of illegal gratification is *sine qua non* to attract provisions as well as presumption under Section 20 of the NDPS Act. A burden to prove accusations with regard to the acceptance of illegal gratification lies on the prosecution. As far as the evidence of complainant PW1 Jitendra

Gadiwan, the complainant (PW1), as regards the demand, is concerned, it suffers from omissions and contradictions, which are proved by the defence. It further reveals from the evidence of Sanctioning Authority PW4 Pramod Wankhede that despite of Resolution was passed not to accord the sanction, he has accorded the sanction without application of mind. Thus, for want of valid sanction also, the case of the prosecution fails and he prays for acquittal of the accused.

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

1. Ashoka Karunakaran Panikar vs. State of Maharashtra;[1]

2. K.Shanthamma vs. State of Telangana[2];

3. State of Punjab vs. Madan Mohan Lal Verma[3], and

4. Mohan s/o Keshavrao Jayebhaye vs. The State of Maharashtra[4].

13. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW1 Jitendra

1 2022 ALL MR (Cri) 2381
2 (2022)4 SCC 574
3 2013 ALL SCR 3051
4 2024 ALL MR (Cri) 603

Gadiwan is corroborated by shadow pancha PW2 Tilakchand Khandekar and pancha PW3 Bandu Meshram substantiating the prosecution case that the accused demanded illegal gratification and accepted the amount. The amount is recovered from the accused and no plausible explanation is put forth by the accused. The prosecution has also proved that the sanction is as per law and, therefore, no interference is called for in the judgment impugned in the appeal.

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

15. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning Authority PW4 Pramod Wankhede. The sum and substance of his evidence is that he was the Chief Officer of Municipal Council at Bramhapuri and the accused was serving as Junior Engineer in the said Municipal

Council. He received papers of investigation from the bureau and along with those papers a draft sanction order was sent. He has gone through all investigating papers and found *prima facie* case and accorded the sanction, which is at Exhibit-37. During his cross examination, it came on record that he had obtained prior approval of General Body of the Municipal Council for giving the sanction. The General Body of the Municipal Council denied permission. He further stated that in the General Body Meeting, all powers were given to him by deciding that he would be personally responsible for granting or rejecting the sanction. His evidence further shows that the accused had given complaints against Corporator Satish Shrivastava. An enquiry was conducted regarding the said complaint. There was a meeting between the Chief Officer, Association of Contractors, and the Sub Divisional Officer. As per order dated 15.4.2006, said contractors were black listed. Thus, attempt was made to show that as the accused had made complaints against contractors, due to which, by passing resolution, contractors were black listed, false complaint is lodged against him. As far as validity of the sanction is concerned, it is submitted that there was no approval of the

General Body to accord the sanction. Moreover, Sanctioning Authority PW4 Pramod Wankhede has not applied his mind and accorded the sanction. His evidence states that he has seen papers and accorded the sanction. There is no whisper that he accorded the sanction after application of mind. There is no reference that which documents he had considered to accord the sanction. Thus, his evidence sufficiently shows that on the basis of draft sanction order, he accorded the sanction.

16. Whether sanction is valid or not and when 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 in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[5] 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

5 1979 AIR 677

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.

18. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[6] 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,

6 2014 Cri.L.J.930

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.

19. The absence of description of documents referred by Sanctioning Authority PW4 Pramod Wankhede would show lack of application of mind by the competent authority while according the sanction.

20. In view of settled principles of law, it is crystal clear that Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction. The mind of Sanctioning Authority should not be under pressure and the said authority has to apply his/her own independent mind on the basis of 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, Sanctioning Authority is the best person to judge as to whether public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

21. Thus, the application of mind on the part of the sanctioning authority is imperative. It is true that sanction order should not be an order like court orders, but it should reflect application of mind.

22. Perusal of the sanction order shows that Sanctioning Authority PW4 Pramod Wankhede reproduced the prosecution case. In the sanction order, though the Sanctioning Authority

mentioned that papers of investigation of Crime No.3069/2006 were reported to the General Body of the Nagar Parishad and the General Body of the Nagar Parishad in its General Body Meeting passed Resolution No.6 on 29.6.2007 and conveyed its approval for prosecution of the accused for offences constituted by the Act, his cross examination shows that the General Body denied permission, however, powers were given to him to decide at his own whether sanction is to be granted or not.

23. Thus, recital of the sanction order shows that the General Body Meeting approved that the prosecution is contrary to the evidence adduced by Sanctioning Authority PW4 Pramod Wankhede. Moreover, the prosecution has not produced on record the said Resolution which would have clarified things why the General Body denied to accord the sanction.

24. After going through the evidence of Sanctioning Authority PW4 Pramod Wankhede, admittedly, the sanction order nowhere reflects material on the basis of which the Sanctioning Authority came to conclusion that the sanction is to be accorded to launch prosecution against the accused.

25. Thus, it is imperative from the record that the sanction accorded by Sanctioning Authority PW4 Pramod Wankhede is without application of mind.

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

27. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Jitendra Gadiwan; shadow pancha PW2 Tilakchand Khandekar, and pancha PW3 Bandu Meshram.

28. It is now well settled that offences under the said Act relating to public servants taking bribe require a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is *sine quo non* for establishing offences under the said Act.

29. Before averting to the evidence, it would be appropriate to refer well settled legal position regarding proof of demand by public servant and its acceptance.

30. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**[7] referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**[8] held that the proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the said Act. The failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offences under Sections 7 and 13 of the said Act would not entail his conviction thereunder. The Honourable Apex Court has reproduced paragraph No.23 of its decision in the case of **P.Satyanarayana Murthy** *supra,* which reads thus:

> "The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the

7 2022 LiveLaw (SC) 192
8 (2015)10 SCC 152

amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction."

31. To prove the offence under Sections 7 and 13(1)(d) of the said Act, following are ingredients of the said Sections, which require to be proved:

> **under Section 7:** (1) the accused must be a public servant or expecting to be a public servant; (2) he should accept or obtain or agrees to accept or attempts to obtain from any person; (3) for himself or for any other person; (4) any gratification other than legal remuneration, and (5) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.
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> **under Section 13(1)(d)**: (1) the accused must be a public servant; (2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person

any valuable thing or pecuniary advantage without any public interest; (3) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere acceptable of any valuable thing or pecuniary advantage is not an offence under this provision; (6) to make out an offence under this provision, there has to be actual obtainment, and (7) since the legislature has used two different expressions namely “obtains” or “accepts”, the difference between these two have to be taken into consideration.

32. In the light of the well settled law, if the evidence of the prosecution is appreciated, it would show that the prosecution mainly placed reliance on the evidence of complainant PW1 Jitendra Gadiwan. As per his evidence, a tender of manufacturing of gate was allotted to him by the Nagar Parishad at Bramhapuri. Accordingly, he installed the gate and submitted bill of

Rs.14,900/-. On 10.7.2006, he visited the accused who supervised the work and requested to take entry of the said bill in the M.B.Register (measurement book register) for which the accused demanded Rs.2500/- from him. The said demand was reiterated by the accused on 17.6.2006. As he was not desiring to pay the amount, he approached the office of the bureau and lodged the report. He narrated the entire procedure carried out by the official of the bureau during pre-trap and post-trap panchanamas. As per his evidence, he along with pancha No.1 Meshram visited the office of the accused on 20.7.2006 i.e. the day of the trap. The accused took them on pan stall and told them that he is having a meeting and he would visit the shop of the complainant. This fact is disclosed by the complainant to trap members and the trap was suspended for some time. At about 5:00 to 5:15 pm, when the complainant and another pancha Khandekar were present in his, the accused visited the shop. The complainant corrected the bill, as per say of the accused. It is evidence of the complainant that at the relevant time, it was the complainant who disclosed to the accused that amount Rs.2500/- is along with him. On the say of the accused, he kept the money

in the file and the pre-determined signal was given. The accused was caught and the amount was recovered from the file. During cross examination, some material omissions brought on record to the extent that the complainant met the accused on 19.7.2006 and disclosed to him that he would pay the amount on 20.7.2006, were not stated by him while lodging the complaint. He admitted during cross examination that on 20.7.2006, the accused visited the shop for getting corrected the bill. He further admitted that while he was preparing the bill, the accused received a phone call on his mobile and he had gone out of the shop to talk on his mobile. It further came in evidence that at the time of the trap, pancha Khandekar was outside the shop. Whereas, work of preparing the bill and communication with the accused took place inside the shop.

33. Thus, the evidence of complainant PW1 Jitendra Gadiwan shows that it was the complainant who disclosed to the accused that he is having amount Rs.2500/-. On the day of the trap, when the complainant visited his office initially, at the that time also, there was no demand by the accused. The evidence further shows

that some contractors demanded to suspend the accused, but, the complainant has shown his unawareness about the said fact.

34. To corroborate the version of complainant PW1 Jitendra Gadiwan, the prosecution examined shadow pancha PW2 Tilakchand Khandekar. As far as the demand is concerned, his evidence shows that initially, pancha Meshram accompanied the complainant when the complainant visited the office of the accused. However, the accused had to attend a meeting and, therefore, there was no communication regarding the work of the complainant and, therefore, the trap was suspended and decided to a lay trap at 4:00 pm. Thereafter, officers of the bureau directed him to accompany the complainant in his shop and said Meshram will accompany raiding party members. As to the demand, the evidence of the complainant shows that the accused came in the shop of the complainant and told that description in the bill is not proper and asked the complainant to prepare a fresh bill. The complainant handed over new bill to the accused. Thereafter, the accused said to the complainant to give amount as per earlier demand. The accused accepted the amount by asking

the complainant to keep it in the note pad. Thereafter, the accused was caught. The cross examination of this witness shows that he has not heard the communication between the complainant and the accused. He is unable to recollect whether he was out of the shop. He also not heard that the accused demanded the amount and the complainant kept the amount in the note pad.

35. Another pancha is PW3 Bandu Meshram, whose evidence also shows that when he proceeded to the office along with the complainant, the complainant enquired about his bill and the accused disclosed that the bill requires to be corrected. Thus, his evidence also shows that there was no demand in his presence. During cross examination also it came on record that the accused told that he will verify bills and, thereafter, disclose about the same.

36. Learned counsel for the accused submitted that from this evidence it is crystal clear that there was no demand by the accused, but complainant PW1 Jitendra Gadiwan himself disclosed that he is having amount of Rs.2500/- and kept in a file.

He submitted that that there is no corroboration to the evidence of the complainant as to the demand as the complainant has admitted that at the time of the communication between him and the accused, shadow pancha PW2 Tilakchand Khandekar was outside the shop. As far as the demand in presence of pancha is PW3 Bandu Meshram is concerned, the same is also not corroborated. Shadow pancha PW2 Tilakchand Khandekar specifically stated that he has not heard the communication between the complainant and the accused. The material omissions brought on record and proved by the defence show that the complainant has not stated that on 19.7.2006 the accused demanded the bribe. He has also not stated that he had told the accused that he will give Rs.2500/-. Thus, he submitted that the entire evidence is not sufficient to prove the demand and acceptance.

37. As far as Trap Officer PW5 Bhimrao More is concerned, his evidence is not the direct evidence as to the demand and acceptance. His evidence shows that pancha No.1 has disclosed that the accused has kept the amount in a pad. Whereas, the

evidence of complainant PW1 Jitendra Gadiwan shows that he has kept the amount in pad on the say of the accused. The evidence of the complainant shows when he was preparing the bill, the accused went outside the shop as he received phone call.

38. Learned counsel for the accused submitted that thrusting of the amount by the complainant by keeping the amount in the file cannot be ruled out. He submitted that mere utterance of words that whether the complainant has brought the amount would not constitute demand of bribe. He submitted that proof of demand and acceptance is *sine qua non,* which is absent in the case.

39. To substantiate the said contentions, learned counsel for the accused placed reliance on catena of decisions particularly in the case of **K.Shanthamma vs. State of Telangana** *supra.* The Honourable Apex Court in the said decision and in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr** *supra* held that proof of demand is sine qua non for establishing the offence under Section 7 of the said Act.

40. After appreciating the evidence on record, there is no corroboration as to the earlier demand by the accused. As far as the demand, on the day of the trap, and the acceptance of bribe amount is concerned, the evidence of prosecution witnesses is not consistent, cogent and reliable one. From the evidence of complainant PW1 Jitendra Gadiwan, it reveals that there was no demand by the accused. The evidence of the complainant and shadow pancha PW2 Tilakchand Khandekar is also not consistent as to the demand and acceptance. The presence of said Khandekar at the time of demand and acceptance itself is doubtful.

41. The Constitution Bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**[9] 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 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”,

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referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**[10] 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 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

10 (2002)5 SCC 86

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 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 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'.

42. In the case of **M.O.Shamsudhin vs. State of Kerala**[11], 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.

43. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**[12], it has been held that the combine effect of Sections 133 and 114, illustration (b) may be stated as follows:

11 (1995)3 SCC 351
12 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."

44. When a trap is set for proving charge of corruption against a public servant, evidence about prior demand has its own importance. 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.

45. In the present case, as noted above, the evidence, as to the demand and acceptance, is not satisfactory and convincing and 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.

46. It is also well settled that while deciding offences under the said Act, complainant's evidence is to be scrutinized meticulously. There could be no doubt that evidence of complainant should be corroborated in material particulars. The complainant cannot placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

47. As far as applicability of presumption is concerned, the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)** *supra* 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.

48. As observed earlier that the prior demand by the accused is not proved by the prosecution, a doubt is created as to the demand and acceptance. The sanction accorded is also not a valid sanction and it is without application of mind. As such, the appeal deserves to be allowed and, therefore, I pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 7.5.2014 passed by learned Special Judge, Chandrapur in Special (ACB) Case No.10/2007 convicting and sentencing the accused is hereby quashed and set aside.

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

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!