



Judgment

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

CRIMINAL APPEAL NO.610 OF 2004

Ambadas s/o Ramaji Sahare,
aged about 56 years,
r/o Arvi, tahsil – Arvi,
district Wardha. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
through Anti Corruption
Bureau, Wardha. **Respondent.**

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Shri R.M.Patwardhan, Counsel for the Appellant.
Shri S.M.Ghodeswar, Additional Public Prosecutor for the
State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 10/07/2023
PRONOUNCED ON : 22/08/2023

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order of conviction and sentence dated 13.9.2004 passed by learned Judge, Special Court, Wardha (learned Special Judge) in Special Case No.3/1996.

2. By the said impugned judgment and order of conviction and sentence, the accused is convicted for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (the said Act).

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For the offence under Section 7 of the said Act, the accused is sentenced to suffer rigorous imprisonment for six months and to pay fine Rs.300/-, in default, to undergo further rigorous imprisonment for two months

For the offence under Section 13(1)(d) read with Section 13(2) of the said Act, he is sentenced to suffer rigorous imprisonment for one year and to pay fine Rs.300/-, in default, to undergo further rigorous imprisonment for two months.

Learned Special Judge directed that all the sentences of the accused shall run concurrently.

3. The prosecution case in a nutshell runs, thus:

The accused, at the material time, was serving as Talathi at Wardha (Maneri). In the month of May 1995, Damodhar Nathuji Dhurve (informant), who is resident of Wardha (Maneri), having four acres of agricultural land at Wardha (Maneri), having 50-55 teak wood trees on the boundary of the said field. For cutting the said trees, the informant was required permission of the forest department

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and for such permission, he was in need of 7/12 extract, map, and certificate from Talathi and, therefore, he approached to the office of the accused for obtaining the above said documents. He intimated the purpose of his visit to the office of the accused and requested the documents as the aforestated. As per allegations, the accused has demanded Rs.300/- for supplying copies of the said documents. The informant requested for reducing the amount of illegal gratification. However, the accused has refused the said request on the count that if he reduces the said amount, he has to reduce for everybody and insisted for Rs.300/-. The informant informed that he is not having that much amount and, therefore, the accused asked him to come along with the amount on 8.5.1995 at his office. It is further alleged that the accused informed him that unless and until the informant would pay the amount, he will not issue the required documents. As the informant was not inclined to pay the amount, he approached to the office of the Anti Corruption Bureau (ACB) at Wardha and lodged a report. The officials of the ACB decided to conduct a trap and accordingly necessary formalities were completed and the trap was laid on 9.5.1995.

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The trap was successful and the tainted currency notes, comprised of Rs.100/- three in numbers, were recovered from a register in which he was carrying out the work. Necessary panchanamas were drawn out. The statements of witnesses were recorded. After completion of investigation, chargesheet came to be filed against the accused.

4. The accused was tried for the offences as the aforesaid. On merits of the case, learned Special Judge found that the prosecution succeeded in proving charges as demand and acceptance are proved and, therefore, convicted the accused as the aforestated.

5. Being aggrieved and dissatisfied with the judgment and order of conviction and sentence, the present appeal is preferred by the accused on the ground that learned Special Judge has not considered evidence adduced that the accused has forwarded a report against the informant as the informant was involved in constructing a mosque by encroaching on the land of grampanchayat along with one Ramchandra Khanorkar and Shaikh Shafik etc.. On his report, the action was taken against the informant. The further defence of the accused is

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that amount Rs.224.45 was due against the informant towards the fees of reimbursement and the amount is paid towards the said fees.

6. Heard learned counsel Shri R.M.Patwardhan for the accused and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State.

7. Learned counsel for the accused submitted that to substantiate the charges, the prosecution placed reliance on five witnesses viz. Damodar Nathuji Dhurve (PW1) examined vide Exhibit-22, the informant; Maroti Gomaji Kathane (PW2) examined vide Exhibit-29, the kotwal; Manohar Zibal Hikare (PW3) examined vide Exhibit-40, the sanctioning authority; Dilip Marotrao Ganvir (PW4) examined vide Exhibit-44, the shadow pancha, and Narayan Manikrao Survase (PW5), the Investigating Officer.

Besides the oral evidence, documents i.e report Exhibit-23, seizure memo Exhibit-24, extract of gaon namuna Exhibits-25 and 26, map Exhibit-27, and certificate Exhibits-28 and 28A are on record. Moreover, there is report Exhibit-92 which shows that the accused submitted a report against

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the informant who was involved in construction of a mosque illegally on the land of the grampanchayat. The action was taken against the informant. The accused submitted that as far as the incident is concerned, there is a variance in evidence of the informant as well as the shadow pancha. The demand is not proved. In fact, as the Talathi has given report against the informant, he is falsely implicated in the crime. The prosecution has to prove the charges by taking into consideration standard of proofs which require to prove charges. Insofar as the demand and the acceptance are concerned, kotwal PW2 Maroti Kathane, who was working with the accused, has not supported. The sanction order is also not as per the requirement. The sanction order is invalid and, therefore, the conviction deserves to be set aside.

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

1. The State of Maharashtra vs. Ramrao Marotrao Khawale¹.

2. Punjabrao vs. State of Maharashtra².

¹ 2017 ALL MR (Cri) 3269

² AIR 2002 SC 486

3. Devidas s/o Harichandra Bhaskar vs. State of Maharashtra³.

4. Raosaheb vs. State of Maharashtra⁴.

9. *Per contra*, learned Additional Public Prosecutor for the State supported the judgment and order of conviction passed by learned Special Judge and submitted that the prosecution has proved the demand and acceptance. When the prosecution proves that accused has received gratification amount, presumption comes into play and burden is on accused to rebut presumption which the accused has not rebutted. The sanction is proved by the prosecution. As such, he submitted that no interference is called for in the judgment and order of conviction impugned in the appeal.

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

1. Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra⁵.

2. State of Maharashtra vs. Rashid B.Mulani⁶.

3 2021(3) Mh.L.J. (Cri)355

4 1994 CRI.L.J. 3792

5 (1997)10 SCC 600

6 (2006)1 SCC 407

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11. It is well settled that when a trap is set for proving charge of corruption against a public servant, evidence about prior demand has its own importance.

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

13. The sanction order was challenged on the ground that without application of mind the said sanction was accorded. In order to prove the sanction order, the prosecution has examined Kotwal PW3 Manohar Hikare. As per his evidence, he was working as Sub Divisional Officer at Arvi. The accused was serving as Talathi at Wardha (Maneri) of halka No.2. He is the appointing and removing authority of Talathi. On 23.3.1996, he received all case papers in regard to the trap which was laid against the accused. He gone through all the case papers and found that it is a fit case to launch prosecution and by applying his mind, he accorded the sanction. The sanction order is at Exhibit-42.

His cross examination shows that he does not remember whether the case papers were containing complaint

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made by the accused against the informant about illegal construction of mosque in a bunch of papers sent to him by the ACB. He further admitted that he received draft sanction order. He also does not remember whether he gone through confidential reports of the accused.

14. It is submitted that the sanction is not mere formality. It is observed by the Honourable Apex court in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**⁷ that it is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. The grant of sanction is not an idle formality but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with. It is further 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. Any subsequent fact coming

7 1979 AIR 677

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into existence after the resolution had been passed is wholly irrelevant.

The same view is taken by this court in the case of **Shivchalappa Gurumorti Appa Loni vs. State of Maharashtra**⁸ wherein also it is held that granting of sanction is not an idle formality.

In the case of **Mansukhlal Vithaldas Chauhan vs. State of Gujarat**⁹, the Honourable Apex Court held that validity of sanction would, therefore, depend upon material placed before sanctioning authority and the fact that all relevant facts, material and evidence have been considered by sanctioning authority. Consideration implies application of mind. The order of sanction must *ex facie* disclose that sanctioning authority had considered evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing relevant files before Court to show that all relevant facts were considered by sanctioning authority.

8 1993 Mh.L.J. 573

9 (1997)7 SCC 622

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15. Here, in the present case, Kotwal PW3 Manohar Hikare has neither referred any details about the documents nor the sanction order discloses that he applied the mind by perusing the documents and accorded the sanction. The proceeding would be rendered *void ab initio for want of proper sanction.* "

16. Thus, the sanctioning authority has to apply its 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 independent mind. On the basis of the evidence, which came before it, an order of sanction should not be construed in a pedantic manner. However, purpose for which an order of sanction is required 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 prosecution or not.

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

17. After going through the evidence of Kotwal PW3 Manohar Hikare and sanction order, it shows that he has not disclosed on what basis he came to the conclusion that the sanction has to be accorded. The sanction order only shows that upon reading the papers of investigation, he found his opinion and accorded the sanction. He is unable to recollect whether the papers forwarded to him were containing the complaint filed by the accused against the informant. He is further unable to recollect that the accused had made a report showing involvement of the informant in illegal construction of mosque on the land of grampanchayat and action was taken against him. It is apparent that PW3 Hikare has accorded the sanction on the basis of draft sanction order. The grant of sanction is a serious exercise of powers by competent authority. It has to be apprised of all the relevant materials and on such materials, authority has to take a conscious decision as to whether facts would reveal commission of

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offence under relevant provisions. No doubt, an elaborate discussion is not required. However, decision making on relevant materials should be reflected in the order.

18. Thus, perusal of the evidence of PW3 Manohar Hikare, shows that the sanction order nowhere reflects that which document was considered by the sanctioning authority and on what basis the sanctioning authority came to the conclusion that the sanction is to be accorded to launch the prosecution against the accused.

19. Thus, it is apparent that the sanction accorded is without application of mind.

20. The another question, which arises for consideration, is, whether the prosecution has proved the demand and acceptance of the bribe by the accused from the informant and whether interference is called for in the judgment and order of conviction impugned.

21. While deciding issue involving offence under the said Act, a fact required to be considered is that informant's

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evidence will have to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

22. The Honourable Apex Court in the case of **Panalal Damodar Rathi vs State of Maharashtra**¹⁰ held that "there could be no doubt that the evidence of the complainant should be corroborated in material particulars After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon."

23. 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

10 AIR 1979 SC 1191

11 (1995)3 SCC 351

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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.

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

“According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars.”

25. 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.

12 1963 Mh.L.J. (SC) 273

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26. In the light of the above principles, if the evidence of informant PW1 Damodar Dhurve is appreciated, it shows following facts:

(i) on 5.5.1995 at about 11:00 am he visited the office of the accused who was working as Talathi for obtaining 7/12 extract, map, and certificate;

(ii) the accused demanded Rs.300/- and told him that unless and until the amount is paid, he will not issue the documents claimed;

(iii) the accused asked him to come on 8.5.1995 along with money. The informant requested him to reduce the amount for which the accused declined;

(iv) he approached to the ACB office at Wardha and narrated his grievances which were reduced into writing by the ACB officers;

(v) the ACB officers called two employees of PWD Department to act as panchas;

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(vi) after arrival of the panchas, panchanama was prepared;

(vii) his personal search was taken by pancha No.1;

(viii) Demonstration as to the solution of phenolphthalein powder shown to him and panchas;

(ix) the ACB officers obtained Rs.300/- from him by accepting three currencies of Rs.100/- denomination. The solution of phenolphthalein powder was applied on currency and was kept right side pant pocket of the informant;

(x) pancha No.1 Ganvir was asked to remain with the informant and pancha No.2 was asked to remain with the other raiding party members. He was instructed to hand over the amount only on demand;

(xi) he along with panchas and raiding party members proceeded in vehicle at about 3:55 pm

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and reached at Maneri at 5:00 pm. He along with pancha No.1 proceeded to the office of the accused, but the office of the accused was close. Accordingly, panchanama was drawn. The ACB Officers called informant and panchas on the next day;

(xii) on the second day also, the accused has not come to the office and raid was not conducted;

(xiii) on 10.5.1995, after following procedures, the informant and pancha No.1 reached to the office of the accused. The accused was present in the office. They greeted each other. The informant asked about his work. The accused demanded amount from him and he handed over the said amount to the accused. The accused kept these currencies in one register, and

(xiv) thereafter, the informant gave a signal to the other raiding party members. The accused was caught. The tainted amount was recovered from the register. The investigating officer

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enquired with pancha No.1 and pancha No.1 disclosed that the accused has accepted the amount. After following due procedure, the accused was taken into custody.

27. The defence of the accused is that the amount handed over to him was towards reimbursement fees as to the agricultural land of the informant. It was further defence that the informant was involved in constructing a mosque on the land owned by the grampanchayat by encroaching the same. The accused submitted a report against the informant and on the basis of which action was taken against the informant by the Tahsildar and, therefore, he is falsely implicated in the alleged offence.

28. During cross examination, informant PW1 Damodar Dhurve has admitted that prior to the incident, a report was submitted by the accused against him and others that they have hurt feelings of villagers by constructing a mosque by encroaching on the government land. It is further admitted that on the basis of the said report, the Tahsildar has initiated an action against the informant and others. The said

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report was submitted by the accused prior to the trap. It is further admitted that the ACB officers seized the amount from the register. The report of the Tahsildar is also on record which shows that the action was taken against the informant regarding the illegal construction of mosque on the grampanchayat's land. The certified copy of the order sheet of the revenue case No.12 LEN 39/1992-93 is at Exhibit-29-A which discloses the name of the informant to whom the notice was issued. The report of the Tahsildar is also on record at Exhibit-92 which discloses that the accused submitted a report as to illegal construction by the informant with the other persons. It further reveals that the Tahsildar has declared the auction of construction material which was collected by the informant to construct the said mosque.

29. As far as the demand is concerned, the evidence, i.e. the cross examination of informant PW1 Damodar Dhurve, shows that on visiting the office of the accused on 10.5.1995, he informed the accused that yesterday he came with money, but the accused was not present in the office and, therefore, he left. Thus, it was the informant who informed the accused about the amount brought by him.

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Thus, it appears that there was no demand by the accused.

It further reveals from the cross examination that the accused has called the kotwal and took out the register of Gaon Namuna-8A and kept it on the table. As per the evidence of the informant, the accused demanded the money from him. He handed over the said amount to the accused.

30. To corroborate the version of informant PW1 Damodar Dhurve, the prosecution placed reliance on the evidence of PW4 Dilip Marotrao Ganvir, who acted as a pancha on pre-trap and post-trap panchanamas. He corroborated the version of the informant on material particulars. As far as the demand and acceptance are concerned, the pancha deposed that on 10.5.1995 he along with the informant visited the office of the accused. The informant asked about his work by communicating with the accused and the accused disclosed that 7/12, certificate, and map are ready. It further reveals from his evidence that the accused asked the informant that his work is completed and whether he has brought the money and, thereafter, the informant handed over the said money to

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the accused. Thereafter, the informant gave signal and the accused was caught.

During cross examination, the pancha has admitted that the accused made demand of money in regard to "fee on something else" and further admitted that the accused said to informant that he will issue receipt and asked to sit. On the basis of the said admission, it is submitted that the defence of the accused is substantiated by the said admission which shows that the accused has accepted the amount towards the fees which was due from the informant towards reimbursement charges against the land of the informant.

31. The prosecution has also examined Kotwal PW3 Manohar Hikare, whose evidence shows that when he entered into the office of the accused, only the informant was present and except the informant no other person was present.

Thus, the evidence of Kotwal PW3 Manohar Hikare shows that PW4 Dilip Marotrao Ganvir was not present along with the informant. At the relevant time, Investigating Officer PW5 Narayan Survase has also admitted during the cross

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examination that the accused has given explanation that the amount was paid towards the measurement charges.

32. Besides the oral evidence, the prosecution placed reliance on pre-trap panchanama Exhibit-45, post trap panchanama Exhibit-46, panchanama as to unsuccessful trap on 8.5.1995 Exhibit-47, panchanama as to unsuccessful trap on 9.5.1995 Exhibit-48, seizure memos Exhibits-51 to 53, personal search of the accused Exhibit-59, requisition letter to executive engineer to call the employees to act as panchas, requisition to the Deputy Conservator for vehicle Exhibit-70, FIR filed by Investigating Officer PW5 Narayan Survase Exhibit-74, letter to CA Exhibit-75, CA Report Exhibit-78, letter to obtain the sanction Exhibit-80. Exhibit-93 is the letter of the Collector as to recovery of the charges against reimbursement of the lands whereby directions were given to the Talathi for recovery of amount. The copy of the same letter is given to the accused with a direction to recover the amount.

33. After appreciating the evidence on record, it reveals that as per the prosecution case, the accused has

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demanded the amount for issuing 7/12 extract, map, and the certificate. Learned counsel for the accused vehemently submitted that for proving the offence against the accused the prosecution has to prove that there was a demand and the amount was accepted towards that demand. Mere recovery of the amount is not sufficient to prove the charges.

34. In support of his contentions, learned counsel for the accused placed reliance on the decision of this court in the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale** cited *supra* wherein it is held that it is well settled law 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.

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Learned counsel for the accused further submitted that 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.

35. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra** cited *supra* 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

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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.

36. In the case of **State of Maharashtra vs. Rashid B.Mulani** 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.

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37. In the instant case, upon careful consideration of the prosecution evidence, particularly the evidence of informant PW1 Damodar Dhurve as well as shadow pancha PW4 Dilip Ganvir, I find that the prosecution could not establish beyond reasonable doubt the prior demand gratification made by the accused. The evidence of informant PW1 Damodar Dhurve shows that on 8.5.1995 he approached to the office of the accused and the accused has demanded the amount. As far as the demand on the day of the trap is concerned, the same is washed out by the admission given by shadow pancha PW4 Dilip Ganvir, who specifically admitted that in the office of Talathi, the Talathi made demand of money in regard to fees or something else. He further admitted that the accused told informant PW1 Damodar Dhurve that he will issue receipts and asked the informant to sit for a while. This fact is further corroborated by Investigating Officer PW5 Narayan Survase who admitted that immediately explanation given by the accused was that the amount was paid towards measurement charges. Exhibit-93, is the letter issued by the Collector directing all the Talathis to recover the amount due from agriculturists as to

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reimbursement charges. The copy of the said letter is also given to the accused with a direction to recover the amount. The evidence of informant PW1 Damodar Dhurve and Kotwal PW3 Manohar Hikare shows that as soon as the informant came in the office, the accused took out the register to issue documents. On the basis of the said evidence, an inference can be drawn that before issuing the documents, the accused asked informant to clear the charges and, therefore, the informant has handed over the said amount to the accused. There is immediate explanation by the accused regarding the amount recovered from his office. The explanation is supported by letter Exhibit-93. The explanation is further substantiated by the admissions given by shadow pancha PW4 Dilip Ganvir. It is well settled that while deciding the offence under the said Act, informant'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 be placed on any better footings than that of accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

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38. Thus, it is well settled that the evidence of informant PW1 Damodar Dhurve is to be corroborated on all material particulars.

39. As far as applicability of presumption is concerned, the constitution bench of the Honourable Apex Court, in the case of **Neeraj Dutta vs. State (Govt. of N.C.T. of Delhi)**¹³ reported in AIR 2023 SC 330, held that presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands. It is further held that insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose

¹³ AIR 2023 SC 330

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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.

40. Here, in the instant case, as observed earlier that prior demand by the accused is not proved by the prosecution, a doubt is created as to demand of the amount as a gratification as the admission given by shadow pancha PW4 Dilip Ganvir shows that the accused has communicated to informant PW1 Damodar Dhurve that the amount is towards fees and also asked the informant to take receipts and asked him to sit for taking such receipts. These admissions sufficiently create doubt as to the prosecution case. Not only the evidence of shadow pancha PW4 Dilip Ganvir but also the explanation given immediately to Investigating Officer PW5 Narayan Survase by the accused, and Exhibit-93 the directions issued by the Collector to recover the amount towards reimbursement charges, sufficiently shows that the amount was asked against the said charges and the informant has paid the said amount towards the said charges. The evidence also shows that the raid was tried on two occasions. The accused himself was not present in the office. Under such

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circumstances, merely because the tainted amount was found on the table of the accused, it cannot be said that the offence was proved against the accused. There is no convincing evidence as to the demand and acceptance as already observed that the evidence of Kotwal PW3 Manohar Hikare, who narrated about the sanction, reveals that he has not applied his mind while granting sanctions. The principles for according the sanctions are not taken into consideration.

41. It is well settled that granting of sanction is a solemn sacrosanct act which affords protection to the government servants against frivolous prosecutions. Therefore, 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. A sanction order showing *prima facie* application of mind is valid sanction order. The sanction order is silent as to the material which is considered by the sanctioning the authority while according the sanction.

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42. Thus, on the ground of sanction also the prosecution in the present case fails. The prosecution has also not proved the demand and the acceptance against the said demand. As such, as 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 13.9.2004 passed by learned Judge, Special Court, Wardha in Special Case No.3/1996 convicting and sentencing the appellant is hereby quashed and set aside.

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

Appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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