Corruption Charges Against Public Servant

Case Name: Ramesh S/O Babulal Chaphale v. State of Maharashtra

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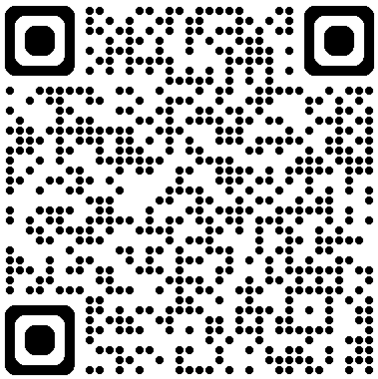
Citation: 2024:BHC-NAG:12137

Act: Prevention of Corruption Act, 1988



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

CRIMINAL APPEAL NO.229 OF 2016

Ramesh s/o Babulal Chaphale,
aged about 46 years,
occupation : Asst. Junior
Engineer, r/o Master Colony,
Civil Lines, Gondia, tahsil and
district Gondia. ..... **Appellant.**

:: V E R S U S ::

State of Maharashtra,
through Anti Corruption Bureau,
Gondia, District Gondia. ..... **Respondent.**

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Shri Yash Bhelande, Advocate h/f Shri S.P.Bhandarkar, Counsel for the Appellant.
Shri C.A.Lokhande, Additional Public Prosecutor for the Respondent/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 17/10/2024
PRONOUNCED ON : 25/10/2024

JUDGMENT

1. By this appeal, the appellant (the accused) has challenged judgment and order dated 23.6.2016 passed by learned Special Judge (learned Judge of the trial court), Gondia in Special (ACB) Case No.5/2012.

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

Under Section 7, he is sentenced to undergo rigorous imprisonment for five years and to pay fine Rs.5000/-, in default, to undergo simple imprisonment for two months.

Under Section 13(1)(d), he is sentenced to undergo rigorous imprisonment for five years and to pay fine Rs.5000/-, in default, to undergo simple imprisonment for two months.

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

In the year 2011, the accused was serving as Assistant Junior Engineer at Amgaon Panchayat Samiti. Complainant Kesharbai Jagdish Dongre applied for financial aid under a Scheme of “Indira

Avas Yojna" for constructing house and amount Rs.43,000/- was sanctioned to her. Out of the same amount, she received amount Rs.32,000/- and Rs.11,000/- was remained to be received and, therefore, she approached the office of Amgaon Panchayat Samiti for getting amount Rs.11,000/-. It was alleged that the accused demanded Rs.500/- as bribe for disbursing and issuing cheque of Rs.11,000/- and, therefore, she approached the office of the Anti Corruption Bureau (bureau) at Gondia and lodged a complaint.

4. After receipt of the complaint, officers of the bureau called two panchas. In presence of panchas, the Complainant narrated the incident, which was verified by panchas. After following a due procedure, it was decided to conduct a raid. The Complainant produced a currency note of Rs.500/- denomination before 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 tainted note and the same was kept in purse of the Complainant. The Complainant and pancha No.1 were instructed. As per instructions, the Complainant was asked to hand over the amount only on demand. Whereas, pancha No.1 was instructed to stay along with the Complainant and pancha No.2 was instructed to remain with raiding party members. The Complainant was further instructed to give a signal after acceptance of the amount. Accordingly, pre-trap panchanama was drawn. Subsequent to the pre-trap panchanama, the Complainant and pancha No.1 entered into the office of the Panchayat Samiti and at the relevant time, the accused met them near a channel gate. The Complainant enquired about her work. At the relevant time, the accused demanded the amount. Accordingly, the Complainant took out the amount from her purse and handed over the same to the accused. As decided, the Complainant gave a signal

to raiding party members. The officers of the bureau immediately caught the accused and the amount was recovered from him. The hand wash of the Complainant as well as the accused was collected. The investigating officer obtained a sanction to launch prosecution against the accused. Incriminating articles were sent to chemical analysis. After completion of the investigation, chargesheet was submitted against the accused.

5. During trial, the prosecution examined in all four witnesses namely Dhanraj s/o Chunnilal Yede vide Exh.8 (PW1), the Shadow Pancha; Kesharbai w/o Jagdish Dongre vide Exh.19 (PW2), the Complainant; Yashwant Wasudeo Gedam vide Exh.20 (PW3), the Sanctioning Authority; and Devidas Bhagwan Ilamkar vide Exh.23 (PW4), the Trap Officer.

6. Besides the oral evidence, the prosecution placed reliance on the complaint Exh.9, pre-trap panchanama Exh.10, post-trap panchanama Exh.11,

map Exh.12, seizure memos Exhs.13, 15, and 16, personal search panchanama of the Complainant Exh.18, Sanction Order Exh.21, report Exh.24, and First Information Report Exh.25.

7. In support of the defence, the accused examined Prakash Baburao Raut vide Exh.41 (DW1).

8. 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.

9. Heard learned Advocate Shri Yash Bhelande h/f learned counsel Shri S.P.Bhandarkar for the accused and learned Additional Public Prosecutor Shri C.A.Lokhande for the State. I have been taken through the entire evidence on record so also the judgment impugned in the appeal.

10. Learned counsel for the accused submitted that the prosecution placed reliance on the evidence of

Shadow Pancha PW1 Dhanraj Yede and Complainant PW2 Kesharbai Dongre to prove the demand and acceptance.

As far as the Complainant is concerned, she has not supported the prosecution case. Her contention is corroborated by DW1 Prakash Raut.

The evidence of the Shadow Pancha is also not sufficient to prove the demand as well as the acceptance.

As far as the previous demand is concerned, there is no corroboration as the Complainant specifically stated that the demand was made to her husband who is not examined.

There is no verification as to the demand. The sanction is also not accorded after application of mind.

For all above these grounds, the judgment impugned in the appeal deserves to be quashed and

set aside and the accused is to be acquitted of charges levelled against him.

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

1. Dilip Jagannath Puri vs. State of Maharashtra[1];

2. Mohan Bhaiyyalal Shrivastava vs. The State of Maharashtra[2];

2. Onkar Tukaram Ramteke vs. State of Maharashtra[3];

3. Banarsi Dass vs. State of Maharashtra[4];

4. Uttam s/o Ramaji Shere vs. State of Maharashtra, through ACB, Akola[5];

5. Daulat Arjun Doifode and ors vs. State of Maharashtra[6], and

6. Criminal Appeal No.447/2012 (Bhaurao s/o Wasudev Chauhan vs. State of Maharashtra) decided by this court on 24.1.2024.

1 2023(2) AIR Bom.R (Cri.)
2 2023(3) Bom.C.R. (cri.) 913
3 2022(4) Mh.L.J. (Cri.) 214
4 2010(4) SCC 450
5 2018(2) AIR Bom.R (Cri.) 108
6 Law Finder Doc Id # 1678702

12. *Per contra*, learned Additional Public Prosecutor for the State submitted that the trap was successful. There is no cross examination as far as the acceptance is concerned. Thus, the evidence as to the demand and acceptance remained unchallenged. The sanction is also accorded after application of mind. There is no merit in the appeal and the appeal deserves to be dismissed.

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

14. The Sanction Order was challenged on ground that it was accorded without application of mind.

15. In order to prove the Sanction Order, the prosecution examined Sanctioning Authority PW3 Yashwant Gedam, who testified that in the year 2012 he was Chief Executive Officer of Zilla Parishad at Gondia. He received a requisition from the office of

the bureau for securing sanction to launch prosecution against the accused. The accused was serving as Junior Engineer and was attached to Block Development Office at Amgaon Panchayat Samiti. On going through documents, he was convinced that circumstances are fit to grant sanction. Accordingly, he accorded the sanction. His cross examination shows that at the material time, he personally did not collect any information as to whether the accused was given any charge of Khursipartola Circle Region. He further admitted that the house in “Gharkul Yojna” was required to be constructed within a period of six months. He does not remember whether the house of the Complainant was constructed within six months. He specifically admitted that the accused was not disbursement authority to issue any cheque under his signature to beneficiary of “Gharkul Yojna”. He further admitted that he received Sanction Order from the office of the Deputy Chief Executive Officer and due to which, his counter signature is below his

signature. He further admitted that after verifying counter signatures of those officials, he endorsed his signature on Exh.21.

16. On the basis of the cross examination of Sanctioning Authority PW3 Yashwant Gedam, learned counsel for the accused submitted that this cross examination sufficiently shows non-application of mind of the Sanctioning Authority. The Sanction Order shows that the entire prosecution story is reproduced and it is mentioned that on carefully reading papers of investigation and after carefully evaluating the evidence, he was satisfied that there is an adequate evidence to prosecute the accused and he accorded the sanction.

17. Whether sanction is valid or not and when it can be called as valid, the same is settled by various decisions of the Hon’ble Apex court as well as this court.

18. The Hon'ble Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[7] has held that what the Court has to see is whether or not the Sanctioning Authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

19. The Hon'ble Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[8], has held that sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a

7 1979 AIR 677
8 2014 Cri.L.J.930

solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the 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. The Hon'ble Apex Court, in the case of **State of Karnataka vs. Ameerjan**[9], 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.

9 (2007)11 SCC 273

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.

21. The view in the case of **State of Karnataka vs. Ameerjan** *supra* is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**[10].

22. In the present case, the Sanction Order was challenged on ground of non-application of mind.

23. In view of settled principles of law, it is crystal clear that the Sanctioning Authority has to apply

10 2021 SCC OnLine Bom 237

his/her own independent mind for generation of his/her satisfaction for sanction. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required, the same is to be borne in mind. In fact, the Sanctioning Authority is the best person to judge as to whether public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

24. Thus, the application of mind on the part of the Sanctioning Authority is imperative. The orders granting sanction must demonstrate that he/she has applied his/her mind while according sanction.

25. 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 facts would show commission of offence under relevant provisions. No doubt,

elaborate discussion is not required, however, decision making on relevant materials should be reflected in order.

26. After going through the evidence of Sanctioning Authority PW3 Yashwant Gedam, his cross examination shows that the Sanction Order was prepared by the the Deputy Chief Executive Officer and he merely signed on it. Moreover, the Sanction Order nowhere reflects application of mind and which documents were considered by the Sanctioning Authority and on what basis, he came to conclusion that the sanction is to be accorded to launch prosecution against the accused.

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

28. To prove the demand and acceptance, main reliance on which the prosecution placed, is the

evidence of Shadow Pancha PW1 Dhanraj Yede and Complainant PW2 Kesharbai Dongre.

As regards the Complainant, her evidence is that she sought a financial aid under Scheme of “Indira Awas Yojna” for construction of her house and she received amount Rs.32,000/-. Remaining amount Rs.11,000/- was not received and, therefore, her husband approached the office of the Panchayat Samiti. At the relevant time, one babu (clerk) demanded amount Rs.500/- from her husband. At the relevant time, her husband was working with one Hemraj Patil and her husband disclosed about the said demand to said Hemraj Patil. Said Hemraj Patil took them at Gondia in one office at Balaghat Road for giving report. It was Hemraj Patil who approached the concerned officer in the office and her signatures were obtained. Her evidence further discloses that they were taken to Amgaon and at the relevant time, one person was with her. The officer gave her

Rs.500/- and asked her to give it to the clerk of Panchayat Samiti. On the way, she met Prakash Raut and she asked said Prakash Raut to hand over the amount to clerk of Panchayat Samiti and, thereafter, she halted near a godown in the premises of Panchayat Samiti. Her evidence further discloses that she never approached the accused in his office. She denied as to the demand by the accused for handing over the cheque.

Thus, it appears that she left loyalty towards the prosecution. Though she was cross examined at length by learned APP, nothing transpired from the said cross examination.

As far as cross examination on behalf of the accused is concerned, she admitted that she already received amount Rs.32,000/-. She further admitted that she had no occasion to visit the office of Panchayat Samiti for submitting and processing of her application. All formalities for getting grant were

done by her husband. She further admitted that her husband never informed her that the concerned clerk was demanding Rs.500/-. She further admitted that it was Hemraj Patil who asked her to come along with him. Necessary conversation was between Hemraj Patil and officers of the bureau and she merely signed on it. Her cross examination shows that at a pan kiosk, she was given a note of Rs.500/- and she handed over the same to Prakash Raut to hand over the same to the concerned clerk.

29. Thus, as far as the demand and acceptance is concerned, Complainant PW2 Kesharbai Dongre has not supported the prosecution case. Her contention, that amount was handed over to DW1 Prakash Raut and DW1 Prakash Raut handed over the same to the accused, is also supported by DW1 Prakash Raut vide Exh.41, which states that the Complainant gave him currency of Rs.500/- and asked him to give the same to concerned clerk one Dhanvijay. Said Dhanvijay did

not accept the amount and, therefore, he put the currency note in the pant pocket of left side of the accused.

30. Besides the evidence of Complainant PW2 Kesharbai Dongre, the prosecution placed reliance on the evidence of Shadow Pancha PW1 Dhanraj Yede. As per his evidence, he acted as pancha and verified contents of the complaint as well as heard narration of the Complainant. He also narrated about all events took place during pre-trap panchanama. As to the demand and acceptance, he stated that he along with the Complainant went in the office of the Panchayat Samiti and when they entered the said office, the accused met them at a channel gate . The Complainant asked about her work and the accused demanded the amount and the Complainant took out the amount from her purse and handed over the same. After getting a signal, raiding party members caught the accused. The amount was recovered from

the accused. The hand wash of the Complainant and the accused was collected.

31. The cross examination of Shadow Pancha PW1 Dhanraj Yede shows that he was instructed to give a signal after acceptance of the amount. He also admitted that geographical condition of the spot of the incident. The presence of other persons in front of the office of the accused was also admitted. He admitted that they were at the spot of the incident for about ten minutes.

Thus the entire cross examination shows that the spot of the incident was surrounded by other buildings and in front of the office, other persons were also present there.

32. Learned counsel for the accused submitted that there was no verification of the demand before laying the trap. The Complainant has not supported the prosecution case. Thus, previous demand is not

proved and stray statement, that the accused demanded the amount, is not sufficient to prove aspect of demand and acceptance.

33. The prosecution also adduced the evidence of Trap Officer PW4 Devidas Ilamkar. He narrated about the investigation carried out by him. As far as his evidence is concerned, the same is to the extent that after receipt of the signal, the accused was caught and the amount was recovered from him. His cross examination shows that the Complainant was from rural area, but she was not illiterate. He also admitted that there was an open ground in front of the office of the accused. He further admitted that the solution was not pasted on the currency note, but it was sprinkled.

Thus, his evidence is only to the extent of recovery of the amount from the accused.

34. Learned counsel for the accused also invited my attention to the cross examination of Sanctioning Authority PW3 Yashwant Gedam, which shows that the accused was not concerned with disbursing of the amount to Complainant PW2 Kesharbai Dongre under his signature to beneficiary of “Gharkul Yojna”. He submitted that this admission sufficiently shows that the accused was not concerned with the work of the Complainant. So, no question arises as to the demand by the accused. Admittedly, as per the evidence of the Complainant, the demand was made to her husband, who is not examined by the prosecution. Thus, there is no corroboration as to the previous demand, which is required.

35. Learned counsel for the accused placed reliance on the decision in the case of **Dilip Jagannath Puri** *supra* wherein this court considered that the talathi had no power to delete entry in 7/12 extract and the Sanctioning Authority admitted that

the same version of Complainant cannot be taken as a gospel truth.

He further placed reliance on the decision in the case of **Mohan Bhaiyyalal Shrivastava** *supra* wherein it is considered that complainant left loyalty towards the prosecution and while considering evidence of prosecution, it is necessary to bear in mind importance of evidence of prior demand which if trustworthy makes the trap a legitimate to eradicate corruption otherwise it could be an illegitimate trap.

He further placed reliance on the decision in the case of **Onkar Tukaram Ramteke** *supra* wherein it is that demand of illegal gratification is *sine qua non* for constituting an offence under the said Act. Mere recovery of tainted amount is not sufficient to convict accused when substantive evidence in the case is not reliable.

He further placed reliance on the decision in the case of **Banarsi Dass** *supra* wherein the Hon'ble Apex court held that mere recovery by itself cannot be prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money.

He further placed reliance on the decision in the case of **Uttam s/o Ramaji Shere** *supra* wherein aspect of complainant turning hostile is considered and conviction was set aside.

36. As far as the earlier demand is concerned, as Complainant PW2 Kesharbai Dongre left loyalty towards the prosecution, there is no other material to hold that the accused demanded the amount and accepted the same. The same allegation is to be considered in the light of fact that Sanctioning Authority PW3 Yashwant Gedam specifically admitted that the accused was not disbursing authority to

issue any check under his signature to beneficiary of “Gharkul Yojna”.

37. Admittedly, the complaint was lodged on 21.9.2011. As per allegations in the complaint, prior to four days of lodging of the complaint, Complainant PW2 Kesharbai Dongre had been to the office of the Panchayat Samiti and the demand was made to her by the accused. The investigating officer stated that during post-trap panchanama, he seized relevant papers. The note-sheet prepared in the office of the Panchayat Samiti shows that there is an endorsement dated 10.7.2009 that the Complainant completed the work of construction of house and installment of Rs.10,000/- is to be paid to her. Accordingly, amount Rs.10,000/- was paid to her. Second installment was paid to her on 21.9.2011 and as to the third installment, there is an endorsement that amount Rs.11,149/- is to be disbursed to the Complainant.

Thus, the document on record shows that final installment was paid to her prior to lodging of the complaint. If this document is taken into consideration, admittedly, on the date of the demand, no work was pending with the accused and then question as to the demand by the accused does not arise. The disbursement letter (अनुदान वितरण पत्रक) shows that prior to the trap, the amount of the last installment was already paid to her.

38. As observed earlier, that as per the evidence of Complainant PW2 Kesharbai Dongre, the demand was made to her husband, her husband was not examined. On the day of the trap, presence of several persons in front of the office of the accused is admitted by Shadow Pancha PW1 Dhanraj Yede. No independent witness is examined.

39. It is well settled that proof of demand is *sine qua non* to prove charge. A stray statement, in absence of

any other cogent evidence, will not amount to demand to constitute an offence.

40. In the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**[11], it is held that statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

41. The Hon'ble Apex Court, in the case of **Jagtar Singh vs. State of Punjab**[12] also, by considering the judgment of the Constitution Bench in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)**[13] summarized discussion and reproduced paragraph No.74, which is as under:

11 2017 SCC ONLine SC 742
12 2023 SCC OnLine SC 320
13 2023 SCC OnLine SC 280

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

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

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

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

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

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of

acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

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

would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not.

Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

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

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a

motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said Criminal Appeal No.1669 of 2009 presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d) (i) and (ii) of the Act.

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

42. The Constitution Bench of the Hon'ble Apex Court in the case of **Neeraj Dutta** *supra* held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. The Honourable Apex Court, while discussing expression "accept", referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**[14] observed that mere

14 (2002)5 SCC 86

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 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'.

43. Thus, it is well settled that to prove offences under Sections 7 and 13(1)(d) of the said Act, proof of demand is *sine qua non*. As far as applicability of presumption is concerned, it would be attracted only when foundational facts have been proved by relevant oral and documentary evidence and not in absence thereof. On the basis of material on record, the Court

has discretion to raise a presumption of fact while considering whether fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by accused and in absence of rebuttal, presumption stands.

44. In the instant case, as observed earlier, prior demand by the accused is not proved by the prosecution. Complainant PW2 Kesharbai Dongre has not supported the prosecution case. The exact communication between the Complainant is not stated by Shadow Pancha PW1 Dhanraj Yede. It is also not reproduced in the post-trap panchanama. There is no independent corroboration as to the proof of demand. Since proof of demand is *sine qua non* for convicting the accused in such cases, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt. The sanction accorded is without application of mind and, therefore, it is not a valid sanction.

45. In the light of the above discussion, the appeal succeeds and deserves to be allowed, as per order below:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 23.6.2016 passed by learned Special Judge, Gondia in Special (ACB) Case No.5/2012 is hereby quashed and set aside.

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

Appeal stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!

Case Brief & MCQs on "Ramesh S/O Babulal Chaphale v. State of Maharashtra" (2024:BHC-NAG:12137) is available in the eBook:

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