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

CRIMINAL APPEAL NO.392 OF 2014

State of Maharashtra, through
Anti Corruption Bureau, Bhandara,
District Bhandara. ….. Appellant.

:: V E R S U S ::

Baliram s/o Vithoba Bhute,
aged about 40 years, occupation : service,
r/o Dhanori, post Kadura,
taluka Pauni, district Bhandara. ….. Respondent.

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Mrs.M.H.Deshmukh, Additional Public Prosecutor for the State.
Shri N.S.Khandewale, Counsel for the Respondent.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/03/2024
PRONOUNCED ON : 12/04/2024

JUDGMENT

1. Being aggrieved and dissatisfied with judgment and order dated 29.11.2013 passed by learned Additional Sessions Judge, Gondia (learned Judge of the trial court) in Special Criminal Case No.1/2008 whereby the respondent (accused) is acquitted of offences under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (the said Act).

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

Vilas Sahare (complainant), Headmaster of Zilla Parishad Primary School, Bidtola, taluka Arjuni-Morgaon, district Gondia, lodged a report on 30.11.2006 alleging that he purchased a plot at Borkar Layout and in the year 2005 constructed house by obtaining necessary permission from the competent authority. He had purchased teakwood doors and windows for consideration of Rs.20,000/- from one Manohar Zade and used the same while constructing the house. The mobile squad of the forest department visited his house on 24.11.2006 and sought explanation from his wife about the teakwood as well as other necessary documents. The accused, who was serving as Forest Guard, was one of members of the said squad. Despite the necessary documents and explanation given to him, he demanded Rs.6000/- for not taking action against him and after negotiation, shown his readiness to accept Rs.3000/-. As the complainant was not willing to pay the amount, he approached the office of the Anti Corruption Bureau (the Bureau) and lodged the report. After lodging of the report, the office of the Bureau decided to lay a trap. Accordingly,

formalities under panchanama of pre-trap proceeding were carried out.

3. The complainant had produced bribe amount Rs.3000/-. Demonstration as to phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted notes. The said notes were kept in shirt pocket of the complainant. The necessary instructions were given to the complainant as well as shadow pancha. The complainant was instructed to hand over the amount only on demand and pancha No.1 was asked to stay along with the complainant. Accordingly, the pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant and pancha No.1 proceeded to the office of the accused at Arjuni-Morgaon. As the accused was not present in the office, they visited the house of the accused behind the office premises. After some time, the complainant gave a pre-decided signal. The raiding party members caught the accused. The complainant and shadow pancha confirmed regarding demand and acceptance of the bribe amount. The amount of bribe was recovered. After following due procedure, the accused was

arrested. The officer of the bureau lodged report. On completion of investigation, after obtaining a sanction, chargesheet was filed against the accused.

4. Learned Judge of the trial court framed charge vide Exhibit-43. In support of the prosecution case, the prosecution examined in all 6 witnesses namely; Suresh Shriram Badge vide Exhibit45 (PW1), the shadow pancha; Vilas Kewalram Shahare vide Exhibit-55 (PW2), the complainant; Prashant Ashok Deshmukh vide Exhibit-65 (PW3), pancha No.2; Sandhya Vilas Sahare vide Exhibit-66 (PW4), the wife of the complainant; Prakash Munde vide Exhibit-71 (PW5), the Trap Officer, and Mukeshkumar Chunnilal Ganatra vide Exhibit-78 (PW6), the Sanctioning Authority.

5. Besides the oral evidence, the prosecution placed reliance on personal search panchanama of the complainant Exhibit-46; pre-trap panchanama Exhibit-47; seizure memos Exhibits-48 to 51; personal search of the complainant after trap Exhibit-52; seizure memo Exhibit-53; post-trap panchanama Exhibit-54; complaint Exhibit-56, receipts Exhibits-57 and 58, panchanama (spot

inspection) Exhibit-59; compounding form Exhibit-60; seizure memo Exhibit-61, and supurdnama Exhibit-62.

6. After considering the evidence adduced during the trial, learned Judge of the trial court observed that there was no valid sanction for the prosecution of the accused as well as demand and acceptance is not proved and, therefore, presumption is not attracted and acquitted the accused.

7. Being aggrieved with the same, the present appeal is preferred by the State on ground that learned Judge of the trial court erroneously held that there were two proceedings against PW4 Sandhya Sahare, the wife of the complainant, by forest department and observation of learned Judge of the trial court, that the presumption under Section 20 is not attracted, is erroneous finding and, therefore, the judgment of acquittal deserves to be set aside.

8. Heard learned counsel Mrs.M.H.Deshmukh for the State and learned counsel Shri N.S.Khandewale for the accused.

9. Learned Additional Public Prosecutor for the State, taking me to the evidence adduced and other material on record, submitted that the prosecution has proved the sanction by examining Sanctioning Authority PW6 Mukeshkumar Ganatra, which shows that there was a valid sanction. She further submitted that the evidence of complainant PW2 Vilas Sahare and PW4 Sandhya Sahare, the wife of the complainant, clearly establishes the demand and acceptance at the instance of the accused. The amount is also recovered from the accused. Presumption is attracted which is not rebutted by the accused. There is a corroboration to the evidence of the complainant through shadow pancha PW1 Suresh Badge. Thus, the observation of learned Judge of the trial court as to the sanction and demand and acceptance is erroneous and liable to be set aside. Also, learned counsel, referring findings recorded by learned Judge of the trial court, strenuously argued that view taken by the trial court is erroneous and, therefore, the judgment impugned deserves to be set aside.

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

1. Ram Sagar Pandit vs. State Bihar[1];

2. Jaswant Singh vs. State of Punjab[2];

3. State of Madhya Pradesh vs. Harishankar Bhagwan Prasad Tripathi[3], and

4. Central Bureau of Investigation vs. State of Haryana[4].

11. *Per contra,* learned counsel for the accused submitted that learned Judge of the trial court considered the entire evidence and by assigning reasons observed that the demand and acceptance is not proved. Learned Judge of the trial court rightly considered conduct of complainant PW2 Vilas Sahare and shows that the complainant was avoiding to be implicated in any of prosecution case and, therefore, false report is lodged. Learned Judge of the trial court has also dealt with presumption and held that in case of a public servant, when it is shown that he has received certain sum of money, which is not legal remuneration, conditions prescribed under Section 20(1) of the said Act are satisfied. It is observed

1 1963 Supp(2) SCR 652
2 AIR 1958 SC 124
3 (2010)8 SCC 655
4 (1999)8 SCC 501

that the prosecution has miserably failed to prove that the accused had demanded any bribe. The sanction is also not valid sanction and, therefore, no interference is called for.

12. In support of his contentions, learned counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **N.Vijaykumar vs. State of Tamil Nadu**[5].

13. As issue regarding the sanction is raised by learned Additional Public Prosecutor for the State, while arguing the appeal, he submitted that the observation of learned Judge of the trial court, that the sanction is not valid, is erroneous. It is pertinent to note that the same ground is not raised in the appeal memo.

14. The Honourable Apex Court, in the case of **Jaswant Singh vs. State of Punjab** *supra,* observed that sanction under the said Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness.

5 (2021)3 SCC 687

15. The Honourable Apex Court, in the case of **State of Madhya Pradesh vs. Harishankar Bhagwan Prasad Tripathi** *supra,* had considered requirements of valid sanction and held that while granting sanction, officer concerned is not required to indicate that he has personally scrutinized file and had arrived at satisfaction for granting sanction. The narration of events granting sanction for prosecution clearly indicates the case and the reason for grant of such sanction.

16. Thus, order granting sanction does not suffer from any infirmity.

17. The Honourable Apex Court, in the case of **Central Bureau of Investigation vs. State of Haryana** *supra*, also dealt with the issue of valid sanction.

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

19. In view of the well settled principle of law, sanctioning authority has to apply his/her own independent mind for

generation of its satisfaction for sanction. The sanctioning authority is the best person to judge whether a public servant concerned should receive protection under the said Act by refusing to accord sanction for prosecution or not. Thus, application of mind on the part of sanctioning authority is imperative. The orders granting sanction must demonstrate that he/she should apply his/her mind while according sanction.

20. To prove the sanction, the prosecution examined Sanctioning Authority PW6 Mukeshkumar Ganatra. Learned Additional Public Prosecutor for the State so also learned counsel for the accused took me through the evidence of the said witness which shows that investigation papers were forwarded to him after examining papers, he came to conclusion that there was evidence to show involvement of the accused in the crime and he accorded the sanction. The cross examination of this witness shows that he did not notice papers disclosing that on 24.11.2006 the accused visited house of complainant PW2 Vilas Sahare. He did not perused papers relating to proceeding on 25.11.2006 at the house of the complainant and he is unable to state whether there was

meeting between the accused and the complainant from 25.11.2006 to 30.11.2006.

Perusal of the sanction order reveals that first seven paragraphs deal with allegation levelled against the accused. In second last paragraph, only it is mentioned that upon reading papers of investigation and evaluating evidence carefully, he is satisfied that there is an adequate evidence against the accused and accorded the sanction.

21. Thus, Sanctioning Authority PW6 Mukeshkumar Ganatra has not mentioned that which papers he had considered and on the basis of which record he came to conclusion that the sanction is to to be granted.

22. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[6] 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.

6 1979 AIR 677

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.

23. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[7] has held that sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the

7 2014 Cri.L.J.930

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.

24. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**[8], 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

8 (2007)11 SCC 273

required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority.

25. Thus, the law is settled that sanction order is not required to be passed as of a court order, but Sanctioning Authority has to apply his/her own independent mind for generation of its satisfaction. 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.

26. After going through the evidence of Sanctioning Authority PW6 Mukeshkumar Ganatra, 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.

27. Another ground raised by learned Additional Public Prosecutor for the State is that learned Judge of the trial court erroneously held that the presumption under Section 20 is not attracted. She invited my attention to the evidence of shadow pancha PW1 Suresh Badge and complainant PW2 Vilas Sahare and submitted that the evidence of these two witnesses sufficiently shows that there was a demand and the bribe amount was accepted by the accused.

Whereas, learned counsel for the accused submitted that the chief-examination of shadow pancha PW1 Suresh Badge itself shows that they entered into the house of the accused and the complainant asked about his work and the complainant told that he had borrowed the amount from him (pancha) and handed over the amount to the accused. He submitted that this evidence shows

that there was no demand by the accused, but it was the complainant who handed over the said amount. He also invited my attention to the cross examination of the said shadow pancha, who specifically admitted that the complainant told the accused that he had brought amount Rs.3000/- and the accused did not demand the amount. Thus, he submitted that the evidence of the complainant regarding the demand is not corroborated by the said shadow pancha.

28. Learned Additional Public Prosecutor for the State also referred the evidence of complainant PW2 Vilas Sahare and submitted that there was previous demand by the accused and for settlement of the dispute, the accused demanded the amount. The amount is also recovered from the accused.

Learned counsel for the accused submitted that during cross examination, admission of complainant PW2 Vilas Sahare, that he contacted the accused and informed him that he would pay the amount and the prosecution should not be launched, is sufficient to show that the amount was thrusted by the complainant.

29. Besides the evidence of these two witnesses, the prosecution also placed reliance on the evidence of pancha No.2 PW3 Prashant Deshmukh. However, his evidence is only to the extent of recovery of the amount.

30. Learned counsel for the accused submitted that the amount was recovered from the house of the accused. Thus, the evidence is sufficient to show that the amount was thrusted by complainant PW2 Vilas Sahare. It is submitted that to prove offences under Sections 7 and 13(1)(d) of the said Act, the prosecution has to prove demand and acceptance, which is *sine qua non.* The presumption would attract only after demand and acceptance are proved. The prosecution evidence is not sufficient to prove demand and acceptance. The admission of complainant PW2 Vilas Sahare, that he told the accused that he would pay the money and accused should not launch prosecution, is sufficient to show that two avoid prosecution, this false report is lodged by the complainant. He also invited my attention towards documents seized during panchanama, which shows that the accused visited the house of the complainant on 25.11.2006 and teakwood and

doors and windows are seized and, thereafter, the complainant approached for compounding of the offence. PW4 Sandhya Sahare, the wife of the complainant, filed an application for compounding of the offence. As the complainant apprehended that he would be prosecuted, the false report is lodged. He submitted that the observations of learned Judge of the trial court sufficiently show that conduct of the complainant can also be inferred from fact that during the investigation, it revealed to the Investigating Officer that the complainant refused to sign panchanamas, which are drawn by the Forest Officer and asked his wife to sign panchanamas. Thus, the complainant was avoiding to be implicated in any of prosecution case and, therefore, learned Judge of the trial court observed that for attracting the presumption the prosecution has to prove demand and acceptance. The burden can only be said to have been discharged by the accused which may be reasonable and probable. Perusal of the evidence shows that the accused has considerably brought evidence on record, which satisfies that to avoid prosecution, the complainant on his own handed over the amount to the accused.

Thus, the evidence creates a doubt on trustworthiness of the prosecution witnesses.

31. Learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW2 Vilas Sahare and pancha witness sufficiently shows involvement of the accused and, therefore, observations of learned Judge of the trial court are erroneous.

32. It is well settled that while exercising appellate powers, especially while dealing with appeals against acquittal, cardinal principle, to be kept in mind, is that there is a presumption of innocence in favour of the accused unless the accused is proved guilty. The presumption continues and finally culminates into a fact when the case ends in acquittal. The possibility of two views in criminal case is not an extraordinary phenomenon while considering appeals against the acquittal, fact cannot be lose sight of that the trial court has appreciated the entire evidence and reversal of an order of acquittal is not to be based on mere existence of a different view or mere difference of opinion. Normally, while exercising appellate jurisdiction, it is duty of the

appellate court whether decision is correct or incorrect on law and facts. While dealing with appeals against acquittal, the court cannot examine the impugned judgment only to find out whether view taken was correct or incorrect. After re-appreciating oral and documentary evidence, the appellate court must first decide whether trial court's view was possible view. The appellate court cannot overturn acquittal, and order of acquittal cannot be reversed, only on the ground that after re-appreciating evidence, it is of the view that guilt of the accused was established beyond reasonable doubt.

33. Learned counsel for the accused pointed out from the evidence adduced that the demand and acceptance, *sine qua non* to prove the office, is not proved. Mere recovery of money itself is not sufficient to establish the guilt of the accused. There is no corroboration to the evidence of complainant PW2 Vilas Sahare as shadow pancha PW1 Suresh Badge specifically stated that there was no demand and it was the complainant who handed over the amount to the accused. This evidence is to be appreciated in the light of the admission given by the complainant that he contacted

the accused and informed him that he would pay the amount and prosecution should not be launched. This evidence is sufficient to rebut presumption.

34. The Honourable Apex Court, in the case of **N.Vijaykumar vs. State of Tamil Nadu,** as *cited* by learned counsel for the accused, dealt with expression “erroneous” which means “wrong” and “incorrect” and observed that It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind.

35. By applying the aforesaid principle and the evidence on record in the case in hand, I am of a considered view that the view taken by learned Judge of the trial court is a possible view.

36. As far as applicability of presumption is concerned, the Honourable Apex Court in the case of **Neerja 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.

37. In the instant case, as observed earlier, that prior demand by the accused is not proved by the prosecution, a doubt creates as to the demand as the admission by complainant PW2 Vilas Sahare itself shows that it was the complainant who offered the amount to the accused. Insofar as the demand on the day of the trap is concerned, the same is not corroborated by the pancha as the pancha specifically stated that it was the complainant who handed

over the amount to the accused. Thus, mere recovery of currency notes from the accused without proof of demand would not be sufficient to prove offence under Sections 7 and 13(1)(d) of the said Act. 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.

38. Thus, the view taken by learned Judge of the trial court is a possible view and, therefore, no interference in the judgment impugned is called for.

39. After appreciating the evidence on record, I do not find any error committed by learned Judge of the trial court. The appreciation of the evidence is on the basis of sifting and weighing of material facts and on that ground also, the appeal of the State deserves to be dismissed. The judgment impugned, on appreciating the evidence, appears to be legal and correct one and nothing is on record to arrive at a finding to show that the judgment passed is perverse or illegal.

40. In the light of the above, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

The appeal stands **disposed of.**

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!