

(2016) 01 BOM CK 0200
In the Bombay High Court
Case No : Criminal Appeal No. 570 of 1997

Ghalappa Sardar Nadgeri

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Evidence Act, 1872 — Section 8

Prevention of Corruption Act, 1988 — Section 13 (2), 13(1)(d), 20, 7

Citation : (2016) 3 AIRBomRCri 584 : (2016) 4 BomCR(Cri) 481 : (2016) 4 MhLJCrI 645

Hon'ble Judges : Smt. Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Mr. Niteen Pradhan a/w Ms. S.D. Khot a/w Ms. Ameeta Kuttikrishnan, Advocates, for the Appellants in Appeal No. 570 of 1997; Mr. Viresh V. Purwant, Advocate, for the Appellants in Appeal No. 800 of 2015; Ms. A.A. Mane, APP, for the State

Final Decision : Dismissed

Judgement

Smt. Sadhana S. Jadhav, J.—;Accused/appellant no. 1 is convicted for offence punishable under section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for the period of one and half years and fine of Rs. 1,000/- in default to suffer rigorous imprisonment for six months. He is also convicted for offence punishable under section 7 of Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for the period of Six months and to pay fine of in default to suffer rigorous imprisonment for the period of three months. Appellant no. 2 is convicted for offence punishable under section 12 of Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for six months and fine of Rs. 1,000/- in default to suffer rigorous imprisonment for three months by Special Judge, Solapur in Special Case No. 17 of 1994 vide Judgment and Order dated 08/09/1997. Hence, these appeals.

2. Such of the facts necessary for the decision of these appeals are as follows.

3. Accused no. 1 Ghalappa Nadgeri was working as a Police Head ism Constable. Accused no. 2 Gurunath Rathod was working as a Police Constable. They were attached to Akluj outpost police station, Shripur, Taluka Malshiras. Both the accused were public servants.

4. It is the case of prosecution that on 09/10/1993 at about 6.00 p.m., both the accused informed P.W. 4 Shrimant Jorwar that a complaint had been filed against them and that they should come to Shripur police station. P.W. 4 and his father Baliram had been to the outpost police station. Shrimant was informed that State Farming Corporation (Hereinafter referred as "SFC") had lodged a report against him and had initiated proceedings for cultivating the land block no. 23 which was in possession of SFC. Balwant Jorwar was in possession of 2 Acres and 5 Gunthas land in Block No. 37 and the remaining land was in possession of SFC. Hence, there was a civil dispute between SFC and Balwant Jorwar. Suit was pending before Civil Judge Junior Division, Malshiras. In the intervening period i.e. on 29/05/1993, Tahsildar, Malshiras had decided the ROR (Record of Rights) proceedings in favour of SFC and had further given direction that the name of SFC be included in the Record of Rights (7/12 ism Extract) in the coloumn cultivation.

5. It is the case of prosecution that on 16/09/1993, manager had filed an application to Akluj Police Station contending therein that Baliram Jorwar had devoid the orders passed by Tahsildar and was cultivating the land block no. 23 of village Mire. The said application was assigned for inquiry to accused no. 1. At the relevant time, both the accused were attached to Akluj outpost police station. On 09/10/1993 accused had been to village Mire and informed Baliram Jorwar about the report filed by SFC. They had taken Baliram Jorwar and his sons Shrimant, Kundalik and Pandurang to the police station. At that relevant time, Assistant Security Officer of SFC was also accompanying the accused as well as the members of Jorwar family. Accused had informed shrimant Jorwar that he would have to cause arrest of Balwant & Shrimant on the basis of report lodged by SFC. That Shrimant Jorwar had requested the accused not to take coercive steps. At that juncture, accused no. 1 had demanded a gratification of in the eventuality that Jorwars do not wish to be arrested. That the amount was negotiated and reduced to. It was ism further decided that Shrimant would pay gratification of on 11/10/1993. It is also alleged that accused no. 1 had informed them that upon failure to pay they would be taken into custody. On this condition Balwant and Shrimant were released from Police Station.

6. That Shrimant Jorwar had no intention to pay illegal gratification and therefore, on 11/10/1993, he approached the office of Anti Corruption Bureau at Solapur and lodged a report. Report lodged by him was reduced into writing by Dy. S.P. Chavan. That Dy. S.P. of A.C.B. had decided to arrange for a trap and had taken effective steps for the same. The procedure for laying a trap and use of anthracene powder was explained to the complainant. Dy. S.P. had recorded the Pre-trap Panchanama and thereafter, raiding party had proceeded to lay the

trap. Two Panchas were deputed, one was Shri. Khalase who was to act as shadow witness. Specific instructions were given to complainant Shri. Jorwar that he should part with the tainted notes in favour of the accused "Only on a specific demand made by the accused".

7. When the raiding party was proceeding to Shripur outpost, they had noticed that police jeep parked on the road and accused no. 2 was seated in the jeep. There was a formal talk between the complainant and accused no. 2. Thereafter, accused no. 2 accompanied the complainant Shrimant and the shadow witness Panch no. 1 Khalase to the police station. Accused no. 1 was present in the police station. Initially there was a formal talk between the complainant and the accused and thereafter, accused no. 1 had specifically enquired with the complainant about the money and also enquired as to whether he had brought the amount as agreed. Complainant had answered in the affirmative. Thereafter, accused no. 1 had directed accused no. 2 to accept the said amount from the complainant. Thereafter, accused no. 2 had entered into the rear room. There he had accepted the amount from the complainant. Soon thereafter, complainant had given the predetermined signal and raiding party had accosted the accused. It is the case of the prosecution that accused no. 2 had concealed the said tainted notes in a newspaper. The raiding party had thereafter taken stock of the tainted notes and examined the hands of accused no. 2 below ultra-violet lamp. The sparkling of blue light made it clear that he had accepted the tainted notes as anthracene powder had been applied to the said tainted notes. The denomination of the said notes tallied with the numbers mentioned in the Pre-trap Panchanama. The raiding party had also seized certain documents from the custody of accused no. 1.

8. Dy. S.P. Chavan lodged a report at Shripur Police Station on the basis of which crime no. 159 of 1993 was registered against both the accused. After completion of investigation, charge-sheet was filed. Case was committed to the Special Court and registered as Special Case No. 17 of 1994. Prosecution examined as many as 8 witnesses to bring home the guilt of the accused.

9. P.W. 1 Narayan Nana Khalase has deposed before the court that in the year 1993 he was working as clerk in the office of Soil Conservation Officer, Solapur. On 11/10/1993, Superintendent of the office had deputed P.W. 1 to the office of A.C.B. on request. Another Panch Shri. Pyare had also been deputed to act as a Panch. That there was an unknown person at the police station. His report was reduced into writing. Pre-trap Panchanama was signed by him. Panchas were given instructions.

10. As far as incident in question is concerned, he has deposed before the court that on 11/10/1993 he was a member of raiding party. They had reached Shivaji Chowk. They found that a jeep was parked there. It was about 6.00 p.m. One person was sitting in the jeep by the side of the driver. Complainant informed P.W. 1 that the said person seated next to the driver was constable Rathod. P.W. 1 has identified accused no. 2 before the court.

11. That the complainant had offered greetings to accused no. 2. he reciprocated the same. Thereafter accused no. 2 had questioned the complainant and complainant had replied that he had come as suggested by Nadgire Saheb. Complainant, upon enquiry by accused no. 2 had also stated that his father had not come and that he was being accompanied by a relative. Accused no. 2 then alighted from the jeep and started walking along with the complainant and P.W. 1. members of the raiding party were following them. They went to Shripur outpost. Officer was sitting in the police station. They had exchanged greetings. Two other persons were sitting in front of the ism officer. Accused no. 1 had questioned the complainant about the identity of P.W. 1, upon which complainant had informed accused no. 1 that P.W. 1 is his paternal cousin.

12. P.W. 1 has categorically stated in the examination-in-chief that accused no. 1 had asked the complainant as to whether he had brought money. Complainant answered in the affirmative. Then accused no. 1 gave signal to accused no. 2 to take the complainant to the rear room. Accused no. 2 went inside and gave a signal to the complainant to come in the rear room.

13. P. W. 1 had attempted to follow the complainant but was directed by accused no. 1 to be seated. P.W. 1 observing the events happening in the inner room as there was clear visibility. According to him, there was preliminary conversation between the complainant and accused no. 2 and thereafter complainant passed on the tainted currency notes to the accused no. 2. Accused no. 2 counted the currency notes with both the hands. In the meanwhile, complainant had given the pre-determined signal. P.W. 1 has specifically stated that accused no. 2 had then picked up one waste newspaper lying in that room and concealed the currency ism notes in that piece of paper and kept the bundle in his left palm. Within no time the raiding party entered into the inner room. P.W. 1 had informed the raiding party that accused no. 2 had accepted the tainted notes. Hands of accused no. 2 were seen under ultra-violet lamp and it showed presence of anthracene powder by emitting blue colour shining.

14. Dy. S.P. Anti Corruption had then inquired with accused no. 1 to disclose his identity. He produced certain papers which were seized. Dy. S.P. had then inquired with other two persons who were sitting in the police station.

15. It is elicited in the cross-examination that P.W. 1, at the time of acceptance of gratification by accused no. 2 inside the room, was sitting on the bench opposite to the table which was opposite to the chair occupied by accused no. 1. Accused no. 1 was sitting on the chair which was adjacent to the eastern side wall. P.W. 1 has denied the suggestion that events in the inner room could not be seen from the place where he was seated. He has admitted that he did not enter into the inner side room and therefore he could not give the topography of ism the inner room. It is pertinent to note that despite lengthy cross-examination, defence has failed to make a dent in the substantive evidence of P.W. 1 as was narrated in his examination-in-chief, more particularly the aspect of demand and acceptance by accused no. 2 and the fact that accused no. 1 had given a signal

to the accused no. 2 to accept the amount on his behalf. P.W. 1 has proved the Pre-trap Panchanama dated 11/10/1993 as well as Post-trap Panchanama. Complaint filed by Manager of SFC which was formed in compilation given by accused is on record. Inward number of the said application is 1814 of 1993 received on 25/09/1993.

16. P. W. 2 Popat Indarkar was the owner of the jeep bearing no. MH- 16-7231. He has deposed before the court that on 11/10/1993 he was at Shripur at about 5.30 p.m. He had parked his jeep at Shivaji Chowk and was standing near the jeep. Accused no. 2 was standing near the Pan stall. Accused no. 2 boarded the jeep and asked P.W. 2 to drive to Umbare. P.W. 2 had informed accused no. 2 that Dynama of the said jeep was out of order. At that juncture, two persons had come near the jeep. They were acquainted with accused no. 2. They extended their ism greetings to accused no. 2 and thereafter, accused no. 2 along with the said two persons went to the police outpost. P.W. 2 was not acquainted with the two persons whom accused no. 2 had accompanied.

17. P.W. 3 Bhagwan Shinde happens to be the person who was in the police station at the relevant time. He has deposed before the court that on 11/10/1993, accused no. 2 and one Datta had met him at Malewadi. They informed him that the matter between P.W. 3 and Mulumbkar was not settled and hence, he was called by the police officer at Akuj. Accused no. 2 had asked P.W. 3 to inform the said fact to Nadgire i.e. accused no. 1 at Shripur outpost. Thereafter, P.W. 3 along with Mulumbkar went to Akuj and contacted Aba Patil who had settled their dispute. Aba Patil had made efforts to contact at police outpost but there was no contact. As suggested by Aba Patil, P.W. 3 and Mulumbkar had been to Shripur outpost to inform accused no. 1 that dispute between them is settled. He then went to Shripur. On the way he had met Humbe who accompanied him to Shripur outpost. P.W. 3 informed accused no. 1 that the dispute with Pandhari was settled. P.W. 3 and Dnyanoba Humbe were sitting on the bench and talking with ism accused no.1. In the meanwhile two persons had come to the police outpost. They greeted accused no. 1. They took a seat on the bench next to P.W. 3. After 10 minutes accused no. 2 had come. He went to the inner room. One person followed accused no. 2 to the inner room and returned within a short while and then 5 ? 6 persons came running to the outpost. He has further deposed that accused no. 1 had not asked that person whether he has brought money. There was no talk between them. At this juncture, prosecution had declared him hostile.

18. P. W. 4 Shrimant Jorwar is the original complainant who had set the law in motion. He has deposed before the court that on 09/10/1993 at about 6.00 p.m., head constable Nadgire and Constable Rathod had been to his village in the jeep of SFC and told him that SFC had filed a complaint against him and therefore he should come to Shripur Police Station. Pursuant to the said call, P.W. 4 and his father accompanied both the accused in the same jeep to Shripur outpost. They were taken to Akuj Police Station. There, accused no. 1 had informed P.W. 4 that

on the basis of the report filed by SFC he would have to arrest P.W. 4 and his father. P.W. 4 had requested accused no. 1 not to arrest him since his service and career was at stake. At that juncture, accused no. 1 had demanded Rs. 5,000/- for not arresting him and to close the matter. There was negotiation. P.W. 4 had informed accused no. 1 that he cannot give the amount for the following 2-3 days and therefore, accused no. 1 had granted him time up to Monday to pay the said amount. It was also decided that amount should be paid at Shripur outpost. Accused no. 1 had specifically told P.W. 4 that in the eventuality he failed to pay the agreed amount, he and his father would be arrested and produced before the court. It is in these circumstances that P.W. 4 had agreed to pay the demanded amount on Monday i.e. after 2 days. P.W. 4 was not willing to extend illegal gratification and therefore, approached office A.C.B. at Solapur. He filed a report which is at exhibit 39. he was apprised of the use of anthracene powder. Pre-trap Panchanama was recorded. He was given specific instructions and it was decided that a trap would be laid. He was also instructed to pay the bribe amount to accused no. 1 only after a specific demand is made.

19. P. W. 4 has further deposed before the court that by Government ism jeep, the raiding party went to Shripur via Mohol-Pandharpur-Tondale Bondale. When they came to Shivaji Chowk, they saw one jeep was parked there. Accused no. 2 was sitting in the jeep. P.W. 4 apprised the shadow witness P.W. 1 that the person seated in the jeep is accused no. 1 accused no. 2 then alighted from the jeep and started walking towards the police outpost along with P.W. 4. At the outpost, accused no. 1 was seated in the chair and was facing West. P.W. 4 and Accused no. 1 had exchanged greetings. Then accused no. 1 offered him seat and enquired about P.W. 1. Two other persons were sitting on the bench. Thereafter, accused no. 1 gave a signal to accused no. 2 to go inside. To the court question, P.W. 4 has stated as follows:

"A. No. 1 had asked me whether I have brought money and I answered in the affirmative."

20. P. W. 4 has further stated that accused no. 2 had called him by giving a signal by neck. He therefore followed accused no. 2 in the rear room. There, accused no. 2 demanded money. Pursuant to the demand, P.W. 4 handed over the tainted currency notes to accused no. 2. thereafter, P.W. 4 had given a pre-determined signal to the raiding party. ism The Dy. S.P. had informed accused no. 2 of his identity. P.W. 4 has reported that as soon as they entered into the police outpost, accused no. 1 had enquired with him as to whether he had brought money. A suggestion was given in the cross-examination that one Bharat Navgire had filed complaint against P.W. 4 and his brother alleging therein that they had beaten him on 06/06/1993. Accused no. 1 had arrested two brothers of P.W. 4. The suggestion that Advocate Prakash Patil had made a phone call to accused no. 1 requesting him to release accused was turned down by accused no. 1 and therefore the complainant had a grudge against accused no. 1. It is admitted that on third day of arrest his brothers were released on jail. It is also

admitted that accused no. 1 had sent charge-sheet against his brothers and the case is pending before the court. It is also elicited in the cross-examination that P.W. 4 along with his family members was charge-sheet for offence punishable under section 324, 504 of Indian Penal Code for incident dated 20/03/1994.

21. P. W. 4 has admitted that Tahsildar, Malshiras had recorded a finding that SFC is in possession of Gat No. 23, however, P.W. 4 has filed ism an appeal challenging the said order. That the name of SFC is recorded in column of occupant in the 7/12 extract. It is also admitted that SFC had filed civil suit no. R.C.S. No. 33 of 1993 against his father in respect of Block no. 23 for the relief of injunction and that the court had ordered to maintain Status-quo. The tenor of cross-examination of P.W. 4 would lead to suggest that the complainant P.W. 4 has implicated accused no. 1 since he was annoyed with him and nurtured a grudge against him. It is also suggested that there is political influence to falsely implicate both the accused in a false case. At this stage, the court cannot be oblivious of the fact that the tainted currency notes were found concealed in a newspaper in the inner room of Shripur outpost. Irrespective of the motive of the complainant, the principal allegation that the amount was demanded and accepted has been established.

22. P. W. 5 Mohan Ambodkar was working as Assistant Security Officer with SFC. One of his duty was to prevent encroachment and remove encroachment. He used to maintain a diary. P.W. 5 has deposed before the court that on 09/10/1993, he was called by S.D. Patil the ism then in-charge Manager. P.W. 5 was informed by Mr. Patil that Balwant Jorwar and his kins were attempted to sow Jawar in land Gat No. 37 owned by SFC and that he should remove the said encroachment. He had been to Gat No. 37 along with a surveyor Mr. Jangam. He had noticed that Jawar was scattered on the ground. An attempt was being made to cultivate the said land. He therefore, approached Shripur outpost and informed accused no. 1 about the said matter. Accused no. 1 assured him that they would visit the land in the evening. P.W. 5 had requested the manager to give him the jeep in order to take accused no. 1 to the said land and accordingly Mr. Patil had provided the jeep. P. W. 5 had been to village Mire along with accused no. 1 & 2. They had been to the house of Shrimant Jorwar. Accused no. 1 had talk with the father of Shrimant Jorwar and asked them to come to Akluj in connection with the encroachment over SFC land. Balwant Jorwar and others accompanied P.W. 5, accused no. 1 & 2 in the same jeep to Akluj Police Station. Accused, complainant and his father went to P.S.O. room. Shrimant Jorwar and his father had not accompanied P.W. 5 while returning from the police station. P.W. 5 has produced the entries in ism respect of the events that had taken place. The contents of the entries are proved by him and hence are marked at Exhibit 43.

23. In the cross-examination, P.W. 5 has admitted that at about 9.30 p.m. Advocate Prakash patil had been to the police station and P.W. 5 had informed him about the encroachment made by Balwant Jorwar. Prakash Patil had assured

P.W. 5 and in view of the order of status-quo passed by the court, Balwant Jorwar should not indulge into such activities and that he would advise him accordingly.

24. P.W. 5 was confronted with his previous statement and has denied to have made portion marked "A" & "B" in his statement to the effect that Prakash Patil had informed P.W. 5 that he would request accused no. 1 to settle the matter. P.W. 5 has stated that on 09/10/1993 he had not filed written application to the police station or outpost Shripur. P. W. 5 has admitted that Exhibit 31/1 is on the letter head of SFC and bears signature of Estate Manager Shri. Shinde.

25. P.W. 6 Suresh Kakkad was working as Superintendent of Police, Solapur, Rural. He was an Authority competent to appoint and remove the accused from their respective posts. That he had received the ism papers of investigation in the month of June 1994. He was satisfied that a prima facie case is made out to prosecute the accused and hence, had accorded the sanction for prosecution of the accused which is at exhibit 47.

26. In the cross-examination he has admitted that he had not verified whether the complaint application filed by SFC was received at Akluj Police Station. It is admitted that it is not mentioned in the sanction order that he had gone through the complaint and Panchanama. It is also admitted that draft of the sanction order was received along with papers. Sanction order was typed as per the draft. The date is not mentioned at the bottom of the sanction order and that P.W. 6 had signed the same and put the date. He has admitted in the cross-examination that he cannot explain the provisions of section 8 of Prevention of Corruption Act and that he cannot explain the provisions of section 18 & 20 of the Act.

27. P. W. 7 Pandurang Bhosale was working as Maintenance Surveyor. On 31/1/1997, he had received orders from TILR to draw sketch of the scene of offence in crime no. 159 of 1992. Accordingly he had drawn ism the sketch and prepared the map which is at Exhibit 52. It is suggested in the cross-examination that the map of scene of offence was not drawn as per the scale and that events in the inner room were not visible from the bench occupied by P.W. 1 at the time of incident.

28. P. W. 8 Bhaurao Chavan was officiating as Dy. S.P. A.C.B. Solapur. He has deposed before the court about the steps taken by him in the course of investigation. He has proved the omissions and contradictions in the evidence of the witnesses.

29. Defence of the accused no. 1 is that of total denial. It is contended as follows.

(i) It is his case that he had not demanded the amount.

(ii) He had not directed/signalled accused no. 2 to accept the amount in the inner room.

(iii) He has been falsely implicated since he had arrested the brothers of the complainant Shrimant Jorwar.

(iv) On 09/10/1993, he had arrested Pandurang and Pundalik Jorwar and Bharat Navgire and filed a chapter case against them.

(v) Accused were not released on bail, but their opponent Bharat ism Navgire was released on bail on 10/10/1993.

(vi) On 09/10/1993 when he arrested complainant's brother Pandurang Jorwar, he was abused and hence, had slapped Pandurang and therefore complainant has falsely implicated him.

30. The defence of accused no. 2 is as follows.

"On 11th I came at outpost from outside. Both persons were sitting in the outside room. I went to the inner room and I was drinking water. Somebody came from backside. I turned back but that person has disappeared while I was coming outside. I noticed bundle in the paper in the rack. Out of curiosity I picked up the same and opened. That time Anti Corruption Officers entered into inner room and they held me."

31. In answer to question no. 98 in statement u/sec. 313 of Code of Criminal Procedure, 1973, accused no. 2 has stated that on 9th he had been to village Mire along with accused no. 1 and talked to brothers of complainant and his father.

32. Hence, one thing is clear that accused no. 2 has admitted that he had been to village Mire and had a conversation with Pundalik and Bharat Jorwar, brothers of complainant. ism

33. Question no. 5 put to accused no. 1 was as follows.

"It has further come in his evidence that on 09/10/1993 around 6.00 p.m. you accompanied by accused no. 2 came to his village in the jeep and told him that there was complaint filed by SFC and he should come to Shripur. What have to say about this evidence.

Answer: It is false."

34. The evidence on record would show that as per the directions of S. D. Patil, P.W. 5 Mohan Ambodkar has deposed before the court that he had been to Shripur outpost and informed accused no. 1 that Balwant Jorwar has encroached upon the land of SFC and is sowing Jawar in Gat No. 37. Accused no. 1 had agreed to visit the land. That accused no. 1 and accused no. 2 had been to land Gat No. 37. They had been to the house of the complainant and the complainant, his father and brothers had accompanied them to Akluj Police Station. That accused, complainant and his father had been to P.S.O. room. P.W. 5 had taken the entries of the events that had taken place and entries are exhibited at Exhibit 43. It can therefore, be safely inferred that prosecution has proved that on 09/10/1993, accused no. 1, accused no. 2 accompanied by P.W. 5 had been to village Mire, more particularly to ism the house of Shrimant Jorwar and that Balwant Jorwar, Shrimant and other two brothers of Shrimant accompanied them

to Akluj Police Station.

35. That P.W. 4 had approached office of A.C.B. and set law into motion for laying a trap against accused no. 1 & accused no. 2 for demanding illegal gratification.

36. P. W. 1 is an independent witness. He is a public servant whose services were solicited for acting as a shadow witness in the course of laying a trap. P.W. 1 has deposed before the court that on the way to Shripur outpost, they had met accused no. 2 seated in a jeep. P.W. 1 has deposed as follows:

"One person was sitting in the jeep by the side of the driver of the jeep. Complainant pointed out to that person and told me that he was Rathod Constable. Complainant offered Namaskar to accused no. 2 and accused no. 2 reciprocated the same and asked the question whether they had come. Complainant replied with yes he has come as suggested by Nadgire Saheb."

37. This part of the testimony of P.W. 1 has not been shaken in the cross-examination and therefore, an inference could be drawn that ism Nadgire had asked P.W. 4 to come to the outpost.

38. P. W. 1 has further deposed that :

"Accused no. 1 then asked the complainant whether he has brought the money. Complainant replied in the affirmative. Then accused no. 1 gave a signal to accused no. 2 asking him to go to inner room. Accused no. 2 went inside and by giving signal by neck, accused no. 2 called complainant inside. Then complainant went inside. I stood up and tried to go inside at that time, accused no. 1 asked me to stay there."

39. This part of the testimony also has not been shaken in the cross-examination. All that is suggested that events which had taken place in the inner room were not visible to P.W. 1 from the place where he was seated. That he had not heard the conversation between accused no. 2 and the complainant and therefore according to learned counsel for the appellants the fact of demand has not been proved. It is not the case of accused no. 2 that amount was thrust with him or that he was forced to accept the amount. The defence of accused no. 2 is that the tainted currency notes were concealed in a bundle of newspaper by someone and out of curiosity he had opened the same and at that time, he had ism been trapped. The court cannot be oblivious of the fact that accused no. 1 who was superior officer was seated in the outer area. There were two persons sitting in front of him. Nobody could have entered in the inner room without being noticed by accused no. 1 and nobody could have kept the said notes in the inner room. Accused no. 1 would have not permitted P.W. 4 to enter the said room clandestinely and keep the currency notes in the inner room. The explanation offered by accused no. 2 not only does not inspire the confidence of the court but is not a plausible explanation in any manner. The traces of anthracene powder were seen on the hands of accused no. 2.

40. This court had put a query to the learned counsel for the appellants as to

whether accused had offered any explanation to the officer immediately upon being apprehended by the raiding party. Learned counsel has submitted that in that circumstances section 24 of the Indian Evidence Act would come into play and therefore the said statement would be inadmissible in evidence.

41. The Hon^{ble} Apex Court in the case of K.S. Panduranga v. State of Karnataka 2013 (3) S.C.C. 721 has held that: ism

"When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt."

42. Once the fact of acceptance of the currency notes is established by the prosecution, it becomes incumbent upon the court to draw a presumption. The onus would lie upon the accused to rebut the said presumption or demonstrate the preponderance of probabilities to seek discharge/exoneration from the charges levelled against him. However, the accused has not placed any material before the court to show that he had not demanded the gratification or that the amount accepted by accused no. 2 which was found in his exclusive possession was not towards illegal gratification. The evidence on record would clearly indicate that the tainted currency notes were found in the precinct of police station and more over accused no. 2 has specifically admitted that at the relevant time he was in the rear room and had opened the bundle out of the curiosity. It is strange that accused no. 1 who was ism sitting just outside the rear room had not noticed a stranger entering into the rear room as the police station was manned by the police personnels only.

43. The Legislature has chosen to use the words "Shall presume" and therefore it becomes incumbent upon the court to presume that the amount accepted and found in the possession of the accused is towards illegal gratification. "Shall presume" has been defined in Section 4 of the Indian Evidence Act as follows:

"Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

44. It therefore, becomes obligatory on the part of the court to presume that accused had accepted illegal gratification. In the absence of rebuttal of presumption by the accused, it can be safely inferred that the prosecution has proved its case beyond reasonable doubt.

45. Learned counsel for the appellant has submitted that presumption under section 20 of Prevention of Corruption Act, 1988 has to be drawn at the end of the trial. ism

46. Section 20 of Prevention of Corruption Act, 1988 contemplates as follows:

"20. Presumption where public servant accepts gratification other than legal remuneration

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

47. The said submission is not only against the settled principle of law, but does not stand to any reason or an inference which can be drawn by a prudent mind. Presumption is always to be drawn at the initial stages on the basis of the material before the Court. The presumption would stand discharged or rebutted only at the end of the trial. Hence, the submission does not deserve any consideration. The thrust of the learned counsel for the appellant is that complainant P.W. 4 had motive to falsely implicate accused no. 1. He has relied upon para 15 of the testimony of P.W. 4 to substantiate his contentions.

48. It is further submitted that it is necessary for the prosecution to establish that illegal gratification was solicited in the discharge of its official duties. According to learned counsel, the act of the accused was not in discharge of official duties and therefore appellants could not have been charged with section 7 & 13 of the Prevention of Corruption Act, 1988. It is submitted that there was no conversation about the official business and the transaction was not explained by the prosecution and therefore it can be safely held that accused deserve to be acquitted of the charges levelled against them.

49. This would be a far fetched submission. Evidence on record is contrary. P.W. 5 has proved that he had informed accused no. 1 about the encroachment by Balwant Jorwar of land Gat No. 37. That accused no. 1 had assured to take action. That accused no. 1 had also brought Balwant Jorwar and his sons to the police station. The transaction has taken place in the police station that too in

the inner room to which only police could have access. That unless there was specific reason, accused no. 2 would not have accompanied the complainant and P.W. 1 to the police station on 11/10/1993, especially after P.W. 4 had categorically stated that he has come as per the directions of Nadgire Saheb. Accused have not stated as to what was the purpose for calling P.W. 4 to the police station on 11/10/1993. It is more than clear that it was in discharge of official duties.

50. It is further submitted that there is no positive evidence on record that at the time of actual acceptance of tainted currency notes, there was any demand made by accused no. 2. At this stage, it would be relevant to consider section 8 of Indian Evidence Act.

"8. Motive, preparation and previous or subsequent conduct. -

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. ? The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. ? When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct, is relevant."

51. The conduct of the accused becomes relevant. Unless directed or permitted by the accused no. 1, the complainant would not have followed accused no. 2 in the inner room. It is not the case of accused no. 2 that complainant had entered the inner room and placed the tainted currency notes. According to accused no. 2 somebody had kept the tainted currency notes in the inner room of which he had no knowledge.

52. Learned counsel for the appellants further submits that even if it is taken into consideration that accused no. 2 had accepted the tainted currency notes, it cannot be inferred that accused no. 2 had the knowledge about the demand made by accused no. 1. This is again far fetched submission. The defence of accused no. 2 is that he has not accepted it. The defence of accused no. 1 is that he had no knowledge of what has happened in the inner room. Unless accused no. 2 had knowledge, he would not have accepted the tainted currency notes. P. W. 1 as well as P. W. 4 have categorically stated that after accepting the

tainted currency notes, accused have concealed the notes in a bundle of newspaper. Unless there was knowledge, accused no. 2 would not have concealed the said currency notes. It is in these circumstances that it can be safely held that accused have failed to rebut the presumption which is drawn under section 20 of Prevention of Corruption Act, 1988.

53. In the case of State of Andhra Pradesh v. P. Venkateshwarlu [2015 Cr.L.J. 2902] The Hon"ble Apex Court has set aside the acquittal recorded by the High Court. The Hon"ble Apex Court has held that: "The offence under Section 7 of P.C. Act has been confirmed by the unchallenged recovery of the tainted amount. Thus, it is our obligation to raise the presumption mandated by Section 20 of P.C. Act. It is for the accused respondent to rebut the presumption, by adducing direct or circumstantial evidence, that the money recovered was not a reward or motive as mentioned under Section 7 of the P.C. Act."

54. The Hon"ble Apex Court has referred to Judgment of the Hon"ble Apex Court in the case of C.M. Girish Babu v. CBI, Cochin High Court of Kerala [A.I.R. 2009 S.C. 2022] wherein it was held as follows :

"It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification."

55. A similar defence was raised that the entire trap was laid down on enemical relations with document writers. The conduct of the accused would become relevant. The demand need not always be made in words. That P. W. 1 and P. W. 4 have categorically described the gesture of accused no. 1 directing accused no. 2 to go in the inner room. Accused no. 2 calling upon P. W. 4 by signalling. It can therefore be inferred that demand was made by gesture. The gesture is defined in Oxford dictionary as follows:

"(1) A movement of a limb or the body as an expression of ism thought or feeling.

(2) The use of such movements especially to convey feeling or as rhetorical device.

(3) An action to evoke a response or convey intention."

56. "Gesture" as defined in Black"s Law Dictionary is as follows:

"A motion of the body calculated to express a thought or emphasise a certain point."

57. In the present case, gesture of accused no. 1 as well as accused no. 2 can be considered as the use of movements to convey feeling or rhetorical device by which they asked the complainant to go in the rear room where the tainted notes

were found.

58. It is necessary to appreciate the evidence from this point of view that the gesture was made by accused no. 1 and accused no. 2 which was a calculated movement to emphasise a certain point and that was the demand of tainted currency notes. This has to be in the backdrop of the fact that P.W. 1 has stated that accused no. 1 then asked the complainant whether he has brought the money and that the complainant had replied in the affirmative. This would fortify the fact ism that there was demand by accused no. 1 and at the behest of accused no. 1, accused no. 2 had accepted the amount knowing fully well that it is an illegal gratification.

59. Learned counsel for the appellants has further submitted that Sanctioning Authority has not deposed before the court that he had accorded sanction for prosecution of the appellants upon there being a subjective satisfaction and on this count the charges levelled against the accused shall necessarily fail. It is true that there has to be a valid sanction for prosecution. However, section 19 Sub Clause (3) of Prevention of Corruption Act, 1988 reads as follows.

"19. Previous sanction necessary for prosecution.

(1) -----

(2) -----

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), ---

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been ism occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

60. Section 19 contemplates a sanction as a condition precedent for taking cognizance of the offence punishable under Prevention of Corruption Act, 1988, however, sub clause 3 makes it clear that the finding, sentence or order cannot be reversed on the sole ground that there was irregularity in according sanction.

61. Section 19 sub clause (4) of Prevention of Corruption Act, 1988 contemplates as follows.

"(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation ? For the purpose of this section, ?

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that such prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

62. There is nothing on record to even remotely indicate that the sanction was challenged at the preliminary stage. Hence, the contention regarding a valid sanction cannot be considered at the appellate stage. Incident is of the year 1993 and the appeal is of the year 1997. Hence, it would not be proper to consider the submission that appellants deserve to be acquitted for want of valid sanction. It is the discretion of the court that only upon appreciating the evidence, if the court arrives at a conclusion that for want of valid sanction is to the prejudice of the accused and has resulted in failure of justice, only then accused being prosecuted under Prevention of Corruption Act may deserve to be acquitted.

63. In the present case, prosecution has proved the guilt of the accused beyond reasonable doubt.

64. This Court cannot be oblivious of the fact that cases of corruption are on the rise. Corrupt public servants are given latitude on the basis of loop holes in the prosecution case. The court cannot travel beyond the evidence adduced by the prosecution, unless accused on the same set of evidence is able to present a different view of the matter. Only in such situation, where two views are possible, court may take a view in favour of accused.

65. In the present case, there is no scope even to fathom that two views are possible. This Court has considered the conduct of the accused under section 8 of Indian Evidence Act and has arrived at a conclusion that prosecution has proved the case beyond reasonable doubt. Accused have failed to rebut the presumption drawn under section 20 of the Prevention of Corruption Act, 1988 and therefore, appeal deserves to be dismissed.

66. Criminal appeal no. 800 of 2015 is filed by appellant no. 1 in criminal appeal no. 570 of 1997 due to change of Advocate. Hence, the said appeal stands dismissed.

ORDER

(i) Both appeals stand dismissed.

(ii) The conviction and sentence recorded vide Judgment and Order dated

08/09/1997 passed by Special Judge, Solapur in Special Case No. 17 of 1994 is hereby maintained.

(iii) Appellants are directed to surrender before the Special Judge at Solapur on or before 15/05/2016.

(iv) Upon failure to surrender before the Special Court Solapur, the Special Judge shall issue non-bailable warrant against the appellants, calling upon them to serve the sentence.

(v) Appeals stand disposed of.