

(2024) 06 BOM CK 0002
In the Bombay High Court
Case No : Criminal Appeal No. 197 Of 2019

Sayyad Shakil Salam

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 14-06-2024

Acts Referred:

Indian Penal Code, 1860 — Section 161
Prevention of Corruption Act, 1988 — Section 7, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii),
13(2), 19, 19(4), 20
Evidence Act, 1872 — Section 3, 65A, 65B, 65B(1), 65B(4)

Citation : (2024) 06 BOM CK 0002

Hon'ble Judges : Urmila Joshi Phalke, J

Bench : Single Bench

Advocate : R.P.Joshi, S.C.Joshi

Final Decision : Disposed Of

Judgement

Urmila Joshi Phalke, J

1. By this appeal, the appellant (the accused) has challenged judgment and order of conviction and sentence dated 28.2.2019 passed by learned Special Judge (under Prevention of Corruption Act), Bhandara (learned Judge of the trial court) in Special Criminal (ACB) Case No.18/2015 whereby he is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to undergo rigorous imprisonment for one year and to pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for one month. He is also convicted for offence punishable under Section 13(1)(d) read with Section 13(2) of the said Act and sentenced to undergo rigorous imprisonment for one year and to pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for one month.

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

The accused was serving as Round Officer in Forest Department at Nakadongari,

tahsil Tumsar, district Bhandara. Complainant Dongarsingh Yadav was serving as Security Guard in Dongri/Buzrug Mines. The complainant had purchased some teak wood from a shop for making furniture to gift it in marriage of his relative. On 21.1.2015, when the complainant was on duty, the accused and other officials of the Forest Department conducted a raid at the house of the complainant. As wife of the complainant informed him about the said raid, he immediately came to the house and informed that he had purchased the teak wood from shop of one Hemraj Warkade at Tumsar. The officials of the Forest Department obtained signatures of his wife on some papers and told the complainant that crime would be registered against his wife. As per allegations, the accused demanded Rs.20.000/- for not initiating action and asked him to pay on or before 28.1.2015 and, therefore, he approached the office of the Anti Corruption Bureau (the office of the bureau) at Bhandara on 27.1.2015 and lodged a report.

3. After receipt of the complaint, officials of the bureau called two panchas. The complaint was read over to panchas and they have also obtained information of the complainant. The complainant was called on the next day i.e. 28.1.2015 with the bribe amount. The complainant produced fifteen currency notes of Rs.1000/- denomination and ten currency notes of Rs.500/-denomination. The demonstration as to anthracene powder and ultra violet lamp was shown to the complainant as well as panchas. The voice of pancha No.1 was recorded in Digital Voice Recorder. Accordingly, pre-trap panchanama was drawn.

4. On 28.1.2015, the complainant and pancha No.1 were sent to the office of the accused. The digital Voice Recorder was kept in left pocket of T-Shirt of the complainant. The complainant and pancha No.1 met the accused at Nakadongari. The communication as to the bribe amount took place between the complainant and the accused. The complainant requested the accused to reduce the amount. The accused has not accepted the same and, therefore, the complainant informed that he would come along with the bribe amount within an hour and, thereafter, they approached raiding party members who were present nearby at Shiv Mandir. They disclosed the communication to the trap officer. The officer of the bureau took out the digital tape recorder and heard the communication. The script of the said communication was drawn and, thereafter, on the say of the officer, the complainant and pancha No.1 visited the forest office for paying the amount, but the accused was not present there and, therefore, they again came back at Shiv Mandir Area where raiding party members were present. At about 7:00 pm, the complainant received a phone call from accused when he had been to his house. The accused asked him whether he paid the amount to Shekhar Sonwane. The complainant denied about the same and, therefore, the accused called him in his office after an hour.

5. After the communication with the accused, the complainant again approached the officers of the bureau who were near Shiv Mandir. The bribe amount was again kept in the pocket of the complainant. The Digital Voice Recorder was also

turned on and kept in upper pocket of his T-Shirt. He was directed to give a signal after acceptance of the bribe amount. Pancha No.1 and the complainant went to the office of the accused. There was communication between the complainant and the accused. The accused asked him about the bribe amount which was replied in the affirmative by the complainant. The complainant took out the amount from the pocket of his pant and handed over to the accused and the accused accepted the same. The complainant immediately gave the signal and raiding party members caught the accused. The Digital Voice Recorder was taken out from the complainant and the amount was recovered, which was kept on table. The hands of the accused and the tainted amount were checked in the ultra violet lamp. The blue colour glittering was noticed on it. The conversation between the complainant and the accused was heard, which was recorded in the digital tape recorder. The script was drawn. The personal search of the complainant and the accused was drawn and, thereafter, officer of the bureau lodged report with Tumsar Police Station. During investigation, voice samples of the complainant and the accused were collected. An information regarding service record of the accused was also collected. After obtaining a sanction, chargesheet was filed against the accused.

6. To substantiate allegations, the prosecution examined in all six witnesses, viz. Dongarsingh Jangluram Yadav vide Exhibit-17 (PW1), the complainant; Shantaram Yewale vide Exhibit-25 (PW2), the Shadow Pancha; Tangam Reddy vide Exhibit-40 (PW3), the Sanctioning Authority; Parag Raut vide Exhibit-43 (PW4), the Carrier; Kishor Parwate vide Exhibit-48 (PW5), the Trap Officer, and Sachin Halmare vide Exhibit-67 (PW6), the employee of the bureau.

7. Besides the oral evidence, the prosecution further relied upon complaint Exhibit-16, personal search of the complainant Exhibit-18, receipts Exhibit-20, supurdnama Exhibit-21, letter to the District Sub Registrar, Cooperative Exhibit-26, pre-trap panchanama Exhibit-27, verification-cum-post trap panchanama Exhibit-29, seizure memo Exhibits-30 and 31, panchanama regarding conversation between the complainant and the accused Exhibit-35, voice specimen panchanamas of the complainant and the accused Exhibits-37, Sanction Order Exhibit-41, explanation of the accused Exhibit-51, letter issued to the Deputy Superintendent of Police (ACB) Exhibit-55, and voice analysis reports Exhibit-66.

8. After considering the evidence adduced during the trial, learned Judge of the trial court held the accused guilty as the aforesaid.

9. I have heard learned counsel Shri R.P.Joshi for the accused and learned Additional Public Prosecutor Shri S.C.Joshi for the State. I have been taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

10. Learned counsel for the accused submitted that learned Judge of the trial court erroneously convicted the accused in absence of any cogent and reliable

evidence as the demand and acceptance of the alleged gratification is not proved. He submitted that the amount is recovered from the table and, therefore, possession of the tainted amount admittedly is not from the accused. The demand and acceptance of illegal gratification is a sine qua non to attract provisions of the said Act. He submitted that the entire investigation carried out by the officer of the bureau is a tainted investigation. PW6 Sachin Halmare has drawn script of the alleged conversation between the complainant and the accused on 29.1.2015 and obtained hash value, whereas the trap was laid on 28.1.2015. PW6 Sachin Halmare nowhere stated that he prepared the script on 28.1.2015. Thus, the panchanama appears to be prepared subsequently. He further submitted that the evidence of the complainant is not truthful. On the point of demand, Shadow Pancha PW2 Shantaram Yewale has not supported and corroborated the prosecution story. There is no evidence as to the initial demand. The electronic evidence produced to prove the demand at the time of the trap is also not trustworthy as it is not according to the provisions of the Indian Evidence Act. The sanction accorded by Sanctioning Authority PW3 Tangam Reddy is without application of mind. The evidence as to the acceptance of the amount is also doubtful.

11. In support of his contentions, learned counsel for the accused placed reliance on catena of decisions, which would be referred at the relevant time of discussion in the judgment.

12. Learned Additional Public Prosecutor for the State submitted that though Shadow Pancha PW2 Shantaram Yewale has not corroborated the evidence of PW1 complainant Dongarsingh Yadav, the evidence of the complainant is corroborated by circumstantial evidence like electronic evidence collected in the nature of script with the help of Digital Voice Recorder. The amount is seized from the accused. The explanation given by the accused is also false and not supported by any other evidence. The Digital Voice Recorder wherein communication was recorded and script prepared from it clearly disclosed involvement of the accused in the present crime. Thus, the prosecution has proved the demand and acceptance with the help of the evidence of the complainant and other circumstantial evidence. The sanction accorded is also as per the law and, therefore, no interference is called for.

13. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on various decisions, which would be referred at the relevant time of discussion in the judgment.

14. Since question of validity of the sanction has been raised as primary point, it is necessary to discuss an aspect of sanction. The sanction order was challenged on the ground that the sanction was accorded without application of mind and mechanically.

15. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning Authority PW3 Tangam Reddy. Sum and substance of his

evidence is that he received the chargesheet and all papers of investigation. He went through all papers and accorded the sanction to prosecute the accused. The said sanction order is at Exhibit-41. His cross examination shows that he has seen all papers while according the sanction. He denied that he received a draft sanction order. His evidence further shows that the Round Officer has to decide as to whether to compound the case and he has to send the proposal to the Range Officer. The amount of fine shall be decided by the Assistant Conservator of Forest.

16. Admittedly, the accused was serving as the Round Officer at Nakadongari. As per allegations, the demand of Rs.20,000/-was made for not taking an action. The cross examination itself shows that it was the Round Officer who has to decide as to whether to compromise the case or not.

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

18. The Honourable Apex in the case of Mohd.Iqbal Ahmad vs. State of Andhra Pradesh 1979 AIR 677 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. In view of the settled principles of law, it is crystal clear that the Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction. The sanction order should speak for itself. It is well settled that sanction order should not be so elaborate like an order of court containing detailed reasons, but it should be after application of mind. Ultimately, an object of grant of sanction should be able to consider evidence and material before it and the Sanctioning Authority shall come to a conclusion that whether the prosecution in the circumstances be permitted or forbidden. It is further well settled that sanction is solemn and sacrosanct act. The law does not require sanction to be in a particular form. The sanction should be given in respect of facts constituting offence charged equally which applies to the sanction under Section 19 of the said Act.

20. As observed earlier, sanction order is not required to be passed as of a court order.

21. Sub section (4) of Section 19 of the said Act states that 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.

22. In the light of the above well settled legal position, if the sanction order is perused, Sanctioning Authority PW3 Tangam Reddy specifically stated that he received all investigation papers. He went through all papers and accorded the sanction. His cross examination further clarified that he has seen all papers while according the sanction. The sanction order reproduces the entire prosecution case and in second last paragraph it is specifically mentioned that upon carefully reading and after carefully evaluating the evidence on record, he is satisfied that there is adequate evidence to prosecute the accused and accorded the sanction.

23. In view of the settled principles of law, it is crystal clear that that Sanctioning Authority has to apply his/her mind for generation his/her satisfaction and order of sanction should not be constructed in a pedantic manner. The purpose for which an order of sanction is required, is to be borne in mind. In fact, the Sanctioning Authority is the best person to judge as to whether public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not. Thus, application of mind on the part of the Sanctioning Authority is imperative.

24. Perusal of the sanction order and the evidence shows that Sanctioning Authority PW3 Tangam Reddy has not only gone through all papers of the investigation but also evaluated the evidence and on his satisfaction, he accorded the sanction.

25. Thus, the issue of sanction cannot be put at such pedestal as it would make impossible for the prosecution to prove the same. The object and purpose of grant of sanction and protection contemplated thereby does not mean that technical and trivial objections to legality and validity of sanction to be entertained. When all relevant materials placed before the Sanctioning Authority are found to be taken into consideration in correct perspective, the sanction accorded is by application of mind.

26. Thus, the sanction accorded in the present case is after application of mind and, therefore, the contention of learned counsel for the accused that the sanction is not according to law is not sustainable and is liable to be discarded.

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

28. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of PW1 complainant Dongarsingh Yadav and Shadow Pancha PW2 Shantaram Yewale.

29. On the question of demand and payment of the bribe amount for performance of public duty, it is necessary to see testimony of PW1 complainant Dongarsingh Yadav, whose evidence shows that he was serving as Security Guard as well as he was doing carpentry work privately. He purchased teak wood from a wood shop at Tumsar. On 21.1.2015, when he was on duty, the accused

and other forest officials conducted a raid and seized some teak wood from his house. Though he explained that he purchased the said teak wood, the forest officers prepared some papers and obtained signatures of his wife. He alleged that he was threatened that as he had stolen the teak wood by cutting it from jungle, his wife would be prosecuted. The demand of Rs.20,000/- was made from him for not prosecuting him and his wife and he was asked to pay the amount on or before 28.1.2015 and, therefore, on 27.1.2015, he approached the office of the bureau and lodged the report. He narrated about the entire procedure carried out by the officer of the bureau before laying trap. Regarding the trap, he stated that Digital Voice Recorder was kept with him and he was sent to the accused along with pancha No.1. The communication between him and the accused was recorded. His evidence shows that the accused demanded Rs.20,000/- from him. Initially, he has not paid the amount and again approached the officer of the bureau who were present nearby the office of the accused. After some time, he again went to the accused along with pancha No.1. The communication between him and the accused was recorded. The accused demanded Rs.20,000/- and he handed over the same. The accused was caught. His evidence further shows that his voice samples as well as voice samples of the accused were obtained. Thus, he narrated regarding the demand and acceptance by the accused.

The defence of the accused is that the amount was kept on the table when he went to washroom of the office quarter and he is falsely implicated.

Though the complainant is cross examined, nothing material is brought on record which would shatter his evidence.

On the contrary, the cross examination shows that his natural voice sample was taken by the officer of the bureau. He denied that the amount was accepted towards the fine amount by the accused.

30. In support of contentions, the prosecution placed reliance on some receipts dated 16.2.2014, 13.9.2003, 15.9.2009 and 13.11.2003 to show that PW1 complainant Dongarsingh Yadav had purchased the teak wood from S.S.Lanjewar Forest Contractor. The said receipts are not denied by the accused during the cross examination. These receipts show that the complainant purchased some teak wood from S.S.Lanjewar Forest Contractor and Saibaba Timber Depot etc..

31. To corroborate the version of the prosecution, the prosecution also examined Shadow Pancha PW2 Shantaram Yewale. His evidence shows that he acted as pancha. The officer of the bureau obtained tainted amount from PW1 complainant Dongarsingh Yadav and shown demonstration as to anthracene powder and ultra violet lamp. The anthracene powder was applied on the tainted notes and, thereafter, said tainted notes were shown in the light of ultra violet lamp. He was instructed to accompany the complainant. The Digital Voice Recorder was kept with the complainant. He along with the complainant visited chamber of the accused. During communication, the complainant requested to reduce the amount which was denied by the accused. Thereafter, the

complainant told that he would come with the amount after an hour. The accused told him to pay the amount to one Sonwane. His further evidence shows that officer of the bureau took out Digital Voice Recorder from the pocket of shirt of the complainant and it was closed. The memory card was taken out and it was inserted in the lap-top and in their presence he heard communication. Thereafter, again, the Digital Voice Recorder was switched on by member of the trap party and his voice was recorded in it. Again, he along with the complainant visited the office of the accused. However, nobody was present in the office of the accused and, therefore, they returned back. Again, at about 7:00 pm, he went with the complainant. The accused demanded the amount and accepted the same. Accordingly, post-trap panchanama was drawn.

32. Thus, as far as the demand is concerned, the evidence of Shadow Pancha PW2 Shantaram Yewale shows that there was a demand by the accused. However, during cross examination the pancha admitted that the accused did not demand the bribe amount in his presence. He further stated that he could not heard the conversation between the complainant and the accused. He further admitted that on 28.1.2015 at about 2:00 pm, no bribe amount was given to the accused. On the basis of this admission, it is submitted by the accused that the demand and acceptance is not proved as the shadow pancha specifically admitted that there was no demand by the accused to the complainant and he has not heard any communication as to the demand.

33. PW5 Trap Officer Kishor Parwate, narrated about the entire procedure carried out by him. His evidence shows that the scrip of the conversation between the complainant and the accused was drawn. The hash value of the conversation was taken out and, thereafter, hash value generation certificate was issued, which is at Exhibit-34. The bribe amount is also seized. Though he is cross examined, during his cross examination nothing is brought on record to falsify his version regarding the conversation recorded in the Digital Voice Recorder.

34. PW6 Sachin Halmare, is also examined by the prosecution who has drawn the said hash value certificate. On the basis of memory card of the Digital Voice Recorder, he prepared the script Exhibit-35 and also issued certificate under Section 65B of the Indian Evidence Act, which is at Exhibit-65.

35. Learned counsel for the accused vehemently submitted that the evidence of PW1 complainant Dongarsingh Yadav is not corroborated as the pancha has not supported the demand made. The electronic evidence, on which the prosecution relied upon, is not trustworthy and liable to be discarded. He further submitted that the evidence as to demand and acceptance is also not trustworthy. Mere recovery of tainted money is not sufficient to hold the accused guilty.

36. To support the above contentions, learned counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of State of Punjab vs. Madan Mohan Lal Verma (2013)14 SCC 153 wherein it is held that the law on the issue is well settled that demand of illegal gratification is sine qua non

for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe.

On the same issue, he further placed reliance on the decisions of the Honourable Apex Court in Criminal Appeal No.1592/2022 (Soundarajan vs. State rep. by the Inspector of Police Vigilance Anti Corruption Diindigul) decided on 17.4.2023 and N.Vijayakumar vs. State of Tamil Nadu (2021)3 SCC 687 wherein also it is held that mere recover of tainted money in absence of any proof of demand and acceptance, cannot be said to be sufficient to convict the accused.

The Honourable Apex Court in the case of Suraj Mal vs. The State (Delhi Administration) AIR 1979 SC 1408 has also laid down the same ratio.

Learned counsel for the accused also placed reliance, as under:

1. Onkar Tukaram Ramteke vs. State of Maharashtra 2022(4) Mh.L.J. (Cri) 214;
2. The State of Maharashtra vs. Ramesh Tukaram Wagh 2020 ALL MR (Cri) 3509;
3. Uttam s/o Ramaji Shere vs. State of Maharashtra 2018 ALL MR (Cri) 2393, and
4. Mahesh Ramesh Jadhav vs. The State of Maharashtra 2019 ALL MR (Cri) 4056.

37. Learned Additional Public Prosecutor for the State also placed reliance on the decision of the Honourable Apex Court in the case of Neeraj Dutta vs. State (Government of NCT of Delhi) (2023)4 SCC 731 wherein it is held that for recording conviction under Section 7 and (13)1(d)(i) and (ii), the prosecution has to first prove the demand and acceptance of illegal gratification either by direct evidence which can be in the nature of oral evidence or documentary evidence or by circumstantial evidence in the absence of direct oral and direct documentary evidence. He submitted that the evidence of the complainant is corroborated by the electronic evidence which sufficiently proves involvement of the accused in the alleged crime.

38. It is submitted by learned counsel for the accused that the prosecution placed reliance on the electronic evidence and examined PW6 Sachin Halmare, who transcribed the script of the alleged conversation on the basis of conversation recorded in the Digital Voice Recorder. He has drawn script on 29.1.2015. Whereas, the trap is of 28.1.2015. The hash value certificate issued by PW6 Sachin Halmare is also unreliable as he has not stated anything about the calculation of hash value. As per the evidence of the Investigating Officer, hash value was collected on 28.1.2015, whereas the certificate is of 29.1.2015. To substantiate his contentions, he placed reliance on the decision of the Honourable Apex Court in the case of Nilesh Dinkar Paradkar vs. State of Maharashtra (2011)4 SCC 143 wherein it is held that it s the duty of the court while basing conviction on the basis of identification of voice. The court has to take into consideration factors (a). the quality of the recording of the disputed

voice, (b). the gap in time between the listener hearing the known voice and his attempt to recognize the disputed voice, (c) the ability of the individual to identify voices in general (d). the nature and duration of the speech which is sought to be identified and (e). the familiarity of the listener with the known voice; and even a confident recognition of a familiar voice by a way listener may nevertheless be wrong.

He further placed reliance on Sunil Hirasingh Rathod vs. The State of Maharashtra 2022 ALL MR (Cri) 647 wherein it is held that SD Cards used for recording conversation cannot be admitted in evidence in absence of certificate under Section 65B of the Evidence Act.

39. Per contra, learned Additional Public Prosecutor for the State submitted that the prosecution has not only produced the SD Cards and script of the conversation but also PW6 Sachin Halmare is examined who transcribed the conversation and prepared the script and also obtained the hash value certificate. The certificate under Section 65B of the Indian Evidence Act is also proved by the prosecution by examining him. The said SD Cards were forwarded for analysis and the analysis report shows that the voice which matches with Exhibits is of Mr.Sayyad Shakil Salam i.e. the accused. Thus, the prosecution has not only adduced the direct evidence of the complainant but also it is corroborated by circumstantial evidence.

40. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on the decision of the Honourable Apex Court in the case of P.Gopalkrishnan alias Dileep vs. State of Kerala and anr(2020)9 SCC 161 wherein the Honourable Apex Court dealt with the electronic evidence and admissibility of electronic evidence and referred Chapter "Documentary and Real Evidence" by Halsbury's laws of England. The Honourable Apex Court referred paragraph No.1471 of the said Chapter wherein reference of audio video recordings is given. It is reproduced as under:

"1471. Audio and video recordings. An audio recording is admissible in evidence provided that the accuracy of the recording can be proved, the recorded voices can be properly identified, and the evidence is relevant and otherwise admissible. However, that evidence should always be regarded with caution and assessed in the light of all the circumstances.

A video recording of an incident which is in issue is admissible. There is no difference in terms of admissibility between a direct view of an incident and a view of it on a visual display unit of a camera or on a recording of what the camera has filmed. A witness who sees an incident on a display or a recording may give evidence of what he saw in the same way as a witness who had a direct view." (emphasis supplied).

41. Thus, besides the oral evidence of PW1 complainant Dongarsingh Yadav, the prosecution placed reliance on the electronic evidence to prove the demand by the accused. The evidence of the complainant as well as the Shadow Pancha PW2

Shantaram Yewale shows that the Digital Voice Recorder was kept with the complainant before he approached the accused and the communication between him and the accused was heard and script was prepared. The said script was reproduced in the post-trap panchanama. From the said script, it reveals that the complainant was requesting to reduce the amount, but the accused was not ready for the same. The said communication script shows that it was the accused who demanded the amount from the complainant and accepted the same. PW6 Sachin Halmare issued the certificate under Section 65B of the Indian Evidence Act mentioning that he is attached to the office of the bureau, Bhandara unit. The Micro SD Card was titled as "recorded conversation at the time of verification/trap/transcript specimen voice panchanama created on 28.1.2015 and 29.1.2015 containing conversation recorded in the Sony Audio Recorder operated by him." It further mentions that the said conversation is recorded in the Audio Recorder Micro SD Card during the period over which the Audio Recorder is used regularly to record and listen the conversation for the purposes of activities regularly carried on over that period by a trained person. It is further mentioned that during the said period, information contained in the electronic recorder was regularly recorded into the Audio Recorder Micro SD in the ordinary course of the said activities. Through out the material part of the said period, Audio Recorder and Laptop were recording properly. The Micro SD Card referred to above is appropriately copied from the relevant Audio Recorder with the help of Laptop. Said 65B certificate is at Exhibit-65. Not only the certificate but also the said SD Card was referred to analysis and the analysis report issued by the Directorate of Forensic Sciences Laboratory shows that the auditory analysis of the recorded questioned voice Exhibits of speaker marked Exhibit-1/1 and Exhibit-1/2 and specimen voice Exhibit of speaker marked Exhibit-2 and the subsequent spectrographic analysis revealed that, the questioned voice Exhibits of speaker marked exhibit 1/1 and exhibit 1/2 matches with the specimen voice Exhibit of speaker marked Exhibit-2 (said to Mr.Sayyad Shakil Sayyad Salam).

42. The law as regards electronic evidence is now settled law. The Honourable Apex Court in the case of Arun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and ors (2020)7 SCC 1 distinguished primary and secondary evidence qua electronic records and documents and also laid down how it can be produced in court and how it can be proved. The Honourable Apex Court, while distinguishing the same, referred the earlier decisions and upheld the observation of its earlier decision in the case of Anvar P.V. vs. P.K.Basheer (2014)10 SCC 473. The Honourable Apex Court observed that Section 65 differentiates between existence, condition and contents of a document. Section 65A speaks of "contents" of electronic records being proved in accordance with the provisions of Section 65B. Section 65B speaks of "admissibility" of electronic records which deals with "existence" and "contents" of electronic records being proved once admissible into evidence. It further lays down that Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or

copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records.

43. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" – whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it. Thus, the Honourable Apex Court held that the certificate under Section 65B(4) is the condition precedent to the admissibility of the evidence by way of electronic record which is correctly held in the case *Anvar P.V. supra*.

44. Learned counsel for the accused vehemently submitted that the said electronic evidence is not admissible and placed reliance on the decision of this court in the case of *Sunil Hirasingh Rathod vs. The State of Maharashtra supra*.

45. After going through facts of the case *supra*, it reveals that SD Card used for recording conversation was not produced along with Section 65B certificate which is not the case in the present matter.

46. In the present case, the prosecution has not only produced the SD Card but also examined PW6 Sachin Halmare, who was authorized person, who deposed about the transcription and also issued the hash value certificate as well as the certificate under Section 65B complying all requirements.

47. As observed earlier, the evidence of PW1 complainant Dongarsingh Yadav was not shattered during the cross examination as far as demand and acceptance is concerned. Though Shadow Pancha PW2 Shantaram Yewale has not supported the case of the prosecution, during the cross examination, he admitted that there was no demand by the accused on 28.1.2015 in his presence and also stated that he could not hear the conversation but the evidence of the complainant is corroborated by the circumstantial evidence which is in the nature of audio recording. The communication recorded in the electronic device shows there was a demand by the complainant and in pursuance of the said demand, the gratification amount was accepted. It is well settled that besides the direct evidence, demand and acceptance can be proved on the basis of circumstantial evidence.

48. The Constitution Bench of the Honourable Apex Court in the case of *Neeraj Dutta vs. State (Govt. of NCT of Delhi)* 2023 4 SCC 731 held that for recording

conviction under Sections 7 and 13 (1)(d)(i) (ii) of the said Act, the prosecution has to prove the demand and acceptance of illegal gratification either by direct evidence which can be in the nature of oral or documentary evidence or by circumstantial evidence in the absence of direct or oral evidence. It further held that under Section 7 of the said, 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 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 said Act.

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

50. The Honourable Apex Court in the case of K.Shanthamma vs. The State of Telangana 2022 LiveLaw (SC) 192 referring the judgment in the case of P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr (2015)10 SCC 152 held that the proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the said Act. The failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offences under Sections 7 and 13 of the said Act would not entail his conviction thereunder. The Honourable Apex Court has reproduced paragraph No.23 of its decision in the case of P.Satyanarayana Murthy supra, which reads thus:

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

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

under Section 7: (1) the accused must be a public servant or expecting to be a public servant; (2) he should accept or obtain or agrees to accept or attempts to obtain from any person; (3) for himself or for any other person; (4) any gratification other than legal remuneration, and (5) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

under Section 13(1)(d): (1) the accused must be a public servant; (2) by corrupt

or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; (3) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision; (6) to make out an offence under this provision, there has to be actual obtainment, and (7) since the legislature has used two different expressions namely "obtains" or "accepts", the difference between these two have to be taken into consideration.

52. The Constitution Bench of the Honourable Apex Court in the case of *Neeraj Dutta vs. State (Govt. of NCT of Delhi)* 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* (2002) 5 SCC 86 observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). In Section 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.

53. 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'.

54. In the light of the above well settled legal position, if the evidence adduced is appreciated, there is no dispute as to the fact that the prosecution is under obligation to prove the demand as well as the acceptance. The evidence of PW1 complainant Dongarsingh Yadav, and evidence as regards electronic evidence, is consistent and corroborative on the demand and acceptance. Thus, the demand and acceptance is proved.

55. The statutory presumption under Section 20 of the said Act comes into play when evidence either direct or circumstantial shows that money was accepted other than for motive or reward under Section 7 of the said Act. The standard required for rebutting presumption is tested on the touchstone of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubts.

56. In the case in hand, a condition precedent to draw such legal presumption, that the accused has demanded the amount and accepted the same, has been proved and established. The evidence of the trap officer shows that after acceptance of the amount, the hands of the accused were examined in the ultra violet lamp by making dark and he noticed blue colour glittering over it remained unchallenged during the cross examination.

57. In the light of the above evidence, the defence of the accused that when he had been to washroom, PW1 complainant Dongarsingh Yadav has kept the amount on his table is falsified. Thus, the explanation given by the accused is not sufficient to rebut the presumption.

58. The Honourable Apex Court, in the case of C.M.Girish Babu vs. CBI Cochi, High of Kerala (2009)3 SCC 779, held that 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. It is further held that it is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. The Honourable Apex Court, in the case of C.M.Girish Babu vs. CBI Cochi,

High of Kerala (2009)3 SCC 779, held that 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. It is further held that it is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

59. Thus, as observed earlier, the accused has offered the explanation which appears to be false to rebut the presumption under Section 20 of the said Act.

60. Thus, in the present case, a primary condition for acting on the legal presumption, that the prosecution should have proved that whatever received by accused was gratification, is proved by the prosecution. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. Learned Judge of the trial court has rightly considered the same and convicted and sentenced the accused.

61. 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.