

(2012) 05 BOM CK 0038

In the Bombay High Court

Case No : Criminal Appeal no. 2 of 2003

Shivrao Wamanrao Deshmukh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Evidence Act, 1872 — Section 114, 3, 8
Penal Code, 1860 (IPC) — Section 165A
Prevention of Corruption Act, 1947 — Section 4, 4(1), 5(1)
Prevention of Corruption Act, 1988 — Section 11, 13(1), 13(2), 19, 20

Citation : (2012) BomCR(Cri) 209

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : A.V. Bhide in Criminal Appeal no. 2/2003 and Mr. S. V. Sirpurkar in Criminal Appeal no. 47/2003, for the Appellant; Sangita Jachak, Assistant Public Prosecutor in Both Appeals, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—Both the appeals are filed against the Judgment and Order passed in Special Case no. 1/2000, which was pending in the Court of Special Court, Khamgaon, District Buldana. The appellants from both the appeals are convicted and sentenced by the Trial Court for the offences punishable under Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Both the sides are heard. This Court has perused the original record. In short, the facts leading to the institution of two appeals can be stated as follows:

The complainant Subhash Murthe wanted to register the sale deed made by him in favour of one Smt. Deokabai Tawari in the office of Sub Registrar, Jalgaon Jamod, District Buldana. Accused no. 1 Shri Kale was working as the Sub Registrar and accused Shri Deshmukh was working as a peon in this office. On 6.4.1998 the complainant purchased stamp papers for execution of the sale deed and he deposited the charges in respect of registration of the sale deed by challan in Treasury Office on 16.4.1998.

2. On 16.4.1998 the complainant went to the office of Sub Registrar, Jalgaon Jamod and presented the sale deed along with challan for registration. Accused no. 1 put stamps, seals, etc., of the office on the stamp papers on which the sale deed was written and then he asked the complainant to pay Rs. 150/as gratification amount. This amount was not legal remuneration. On that day, the complainant had no extra money and as the complainant did not give the demanded amount, accused no. 1 returned the sale deed to the complainant. Thus, there was no registration of sale deed on 16.4.1998.

3. The complainant had no desire to give bribe and so he approached Anti Corruption Bureau (In short "ACB") Buldana on 17.4.1998. The Deputy Superintendent of Police Shri Gadekar was in charge of this office and he received complaint of Shri Subhash Murhe. Shri Gadekar prepared plan of action. He collected two independent panch witnesses, who are employees of B.D.O. office Buldana. The complaint was introduced to the panchas and the plan of action was explained to the complainant, staff members and panch witnesses. Shri Gadekar collected documents i.e. xerox copies of the sale deed, challan etc. In the office, demonstration of use and detection of phenolphthalein powder (in short "powder") was given to the complainant and to the panch witnesses. The complainant produced three currency notes of Rs. 50/denomination each as trap money. The numbers of these notes noted in the pretrap panchanama. Powder was then applied to trap money and the said notes were kept in the right pocket of the pant of the complainant by Police Officers. The other articles of the complainant were kept in other pocket. Instructions were given to the complainant not to touch the tainted amount till the demand of bribe was made by the accused. Shri Kharche, the first panch witness was to remain in the company of the complainant as a shadow witness and other panch witness was to remain with the Police Officers. Instructions were given to the complainant about giving of signal, if bribe was accepted by the accused. Shri Gadekar took the complainant, two panch witnesses, staff and articles necessary for trap to Jalgaon Jamod in a vehicle. The vehicle was parked at some distance, from the office of Sub Registrar and from there the complainant and panch witness Shri Kharche walked towards the office of Sub Registrar.

4. When the complainant and Shri Kharche reached the office of Sub Registrar, both the accused were present in the office and the work of registration of a Gift Deed of one Shri Dalke was going on. In the presence of complainant and panch witness Shri Kharche, accused no. 2 demanded Rs. 125/from Shri Dalke but Shri Dalke was having only Rs. 50/and he gave such amount to accused no. 2. When the complainant presented the sale deed along with challan for registration, accused no. 1 first asked the complainant about Shri Kharche. When accused no. 1 informed that panch Shri Kharche was his friend, the further proceeding was started. Accused no. 1 said that the sale deed was in the handwriting of two persons but he would not take objection due to this circumstance. Accused no. 1 then asked accused no. 2 to prepare receipt of registration.

5. Accused no. 2 asked complainant to bring two witnesses. As Shri Kharche was already present, the complainant went out of office and brought one Shri Zunjare, as witness on sale deed. The signatures of Shri Kharche and said witness were obtained on the sale deed. The vendor, the complainant was there and there were already two signatures of the witnesses on the sale deed. After obtaining signatures of witnesses, Zunjare left the office. Thereafter Accused no. 1 and 2 demanded bribe from the complainant. The complainant took out tainted money from his pocket and he tendered it to the accused. Accused no. 2 accepted the tainted money by right hand and kept money in left chest pocket of his shirt. Accused no. 1 was watching this incident. Then the complainant and panch witness came out of the office and the complainant gave predecided signal.

6. After receiving signal, the Police officers and the second panch rushed towards the office of accused no. 1. The complainant and first panch witness also entered the office. Shri Kharche informed the Police officers and second panch witness about the incident. When accused no. 2 avoided to produce the amount, personal search of accused no. 2 was taken and the tainted money came to be recovered from the shirt pocket of accused no. 2. Numbers of these three notes tallied with the numbers already noted in pretrap panchanama. Powder was detected on both the hands of accused no. 2 and on the three currency notes accepted by him. Some more amount viz. Rs. 380/was found with accused no. 2. This amount also came to be seized. The solution used of testing was preserved. The Sub Registrar had signed on the sale deed for registration purpose and xerox copy of original sale deed came to be collected along with copy of challan.

7. Shri Gadekar took over some registers from the office of Sub Registrar, which include General Cash Book and Daily Account Book. In Account book, no cash in hand was shown till the date 17.4.1998 and it was found to be filled. In General Cash Book entries were found to be made till 15.4.1998 but till that date, for many months no cash transaction was shown.

8. Post-trap panchanama was prepared accordingly by Shri Gadekar in the presence of panch witness. Shri Gadekar then gave report to Jalgaon Jamod Police Station in respect of the incident and crime came to be registered. Separate seizure memos were prepared in respect of the aforesaid articles. During investigation, Shri Gadekar recorded the statements of panch witnesses, complainant and other persons. Shri Gadekar submitted proposals for sanction to the Competent Authorities in respect of accused nos. 1 and 2. After getting sanction, chargesheet came to be filed for the aforesaid offences.

9. In the trial Court, the prosecution examined complainant, panch witness Shri Kharche, two Competent Authorities and the Investigating Officer Shri Gadekar. In defence the accused examined Shri Dalke, who had presented Gift Deed for registration and he examined one clerk from the office of Joint District Registrar. All the prosecution witnesses supported the case of the prosecution. Accused no. 1 took defence by examining a witness and by producing some record that the amount of Rs. 50/was accepted as Flag fund and remaining amount was

accepted for selling of Indira Vikas Patra, small scale saving certificate. In the trial Court, accused no. 1 produced some record in respect of the funds forwarded to the District Collector but that record was found to be created subsequent to the day of trap.

10. The Trial Court believed all the prosecution witnesses. The Trial Court has held that there was demand of bribe made by accused no. 1. The Trial Court has held that on the day of trap again there was demand of gratification from accused nos. 1 and 2 and as per the instructions of accused no. 1, the amount was accepted by accused no. 1. The Trial Court has disbelieved the aforesaid defences taken by two accused. The Trial Court has held that false record is created to suite the defence by accused no. 1 and record was created subsequent to the day of trap.

11. In the appeal, it was submitted for accused no. 1 that no tainted money was recovered from the possession of accused no. 1 and so there was no need for him to give explanation. Alternatively, it was submitted that accused no. 1 has given reasonable and probable explanation in respect of the amount and so this explanation ought to have been accepted by the Trial Court. Some arguments were advanced in respect of the sanction given for prosecution of accused no. 1. For accused no. 2, it was submitted that there is no evidence on "demand" made by accused no. 2 and if the amount was accepted by accused no. 2 as per the instructions of accused no. 1, the probability that the amount was legally recoverable needs to be kept in mind. The learned APP argued in support of the decision of the Trial Court. The learned APP submitted that the conduct of accused no. 1 creating false record also goes against him. Both sides have cited some reported cases.

12. The complainant Subhash Murhe (PW 1) has given evidence that for preparation and execution of the sale deed of his agricultural land in favour of Smt. Tawri, he first went to the office of Sub Registrar on 6.4.1998. He has deposed that as per the instructions of the Registrar Office, he purchased stamp papers of Rs. 4000/on that day. He has deposed that as he could not approach treasury in time, he could not deposit the registration charges of Rs. 1041/on that day. He has deposed that as there was holiday, he went to Jalgaon Jamod, for depositing registration charges on 16.4.1998 and on that day he deposited the charges. He has deposed that after depositing the charges of registration, he presented his sale deed, which was already written and signed along with challan before accused no. 1. He has deposed that accused no. 1 impressed rubber stamps on this sale deed but he demanded Rs. 150/for himself. The complainant has deposed that accused no. 1 said on 16.4.1998 that he will not be registered the sale deed unless the amount of Rs. 150/was paid to him. He has deposed that as on that day he was not having such amount, the sale deed was returned to him by Sub Registrar, accused no. 1 and he returned to the village.

13. The complainant has deposed that he was asked to come to the office of Sub Registrar on the next day with bribe amount, but he had no desire to give bribe.

He has deposed that on 17.4.1998 he went to the office of ACB and he gave complaint against accused no. 1. He has deposed that he had already obtained two xerox copies of original sale deed on which there were stamps impressed in Sub Registrar office. His complaint is proved at Exhibit 23 and Exhibit 23 is fully consistent with the substantive evidence of the complainant. The documents show that two copies of the sale deed, copy of challan and 7/12 extract were taken over by CBI office. The panch witness Shri Kharche (PW 2) has given evidence in respect of these documents. In a pretrap panchanama, which is at Exhibit 25 and in the evidence of Shri Kharche there is mention of these documents. Shri Gadekar has also given evidence that copy of scribed sale deed was taken over by him.

14. The copy of sale deed, on which rubber stamp impressions were made in the office of Sub Registrar is marked at ExhibitG by the Trial Court. This document shows that there are some stamp impressions made in the office of Sub Registrar. Stamps are on each paper and for every purpose of registration. The stamp papers were produced on 16.4.1998. ArticleH is a xerox copy of challan showing that amount was deposited in Treasury on 16.4.1998 and it also bears the signature of Sub Registrar. If ExhibitG is compared with xerox copy of registered sale deed, it can be easily seen that the information was filled in the same rubber stamp, which were impressed on 16.4.1998. On ExhibitG there was already signatures of Vendor and there were signatures of two witnesses. The registration amount was already deposited in the Treasury and so in ordinary course, the Sub Registrar ought to have registered the sale deed on 16.4.1998 itself. These circumstances and the evidence given by the complainant show that the Sub Registrar avoided the registration on 16.4.1998.

15. The complainant (PW 1) has given evidence on supplying of bribe money by him for trap, giving demonstration of use and detection of powder by ACB Officers, calling of panch witnesses by Shri Gadekar and preparing the plan for trap by Shri Gadekar. Similar evidence is given by Shri Kharche (PW 2) and Shri Gadekar (PW 5). There is evidence given by witnesses that the numbers of three currency notes were noted in pretrap panchanama. Evidence is given that three notes were kept in the right pocket of the pant of complainant and there were instructions that the complainant should not touch the money unless the amount was demanded. The pretrap panchanama is duly proved in the evidence of panch witnesses and evidence is given by Shri Gadekar also on this document. This part of the evidence is not much disputed.

16. The complainant (PW 1) has given evidence that they reached Jalgaon Jamod at 3.30 p.m. on 17.4.1998. He has deposed that he and Shri Kharche went to the office of Sub Registrar. He has deposed that accused nos. 1 and 2 were present in the office and accused no. 1 asked accused no. 2 to prepare the receipt. He has deposed that accused no. 2 asked him to collect two witnesses. He has deposed that he brought one Shri Zunjare from outside of the office and Shri Zunjare was used as second witness. He has deposed that Zunjare signed on the

sale deed and went out of the office. There is a copy of sale deed on which signatures of Zunjare and Kharche are present and this document was registered. This document is consistent with the oral evidence of the complainant. Similar evidence is given by Shri Kharche (PW 2) on this part of the incident.

17. The complainant (PW 1) has deposed that accused no. 1 then demanded bribe of Rs. 150/-. He has deposed that he took out the tainted money and tendered it to accused no. 1, but accused no. 1 instructed him to hand over it to accused no. 2. He has deposed that accused no. 1 accepted the tainted money and kept it in pocket of his shirt by using right hand. He has deposed that accused no. 1 was sitting at the distance of 11/2 feet from accused no. 2 at the relevant time. He has deposed that he came out of the office after giving money and gave predecided signal. He has deposed that the officers of ACB and the 2nd panch witness entered the office of Registrar, after receiving signal. He has deposed that Shri Kharche told the officers that accused no. 2 had accepted the bribe for accused no. 1. He has deposed that both accused 1 and 2 were held by the officers and he was asked to go outside by the officers.

18. Shri Kharche (PW 2) has given evidence that when Zunjare went out of the office after putting the signatures on the sale deed, accused nos. 1 and 2 demanded the amount to the complainant. He has deposed that the complainant took out the money and when the complainant tendered the money to accused no. 1, accused no. 2 took the amount by using right hand and accused no. 2 kept the amount in a chest pocket of his shirt. He has deposed that distance between accused no. 2 and accused no. 1 was two feet at that time. The other evidence of Shri Kharche on this incident is similar to the evidence of complainant.

19. In the posttrap panchanama, which is proved in the evidence of Shri Kharche (PW 2) there is mention that accused no. 1 demanded money and when the money was tendered to accused no. 1 by the complainant, accused no. 2 had taken it. Thus, there is little bit improvement made by Shri Kharche (PW 2) by stating in evidence that demand was made by accused no. 2 also. Much was argued in respect of this inconsistency for the defence. In view of other circumstances of the case, this Court holds that much weight cannot be given to such inconsistency. Even if the improvement is ignored, from the evidence, inference can easily be drawn that the amount was demanded by accused no. 1 and the amount was accepted by accused no. 2. Due weight needs to be given to the contents of panchanama, which are in support of substantive evidence. The evidence shows that additional amount of Rs. 380/- was also recovered from the possession of accused no. 2. Specific evidence is given by the witnesses that accused no. 2 was preparing receipt as per the instructions of accused no. 1 when accused no. 2 was simply a peon. This circumstance needs to be kept in mind at the time of appreciation of aforesaid evidence.

20. The evidence of Kharche (PW 2) and Shri Gadekar (PW 6) shows that tainted money was recovered from the pocket of shirt of accused no. 2. They have given

evidence that powder was detected on the shirt, on the tainted money and both the hands of accused no. 2. The accused have taken defence that amount was accepted for legal purpose i.e. for selling Flag ticket and small scale saving certificate and so no more discussion is required on the evidence given on recovery of tainted money from the possession of accused no. 2.

21. The seizure memo in respect of the various articles, which were taken over by Shri Gadekar on that day are duly proved in the evidence of Shri Kharche and Shri Gadekar. Shri Gadekar has given evidence that eight registers were taken over by him from the office of Sub Registrar. These registers are mentioned in posttrap panchanama. The documents show that General Cash book and Daily Account Book were taken over. Daily Account book was filled till 17.4.1998, but no cash in hand was shown and no cash transaction were shown. In General Cash Book also there were entries till 15.4.1998 but no cash transaction had taken place from 15.9.1997 to 15.4.1998. This record is considered by the Trial Court and this record needs to be kept in mind at the time of consideration of defence of the accused.

22. Accused no. 1 has examined one clerk of the office of Joint District Registrar, Buldana. Accused no. 1 has also produced some record in respect of the directions given by Higher Officer to collect fund for Flag Day. Exhibit 75 shows that for Flag Day of 1997, target of Rs. 1.25 lakh was given to the Joint District Registrar, Buldana, and this amount was to be sent to the office of District Collector prior to 29.2.1998. Surprisingly, accused no. 1 has not produced any record or he has not relied on the record of period prior to 29.2.1998. He has produced his correspondence dated 2.5.1998, which was made after the day of trap to show that he had sent Rs. 4450/to the office of the District Collector. The Trial Court has considered the counter foils of one receipt book in respect of Flag Day. In each receipt book there were 25 tickets and the book produced was having tickets starting from number 355451. This book shows that tickets were sold on 14.4.1998 and subsequently. In this book signatures of the purchasers of the tickets were not obtained on counter foils and in many cases names are not written and in some cases complete names and addresses are not written. Most important of all is that no separate account in respect of such tickets is shown and so necessary importance needs to be given to the entries made in the cash book.

23. Shri Dalke, who had presented his Gift Deed for registration before the registration of sale deed of the complainant has given evidence that on that day he had purchased two Flag Day tickets of Rs. 25/each. He has produced his copy of Gift Deed at Exhibit 26. Surprisingly, two tickets were pasted on the back side of the Gift Deed. No procedure or permission of pasting of such tickets on the Gift Deed is there. The documents in respect of Shri Dalke and the complainant show that registration no. 731 was given to the document of Dalke and registration no. 732 was given to the document of the complainant. In spite of this circumstance, there are many counter foils in the book to show that tickets

were sold to many person after Shri Dalke and after that there are counter foils of the name of the complainant. Thus, it can be said that in hurry, some attempt was made subsequently by the complainant for creating some record in his favour. Though the accused has come with the defence that one Indira Vikas Patra, a certificate worth Rs. 100/was sold to the complainant, no record at all in respect of such certificate is produced.

24. Accused no. 1 has taken one more defence that one Shri Bhagat was against accused no. 1 as a report against Bhagat was given to District Joint Registrar. The complainant has tried to say that at the instance of Shri Bhagat, who scribed the sale deed of the complainant, false case is filed. The evidence of clerk Shri Dhepale from Joint District Registrar office shows that his office received report given by accused no. 1 against Shri Bhagat on 9.5.1998 i.e. after the date of trap. The accused has produced one copy of letter dated 19.3.1998 addressed to District Joint Registrar but there is no record to prove that this letter was received by the District Joint registrar. In the original record, there is copy of outward register of the office of Sub Registrar of Jalgaon Jamod and it shows that overwriting was done on one entry and after scratching of previous entry, new entry was made to show that this letter was sent to the office of the Joint District Registrar on 19.3.1998.

25. the aforesaid circumstances show that accused no. 1 misused his position and created the aforesaid record after the date of trap. It is unfortunate that the Competent Authority does not take necessary steps when trap become successful. In such cases it is always desirable to immediately suspend the employee or charge of the work is handed over to some other person for some time. In the present case, in view of the aforesaid circumstances, this Court holds that the conduct of the accused no. 1 can be used against him u/s 8 of Evidence Act.

26. The aforesaid discussion shows that there is corroboration of both direct and circumstantial evidence to the version of the complainant. There is corroboration even to the evidence in respect of the demand made on 16.4.1998. It was submitted that Shri Tawari, who was in the company of complainant on 16.4.1998 ought to have examined and due to nonexamination of Shri Tawari, adverse inference needs to be drawn. This Court holds that in view of the availability of the circumstantial evidence, it was not necessary to examine Tawari. The evidence shows that there was no need for the complainant to pay any amount for registration of sale deed to accused no. 1 or accused no. 2. Thus, from the evidence it needs to be inferred that the amount was demanded as gratification, other than legal remuneration by accused no. 1 and it was obtained and accepted by both the accused on 17.4.1998.

27. The charge was framed against both the accused for offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Let us see which things are required to be proved by the prosecution.

28. Section 13(1)(d) of the Prevention of Corruption Act reads as under:

13. Criminal misconduct by a public servant(1) A public servant is said to commit the offence of criminal misconduct,22 (d) If he,

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

29. Thus, the prosecution is required to prove only two things. viz, (i) the accused used his official position, post in Government office and (ii) accused extracted, obtained money.

30. It was not necessary for the prosecution to prove that there was some work of the complainant pending with the accused and for that work the amount was obtained by the accused for proving offence u/s 13(1)(d) of the Act. This section simply prohibits a public servant from obtaining pecuniary advantage or valuable thing and so in the present case the prosecution can prove offence only by proving that the amount of Rs. 150/as bribe amount was obtained by the accused, who is public servant.

31. In the case reported as AIR 1980 Supreme Court, 873 (Hazari Lal vs. The State (Delhi Administration)), the Apex Court has discussed the provisions of Sections 3 and 114 of the Evidence Act and has given the meaning of term "obtaining" used in the aforesaid provision. The Apex Court has laid down that the act of obtaining can be proved by giving circumstantial evidence or by giving direct evidence. Though in the reported case there was charge for offence punishable u/s 5(1)(d) of Prevention of Corruption Act, 1947, this section is similar to the present section viz. Section 13(1)(d) of Prevention of Corruption Act, 1988.

32. What amounts to proof is discussed by the Apex Court in the case reported as 2001 Cr. L.J., 515 (SC) (M. Narsinga Rao vs. State of AP. The Apex Court has discussed the provision of Section 3 of the Evidence Act. The term "proved" is defined as under:

ProvedA fact is said to be proved when, after considering the matters before it, the Court either 24 Cri. Appeal no. 2/2003 believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

33. Thus, as per Section 3, a fact can be proved in two ways. The Court has discretion to use one of the two modes mentioned in this Section. The Court may presume existence of fact i.e. a fact as proved which it believes to exist. In the second mode inference can be drawn by the Court by using the approach of

ordinary prudent man. For both modes, the inference needs to be drawn by the Court on the basis of facts and circumstances of that particular case.

34. For drawing the inference, which can be drawn u/s 3 of the Evidence Act, the Court can use other provisions like Section 114 of the Evidence Act and illustrations given to this Section. The relevant portion of the provision runs as under:

114. Court may presume existence of certain facts-The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The court may presume(

a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

35. In the case reported in AIR 1980 Supreme Court, 873 (Hazari Lal vs. The State (Delhi Administration)), (cited supra) the Apex Court has observed that illustration "a" to Section 114 of the Evidence Act is similar to the case in which tainted money is recovered from the custody of the accused. So if the accused does not give any explanation, the Court can presume that the tainted money was obtained by the accused. This presumption can be drawn having regard to the facts of the case. This discretionary presumption may or may not be used by the Court, in view of the facts of that case. Drawing of this presumption is justified in this case. In the present case, the prosecution has proved recovery of tainted money from accused no. 2 and it is further proved that accused no. 1, who is also public servant demanded money and for accused no. 1, accused no. 2 accepted it. This Court finds no reason to disbelieve all the three prosecution witnesses in this regard. So this Court holds that there is sufficient evidence for proving the offence punishable u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, against both the accused and the Trial Court has not committed any error in this regard.

36. Section 7 of the Prevention of Corruption Act, 1988 runs as under:

7. Public Servant taking gratification other than legal remuneration in respect of an official act- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public

servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanation-(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

37. The aforesaid provision shows that for proving the offence u/s 7, the following things are required to be proved in the case like the present one; (a) The accused accepted or obtained; (b) any gratification whatsoever other than legal remuneration; and (c) as a motive or reward for doing any official functions, rendering or attempting to render any service with Government Department, Office etc. In explanation (d) to Section 7 it is made clear that when a public servant receives gratification as a motive or reward for doing what he does not intend or what he is not in a position to do or what he has not actually done also, comes within this expression "motive or rewards for doing".

38. In the present case, the evidence discussed already shows that the complainant had work with Sub Registrar and in the past Sub Registrar had avoided to do work as gratification was not given.

39. For proof of the offence u/s 13(1) (d) of the Prevention of Corruption Act, it is required to be proved that the pecuniary advantage or valuable thing was obtained but for proof of offence u/s 7, it is sufficient for prosecution to prove that the gratification as described in the section was accepted. This is because in Section 7, there is one more requirement for proof of offence like the gratification was accepted as motive or reward in connection with the work. For proving the act of obtaining, efforts on the part of the accused like keeping the work pending, actually demanding the amount are required to be shown but for proof of acceptance, "there is no need to prove such acts of the accused".

40. The prosecution is required to prove that the gratification accepted was other than legal remuneration for proving the offence u/s 7. It is also required to show that the amount was accepted as motive or reward for doing some official function with regard to the complainant. In this regard, explanation (d) to Section 7 is already discussed and it is also observed that in the present case there was work of the complainant with the accused. In addition to that, there is statutory presumption made available u/s 20 of the Prevention of Corruption Act, 1988.

41. Section 20 of the Prevention of Corruption Act, 1988 runs as under:

20. Presumption where public servant accepts gratification other than legal remuneration (1) Where, in any trial of an offence punishable u/s 7 or section 11 or clause (a) or clause (b) of subsection (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.

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

42. The provision of Section 20 of the Prevention of Corruption Act, 1988, shows that as soon as the prosecution proves that the accused accepted the gratification (other than legal remuneration), the Court is bound to presume, unless contrary is proved that the accused accepted such gratification as a motive or reward, as described in section 7 of the Act. Section 20 shows that the burden is on the accused to rebut this presumption.

43. Much was argued for the defence on the nature of burden of proof created by Section 20 of the Prevention of Corruption Act, 1988. On this point, there is a case reported as AIR 1964 Supreme Court, 575 (Dhanvantrai Balwantrai Desai vs. State of Maharashtra). This case was decided by Five Judges of the Apex Court. The apex Court has laid down the following things in this reported case.

i) The statutory presumption u/s 4 of the Prevention of Corruption Act, 1947 must be drawn if it is shown that valuable thing has been received. In view of the provision of Section 4 of the Prevention of Corruption Act, it was further observed that it is not necessary for State to prove that gratification, other than legal remuneration, was accepted by the accused. However, in view of the provision of Section 7 of the Prevention of Corruption Act, 1988 the prosecution is required to prove the receipt of such gratification.

ii) There is difference in presumptions available u/s 114 of the Evidence Act and section 4(1) of the Prevention of Corruption Act, 1947.

44. The presumption, which was available u/s 4(1) of the old Prevention of Corruption Act, is similar to the presumption available u/s 20 of the Prevention of Corruption Act, 1988. Both these presumptions are statutory presumptions and the words are used that "the court shall presume unless contrary is proved". Thus, when condition laid down in Section 20 of the Act is falsified, the Court is bound to draw presumption. So when it is proved for the purpose of Section 7 that the accused accepted or obtained the tainted money, gratification (other than legal remuneration) it becomes necessary for the Court to presume that it was received as motive or reward as is mentioned in Section 7. Thus, in support of the present case, there is additional legal provision. It is already observed that even in the absence of provision of Section 20, the prosecution could have proved offence u/s 7 in the present case.

45. The observations made by the Apex Court in the case of *Dhanvantrai* (cited *supra*) show that when the conditions laid down in Section 20 are satisfied by the prosecution, it becomes necessary for the accused to show that money was legally due to him or that he had received it for transaction or arrangement which was lawful. The Apex Court has observed that the accused can establish directly his case by leading evidence or upon the material before the Court he can show that his case is so probable that a reasonable man would act on the supposition that it exists. Thus, only probable or reasonable explanation from the accused is not sufficient for rebutting the burden imposed by Section 20. In the case of AIR 1958 Supreme Court, 61 (*State of Madras v. A. Vaidyanatha Iyer*), the Apex Court has held that the term used u/s 4(1) "shall be presumed" has the same meaning as given in definition of "shall presume" in section 4 of the Evidence Act. So unless and until the fact established by the prosecution is disproved, the Court is required to continue to presume the existence of fact established by the prosecution viz. the gratification was accepted as motive or reward as is mention in Section 7.

46. It is already observed that the defence put up, the explanation given by the accused is neither probable nor reasonable. Thus, there was no question of discharging the burden imposed by Section 20 of the Prevention of Corruption Act on the accused.

47. For the appellants, the case reported as *Panalal Damodar Rathi Vs. State of Maharashtra*, was cited. The Apex Court has laid down that in view of Section 165A of the Indian Penal Code the complainant in the case like present one needs to be treated as accomplice and so his evidence needs to be corroborated in material particulars before reliance can be placed on his evidence. There cannot be dispute about this proposition. This Court has already discussed the material, which gives the corroboration to the version of the complainant. The corroboration may be in the nature of direct evidence or circumstantial evidence.

48. In other case reported as *State of Kerala and Another Vs. C.P. Rao*, , again the Apex Court has discussed as to what kind of corroboration is required to the version of the complainant. The facts and circumstances of each and every case are always different and in view of the facts of the present case this Court holds that the reported case is of no use to the appellants.

49. One more case reported as 2002 (3) Mh.L.J. 293 (*Bombay High Court*) (*Tryambak Lilaji Binnar Vs. State of Maharashtra*) was cited. In this case, this Court has discussed the requirements of the provisions like the necessity of evidence on demand. This Court has already discussed the law laid down on this point by the Apex Court and so no more discussion is required on this point.

50. In one case reported as *V. Venkata Subbarao Vs. State*, represented by Inspector of Police, A.P., , there was evidence of demand of one officer and one more officer was involved. The facts of the reported case were altogether different.

51. In the case reported as C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, , the Apex Court has observed that only recovery of tainted money from the accused when substantive evidence is not reliable may not become sufficient for conviction u/s 7 of the Prevention of Corruption Act. It is already observed that it is up to the Court to decide as to whether evidence is sufficient or not sufficient in a particular case.

52. In the case reported as Bal Krishan Sayal Vs. State of Punjab, when the witnesses could not give evidence competently on the incident which took place at the time of raid, the benefit of doubt was given to the accused. The facts are entirely different.

53. In the case of C.M. Girish Babu (cited supra) the Apex Court has discussed the burden of proof on accused to rebut presumption imposed by Section 20. It is observed that the accused is not required to prove his case beyond reasonable doubt and he can rely on the cross-examination of the prosecution witnesses for proving his case and he may prove case on preponderance of probability. There is no dispute about this proposition. It was necessary for the accused to prove that his case, defence is more probable than the case of prosecution.

54. On the other hand, for State the case reported as Ram Krishan and Another Vs. The State of Delhi, was cited. In this case, the Apex Court has observed that word "obtains" as used in Section 5(1)(d) of old Act does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. It is observed that one may accept money that is offered, or solicit payment of a bribe or extort the bribe by threat or coercion but in each case, he obtains a pecuniary advantage by abusing his position as a public servant.

55. For accused no. 1, argument was advanced in respect of sanction given by the Competent Authority to prosecute accused no. 1 u/s 19 of the Act. It was submitted that the Competent Authority had not applied its mind and it acted on the basis of opinion given by others. This court has carefully gone through the evidence of Arvind Surve (PW 4), the Competent Authority. He has given evidence that when the proposal was made, the papers of investigation were supplied to him. He has given evidence that he studied those papers. He has deposed that as he found that the amount was not received during trap accused no. 1, he referred the matter to the Government for opinion and after obtaining opinion of Government Department, he accorded sanction to prosecute accused no. 1. The relevant record is produced. This court has carefully gone through the sanction order and it contains the material collected during investigation against accused no. 1 and it is already discussed and believed by this Court. Though the Competent Authority was working as Inspector General of Registration, Maharashtra, one cannot expect such authority to have knowledge of provisions of law. It can be said that as the amount was not recovered from the possession of accused no. 1, he was confused. He wanted to ascertain as to whether the acceptance of amount by accused no. 2 in this case on instructions of accused

no. 1 can be treated as the obtaining and acceptance of the amount by accused no. 1 also. If such steps are taken by the Competent Authority, it needs to be presumed that he was applying the mind and so he took such steps. He granted sanction after considering the opinion of the Government Department and that does not mean that he was under the influence of anybody. One may get satisfied himself after getting more information like opinion and there is nothing wrong in it. So this Court holds that there was satisfaction of the Authority and only after satisfaction, the Authority accorded sanction.

56. For the accused, the case reported as Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, was cited. In this Case the Apex Court has laid down that "sanction" implies application of mind. There cannot be any dispute over this proposition. The facts were different and so this court holds that this reported case is of no use to accused no. 1.

57. For the State the case reported as 2011 (1) Mh.L.J. 5881 (Kootha Perumal Vs. State) was cited. The Apex Court has observed that if the Sanctioning Authority had gone through the necessary facts of the case which have been actually proved by the prosecution in trial and on the basis of such material if the Sanctioning Authority has given sanction for prosecution, such sanction order is in accordance with law. It is already observed that from the facts of each case it needs to be ascertained as to whether relevant material was considered by the Sanctioning Authority before according the sanction. So on this point also, there is no case to defend for accused no. 1.

58. Alternate argument was advanced, in view of the section 20 (3) of the Prevention of Corruption Act, 1988 that the amount shown to be recovered in the case is only Rs. 150/and so this amount can be treated as trivial amount and so inference of corruption may not be drawn in this case. This Court has already observed that even without aid of Section 20, the prosecution can prove its case. Further whether in a particular case amount demanded was trivial or not needs to be decided by the Court for that case. Discretion is given under the provision and the Court may decline to draw the presumption of Section 20 if in the opinion of the Court the amount was trivial. This court has no hesitation to observe that the amount involved, Rs. 150/was not trivial amount, as it was demanded and accepted in the year 1998. In those days, ordinary labour was getting hardly Rs. 30/per day as wages. In the case of Kootha Perumal (cited supra) the bribe amount was only Rs. 50/and the incident was of 1993, but in view of the facts of that case, the accused was convicted and sentenced for similar offences.

59. This Court has also given consideration to the material to consider as to whether penalty imposed is just and proper. The Trial Court has given maximum sentence of two years imprisonment and the fine of Rs. 1000/and Rs. 500/is imposed on accused nos. 1 and 2 respectively. Considering the nature of offence and the posts held by accused, the sentence is just and proper. In view of the circumstances, this Court holds that there is no reason to interfere in the

judgment and order passed by the Trial Court. Hence both the appeals stand dismissed.