

(2024) 08 BOM CK 0041
In the Bombay High Court
Case No : Criminal Appeal No. 537 Of 2005

Shri Shankar Babarao Mukkawar

APPELLANT

Vs

State Of Mah.Thr.Acb Wardha

RESPONDENT

Date of Decision : 08-08-2024

Acts Referred:

Prevention of Corruption Act, 1988 — Section 7, 13, 13(1)(d), 13(2), 20
Evidence Act, 1872 — Section 114B, 133

Citation : (2024) 08 BOM CK 0041

Hon'ble Judges : Urmila Joshi Phalke, J

Bench : Single Bench

Advocate : A.A.Naik, D.Pathak, A.G.Mate

Final Decision : Allowed

Judgement

Urmila Joshi Phalke, J

1. Learned Judge, Special Court, Wardha (learned Judge of the trial court) rendered judgment dated 30.9.2005 in Special Case No.1/2001 whereby the appellant (the accused) is convicted and, therefore, the said judgment is under challenge in this appeal.

2. By the judgment impugned in the appeal, for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act), the accused is sentenced to undergo rigorous imprisonment for three years and to pay fine Rs.2000/-, in default, to undergo further rigorous imprisonment for six months.

For offence punishable under Section 13(1)(d) read with 13(2) of the said Act, he is sentenced to undergo rigorous imprisonment for five years and to pay fine Rs.2000/-, in default, to undergo further rigorous imprisonment for one year.

Learned Judge of the trial court directed that all sentences shall run concurrently.

3. During the pendency of the appeal, the accused expired and, therefore, his legal heir, i.e. wife, was brought on record to prosecute the appeal further.

FACTS OF THE PROSECUTION CASE

4. The accused was serving as Executive Engineer with the Maharashtra Jivan Pradhikaran (MJP) at Wardha in the month of March 2000. The MJP is constituted under the Maharashtra Jivan Authority Act. The MJP runs Scheme for Supply of Water to villages to Girad and Peth in Wardha district under the name as "Augmentation to Girad and Peth villages Combined Water Scheme". The tender process was implemented and in the said tender process, a tender was allotted to M/s.Vatcons, a partnership firm doing work as Civil Contractor registered with the MJP. The estimated cost of the work was Rs.33,94,644/- and period allotted for completion of the work was two years from issuance of work order. The work of Water Supply Scheme was to be commenced from 27.8.1997 and was to be completed on or before 27.8.1999. Shrikant Tankhiwale (the complainant), is one of partners of the said firm and Shri Vaidya was another partner. The contractor used to submit bills for the work done stage wise and the accused was looking after process of the work as Executive Engineer. As per allegations of the complainant, the accused was delaying payment of bills of M/s.Vatcons on a pretext of getting sanction from higher authorities. Though the firm completed the work pursuant to the tender and also done extra work as directed by the accused, it is alleged that despite the work completed by the firm on 25.8.1999, the accused informed the Superintendent Engineer that the firm has not completed the work within prescribed time limit i.e. 27.8.1999 and proposed to impose fine Rs.1000/- per day w.e.f.1.8.1999. The Superintending Engineer approved the proposal of imposing fine Rs.1000/- per day from 1.8.1999. In fact, the contractor had actually done the work costing of Rs.38,31,460.68 which was much more than the tender value of Rs.33,49,644/-. The complainant applied for review of the decision and for seeking favourable orders, he met the accused. It is alleged that for reducing the fine amount, the accused demanded amount Rs.25000/- on 7.2.2000. The accused further asked the complainant to supply G.I.Pipe of 100 mm diameter, 150 in length, which was not covered by the agreement. As the complainant was unable to pay such huge amount, he returned to the home. Again, on 13.3.2000, he met the accused with a request to reduce the fine amount. On that day also, the accused demanded the amount. On 16.3.2000, the complainant obtained a proposal for reducing the fine from the office of the Section Engineer, Hinganghat and handed over the same to the Inward Clerk in the office of the accused at Wardha. In the evening, he met the accused at his Chamber. At the relevant time, the accused informed the complainant that he will recommend for imposing nominal fine and again demanded Rs.25,000/-. On showing inability by the complainant to pay such amount, the accused demanded Rs.10000/- by afternoon of 18.3.2000 and balance amount Rs.15000/- to be paid after sanctioning of pending bills. As the complainant was not desirous to pay the amount, he approached the office of the Anti Corruption Bureau (the bureau) and lodged a report.

5. After receipt of the report, the Additional Superintendent of Police, Anti Corruption Bureau, Nagpur called two panchas. The complainant narrated the

incident which was verified by panchas from the complaint. After following a due procedure, the officers of the bureau decided to conduct a trap. The complainant produced 100 currency notes of Rs.100/-denomination. The demonstration as to use and characteristics of phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted amount and the same was kept in right side pocket of full pant of the complainant. The complainant and pancha No.1 approached the office of the accused on 18.3.2000. After an initial communication, the accused demanded the amount by raising his eyebrows and the complainant handed over the same. The accused accepted the amount and kept in left pocket of his full pant. After getting a signal, the accused was caught by raiding party members. The amount was recovered from the accused. The hand wash of the complainant and the accused was obtained. The solutions as to the pant pocket of the complainant and the accused were also collected. Accordingly, pre-trap and post-trap panchanamas are drawn. After obtaining a sanction and completing investigation, chargesheet came to be filed against the accused.

6. During trial, the prosecution examined in all five witnesses namely Shrikant Tankhiwale vide Exhibit-9 (PW1), the complainant; Sudhakar Dhote vide Exhibit-31 (PW2), the carrier; Vilas Sute vide Exhibit-37 (PW3), the shadow pancha; Sanjaykumar Baviskar vide Exhibit-50 (PW4), the trap officer; and Suresh Salvi vide Exhibit-55 (PW5), the Sanctioning Authority.

7. The accused also examined Deepak Padegaonkar vide Exhibit-85 (DW1) as defence witness.

8. Besides the oral evidence, the prosecution placed reliance on letter by complainant PW1 Shrikant Tankhiwale to Superintending Engineer Exhibit-10, letter by the complainant to the Chief Engineer Exhibit-11, complaint Exhibit-12, personal search of the complainant Exhibit-13, letter by the Sub Divisional Engineer to the Executive Engineer Exhibit-15, seizure memo Exhibit-16, letter to the firm of the complainant Exhibit-20, letter by the complainant to the Executive Engineer Exhibit-22, letter by accused to the complainant Exhibit-23, letter by the complainant to the Executive Engineer Exhibit-25, letter to Superintending Engineer by the complainant Exhibit-27, letter by Executive Engineer to the complainant Exhibit-30, letter to the Chemical Analyzer Exhibit-32, the Chemical Analyzer's Report Exhibit-35, pre-trap panchanama Exhibit-38, seizure memo Exhibits-39 to 41, cabin search panchanamas of the accused Exhibits-43 and 44 post-trap panchanama Exhibit-45, map Exhibit-46, report Exhibit-52, First Information Report Exhibit-53, sanction order Exhibit-56, seizure memo Exhibit-59, and details of RA Bills paid to the contractor Exhibit-65.

9. After considering the evidence adduced during the trial, learned Judge of the trial court held the accused guilty and convicted and sentenced him as the aforesaid.

10. Heard learned counsel Shri A.A.Naik for the accused and learned Additional

Public Prosecutor Shri A.G.Mate for the State, I have been taken through the entire evidence on record so also the judgment impugned in the appeal.

SUBMISSIONS

11. Learned counsel for the accused submitted that the accused was serving as Executive Engineer with the MJP. The sanction granted is not only without application of mind but also Sanctioning Authority PW5 Suresh Salvi was not competent to grant the sanction. As per the evidence of the Sanctioning Authority, powers were delegated to him. However, document showing the said delegation of powers to the said authority is not on record. Even, Trap Officer PW4 Sanjaykumar Baviskar admitted that he was not sure as to who is appointing authority. Thus, the sanction is without application of mind and not by the competent authority. In view of that, the entire prosecution vitiates. The entire investigation is tainted investigation. From investigation papers, it reveals that several witnesses were present who were not examined. As per the evidence of complainant PW1 Shrikant Tankhiwale, first demand was made to him on 7.2.2000 and second demand was on 13.3.2000 and third demand was on 16.3.2000. As per the evidence of the complainant, he filed proposal for reducing fine in the office of the accused on 16.3.2000, which was prepared by the Hinganghat Office of the MJP. However, endorsement of the office of the accused on the said proposal is of 18.3.2000. Moreover, the complainant was accompanied by his partner Shri Vaidya on earlier dates, who is not examined in whose presence the alleged demand was made. The allegation is that the demand by giving a signal, i.e. raising eyebrows, is not sufficient evidence to prove the demand. Other independent witness one Shri Gaikwad, from whom the accused called file on the day of the trap, is also not examined. Thus, not only the sanction but also the demand is not proved and, therefore, mere recovery of the amount is not sufficient to prove charges against the accused.

12. In support of his contentions, learned counsel for the accused placed reliance on various decisions, which would be discussed at appropriate time of discussion in this judgment.

13. Per contra, learned Additional Public Prosecutor for the State submitted that the demand was by gesture. Both complainant PW1 Shrikant Tankhiwale and Shadow Pancha PW3 Vilas Sute consistently stated about the demand by the accused by gesture. There is no evidence contrary as to the demand is concerned. He submitted that the sanction is also after application of mind and the same is proved by the prosecution by Sanctioning Authority PW5 Suresh Salvi. Learned Judge of the trial court appreciating the evidence in its proper perspective rightly convicted the accused. As such, the appeal is devoid of merits and liable to be dismissed.

CONSIDERATION OF SUBMISSIONS

14. Since question of validity of the sanction has been raised as a primary point, it is necessary to discuss an aspect of sanction. The sanction order was

challenged on ground that the sanction was accorded without application of mind. Sanctioning Authority PW5 Suresh Salvi is not competent to accord the sanction.

15. In order to prove the Sanction Order, the prosecution placed reliance on Sanctioning Authority PW5 Suresh Salvi, who testified that at the relevant time, he was working as Member Secretary of the MSP. The accused was serving as Executive Engineer with the MSP at Wardha. Under delegated powers, he being Member Secretary of the Board, he was appointing and removing authority of Executive Engineers. He had received investigation papers and by applying his mind, he accorded the sanction. One Shekhar Gaikwad, was with the Chief Executive Officer in his office at the relevant time.

16. During cross examination, Sanctioning Authority PW5 Suresh Salvi admitted that as per Rules, meetings of Members of the Board were held regularly and minutes of meetings are recorded in Minutes Book. The appointments are made as per Administrative Procedure and arrangements made by the Board. The Ministers for Water Supply minister, Urban Development, and Rural Development as well as State Ministers for Water Supply And Urban Development are Members of the Board. This Board also comprises of other members such as Secretaries of some Departments as well as nominated members from the Zilla Parishads and Municipal Corporations. His cross examination further shows that he is not aware who is appointing authority of the Executive Engineers. He admitted that powers were delegated to him by written order. He does not remember as to whether he forwarded a copy of the said order to the office of the bureau. He further admitted that as per covering letter Exhibit-57, he had not sent copy of order showing powers were delegated to him. The powers were delegated to him by the Board by passing a Resolution. The said Resolution was also not forwarded to the office of the bureau. Prior to giving of the sanction, he had not submitted any report to the Board. He has not obtained any permission from the Board. His cross examination further shows that the Superintending Engineer is having powers to impose the fine on recommendation of the Executive Engineer. The final authority is the Superintending Engineer. He further admitted that he has not prepared any note sheet while granting the sanction. A draft sanction order was received by him. His cross examination further shows that he is not aware whether contractor had finished the work, but he admitted that the time granted to the contractor to finish the work was already over. He had not made any enquiry from his Department as to how many bills were paid to the contractor. He further admitted that till the date of the trap, the amount of fine was not reduced.

17. Thus, the cross examination of Sanctioning Authority PW5 Suresh Salvi shows that as far as delegation of powers is concerned, neither he had filed on record a copy of order showing powers were delegated to him by Members of the Board nor he filed the Resolution passed delegating powers to him. The cross examination of the said witness further shows that a draft sanction order was received by him. He has not made any enquiry as to whether the work was

completed by the contractor. He has not made any enquiry as to how many bills were paid to the complainant towards the tender and work completed by him.

18. Perusal of the Sanction Order shows that the sanction was accorded by MJP after verifying documents and satisfying itself. Thus, wordings used in the Sanction Order are that it was Pradhikaran having fully examined the material placed before it, it is satisfied that there is a prima facie case made out against the accused and the sanction is accorded. The Sanction Order further shows that Sanctioning Authority PW5 Suresh Salvi has also not stated on what basis he came to conclusion that the sanction has to be accorded. The Sanction Order only shows that the Pradhikaran considered documents and accorded the sanction. The Sanction Order nowhere discloses that powers were delegated to him by passing a Resolution and, therefore, he accorded the sanction. The cross examination of the said witness shows that he has neither obtained any permission from the Board nor he has submitted any report to the Board. If the Resolution, which is not part of the record, would have been produced, perhaps sufficient light would have been thrown on the exercise undertaken for according the sanction to show that it was Sanctioning Authority PW5 Suresh Salvi who applied his mind.

19. Admittedly, grant of sanction is a serious exercise of power by competent authority. It has to be apprised of all relevant materials and on such materials authority has to take a conscious decision as to whether facts would show commission of offence under relevant provisions. No doubt, elaborate discussion is not required, however, decision making on relevant materials should be reflected in order.

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

21. The Honourable Apex Court, in the case of CBI vs. Ashok Kumar Agrawal 2014 Cri.L.J.930, has held that sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection

available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

22. The Honourable Apex Court, in the case of State of Karnataka vs. Ameerjan (2007)¹¹ SCC 273, as relied upon by learned counsel for the accused, held that it is true that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be

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

23. The view in the case of State of Karnataka vs. Ameerjan supra is the similar view expressed by this court in the case of Anand Murlidhar Salvi vs. State of Maharashtra 2021 SCC OnLine Bom 237.

OPERATIVE CONCLUSIONS

24. After going through the evidence of Sanctioning Authority PW5 Suresh Salvi, admittedly, the Sanction Order nowhere reflects who has applied mind and which documents are considered by the Sanctioning Authority and on what basis the Sanctioning Authority came to conclusion that sanction is to be accorded to launch prosecution against the accused.

MARSHALLING OF EVIDENCE AS TO DEMAND AND ACCEPTANCE

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

26. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Shrikant Tankhiwale and Shadow Pancha PW3 Vilas Sute.

27. As per the evidence of complainant PW1 Shrikant Tankhiwale, he was one of partners of M/s.Vatcons and during the tender process, the work of the Scheme for Supply of Water to villages to Girad and Peth in Wardha district under the name as "Augmentation to Girad and Peth villages Combined Water Scheme" was allotted to his firm. Another partner was Shri Vaidya. The period of work was from 27.8.1997 to 27.8.1999. The estimated cost of the work was

Rs.33,94,644/-. He alleged that an incorrect proposal was sent to the Executive Engineer that his firm would not be able to complete the work within the prescribed period. The accused was Executive Engineer who submitted a proposal to impose fine of Rs.1000/- per day on the firm. The said proposal was accepted by the Superintending Engineer on 8.9.1999 and his firm received the copy of the letter on 20.9.1999 by which he came to know that fine Rs.1000/- per day was levied on his firm on 1.8.1999. Immediately, his firm issued letter informing that imposition of fine is not correct and their pending bills should be cleared. It was further prayed that order imposing fine be cancelled. However, despite of repeated requests, the order imposing the fine was not cancelled and, therefore, in December 1999, he met the Chief Engineer and also issued letter to him on 16.12.1999. By this letter, it was informed that the work is already completed costing Rs.36,46,742/- and prayed for waiving of the fine amount. Though an action was expected from the Chief Engineer, no action was taken and, therefore, he approached the office of the accused along with his partner Shri Vaidya and requested to cancel the fine imposed on the firm and to make payment of pending bills. The accused informed them that he would reduce or revoke the fine by calling proposal from the Sub Divisional Engineer, Hinganghat and would send it to the Superintending Engineer, however the firm has to supply G.I.Pipe 150 in number and also told that for waving the fine and for payment of pending bills, first he has to pay Rs.25000/- to him. The complainant informed that it is not possible for him to pay such amount and he returned. The accused has not paid any heed towards it. He has supplied the G.I.Pipes on 13.3.2000 and on 14.3.2000 informed the accused regarding supply of G.I.Pipes. On 15.3.2000, again he met the accused along with his partner Shri Vaidya as well as Sub Divisional Engineer Shri Chandrikapure. They requested to cancel or reduce the fine. The accused instructed Shri Chandrikapure to submit such proposal and called them in his office on 16.3.2000. On 16.3.2000, they obtained letter from Sub Divisional Engineer handed over it to the Inward Clerk in the office of the accused. In the afternoon, he met the accused in his office wherein the accused informed him that he would send proposal for levying nominal fine and he has to pay amount Rs.25,000/-. On showing inability to pay such amount, the accused asked him to pay Rs.10,000/- on 18.3.2000 and asked to pay the balance amount of Rs.15000/- after clearing of the pending bills.

28. The complainant further deposed as to the demand on the day of the trap as well as various events took place during the pre-trap panchanama. As to the demand on the day of the trap, his evidence is that on 18.3.2000 he along with Shadow Pancha PW3 Vilas Sute approached the accused. After reaching the office of the accused, he wrote his name on slip and name of the Shadow Pancha as well as Shri Vaidya and obtained visitors' slip. They were called by the accused in the chamber. On entering the chamber, the accused enquired about the Shadow Pancha and the Shadow Pancha was introduced as brother of his partner. On asking about reducing of the fine amount, the accused called letter from his office, made endorsement on the said letter, and demanded the amount by

raising his eyebrows. On that, he handed over the amount and the accused asked him to keep on table. Thereafter, the accused accepted it and kept in his left pant pocket. On getting the signal, the raiding party members caught the accused, seized the amount from him, collected hand wash of the complainant so also accused. The pant pockets of the complainant and the accused were verified by using phenolphthalein powder and sodium carbonate.

29. To corroborate the version of complainant PW1 Shrikant Tankhiwale, the prosecution also examined Shadow Pancha PW3 Vilas Sute who testified about the fact that he acted as a pancha on various events took place during pre-trap and post-trap panchanamas. As to the demand and acceptance, his evidence is that he and the complainant approached the accused, the complainant obtained visitors' slip, and he was introduced as brother of the partner of the complainant. There was a talk between the accused and the complainant. The accused called relevant file and made endorsement on it. After the concerned clerk was directed to prepare letter to the Superintending Engineer as per his endorsement and the concerned clerk left the chamber, the accused raised both his eyebrows and made gestures looking at the complainant. On getting the said gestures, the complainant handed over the amount to the accused. The accused asked the complainant to keep the amount on table and he kept it in his pant pocket. The hand wash of the accused as well as the complainant was obtained. The amount was seized.

30. To test the veracity of the evidence of complainant PW1 Shrikant Tankhiwale, he was cross examined and during the cross examination he admitted that his firm has executed many works for the MJP. He admitted regarding various works carried out by him. His cross examination further shows that he is unable to recollect whether as a part of an agreement his firm was required to start and supervise it for three months. He further admitted that after the incident of trap also, his firm has received letter to complete the work of the Scheme immediately. He has also received a letter informing that the work of the Scheme is allotted to somebody else and extra expenditure was debited to them. Final bill is still not prepared. He further admitted that in respect of the said Scheme, there was a meeting between him and the Minister of the said Department. The cross examination further shows the work of laying down pipe line at Girad village for distribution of water was also included in the work order. They have to provide pipe lines on the hill of Girad and to construct one tank at that place. As per the tender Form B1, they were required to quote percentage of increase or decrease estimated costs. For extra works, different bills are to be prepared. For extra words, rates are required to be sanctioned separately. The Sub Divisional Engineers and Junior Engineers were supervising the work. They were required to take measurement of the work and submit their bills. After verifying the bills submitted by them, Sub Divisional Engineer used to send the same to the Executive Engineer. There was an escalation clause in the agreement. He already received bills of ten running bills. He further admitted that imposition of fine may be one of reasons for non clearing the last bill. The cross examination further

shows that his firm has received letter from the Department stating in it that the work is in a slow speed. He admitted that his firm has received letter stating in it that the work should be done immediately as the water supply is to be started immediately. As regards the water supply, meeting used to be held with different officer. The Superintending Engineer had instructed for doing the work immediately by telegram and letter. It was the say of the officer that his firm is not completing the work immediately and his firm has received instructions that if the work is not completed by August 1999, penalty would be imposed. He further admitted that proposal for imposition of fine is prepared by the Sub Divisional Engineer and it is submitted to the Executive Engineer. The Superintending Engineer is the competent authority to levy the fine or reduce the same. He made a complaint to the Chief Engineer that the Superintending Engineer has proposed the fine on his firm without any reason. Simultaneously, he was requesting the accused for reducing the fine. Because of imposition of the fine amount, he had not received the payment of his running bill. He further admitted that prior to February 2000, the accused was not agreeable to give such recommendation.

31. Thus, the entire cross of complainant PW1 Shrikant Tankhiwale shows that there was constant correspondence with his firm to complete the work in time as the work was not completed and, therefore, the fine was imposed on his firm.

32. During investigation, the investigating officer has collected the same correspondence which is on record. Exhibit-10 is the letter given by the complainant PW1 Shrikant Tankhiwale showing his displeasure as to imposing of the fine. Exhibit-11 is the another letter addressed to the Chief Engineer. The correspondence further shows that by letter dated 27.8.1997, the firm of the complainant was asked to start work and to complete the same within twenty four months. Exhibit-21 is the proposal by the accused to Superintending Engineer for imposing the fine. Exhibit-22 is the letter dated 15.3.2000 requesting the Executing Engineer to reconsider the proposal of the fine and the complainant undertook that he would provide pipes within 2-3 days and water supply will be commissioned in fortnight as per the instructions.

33. Thus, the recital of the letter dated 15.3.2000 shows the work of commissioning of the water supply was not completed by the complainant. By letter Exhibit-23, the complainant was informed that fine is imposed on his firm. Thus, not only the cross examination but also the correspondence shows that as the work of water supply and commissioning of the same was not completed by the firm of the complainant, an action was taken on the firm of the complainant by imposing fine.

34. Shadow Pancha PW3 Vilas Sute, is also cross examined to test his veracity which shows that he has not made any enquiry to ascertain as to on what date he had been to the accused. He has not made any enquiry to satisfy himself. His cross examination further shows that while leaving Nagpur for the purpose of trap, a tape recorder was given for recording conversation and instructions for its

operation were also given. Accordingly, it was used. During the proceeding, the said tape was played to listen what were contents thereof. The conversation recorded in the tape was not written. That tape was not played on 20.3.2000. the cassette was not seized. He further admitted that in his presence no demand was made.

35. Thus, the cross examination of Shadow Pancha PW3 Vilas Sute shows that the tape recorder was used during the trap proceeding. However, the evidence of complainant PW1 Shrikant Tankhiwale and Trap Officer PW4 Sanjaykumar Baviskar is silent on the same. Neither the conversation was recorded during the trap was reproduced nor the tape was produced.

36. The evidence of the Trap Officer PW4 Sanjaykumar Baviskar also shows that he has not made any efforts to obtain documentary evidence to ascertain that Sanctioning Authority PW5 Suresh Salvi has powers to accord the sanction. He has not made any enquiry to verify genuineness of allegations of demand. During the investigation, it was transpired to him that representatives of the public were holding meeting and informing the Department to finish the work early. The Trap Officer has not stated anything about the said tape recorder.

37. Thus, the evidence of Shadow Pancha PW3 Vilas Sute and Trap Officer PW4 Sanjaykumar Baviskar is contradictory as to the use of the tape recorder. Admittedly, the conversation recorded through the tape recorder or conversation took place between complainant PW1 Shrikant Tankhiwale and the accused is not reproduced in the post-trap panchanama. The pancha witness specifically admitted that no demand was made in his presence.

38. The defence of the accused is that, in view of the tender agreement, the firm of complainant PW1 Shrikant Tankhiwale had not implemented the work within the prescribed time limit. There was a political as well as villagers pressure for completing the said Scheme, but the firm of the complainant has not completed the same and, therefore, he proposed the fine on the firm of the complainant and, therefore, he is implicated falsely in the alleged offence. Mere recovery of the money is not sufficient to show his involvement. To support this contention, the accused examined DW1 Deepak Padegaonkar, who was serving as Sub Divisional Engineer in the MJP, Hinganghat who testified that the Water Supply Scheme for villages Girad and Peth was being executed by the Hinganghat Sub Division. The work of this water supply commenced on 7.2.1997. M/s.Vatcons had not implemented the work within the prescribed time limit. Despite correspondence, on several occasions, the work was not completed by M/s.Vatcons and, therefore, he issued correspondence to the Executive Engineer and the Executive Engineer proposed the fine. Though he is cross examined by Public Prosecutor, nothing came on record to shatter his evidence.

39. It is well settled that proof of demand is sine qua non for proving charges.

40. Whether the evidence adduced by complainant PW1 Shrikant Tankhiwale and Shadow Pancha PW3 Vilas Sute is consistent and corroborative, the same is to be

seen.

41. As per the evidence of complainant PW1 Shrikant Tankhiwale, initial demand was made to him on 7.2.2000, second demand was on 13.3.2000, and third demand was on 16.3.2000. The evidence of the complainant shows that on the day of the trap, he obtained visitors' slip and, thereafter, he along with Shadow Pancha PW3 Vilas Sute met the accused. It reflects that prior to visiting the office of the accused and meeting the accused personally, one has to obtain visitors' slip. As far as his evidence as regards his visits on 7.2.2000 and 13.3.2000, no visitors' slip is placed on record. As far as his visit on 16.3.2000 is concerned, he deposed that the Sub Divisional Engineer, as per instructions of the accused, prepared note, which he has submitted at Inward Section of the office of the accused on 16.3.2000 and met the accused on 16.3.2000. The document which is at Exhibit-15 shows that it was received in the office at Inward Section on 18.3.2000. Though the letter mentions date 16.3.2000, endorsement of the Inward Section shows it was received on 18.3.2000. Moreover, there is no visitors' slip of 16.3.2000. Thus, the demand by the accused on 16.3.2000 has no corroboration by any documentary or circumstantial evidence. As far as first two demands are concerned, admittedly, on those days, demands were by the accused in presence of his partner Shri Vaidya. The prosecution has not examined said Shri Vaidya to prove prior demands.

42. It is settled law that evidence of complainant should be corroborated in material particulars.

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

44. 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."

45. In the light of the above well settled legal position, if the evidence of the prosecution is appreciated, it would show that the prosecution has placed reliance on the evidence of complainant PW1 Shrikant Tankhiwale. As per his oral evidence, the accused demanded the amount from him for forwarding the proposal to reduce the fine amount. As already observed, as far as demands on earlier dates i.e. 7.2.2000 and 13.3.2000 are concerned, it has no independent corroboration. It is pertinent to note that on the day of the trap, before approaching the accused, the complainant obtained visitors' slip and sent it to the accused and after receiving the call from the accused, he entered the chamber of the accused. It sufficiently shows that procedure adopted in the office of the accused is that prior to enter the chamber of the accused, one has to obtain visitors' slip, it was sent to the accused and, thereafter, person can meet him. As far as visit of the complainant on earlier occasions i.e. 7.2.2000 and 13.3.2000 is neither corroborated by showing circumstance that before meeting the accused, the complainant obtained visitors' slip. The evidence of the complainant shows that on both dates, his partner Shri Vaidya was along with him, who is also not examined. The evidence as to the visit of the complainant to the office of the accused on 16.3.2000 to hand over the correspondence by the Sub Divisional Engineer in the name of the Executive Engineer proposing to reconsider imposition of fine is also falsified by document Exhibit-15, which shows that though the said letter is dated 16.3.2000, it was received in the office of the accused on 18.3.2000.

46. Thus, insofar as the prior demand is concerned, the same is not corroborated either by direct or circumstantial evidence.

47. In the light of above facts, testimony of complainant requires careful scrutiny.

48. In the case of *M.O.Shamsudhin vs. State of Kerala* (1995)3 SCC 351, it has been held that word "accomplice" is not defined in the Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in crime. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused.

49. In the case of *Bhiva Doulu Patil vs. State of Maharashtra* 1963 Mh.L.J. (SC) 273 it has been held that the combine effect of Sections 133 and 114, illustration (b) may be stated as follows:

"According to the former, which is a rule of law, an accomplice is competent to

give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars.”

50. Thus, in catena of decisions, it is held that the complainant himself is in the nature of accomplice and his story prima facie suspects for which corroboration in material particulars is necessary.

51. Besides the evidence of complainant PW1 Shrikant Tankhiwale, the evidence of Shadow Pancha PW3 Vilas Sute is relied upon by the prosecution. The said Shadow Pancha specifically admitted during his cross examination that the accused has not made any demand in his presence. His evidence further shows that as soon as they reached the office of the accused, the accused called for correspondence, made endorsement on it, and asked his subordinate to prepare proposal. Thereafter, allegedly, the demand was made by gesture. As far as the demand by gesture is concerned, the evidence is that he raised eyebrows. The evidence of the complainant and the Shadow Pancha shows the demand was made by raising eyebrows.

52. Learned counsel for the accused submitted that insofar as the demand by gesture is concerned, there was no demand before documents are prepared by the accused. Complainant PW1 Shrikant Tankhiwale and Shadow Pancha PW3 Vilas Sute both have stated that the amount was demanded through gestures. In view of the settled legal position, conclusive and definite demand must be proved beyond any reasonable doubt for constituting offence under the said Act. The alleged gesture pertinently is not described with any particularity to constitute the demand. In support of his contentions, he placed reliance on the decision of this court in the case of Dattatraya s/o Udaji Warkad vs. State of Maharashtra 2018 ALL MR (Cri) 1305, wherein this court considered aspect of demand by gestures and held that The prosecution case has too many grey areas and doubtful facets for this court to uphold the finding that a conclusive and definite demand is proved beyond reasonable doubt. In absence of such a demand, the alleged acceptance of currency note or the recovery of the note from the accused, pales into insignificance. He further placed reliance on the decision of this court in the case of State of Maharashtra, through Police Station Officer, Mehkar, district Buldhana vs. Deepak Gopalrao Dande Criminal Appeal No.663/2008 decided on 14.9.2020 wherein also this court disbelieved the theory of demand by gestures.

53. Thus, it is well settled that demand by gestures by expressing that without specification of exact monetary demand towards bribe, it is difficult to accept the same as a demand of bribe.

54. The evidence in isolation, that the accused had enquired by raising his eyebrows, is not sufficient to prove the demand.

55. In the case of Mukhtiar Singh (since deceased) through his LR vs. State of Punjab 2017 SCC ONLine SC 742, it is held that statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

56. The evidence of complainant PW1 Shrikant Tankhiwale, Shadow Pancha PW3 Vilas Sute, and Trap Officer PW4 Sanjaykumar Baviskar, as to the use of tape recorder, is also not consistent with each other. Before laying the trap, the Trap Officer has not verified genuineness of allegations. The cross examination of the the Trap Officer shows that it revealed to him during the investigation that firm of the complainant has kept incomplete work. It further transpired to him that the accused has proposed fine to be imposed on the complainant's firm. The accused was not the authority who can reduce or waive the fine amount. It further revealed to him that several communications were made with the firm of the complainant to complete the work. He has not made any enquiry to ascertain whether facts narrated by the complainant demanding the money are correct or not. Thus, the entire evidence of the complainant, shadow pancha, and the Trap Officer creates a doubt as to the actual occurrence of the incident.

57. As far as the applicability of presumption is concerned, in the decision of the Constitution Bench of the Honourable Apex Court in the case of Neeraj Dutta vs. State (Govt. of NCT of Delhi) supra it has been held that presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands. It is further held that insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law.

58. It has been already observed that the entire evidence of complainant PW1 Shrikant Tankhiwale, as to previous demands, is falsified on the basis of Exhibit-15 as well as on the fact that the independent corroboration is not there though the independent witness, the partner of the complainant, was present along with him, who was not examined. As far as the demand on the day of the trap is concerned, which was allegedly by gestures, as observed earlier, gestures without particularity cannot constitute demand. Conclusive and definite demand must be proved beyond any reasonable doubt. Thus, a doubt is created as to the

demand of the amount as there was no independent corroboration. Moreover, principles for according sanction are also not considered. Thus, the entire exercise carried out, as far as the sanction is concerned, there is no evidence that powers are delegated to Sanctioning Authority PW5 Suresh Salvi. Thus, on the ground of sanction also, the prosecution in the case fails. As such, the appeal deserves to be allowed as per order below:

ORDER

(1) The criminal appeal is allowed.

(2) The judgment and order of conviction and sentence dated 30.9.2005 passed by learned Judge, Special Court, Wardha in Special Case No.1/2001 convicting and sentencing the accused is hereby quashed and set aside.

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

Appeal stands disposed of.