

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 880 OF 2004

Dattatraya Baburao Ovhal

...Appellant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Abhishek Avchat a/w. Mr. Abhishek Khandre, Advocate for the Appellant.

Mr. A. R. Patil, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 2nd September, 2020.

Date of Pronouncing the Judgment : 30th September, 2020.

JUDGMENT : (Prakash D. Naik, J.) :-

1. This is an appeal against conviction. The appellant is aggrieved by Judgment and Order dated 30th June, 2004 passed by Special Judge, Pune in Special Case No. 18 of 1998, whereby the appellant was convicted for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 ("P.C. Act" for short) and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 5,000/- (Five Thousand) and in default of payment of fine to suffer rigorous imprisonment for 3 months. He is also convicted for the offence punishable under Section 13(1) (d) r/w. Section

13(2) of P.C. Act., and sentenced to suffer imprisonment for two years with fine of Rs. 5,000/- (Five Thousand).

2. Facts of the case of the prosecution are as under:

(a) The complainant is resident of Pune. The flat in which he was residing, was in the name of his father and mother. Father died on 11th January, 1995. The electricity meter was in the name of his father.

(b) In November, 1997 the complainant visited office of MSEB, Sub-division, Pune and enquired about the procedure for transferring the electricity meter from the name of his father to name of his mother. He was asked to meet concerned clerk through Ovhal (accused). The accused was not in office. Hence, the complainant visited office on the next day and met the accused.

(c) The complainant informed the accused that he intends to transfer the electricity meter from the name of his father to the name of his mother. The accused gave four forms to the complainant. On the reverse of one form rubber stamp was put by the accused and he wrote something in his handwriting below the rubber stamp and told the complainant to submit the papers. Complainant was told to type form W on the

stamp paper of Rs. 20/- and obtain signature of mother and come to him alongwith those documents.

(d) On 1st December, 1997 the complainant visited office of the accused and handed over all the papers to him. After perusing those papers, the accused told the complainant that he has to visit the house of complainant to check wiring. The accused told that he would visit the house on 3rd December, 1997 at about 1 to 1.30 p.m. and told the complainant to remain present in the house at that time.

(e) On 3rd December, 1997 at about 1.30 p.m. the accused visited the house of complainant and checked the wiring in the house and the accused told the complainant that there are more electricity points in the house and there would be more expenditure for transferring the meter. On enquiry by complainant about the amount of expenditure, the accused told that he has to calculate it and told complainant to meet him in next week in his office to understand the amount of expenditure.

(f) On 9th December, 1997 at about 12.00 noon, the complainant met accused in his office. The accused told him that he has to deposit fees of Rs. 7,500/-. The complainant

enquired as to why such huge expenditure is required for transferring meter. He agreed to pay the amount as per rule. The accused told the complainant that he would give firm quotation of Rs. 450, which should be deposited in the office of Rasthapeth office and should give Rs. 1,000/- to the accused. The complainant visited the office of Anti Corruption Bureau (“ACB” for short), Pune. The complainant lodged complaint.

(g) The statement of the complainant was recorded. Two employees from RTO office were called for acting as pancha. The complainant narrated his complaint. He produced 10 notes of Rs.100/- denomination for using as bribe amount. Use of anthracene powder and ultra-violet lamp was explained to the complainant and pancha by ACB office. Anthracene powder was applied to the currency notes. Those notes were shown in ultra-violet lamp, which indicated bluish shining on those notes. Those notes were folded and kept in the left side shirt pocket of the complainant. Instructions were given to complainant and pancha.

(h) The complainant was asked to visit the accused alongwith pancha, Jagtap and instructed to talk with the accused about his work. He was instructed to handover the

amount to the accused on his demand, and after acceptance he should transmit signal. Pancha, Jagtap was asked to hear and observe the talk and transaction between complainant and accused. Other pancha was asked to remain with raiding party members. Pre-trap-Panchanama was prepared. After recording Pre-trap-panchanama, all of them started from ACB Office, Pune and visited MSEB Office. Complainant and pancha, Jagtap approached the accused. Complainant gave firm quotation and showed the receipt. The accused led the complainant and pancha Jagtap towards the toilet. The accused enquired with the complainant as to whether he has brought the amount. The complainant enquired as to how much amount. The accused told him Rs. 1,000/-. The accused enquired about Jagtap and the complainant told him that he is client. The complainant took out tainted notes from his shirt pocket and offered them to accused. Notes were accepted by the accused and he kept them in the left pocket of his pant. The complainant gave signal to the raiding party. They rushed at the spot. The complainant pointed out towards the accused. The complainant was asked to wait outside, and the accused was taken inside the office. Pancha Jagtap told inspector Ahir, that the accused accepted amount and kept it in the pocket of pant. Inspector Ahir

introduced himself to accused. Hands and clothes of all the persons were checked under ultra-violet lamp. There was no shining. Hands and clothes of accused checked under ultra-violet lamp and bluish shining was seen on the thumb and two fingers of the right hand and all fingers and palm of the left hand, and on left side pocket of pant of accused. The notes were taken out from the pocket of the pant of the accused. Ultra-violet shining was seen. Numbers on notes were tallied with pre-trap-panchanama. Pancha Jagtap narrated the incident, complainant was called inside his clothes and hands were checked under ultra-violet lamp, bluish shining was seen on the shirt pocket and right hand of the complainant. He narrated the incident. Trap-panchanama was recorded. Accused was arrested. He was taken to police station, investigation was conducted. Papers were sent for sanction. On receipt of sanction order, charge-sheet was filed against the accused for the offence punishable under Section 13(1) (d) r/w. 13(2) of P.C. Act.

3. PW No. 1, Virendra Nerurkar is the complainant. He is Advocate by profession. He deposed that the flat in which he was residing, was in the name of his parents. His father expired in 1995. The electricity meter was in the name of his father. He had

approached Sub-Division of MSEB to enquire about change of electricity meter in the name of his mother. Accused was looking after the said work. Complainant approached him. Accused gave four forms to complainant by putting stamp on one of the form. He was asked to type form number W on stamp paper. The complainant complied the requirements and approached the accused on 1st December, 1997. Accused visited the flat of the complainant to verify the number of electricity points. It was three bedroom flat. The accused told the complainant to visit office to understand the expenditure. Complainant was told that the number of points are more. The expenditure would be Rs. 1,500/-. Complainant enquired as to why such huge amount is required towards expenditure towards expenditure for change of name. Accused asked him, how much amount he can pay. The complainant stated that, he would pay as per Rule. The accused told him that he would give firm quotation of Rs. 450/- and the same be deposited in the office at Rasthapeth, and while returning he should bring Rs. 1,000/- by the accused for him. Complainant deposited Rs. 450/- on 10th December, 1997 in the office of Rasthapeth. He realised that the electricity meter would not be changed in the name of mother, unless he pays the amount. Hence, he lodged the complaint to ACB, Pune. Complaint was recorded. Pancha witnesses were called. 10 notes of

Rs. 100/- were provided for the purpose of raid. Procedural requirements with regards to raid including applying anthracene powder etc., were completed. The notes were kept in left side shirt pocket of the complainant. Instructions were given to the complainant and pancha by Inspector Ahir. Pancha was told to accompany the complainant while going to office and observe conversation between them. Pre-trap panchanama was prepared. The trap party proceeded to the office of accused. Complainant and pancha Jagtap went to office of accused. Complainant gave form of firm quotation and showed the receipt. Accused told him to come out, and took him towards toilet, and enquired with him whether he has brought the amount. The complainant enquired quantum of amount. Accused told him Rs. 1,000/-. Accused enquired with the complainant about Jagtap. He told him that he is his client. Complainant took out notes from shirt pocket by right hand and offered it to accused. The amount was accepted and kept it in left side pant pocket. Accused gave signal to raiding party. Accused was apprehended. Accused was taken inside the office. Complainant was asked to wait outside. Thereafter, the complainant was called inside the office. Enquiry was made about the incident. Panchanama was recorded. His statement was recorded on 8th January, 1998. The currency notes were identified by him. In cross-examination, he

stated that there was a mark of rubber stamp below exhibit 7 on the reverse side, and below that there is writing in the handwriting including the date. It was in the handwriting of accused. Forms were submitted after compliance to MSEB on 9th December, 1997. At the foot of exhibit 17, there is date 24th November, 1997. Accused visited his house before he submitted forms to MSEB. Complainant was having two meters in his house. The total consumption of his house was divided in two meters. One was for power line and another for regular. The date on which the complainant visited office or the accused visited his house, and the complainant submitted forms, are not noted anywhere. When he visited MSEB office at Rastapeth for depositing Rs. 450/- he had not decided to approach ACB. He visited ACB office at 11.30 a.m.. He was not instructed by ACB that he should visit the accused and enquire when the meter will be changed in the name of his mother, and that he should submit the receipt of Rs. 450/- to the accused. He did not submit receipt of Rs. 450/- and some forms to ACB office while lodging complaint. The receipt is shown to ACB officer. He did not enter the cabin of Ovhal (accused). He was talking with accused from window of cabin. The conversation between him and the accused was going on through the window for two minutes. Two electricity meters are still working in his house.

4. PW-2, Ganesh Jagtap is the pancha witness. He was called in

the office of ACB. Complainant was present. Bribe amount was arranged. Instructions were given to complainant and witness. All the formalities before proceeding to raid were conducted. Anthracene powder was applied to currency notes, which were checked under ultra-violet lamp, and bluish shining was seen. The currency notes of Rs. 1,000/- were kept in left side pocket of the complainant. Instructions were given to him that he should accompany the complainant to accused, and should hear the talk and transaction between them. Complainant was instructed that after the demand is made by the accused, tainted notes should be given to him and on acceptance, the complainant should give signal by moving his left hand on his head. The other pancha was asked to remain with the raiding party. Panchanama was signed by them. They proceeded to the office of accused. Complainant gave papers through window to the accused. Accused asked them to follow him. He made enquiry with complainant about money. On asking about the quantum of amount by the complainant, the accused quoted amount of Rs. 1,000/-. Accused made enquiries about him, and the complainant told him that the witness is his client. Accused told him to go away from spot. Complainant took out currency notes by his hand, and offered to accused, who accepted the amount by right hand, and kept it in the left side pocket of the pant. Complainant

went towards door of office. Accused followed him. Raiding party came there. Accused was apprehended. The notes were taken out from the pant pocket of the accused. The notes were checked under ultra-violet lamp, which were shining. Trap panchanama was recorded. In cross-examination, he stated that his office hour in 1997 was 10.00 a.m. to 6.00 p.m. Written order was given to him at 11.00 a.m. Complaint was hand-written. It was written in his presence. Instructions were given to the complainant to submit documents to the accused, by going to office. Signatures of pancha, were not obtained on those documents at the time pre-trap panchanama. He cannot assign any reason as to why it is not mentioned in pre-trap panchanama that instructions were given to the complainant about giving documents to accused. The work of complainant was about electricity meter. The documents given by complainant to the accused, consisted of application for change of name. Instructions were given to the complainant, to talk with accused about change of name. He was told to see whether the complainant is making the request to the accused, regarding the change of name. He was to see, whether the accused is demanding money for change of name. Within two minutes after giving papers to accused through window, the accused came out of the cabin. Both the sets of documents were given to accused. One set of document

was returned by accused to the complainant. In his presence, complainant did not request the accused to change the name of MSEB meter. The documents written by the accused, were kept by complainant, in left hand till the end. The bathroom was on the right side of the cabin at a distance of 14 to 15 feet. When the accused told him to go away from the spot, he went two to three spaces towards bathroom. The spot where the complainant and accused were standing in the passage is visible from the front portion of the cabin. The notes were taken out from the pant of the accused in the cabin of Assistant Engineer and that was the first occasion for him to see those notes. The other pancha took out Rs. 1,000/- from the pant of the accused. He cannot assign any reason as to why it is not mentioned in the panchanama that other articles were taken out by other pancha after washing hands. Documents which were given by complainant to accused, were found at the time of trap panchanama. Initially, those documents were shown to him in ACB office, at the time of pre-trap-panchanama, which were signed by him. Those documents are exhibit 7, 8 and 23 to 29. Before entering witness box, he read panchanama. After reading panchanama he came to know what case is made out by police against accused. Panchanama was read by him only to know what evidence he should give in Court. He gave evidence as per panchanama.

5. PW-3, Satish Ahir was serving as Inspector with ACB. He deposed that PW-1 had visited office for lodging complaint. The complaint was recorded. Pancha witnesses were called. Bribe amount was arranged. Anthracene powder was applied. Instructions were given to complainant and pancha witness. Anthracene powder was applied. Instructions were given to PW- 2 to accompany the complainant. PW-3 and others started for trap. They went by rickshaw. Complainant and PW-2 walked to MSEB office. Complainant came out of the office and signaled as instructed. PW-2 and other raiding party members rushed to office. Complainant was asked to wait outside. PW-2 pointed out towards the person sitting on the chair, and stated that he has accepted the amount. Accused was apprehended. Request was made for room to complete the proceeding. Hands of the accused were checked under ultra-violet lamp and shining was seen on finger of left hand and thumb, and two fingers of right hand. Shining was also seen on the left side of pant pocket of the accused. Notes were taken out by pancha no. 2 from the pant pocket of accused. Notes were checked under ultra-violet lamp, and the same were shining. Complainant was called inside. He narrated the incident. Articles were seized. Accused was arrested. Sanction was obtained and charge-sheet was filed. In the cross-examination, he stated that there are instructions in the

manual to verify the demand independently by concerned office before laying a trap. It should be seen whether the person demanding the bribe, is having an authority to do the work of complainant before laying a trap. The building of MSEB office is adjacent to road. After entering MSEB office, there are two cabins on right side. The first cabin is of operator and another is of accused. Accused denied that he has accepted the amount. It is provided in the manual that photographs of the hands, having anthracene powder, can be taken in ultra-violet lamp. Separate statements of panchas are not recorded. Sanction proposal is sent through S.P. Investigating Officer used to prepare report about the case and sent it to sanctioning authority through superiors. Report is prepared to show that the material is available against the accused. Proforma of sanction order is also sent to sanctioning authority along with report. Proforma is in general and not for any specific case. Copy of proforma is kept with I.O. Proforma is in his office.

6. PW-4, Ashok Shinde, was serving as Chief Engineer. For transferring meter from one name to other, prescribed form is to be filled and submitted to concerned clerk of Sub-Division, which is sent to Division for approval. Necessary orders are passed by Executive Engineer. After perusing papers, he found that concerned person had complied all formalities for transferring meter. After receiving those

papers he studied them and called concerned Executive Engineer and the person from Esst. Department and discussed with them. He came to the conclusion that it was a fit case for giving sanction. The sanction was given on 16th May, 1998. In cross-examination, he stated that the draft of sanction order was sent by ACB to him. There was blank space in the draft for writing name of sanctioning authority. There was no date on the draft. His name was typed in the said blank space in the order. No date was mentioned on the sanction order. There was enclosure of forwarding letter on which there was outward number and date. Executive Engineer has power to change the name on the meter. Accused has no power either to grant or refuse to change the name in the meter. The concerned clerk has put the paper before Executive Engineer, and after perusing those papers, the Executive Engineer has passed an order as allowed and signed on the firm quotation i.e. permission to change the name in the meter. After granting permission by Executive Engineer, the sub-engineer or Assistant Engineer used to sign on the firm quotation. There is cash centre at Rasthapeth office for depositing the concerned fees. After granting permission, firm quotation is given to the consumer. After depositing money, effect is given to the order of transferring the meter from one name to another. Deposit of charges as per firm quotation, is the first work to be done by

consumer. In this case, trap was made on 10th December, 1997 at 3.00 p.m.. On 9th December, 1997 quotation was given to the complainant, and he deposited the amount on 10th December, 1997. Exhibit 7 is the application of the complainant for transfer of the name and it was submitted on 24th November, 1997. Format was given to the complainant on 24th October, 1997. Previously, there was separate meter for power line and ordinary line, and separate meter for separate line. Previously, the rates of units of power meter and ordinary meter were different. After 1990, these two systems of charging was closed and there is charging as per one rate. Thereafter, the rates are as per progressive slab rate. After 1990, when there are two meters for same purpose, one was removed. After perusing papers sent to him by ACB, he came to know that there were two meters at the residence of complainant. As per rule, it was necessary to remove one meter.

7. Statement of the accused was recorded under Section 313 of Cr.PC.. After hearing both the sides Trial Court convicted the appellant. The Trial Court gave finding that there is sufficient evidence on record to conclude that the accused had demanded the bribe amount and that the same was accepted by him, which can be concluded even without the help of presumption under Section 20 of the Act. Presumption is already in favour of the prosecution. There

is nothing on record to rebut the said presumption. The defence of the accused is of total denial. Hence there is no scope of rebuttal. There is no suggestion to rebut the presumption. Thus, the prosecution has proved that the accused has demanded and accepted bribe amount from the complainant. It was further observed that the prosecution has proved valid sanction for the prosecution of the accused.

8. Learned counsel for the appellant advanced following submissions:

- (i) No demand verification.
- (ii) Non application of mind by sanctioning authority.
- (iii) Appellant was not having authority to do the work of complainant. The work was of Assistant Engineer. The work within the authority of appellant was already completed. The prosecution case that the appellant had demanded money for completion of work is false.
- (iv) PW-1/complainant in his examination-in-chief stated that the accused had demanded Rs. 1,500/- towards bribe amount. In his complaint to police, the amount of Rs.7,500/- is stated to have been demanded by the accused. In the

statement of pancha witnesses, the amount is Rs.750/-.

(v) PW-1, has stated that his complaint was typed by ACB. Pancha Witness stated that written complaint was given by complainant.

(vi) There are discrepancies in the timings. The time at which the complainant first approached the police, the time at which first visited the police station, and time of completion of panchanama and trap.

(vii) Alleged demand is not heard by panch witnesses.

(viii) Statement of Rickshaw driver was not recorded.

(ix) Independent statement of pancha witnesses were not recorded.

(x) Pancha witness is not independent.

(xi) Motive for false implication of accused bring that the house of complainant had two electricity meters. He was charged lesser bill amount. Accused visited the house of complainant for inspection. He told the complainant that one of the meter was to be discontinued.

(xii) There are discrepancies in evidence, as to where exactly

the amount was accepted by the accused.

9. Learned counsel for the appellant has relied upon following decisions:

1. *M. O. Shamsudhin Vs. State of Kerala (1995) 3 Supreme Court Cases 351.*
2. *P. Sirajuddin Vs. State of Madras (1970 (1) Supreme Court Cases 595*
3. *Jitendra Kumar Jain Vs. Central Bureau of Investigation and Anr. 2015 ALL MR (Cri) 503.*
4. *State of Punjab Vs. Madan Mohan Lal Verma (2013) 14 Supreme Court Cases 153.*
5. *V. Venkata Subbarao Vs. State represented by Inspector of Police, A.P. AIR 2007 Supreme Court 489.*
6. *State of Karnataka Vs. Ameerjan (2007) 11 Supreme Court Cases 273*
7. *Suryabhan Vs. State of Maharashtra 2015 (2) Bom. C.R. (Cri). 59*
8. *Vasant Damodar Likhar Vs. State of Maharashtra 2015 (2) Bom. C.R. (Cri). 59*
9. *Sharad Namdeorao Shirbhate Vs. State of Maharashtra 2007 (Supp) Bom. CR. 593*
10. *Nivrutti Sadekar Vs. State of Maharashtra 2019 (1) Mh. L. J. (Cri.) 355.*
11. *T. K. Ramesh Kumar Vs. State through Police Inspector, Bangalore (2015) 15 Supreme Court Cases 629*
12. *Gulabdatagir Ramjan Inamdar and Anr. Vs. State of Maharashtra*

13. P Satyanarayn Murthy Vs. Dist. Inspector of Police and Anr.2015 Cri. L. J. 4670

10. Learned APP submitted that the prosecution has established the case of demand of bribe and its acceptance. Thus, the offences are proved against the accused. There are no discrepancies in the evidence of sanctioning authority. In the evidence of PW-4 it has been clearly stated that he has perused all the documents and arrived at the conclusion that it is fit case to grant sanction. The application of mind by sanctioning authority, is also reflected in the sanction order. Merely, on account of the fact that the admission given by PW-4 that draft sanction order was submitted which is typed name without date, it cannot be presumed that the sanction was granted mechanically. The satisfaction of the authority, is apparent from his ocular evidence and sanction order. He further submitted that the evidence of complainant PW-1 clearly discloses the demand made by the accused for transferring the electricity meter in the name of his mother. The complaint is lodged by him to ACB. Pre-trap panchanama was proved. Pancha witness have supported prosecution case. There is no reason to doubt the version of pancha witness. The pancha was accompanying the complainant. He has specifically stated that the accused had accepted the amount. Anthracene powder was noticed on the hands of complainant,

accused and clothes of both the parties under the ultra-violet lamp. Amount was recovered from the pant pocket of accused. Thus, the prosecution has established that the accused have demanded the bribe amount and the bribe was accepted by him. The accused has not rebutted the presumption under Section 20 of the P.C. Act. The Trial Court has examined the evidence in the nature of oral and document and based its findings with the help of evidence by giving reasons, which do not warrant inference. Hence, appeal be dismissed, and the conviction be confirmed.

11. On scrutiny of the evidence on record, it is implicit that the complainant's father has expired in 1995. The electricity meter which was in the name of his father, was to be transferred in the name of his mother. Complainant (PW-1) approached the Sub-Division of MSEB to make enquiry about changing the electricity meter in the name of his mother. He was directed to the accused. Complainant met him on the next day. He was given forms. On the backside of electric supply form, rubber stamp was put by accused. Accused added some documents by writing and the complainant was asked to type Form W on stamp paper of Rs. 20 and obtain signature of mother, and come alongwith the documents. Perusing evidence of PW-1, it appears that till then there was no demand of bribe by the accused. Complainant approached accused on 1st December, 1997,

and handed over those papers to him. There was no demand of bribe. Accused told the complainant that on 3rd December, 1997, he has to visit his house to check points and wiring. The flat of complainant was having three bedrooms. Accused informed complainant that there are more points in the flat and there would be more expenses which are required to be calculated. Complainant was asked to come to office after 7 to 8 days so that he can be informed about the expenditure. There was no demand of bribe. He was not called on specific day. Complainant alleges that he went to office of accused on 9th December, 1997, and met him. Accused told him that there are more points and expenditure will be to the extent of Rs. 1,500/-. On questioning about the quantum of expenditure, the accused asked the complainant how much amount he can pay. Complainant told him that he would pay as per rule. Accused told him to pay firm quotation of Rs. 450/- in the office at Rasthapeth. Accused also told him that while returning he should bring Rs. 1,000/- for him, as he is doing entire work. It is difficult to believe that accused had accomplished completion of work of complainant, before acceptance of alleged bribe amount. Complainant has not mentioned the date on which he initially met the accused. He has referred to the subsequent date of his meeting accused i.e. 1st December, 1997 and 9th December, 1997. Complainant deposited the

amount of Rs. 450/- in Rasthapeth office. He presumed that unless amount of Rs. 1,000/- paid to Shri Ovhal (accused) as bribe, the meter will not be changed from the name of his father to name of his mother. Hence, he lodged the complaint with ACB on 10th December, 1997. The complainant being Advocate was definitely aware that depositing amount of Rs. 450/- vide firm quotation amounts to completion of his work relating to transfer of electric meter in name of his mother. He should be aware who is the authority to grant sanction for transfer of electric meter. It is pertinent to note that substantial work relating to transfer of meter was completed. Accused had handed over all the requisite forms to the complainant and directed him to deposit Rs. 450. It is also evident that alleged demand had cropped up only after the accused had allegedly visited the house of the complainant, and told him that there are more electrical points and expenditure would be more. Complainant did not disclose that he has two electricity meters. His request was to transfer the electricity meter from the name of his father to the name of his mother. Trap was arranged on 10th December, 1997. After depositing the amount of Rs. 450 with Rasthapeth office, he did not visit the office of MSEB and did not approach the accused to submit the documents. According to complainant, he was accompanied by pancha witness Ganesh Jagtap(PW-2). They met the accused, the

complainant gave form of firm quotation and showed the receipt. Accused told him to come out and lead them towards toilet on the northern side of his cabin and enquired about the amount. Complainant asked him about how much amount and the accused quoted Rs. 1,000/-. Accused refused to reduce the amount. On enquiry the complainant told the accused that the person accompanying is his client. He had stated that the accused had told him on the previous occasion to deposit the amount in Rasthapeth office and approach him with Rs. 1,000/-. In spite of that complainant had asked the accused, the quantum of amount. It is admitted that on the reverse side of exhibit 07, there is mark of rubber stamp and writing executed by the accused with the date. According to complainant, the forms were submitted after compliance to MSEB on 9th December, 1997. In his examination-in-chief, the complainant had stated that after depositing the amount of Rs. 450/- in Rasthapeth office, he had approached the office of ACB and lodged the complaint, apprehending that the accused would demand of Rs.1,000/- towards bribe. However, from the cross-examination it is disclosed that he had submitted forms after compliance to MSEB on 9th December, 1997. He had not mentioned the date of submission in the form. However, at the foot of exhibit 7 on the front page, there is date 24th November, 1997. It is apparent

that the complainant is suppressing vital facts for reasons best known to him. From the date reflected on the form, it appears that the complainant had earlier visited the office of MSEB. He also stated that he came to know about slab wise charges after his visit to MSEB office for enquiry. He was having two meters in the house. Total consumption of house was divided on two meters, as one was for power line and another for regular. Prior to 1997, the differentiation of power meter and ordinary meter was dis-continued. The fact that there were two electricity meters in his house, were suppressed by him, when he had approached the accused for transfer of electricity meter. The suggestion was given to him, in the cross-examination that when he visited the accused for enquiry, after perusing the bill, accused told him that there are two meters in the house and one should be discontinued as per MSEB rule. The suggestion was denied by him. Another suggestion put to the complainant is that the accused told him that after depositing Rs. 450/-. One meter will be discontinued, and the other will be transferred in the name of his mother. He also denied this suggestion. Complainant admitted that the date on which he visited office of MSEB, the date on which the accused visited his house and the date on which he submitted forms, are not noted anywhere. When the forms were given to the complainant, on the same day he was told by accused that Form W

should be on stamp paper of Rs.20. When he visited MSEB office of Rasthapeth for depositing Rs.450/-, he had not decided to approach Anti Corruption Bureau. He visited ACB office at 11.30 a.m.. He took decision to approach ACB office after depositing Rs. 450/-. He was not instructed by ACB office to visit accused and enquire whether the meter will be changed in the name of his mother. He was not instructed by ACB office that he should submit receipt of Rs.450/- to the accused. He did not submit the receipt of Rs.450/- and forms to ACB office while lodging complaint. According to him the same were shown to ACB officer. It is relevant to note that the complainant had presumed that the electricity meter will not be transferred unless bribe amount is paid to the accused, and hence he lodged the complaint. It was his second thought to lodge the complaint. There was reason for ACB to verify the demand made by the accused. Without verification trap was arranged. Complainant had suppressed the vital documents from ACB. Complainant did not enter the cabin of Ovhal (accused), he spoke through window of cabin. The conversation was going on through the window for minute or two. According to complainant, he walked about 15 spaces from the cabin with accused and pancha. They were at the spot for minute or two. These facts would show that the conversation was through the window for about two minutes. It is difficult to believe that PW-2

had heard the conversation between accused and the complainant and that the process of demand and acceptance was completed within span of two minutes.

12. PW-2, has allegedly acted as pancha witness. He has referred to pre-trap-panchanama and post-trap-panchanama. According to him, he went near the cabin of the accused with complainant. Complainant gave papers through window to the accused and entry for those papers was made in the registry by accused. Thereafter, accused allegedly came out of the cabin. They went through the passage and the accused made enquiry about the amount. Accused enquired about PW-2. He was described as client by the complainant. Accused asked him to go away from the spot. He walked two to three spaces. He saw that complainant had taken out the notes and offered them to the accused, who accepted the notes. Complainant and the accused went towards the office. They were followed by PW-2. Raiding party came there. Accused was apprehended. Complainant was asked to stay out of the cabin. Notes were recovered from the accused. The version of this witness is that he was asked to go away by the accused, and he left the place and after walking some distance the amount was offered and accepted by the accused. It is difficult to accept that PW-2 has witnessed the alleged demand and acceptance of amount. If PW-2

was asked to go away, it is difficult to believe that the accused would accept the amount, if he is at close distance. PW-2 has not stated as to how suddenly the raiding party had arrived after amount was accepted by the accused, and when they were at the door of the office. He did not say that the complainant signalled the raiding party after the acceptance of the amount. Instructions were given to the complainant to submit the documents to the accused by going towards office. Their signature was not obtained on those documents. These instructions are not appearing in the pre-trap-panchanama. Instructions were given to the complainant to talk with the accused about change of name. He was asked to say whether complainant making a request to the accused for change of name, and whether the accused is demanding money for change of name. From the narration of incident, examination-in-chief of PW-2 and from the evidence of PW-1, it does not appear that the complainant spoke to the accused about change of name, complainant is making request for change of name and the demand is made for change of name. PW-2 has deposed that documents were given to accused and one set of document was returned by accused to complainant. In his presence the complainant did not request the accused to change the name of MSEB meter. Thus from evidence of PW-2 it cannot be inferred that amount was accepted as bribe for performing duty of

change of name in electricity meter. The documents returned to the complainant, were in his hand till the end. The bathroom on the right side of the cabin, at the distance of 14 to 15 feet. The notes were taken out from pant pocket of the accused in the cabin of Assistant Engineer, and that was the first occasion for him to see the notes. It is not mentioned in the panchanama that other articles were taken out by another pancha, after washing hands the demand given by the complainant to the accused, were found at the trap-panchanama. Xerox copies were seized at the time of panchanama. Original documents were submitted by complainant to accused. Those documents were shown to PW-2 in ACB office at the time of pre-trap-panchanama. He read the panchanama before entering into witness box, and came to know what case is made out by police against the accused. Panchanama was read by only to know what evidence he should give in Court. He gave evidence as per panchanama. Thus reading of panchanama was not with permission of Court. Reading of panchanama was not to refresh memory. But to know what case is made out by police against the accused. It was read to know what evidence to be given in Court and out of fear that if deposition is not as per panchanama, there would be trouble in service. The evidence of this witness suffers from doubt. There are various discrepancies in his evidence.

13. PW-3 is the investigating officer, he referred to the complaint of PW-1 and arrangement made for conducting raid. He also deposed about recording pre-trap-panchanama and post-trap-panchanama. He was member of raiding party. Complainant and PW-2 went to office of MSEB. According to him they went to the office of MSEB at 1.05 p.m., complainant came out of the office and transmitted signal as instructed. The raiding party alongwith pancha No. 2, rushed to the office. PW-2 had stated that after acceptance of amount by accused, the raiding party had apprehended him at 3.00 p.m. Thus there is contradiction with regards to time of arrival of raiding party, after the acceptance of amount. In his cross-examination, he stated that PW-1 was at the office of ACB on 10th December, 1997 at 10.30 a.m.. He has not noted the timing. There are instructions in the manual to verify the demand independently by the concerned office before trap. It should be seen whether the person demanding bribe is having authority to do the work of the complainant before laying a trap. Written requisition was sent for calling pancha at 11.00 to 11.15 a.m.. Complaint was reduced into writing. He admitted that the manual provides taking photographs of the notes having anthracene powder introduced for ultra-violet lamp. Separate statements of pancha are not recorded. Sanction proposal was sent to S.P. The investigating officer prepare a

report about case and sent it to sanctioning authority through superiors. He further stated that the report is prepared to show that material is available against the accused. Proforma of sanction order is also sent to sanctioning authority alongwith report. Proforma in general and not for specific case. Copy of proforma is kept with investigating officer, which is in his office and that can be produced in Court. From the version of this witness, it is revealed that the instructions provided in the manual were not implemented. Verification of demand was not done. There was no reason to proceed with the raid without verification of the demand. Alongwith the report of the case, sanction proposal is forwarded and the proforma of sanction order is forwarded alongwith report.

14. PW-4 is sanctioning authority. The evidence of PW-3 and PW-4 read together, would disclose that sanction was granted mechanically. Section 19 contemplates rider that the finding, sentence or order passed by Special Judge shall be reversed or altered by a Court in appeal by a Special Court Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under Sub-Section (1) unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. In the present case there are serious discrepancies in evidence. The

cumulative effect would be setting aside conviction. PW-4 has deposed that accused was serving as clerk at Sub-division for transferring meter from one name to another. Prescribed format is required to be filled up and submitted to the concerned clerk of Sub-division who sent it to division for approval. The necessary orders are passed by Executive Engineer. This work is technical and formalities are to be completed. On perusal of the papers sent by ACB, he found that the concerned person has complied all formalities for transferring the meter. Thus, from his evidence, it can be gathered that Executive Engineer is the authority to pass necessary orders and not the accused. The required formalities for transferring meter were completed. It is not the case of prosecution that the accused had refused to forward the documents to the division for approval. The sanction was given on 16th May, 1998. He also deposed that ACB had sent draft of sanction order to him. There was blank space in draft for writing the name of sanctioning authority. There was no date on the draft. His name was typed in the blank space in the order. They did not put the date even below his signature on the said order. No date was mentioned on the sanction order. He stated that enclosure of forwarding letter contained outward number and date. The evidence clearly indicate that sanction was granted mechanically, without application of mind. He signed the draft of sanction order.

Draft was without date. Even below his signature, he did not put the date. Learned APP however submitted that in the evidence, PW-4 has categorically stated that after receiving papers he studied the papers and called concerned Executive Engineer and person from Estt. Department and discussed with them. He came to conclusion that it was a case for giving sanction. He also submitted that content of sanction order also indicate that the authority has applied mind. This submission cannot be accepted. The version that he called the concerned persons from the concerned department, and arrived at conclusion as stated above, is appearing in the evidence when he deposed before the Court. What is required to be seen, is that the sanction order was signed by him with application of mind. The admission of this witness in the cross-examination are sufficient to draw inference that on the basis of draft order, PW-4 has executed the sanction order. On perusal of sanction order it is apparent that the PW-4 has not applied his independent mind while granting sanction. PW-4 has also stated that the accused have no power either to grant or refuse to change the name in the meter. The concerned clerk has put the papers before Executive Engineer and after perusing those papers, Executive Engineer has passed order as allowed and signed on firm quotation. This is permission to change the name in the meter. After granting permission by Executive

Engineer, the Sub-engineer or Assistant Engineer used to sign on the firm quotation. After granting permission firm quotation is given to the customer. There is cash center at Rasthapeth for depositing fees. Only after depositing money, effect is given to the order of transferring the meter from one name to another. Thus, the work of transferring meter, was already accomplished. Effect to it was to be given after depositing money at Rasthapeth office. Appellant was not the authority to take the decision. The documents were already forwarded to the concerned authority and permission was granted. Complainant had deposited the money and then he went to office of ACB. Thus, the evidence of the complainant and the other witness does not inspire confidence. After depositing the money there was finality to the work of transferring the electricity meter. Hence, the apprehension of the complainant that the accused would not complete the work unless bribe is paid to him, is devoid of substance. PW-4 has categorically stated that the concerned clerk has put the papers before the Executive Engineer, which is the authority to direct approval of electricity meter and the said authority has allowed and signed on the firm quotation, granting permission to change the name in the meter.

15. Learned counsel for the appellant has placed reliance on several decisions. In *M. O. Shamsudhin Vs. State of Kerala (Supra)* it

was observed by the Supreme Court that the person offering a bribe to a public servant is in the nature of accomplice in the offence of accepting illegal gratification, but the nature of corroboration required in such case should not be subjected to the same rigorous tests, which are generally applied to a case of approver. It is pertinent to note that the accused in this case was convicted under Section 5(2) read with Section 161 IPC. Thereafter, new Act viz Prevention of Corruption Act, 1988 was brought into force and Section 161 to 165A IPC were repealed.

16. In the case of *P. Sirajuddin Vs. State of Madras (supra)*, it was observed that before a public servant is publicly charged with acts of dishonesty, which amount to serious misdemeanour or misconduct of the type alleged and the FIR lodged against him, there must be some suitable preliminary enquiry into allegations by a responsible officer. The enquiring Officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or perceive the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of said person by adopting measures, which are of doubtful validity or sanction. This Court in *Jitendra Kumar Jain Vs. CBI an Another (Supra)* observed that trap was laid without verification of demand of bribe, there were discrepancies in other evidence hence it was held that case against

accused not proved beyond reasonable doubt.

17. In *State of Punjab Vs. Madan Mohan Lal Verma (Supra)*, the Supreme Court has observed that the demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused.

18. In *V Venkata Subbarao Vs. State represented by Inspector of Police, A.P (Supra)*, it was observed that the presumption that money was accepted as motive or reward cannot be raised when demand by accused has not been proved.

19. In *State of Karnataka Vs. Ameerjan (Supra)*, it was held that there has to be application of mind by sanctioning authority. Sanction order must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. The material collected during the investigation, which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned, should be available before the sanction authority, before the sanction order is passed.

20. In *P. Satyanarayn Murthy Vs. Dist. Inspector of Police and Anr (Supra)*, Supreme Court held that the proof of demand of illegal gratification is gravamen of the offence under Section 7 and 13 (1) (d) (i) and (ii) and in absence thereof the charge would fail. Mere acceptance of any amount by way of illegal gratification or recovery dehors the proof of demand, ipso facto, would not be sufficient to bring home the charge. 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.

21. In *Suryabhan Vs. State of Maharashtra (Supra)*, it is observed that the allegation against the public servant was that the demand was made followed by acceptance of the amount as illegal

gratification for making entries in favour of complainant party. But there was evidence showing that mutation entry was already effected by the accused in the knowledge of complainant before making of alleged demand of bribe and there was no independent evidence about the demand of bribe by accused, it cannot be said that the accused have obtained amount by using corrupt or illegal means or by his abusing his position. In the case of ***Vasant Damodar Likhar Vs. State of Maharashtra and Anr.*** This Court had held that the demand of money for doing or not doing an official act is what lies at root of Section 7 of PC. Act. If no official work was pending with appellant, it is doubtful, if appellant therein would make any demand for payment of bribe and illogical if complainant would bow to such demand by agreeing to pay bribe on the date on which trap was made, actually there was no demand by accused and if that is case, it cannot be said that accused had voluntarily accepted something from complainant as a motive or reward for doing some official work.

22. In ***Sharad Namdeorao Shirbhate Vs. State of Maharashtra (Supra)***, and ***Nivrutti Sadekar Vs. State of Maharashtra (Supra)***, this Court has observed that there would indeed be nothing wrong in the witness refreshing his memory by reading his statement before deposing about the incident giving minute details, but that ought to be done before the Court and not outside the Court. In order to test

the veracity of witness, he would be required to recollect the incident out of his own memory and should he falter on some material aspect he could be allowed to refresh his memory with reference to the contemporaneous records of the incident created by police. It would not be permissible for such a witness to stealthily refresh his memory before entering the Court and deposing about the entire evidence giving minute details as if he was reeling them out from his memory.

23. In the case of *Nivrutti Sadekar Vs. State of Maharashtra (Supra)*, it is observed that, witness can be permitted to refresh his memory in the Court with permission of the Court and if the witness deposed after perusal of relevant papers available with APP, such evidence is not acceptable.

24. In *T. K. Ramesh Kumar Vs. State through Police Inspector, Bangalore (Supra)*, it was held that, if demand alleged to have been made by accused has not been established than the other evidence cannot be accepted for convicting the accused. The sanctioning authority is required to apply his mind very carefully while granting sanction to prosecute the accused.

25. In *Gulabdatagir Inamdar Vs. State of Maharashtra (Supra)*, it is held that evidence showing no demand emanated from accused, complainant himself offering money to accused. In consistent

evidence of witnesses as to place where bribe was handed over to accused. Accused cannot be convicted.

26. The discrepancies in evidence are discussed in the earlier paragraphs. Considering the nature of evidence and the infirmities therein, it cannot be said the accused is rightly convicted by the Trial Court. The evidence does not inspire confidence. The work for which the alleged demand of bribe was made was already completed. Accused had forwarded the papers to concerned authority. Accused was not the authority to take decision about transfer of electricity meter. The decision was already taken by the concerned authority. It is obvious that it was known to the complainant that the work relating to transfer of electricity meter is complete. Accused had tendered requisite forms to the complainant with directions to comply the procedural safeguards. There was no alleged demand by the accused, when the complainant had visited him for making enquiry. The demand was allegedly made after visit of the accused to the house of complainant. The defence of the accused that there were two electrical meters in the house of the complainant and that one meter was to be cancelled, and also that there were several electrical points in the flat of the complainant, were brought to the notice of the complainant and hence false complaint is filed seems plausible. Even after depositing amount of

Rs. 450/-, which amount to granting sanction to transfer the electricity meter, the complainant approached the ACB for filing complaint against the accused. Apparently, the documents in the nature of forms and payment of Rs. 450/- on account of firm quotation and the receipts were suppressed by the complainant. Complainant did not point out that he had two electricity meters in his flat. Thus, the evidence of complainant speaks volumes of doubt. The infirmity in evidence of PW-2 qua demand is referred to above. In the facts of this case non-verification of demand by ACB creates doubt about prosecution case. The evidence of PW-3 and 04 indicate that there was no proper application of mind while passing sanction order. The appellant cannot be convicted by invoking presumption under Section 20 of the Act. There are inherent weaknesses in the prosecution case. In **B. Jayaraj Vs. State of A.P. AIR 2014 SC(Supp) 1837**, it was held that mere possession and recovery of currency notes from accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1) (d) (i) and (ii) of the Act. In the absence of any proof of demand for illegal gratification, the case of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, is permitting mandate for an offence under Section 7 and 13 of the Act.

Qua Section 20 of the Act, which permits a presumption as envisaged therein, it is extendable only to an offence under Section 7 and not Section 13(1) (d) (i) (ii) of the Act. It is contingent as well as the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification could follow only if there is proof of demand. In absence of proof of demand such presumption under Section 20 would not arise. These principles are applicable in the present case. Considering the nature of evidence, presumption under Section 20 of P. C. Act cannot be invoked against appellant to convict him. In *Sujit Biswas Vs. State of Assam (2013) 12 SCC 406* it was held that, suspicion, however, grave, cannot take place of proof and the prosecution cannot afford to rest its case in the realm of “may be” true but has to upgrade it in the domain of “must be” true in order to steer clear of any possible surmise or conjecture. In view of these circumstances, the conviction of the accused/appellant, shall not sustain and he deserves to be acquitted.

27. Hence, I pass the following Order:

ORDER

- (I) Criminal Appeal No. 880 of 2004, is allowed;
- (ii) The Judgment and Order dated 30th June, 2004

passed by Special Judge, Pune in Special Case No. 18 of 1998, convicting the appellant for the offences under Sections 7, 13(1) (d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 sentencing him to imprisonment and payment of fine is set aside, and the appellant is acquitted;

(iii) Criminal Appeal No. 537 of 2019, is disposed of accordingly;

(iv) This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)