



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.2 OF 2014

Sanjay @ Sanjivaya Maloji Gharge
Aged 49 years, Occu. Service as
Junior Engineer, Military Engineering
Services, Cantonment Board,
Aurangabad.
R/o Flat No.13, Amba Cooperative
Society, Shikarewadi, Nashik Road,
Nashik.

...APPELLANT
(Orig. accused)

-VERSUS-

The Union of India.
Through CBI,
Anti Corruption Bureau,
Pune.

...RESPONDENT

...
Shri Nilesh S. Ghanekar, advocate for the appellant.
Shri Sachin S. Panale, Standing Counsel for the respondent/ UoI.
...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 18 August 2026

Pronounced on : 24 September 2026

JUDGMENT :-

1. The appellant/ accused is challenging the judgment and order dated 30.12.2013 passed by the learned Special Court, Aurangabad, in Special Case (AC) No.13/2011, thereby

convicting the appellant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. By the said judgment, the learned Special Court was pleased to convict the appellant under Section 7, thereby sentencing him to suffer rigorous imprisonment for 3 years with fine of Rs. 5,000/-, in default, rigorous imprisonment for 6 months, and under Section 13(1)(d) read with 13(2), rigorous imprisonment for 2 years with fine of Rs.2,000/-, in default to suffer rigorous imprisonment for 3 months. Both the sentences were directed to run concurrently.

2. The brief facts of the prosecution case are as under:-

(a) The appellant/ accused was working as Junior Engineer (E and M) at the office of Assistant Garrison Engineer (MES), Aurangabad. On 21.12.2010, he had demanded illegal gratification of Rs.25,000/- from the complainant (PW-2) Danish Mathew, a partner of M/s Sonu Enterprises, Aurangabad. The accused being public servant, the aforesaid demand of bribe was not a part of his official remuneration. Thus, the accused had abused his official position by making the above demand to the complainant for processing his bills of contract having total value

of Rs.4,80,000/-. From the bribe amount of Rs. 25,000/-, the accused had demanded an amount of Rs.10,000/- from the complainant immediately and had accepted the same as a partial fulfillment of demand. When the accused had made demand of Rs.25,000/- from the complainant, it was agreed that Rs.10,000/- was to be paid immediately and the remaining amount of Rs.15,000/- was to be paid within period of 2 to 3 days.

(b) As the complainant (PW-2) Danish Mathew was not willing to pay the bribe amount, he had submitted written complaint against the appellant/ accused to the Superintendent of Police / CBI (ACB, Pune) on 21.12.2010 for taking legal action.

(c) Accordingly, a trap was arranged when the accused had asked Danish Matthew to meet him at the aforesaid purpose. On 21.12.2010, the ACB Pune, acting through IO, had laid a trap as narrated in pre-trap panchanama. When the complainant went to the office/ cabin of the appellant/ accused on 21.12.2010 to deliver the bribe amount to him, the accused had accepted the bribe amount of Rs.10,000/- after making demand of the same from the complainant and kept it in the small steel cupboard in his cabin and locked it. Thereafter, the accused came out of his

cabin and locked it from the outside and went away on his motorcycle asking the complainant to wait outside.

(d) The raiding party CBI, Pune had made its efforts to arrest the accused there, but in spite of instructions from his senior officers, the appellant/ accused did not turn up in his office and could not be arrested. The investigating officer in presence of PW-7 Ashok Kumar Kashyap, Assistant Garrison Engineer, MES, Aurangabad and independent witness, after breaking open the lock of his cabin as well as lock of the small steel cupboard in his cabin, had recovered the bribe amount of Rs. 10,000/- from the steel cupboard of the cabin of the accused, which was in his exclusive possession. Thereafter, the said amount of Rs. 10,000/- came to be seized in presence of the panch witness under the seizure panchanama on record.

(e) The investigating officer completed the procedure of pre-trap and post-trap panchanama and the investigation in this case after recording the statements of the witnesses. Accordingly, necessary permission was obtained from Chief Engineer, Southern Command, Pune, being superior officer and appointing authority of the appellant, for launching the prosecution against

the appellant accused. Accordingly, on 16.06.2011, the charge sheet came to be filed by PW-8 Alok Sinha, PI, CBI (ACB, Pune) against the appellant accused.

(f) The learned Special Court, vide Exhibit 11, framed the charge against the appellant for the offences punishable under Section 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act on the ground that on or about 21.12.2010 at about 11:45 hours, the appellant demanded and accepted Rs.10,000/- as illegal gratification other than legal remuneration from the complainant, and further that the bribe/tainted amount was recovered from his locked cupboard. The appellant pleaded not guilty and claimed to be tried.

(g) The prosecution, in order to prove the case against the appellant accused, has examined nine witnesses. PW-1 Nursing Prasad Pardi, who is the sanctioning authority, at Exhibit 14. PW-2 Danish Matthew is the complainant at Exhibit 19. PW-3 Vishwanath Ganvir, who is the panch witness, at Exhibit 34. PW-4 Susmit Priyadarshi is a Garrison Engineer, who was examined at Exhibit 54. PW-5 Arunkumar Deshpande who was witness to voice identification, was examined at exhibit 73. PW-6

Dattu Gaike, who was driver and who had telephonic conversation on his mobile with the appellant, was examined at Exhibit 78. PW-7 Ashokkumar Kashyap, who is the superior office of the appellant, was examined at Exhibit 79. PW-8 Alok Sinha, Police Inspector, EOW, Calcutta, was examined at Exhibit 96. PW-9 Nagesh Parab, Police Inspector, ACB, Mumbai, was examined at Exhibit 102.

(h) After recording the evidence and hearing the learned counsel for the parties, the learned Special Court was pleased to convict the appellant, thereby holding the appellant guilty of the aforesaid offences. Hence the appellant has preferred the instant criminal appeal.

3. Shri Ghanekar, the learned advocate for the appellant, submitted that as per the complainant (PW-2), after the demand of alleged illegal gratification by the appellant, the complaint was made by the complainant to the CBI on 21.12.2010, which was also recorded by CBI. However, in the statement made in paragraph 4 of his deposition at Exhibit 19, it is stated that on 20.12.2010, the complainant has filed the complaint and which was recorded by the CBI. However, the

said complaint which was allegedly made by the complainant on 20.12.2010 is not produced on record. Therefore, the said statement is not corroborated by the complainant. The said complaint is suppressed, and therefore, adverse inference can be drawn against the prosecution. According to Shri Ghanekar, if the complaint was recorded on 20.12.2010, then it should have been treated as FIR on 20.12.2010 itself. However, the said complaint is suppressed, therefore, the complaint dated 21.12.2010 cannot be treated as the first complaint.

4. Shri Ghanekar further submitted that there is no demand verification panchanama carried out by the prosecution, and they directly proceeded for laying a trap against the appellant. According to him, it is well-settled principle that if there is no pre-trap panchanama, then it raises serious doubt against the prosecution as regards involvement of the accused in the instant crime.

5. It was further pointed out to this Court that during the trap, the complainant was directed to switch on the voice recorder. Such voice recorder was directed to be kept with the complainant whenever he will go to meet the accused. When the

complainant was specifically instructed, he claims to have forgotten to switch on the recorder when he met the accused. The recorder is given in the custody of complainant, after putting it in switch-on condition, however, it was found to be switched off. Thus, it is switched off only by the trap laying officer or the member of raiding party. There is only recording of the mobile communication in between the complainant and the appellant, which is at Exhibit 40, which is also contrary to the substantive evidence of the complainant. There is no reference of any amount, there is also no demand made by the appellant. Shri Ghanekar has taken this Court to the transcript of the said mobile recording, which is at Exhibit 40. After perusal of the said transcript, there is only talks regarding where the appellant is and when they are going to meet, and from where they are talking.

6. It is the further submission of Shri Ghanekar that as per the complaint, the complainant has mentioned that the RAR bill was returned to him and the appellant was going to accept it only after the complainant pays him Rs.10,000/-. The date of submitting RAR bill is alleged to be 10.12.2010. However, there is no reference of the first date when the bribe is demanded and

the RAR bills were not accepted. The second date of demand is alleged to be 18.12.2010. Thus, the substantive evidence of the complainant does not corroborate with the complaint at Exhibit 20. The appellant has not accepted the RAR bills, then those should have been with the complainant. However, the prosecution is not coming with the case that the complainant was in possession of RAR bills. In the cross-examination, the date of second RAR bill is stated to be 15.12.2010. On the one hand, the complainant is claiming that the appellant refused to accept RAR bill, and at the same time, in cross-examination he stated that the appellant accepted the same and assesses the second RAR bill of Rs.50,000/-. Thus, the prosecution is not coming with clear case as regards whether, the RAR bills were accepted or acted upon by the appellant.

7. Another ground which Shri Ghanekar has raised in the instant case is that the complainant had asked the panch not to enter the cabin along with him. However, there is no such evidence of the panch on the point of either demand or acceptance. The complainant claims to have forgotten to record conversations, and there is no corroboration even by way of any

transcript. Thus, the evidence is not at all clinching and trustworthy about demand and acceptance. He further submitted that the shadow panch PW-3 Vishwanath Ganvir is of no use to the prosecution as he admittedly not witnessed the appellant demanding or accepting the bribe.

8. Shri Ghanekar pointed out that the evidence of PW-4 (Susmit Priyadarshi), who was serving as a garrison engineer, came to be recorded on the point that the CBI team tried to chase the appellant to find out him, however, he could not be apprehended. The appellant has secured anticipatory bail. There is no evidence of any powder to his hand. PW-4 in his cross-examination stated that the copy of second RAR bill was in his office at Ahmednagar. Therefore, the said statement falsifies the complaint at Exhibit 20, and this admission clearly shows that the RAR bills were forwarded to the office at Ahmednagar. Shri Ghanekar further submitted that similarly, the evidence of PW-4 (Susmit Priyadarshi) and PW-7 (Ashokkumar Kashyap) goes to show that no work was pending with the appellant and that the RAR bills were processed and job of the appellant was over. Thus, their testimony is not at all useful to the prosecution. PW-7

Ashokkumar Kashyap has admitted that after the receipt of second RAR bill, the appellant has visited the site and he restricted 20% of RAR amount. The evidence of PW-5 Aruna Deshpande, regarding the voice identification, shows that there is nothing incriminating, which would help the prosecution. It has come in the evidence of PW-5 that in respect of the RAR bill which was received in the office and entry No.52/1134 dated 16.12.2010 was made in the voucher register by her. On the basis of her admission and also the admission given by PW-7, it can be safely observed that there was no work pending with the appellant and already the RAR bill was processed and job of the appellant was over. Finally, the evidence of trap laying officer PW-9, Nagesh Parab, is important. In evidence of PW-9, he has stated that he has not verified whether the second RAR bill was with the complainant. He admitted that he has not carried out the demand verification. Thus, his evidence falls short of making out a case of demand and acceptance of bribe against the appellant.

9. Mr. Ghanekar, therefore, submitted that in view of the aforesaid submissions, the appellant cannot be held guilty of the said offences. He, therefore, prayed that the appellant

deserves to be acquitted by allowing the instant appeal.

10. *Per contra*, the learned Standing Counsel Shri Panale appearing for the respondent Union of India/ CBI, vehemently opposed the instant appeal. He submitted that the prosecution has properly established the guilt of the appellant before the court, and as such, the learned Special Judge has committed no mistake by convicting the appellant for the said offences. The evidence brought on record by the prosecution is trustworthy and it is clearly found that the appellant, by misusing his position, has demanded the bribe amount from the complainant for performing his official duty. The evidence on record clearly proves that the appellant has demanded the bribe from the complainant for sanctioning the amount of second RAR bill. The amount has been recovered from the cupboard of the appellant, and the said cupboard is also in the cabin of the appellant. As the appellant could not be apprehended, therefore, with the assistance of the superior officers of the department of the appellant, the cabin as well as the cupboard came to be broken, and the tainted amount of bribe was seized in presence of the panch witnesses, police officers and superior officers. Thus, the prosecution has clearly

proved that the appellant has committed the aforesaid offences and therefore, he is rightly convicted.

11. Shri Panale further submitted that all the witnesses have corroborated and supported the prosecution, and their evidence is trustworthy. Shri Panale heavily relies upon Section 20 of the Prevention of Corruption Act, which deals with presumption where the public servant accepts gratification other than legal remuneration. According to him, drawing legal presumption under Section 20 of the Act is that during trial it should be proved that the accused had accepted or agreed to accept such gratification. The said section does not say that the said condition should be satisfied through direct evidence. It's only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Shri Panale, therefore, submitted that the prosecution has fully established that the appellant has received the bribe amount from the complainant, and after putting the said amount in his cabin in locked cupboard, he went outside the office, however, the same has been seized from the said cupboard in presence of the superior officers. Therefore, the prosecution has proved its case beyond reasonable

doubt and therefore, the instant criminal appeal be dismissed, by maintaining the conviction of the appellant.

12. After hearing the learned counsel for the parties and going through the evidence of the matter, it is clear that the basic requirement of demand is required to be proved beyond all reasonable doubt. In order to prove the charges for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, the proof of demand of illegal gratification is absolutely necessary as it is *sine qua non* of the offence. In order to establish the guilt of the accused public servant under Sections 7, 13(1)(d) and 13(2), the prosecution has to first prove a demand of illegal gratification and the subsequent acceptance as a matter of fact. The fact in issue can be proved by direct evidence which can be in the nature of oral or documentary evidence. The facts in issue, namely the proof of demand and acceptance of illegal gratification, can also be proved by circumstantial evidence in absence of direct oral or documentary evidence.

13. In order to prove the fact in issue, namely demand and acceptance of illegal gratification by public servant, if there

is an offer to pay by a bribe-giver without there being any demand from public servant and latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7. In such case, there need not be prior demand by the public servant. On the other hand, if the public servant makes demand and bribe-giver accepts the demand and tenders the demanded gratification, which in turn is received by the public servant, it is the case of obtainment. In the case of such obtainment, the prior demand for illegal gratification emanates from public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act. Thus, the prosecution is required to establish the foundational facts of demand and acceptance/obtainment of illegal gratification by the accused. Mere recovery of the tainted amount, in the absence of proof of the foundational facts, cannot by itself establish the guilt of the accused. (See: ***Neeraj Dutta v. State (Govt. of NCT of Delhi)*, (2023) 4 SCC 731**).

14. In the aforesaid background and the settled principles enumerated in various judgments delivered by the Hon'ble Supreme Court, it is well settled that in the matter of trap cases, particularly when the initial part or the genesis of that

story of demand and negotiation is found to be untrustworthy, then the entire prosecution case must fail for the simple reason that the testimony of the complainant by itself can never be accepted. It is also well settled that the conviction of the accused cannot be founded on the basis of inference only, but it should be proved against the accused beyond reasonable doubt, either by direct evidence or even by circumstantial evidence. If such link of chain of events is established pointing towards the guilt of accused, then the conviction is sustainable. In the present case, the testimony of the complainant regarding the genesis of the alleged demand and negotiation does not inspire confidence, particularly in view of the material inconsistencies and omissions noticed hereinabove. His testimony also does not receive satisfactory corroboration from the panch witness, the voice recording or the other evidence on record.

15. In this case, it has been pointed out by the learned counsel for the appellant that when the trap was being laid on the appellant/ accused, at that time the panch witness, Ganvir, was standing outside the cabin of the accused, and as such, there was nobody in the chamber when the complainant was asked to pay

the bribe amount and when he has paid the amount to the appellant. On this aspect, it is useful to refer to the evidence of the complainant about when the complainant has asked the panch witness to wait outside the cabin. Perusal of the evidence of the complainant (PW-2) reveals that the complainant himself went inside the cabin and had some conversation with the accused. The fact that the complainant asked the panch witness to remain outside the cabin assumes significance because the alleged demand and acceptance took place inside the cabin and, consequently, there is no independent ocular corroboration from the panch witness regarding these material events. This circumstance, coupled with the other inconsistencies and omissions in the evidence, creates reasonable doubt regarding the prosecution version of demand and acceptance.

16. Looking to the evidence which is sought to be relied upon by the prosecution, particularly about the demand as well as acceptance and recovery, it can be safely said that the same is not sufficient to hold the appellant guilty for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. Even otherwise, the prosecution has not seized,

apart from the tainted notes, other items, which might have been came in contact with the hands of the appellant when he after accepting the amount, went outside his cabin. However, such items like lock, keys and cupboard, are not seized. Thus, other materials have not been seized by the prosecution so as to prove its case beyond all reasonable doubt and this fact goes to create doubt as regards the case of the prosecution.

17. The case that the amount was demanded by the appellant is also not proved by conducting pre-trap panchanama by the prosecution. In the present case, admittedly, no demand verification was carried out before laying the trap. This circumstance, by itself, may not be sufficient to discard the prosecution case, however, it assumes significance in the facts of the present case, particularly when the alleged demand is not corroborated by the voice recording, the panch witness had not witnessed the alleged demand or acceptance, and the testimony of the complainant suffers from the inconsistencies and omissions noticed hereinabove. As there is no pre-trap panchanama, the prosecution tries to rely upon the mobile conversation between the appellant as well as the complainant.

The said conversation of which transcription is made available, if perused, it nowhere mentions that there was any demand from the appellant and the complainant has agreed to pay the said demand or that the appellant has agreed to accept the said demand. The voice recording relied upon by the prosecution does not contain any reference to demand of illegal gratification. Thus, the said recording does not provide corroboration to the complainant's version regarding the alleged demand.

18. The submission advanced by the learned Special Counsel for the CBI, based on Section 20 of the Prevention of Corruption Act, cannot advance the case of the prosecution unless the prosecution first establishes the foundational facts necessary for invoking the statutory presumption. In the present case, for the reasons discussed hereinabove, the prosecution has failed to prove beyond reasonable doubt that the appellant demanded and accepted illegal gratification. Therefore, the question of drawing the statutory presumption under Section 20 does not arise.

19. In absence of proving the very basic issues as regards demand, acceptance, and recovery, the prosecution

cannot be said to have proved its case beyond all reasonable doubt. Consequently, the conviction of the appellant does not sustain and the appellant needs to be acquitted. Hence, the following order is passed:-

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order dated 30.12.2013 passed by the learned Special Judge, Aurangabad, in Special Case (AC) No.13/2011, convicting and sentencing the appellant for the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, is quashed and set aside.
- (iii) The appellant/accused is acquitted of the offences with which he was charged.
- (iv) The appellant is on bail. His bail bond stands cancelled and the surety, if any, stands discharged.
- (v) The fine amount, if deposited, be refunded to the appellant.
- (vi) The record and proceedings be sent back to the concerned Court.