



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.42 OF 2005

Suresh s/o Ramprasad Tiwari,
Age : 39 years, Occ : Service,
R/o Bori, Tq.Jintur, Dist. Parbhani.

...APPELLANT/Accused

-VERSUS-

The State of Maharashtra.

...RESPONDENT

...

Shri Rajendrraa S. Deshmukkh, Senior Advocate a/w Ms. Shital
S. Karle, advocate i/by Shri Devang R. Deshmukh, advocate for
the appellant/ accused.

Shri A.A.A. Khan, APP for the respondents/ State.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 02 September 2026

Pronounced on : 01 October 2026

JUDGMENT :-

1. The appellant is challenging the impugned judgment and order dated 28.12.2004 passed by the learned Special Judge, Parbhani, in Special Case No. 1 of 2003, whereby the appellant/ accused came to be convicted under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default, rigorous imprisonment for three months; and also under

Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for three months. Both the sentences are directed to run concurrently.

2. In short, the prosecution story is as under:-

(a) The complainant/ PW-2 Devidas Budhwant had purchased jeep bearing registration No. MH-22/4381 in the name of his son Subhash on 09.08.2002 and had obtained permit for carrying passengers. On 09.09.2002, PW-2 along with his sons Subhash and Raju and one Sadashiv had gone to Nanded for servicing of the jeep. After completion of the servicing, they left Nanded at about 8:00 p.m. and reached Parbhani at about 9:30 p.m. After a short halt, they proceeded towards Jamb. Two passengers also boarded the jeep near the S.T. stand at Parbhani.

(b) At about 10:30 p.m., when they reached near Bori bus stand, the appellant/ accused, who was then working as L.S.T. Hawaldar, stopped the jeep and caught hold of the neck of Subhash and took him to the police station. On inquiry, the appellant informed PW-2/ complainant that Subhash had not paid

the 'hafta' and, therefore, he had apprehended him. The appellant prepared a report mentioning various sections and seized the jeep. The appellant informed PW-2 that the report would be sent to the Court on the following day at about 10:00 a.m. The appellant demanded Rs.500/- for releasing the jeep. As PW-2/complainant was not carrying the said amount, he paid Rs.200/- to the appellant. The jeep was thereafter released, but its stepni (spare wheel) was retained by the appellant at the police station. The appellant asked PW-2 to meet him on the following day.

(c) On 10.09.2002, PW-2 again approached the appellant, who informed him that more fine would be payable in the Court, but that he would issue the papers in such a manner that the Court would impose fine of only Rs.100/-. The appellant also took back the receipt issued on 09.09.2002. When PW-2 requested return of the stepni, the appellant demanded Rs.500/- and stated that the stepni would be returned and papers for imposition of a lesser fine would be issued only upon payment. The appellant further informed PW-2 that an amount of Rs.300/- would be required to be paid to him for the said purpose and that PW-2 would have to attend the Court.

(d) Therefore, on 12.09.2002, PW-2/ complainant approached the Anti-Corruption Bureau and his complaint came to be recorded by PW-4 DySP Ramesh Khakale. Panch witnesses were called from Government offices and were introduced to him. The complaint was verified in their presence. The complainant PW-2 and one of the panch witnesses were thereafter instructed to meet the appellant and ascertain when the demanded amount was to be paid.

(e) They accordingly visited the appellant's office, but the appellant was not present. On subsequent attempts also, the appellant could not be contacted. On 16.09.2002 at about 9:00 a.m., PW-2 met the appellant, who demanded Rs.300/- and asked him to take the stepni with him. PW-2 thereafter again approached the Anti-Corruption Bureau. Necessary instructions were given to the complainant and the panch witnesses and a demonstration regarding the use of anthracene powder was conducted. A trap was accordingly arranged. At about 12:00 noon, the complainant and panch No.1 entered the police station. After the complainant came out and gave the predetermined signal, the raiding party, along with panch No.2, entered the

police station. On inquiry, panch No.1 informed the raiding party that the appellant had demanded and accepted Rs.300/- from the complainant.

(f) The raiding party apprehended the appellant. The tainted currency notes were recovered from an iron box kept in the police station. The hands of the appellant and the currency notes were examined under the light of the appropriate device, and the numbers of the currency notes were tallied with those noted in the pre-trap panchanama. The incriminating material and relevant documents were seized and, after completion of the necessary formalities, the FIR bearing Crime No.3014/2002 came to be registered against the appellant with the Bori Police Station.

(g) After completion of investigation, the charge sheet was filed on 05.02.2003. The charge at Exhibit 6 was framed against the appellant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The prosecution examined four witnesses, namely, PW-1 Sunil Ramanand, the sanctioning authority at Exhibit 11, PW-2 Devidas Budhwant, the complainant, PW-3

Sapna Sadba Marawar, shadow panch at Exhibit 18 and PW-4 Ramesh Khakale, the Investigating Officer, at Exhibit 33.

(h) Upon appreciation of the evidence on record and after hearing the learned counsel for the parties, the learned Special Court passed the impugned judgment and order, thereby convicting and sentencing the appellant as stated herein above. Hence, the present appeal.

3. The learned senior counsel appearing for the appellant submitted that the learned trial Court did not consider the evidence in proper perspective. He submitted that in order to prove the offences under Sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, the prosecution is required to prove the demand of bribe as well as its acceptance, being *sine qua non* for establishing the offence under Section 7 of the PC Act. He further submitted that the proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1)(d) of the Act and in absence thereof, the charge, therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de-hors the proof of demand, *ipso facto*, would not be sufficient to bring home the

charge under these two sections of the Act. Thus, the prosecution having failed to prove the demand of illegal gratification, therefore, the appellant cannot be convicted under Section 7 or 13 of the Act. In short, he submitted that mere recovery of money is not sufficient to record conviction unless there is evidence that bribe was demanded or money was paid voluntarily as bribe.

4. The learned senior counsel further argued that the evidence of the PW-2 complainant is not at all reliable. He has been declared hostile by the trial Court. However, the said witness had stated that the appellant had asked for relevant documents of the jeep, and the said documents were not with the complainant or his son. He admitted that the concerned PSI of the police station had directed to deposit the fine amount of Rs.500/- and as per the said PSI's direction, the appellant seized the stepni of complainant's vehicle. He also admitted that he was having grudge against the police and he was hurt due to the harassment done by the concerned police. He had stated that the appellant did not demand Rs.300/- as bribe for returning the stepni. Therefore, the said witness came to be declared hostile.

5. Further, the learned senior counsel submitted that the

evidence of the PW-3 Sadba Marawar, who came to be examined by the prosecution as shadow panch, is also not convincing. The learned senior counsel invited the attention of this Court to the testimony of the said witness, wherein it has been deposed that the said witness approached the ACB office on 11.09.2002, whereas the complaint was lodged on 12.09.2002. The demand verification panchanama was not done on 12.09.2002 as the appellant was on leave on that day. Thereafter, the said witness has also deposed that the complainant paid Rs.300/- to the appellant and told him that he would deposit fine in the Court. He also admitted that he received the confidential letter on 11.09.2002 itself. According to the learned senior counsel, it is established from the evidence of the said witness that the said panch witness is a regular habitual panch witness. He had visited the ACB office on various dates. Therefore, on the account of demand, the prosecution case is not supported by the shadow witness.

6. Another attack of the learned senior counsel is on the sanction order. According to him, the evidence of PW-1, who came to be examined as sanctioning authority, cannot be accepted

so as to come to the conclusion that there is a valid sanction. According to him, PW-1 Sunil Ramanand was the Superintendent of Police at the relevant time. Though the said witness has deposed that he has perused panchanamas and statements of witnesses and thereafter, he formed an opinion while giving sanction. However, the said witness has admitted that he has overlooked explanation or the say of the appellant/ accused given to ACB office. He has also admitted that he did not specifically mention after perusal of which document he accorded sanction. It is further pointed out by the learned senior counsel that the said witness has admitted that he did not see the appointment order of the appellant and further that he is subordinate to the DIG of Police. The said witness also admitted that he had issued the circular dated 04.07.2002 for strict recovery of the fine amounts from the vehicles, and further that the non-cognizable case was filed under the Motor Vehicle Act against the son of PW-2. He had received the draft sanction order. It is also admitted by this witness that he did not peruse daily duty distribution register and station diary of the concerned police station while according sanction. Thus, the learned senior counsel heavily argued that the sanction order cannot be issued in such a manner when the

sanctioning authority itself did not peruse all the documents placed before him and he cannot pick and choose only documents which have been forwarded to him by the prosecution and not the written submissions of the accused. He has to act impartially and he has to apply his independent mind, and accordingly, he has to arrive at a conclusion, and then after explaining the reasons, he has to accord sanction to the prosecution.

7. The learned senior counsel, therefore, submitted that the appellant, on the contrary, was appointed by the DIG. However, the appointment order of the appellant is not on record, which is neither placed by the prosecution nor even by the accused. The complainant was having grudge against the appellant as previously the cases under the Motor Vehicles Act were registered against the son of the complainant. Moreover, the sanction order came to be issued on the basis of draft sanction order, which is admitted by PW-1.

8. The learned senior counsel strenuously pointed out the evidence of PW-1/ sanctioning authority, who stated in his cross-examination that he had not mentioned grounds of

satisfaction specifically in the sanction order Exhibit 11 in order to avoid lengthiness and bulkiness of the sanction order. He had also admitted that the recitals of the draft sanction order received by him are the same verbatim as per the sanction order issued by him at Exhibit 11.

9. By making above submissions, the learned senior counsel has prayed for allowing this appeal on the ground of invalid demand and invalid sanction order. In support of above submissions, the learned senior counsel for the appellant has relied upon the following judgments:-

(a) Central Bureau of Investigation vs. Ashok Kumar Aggarwal, (2014) 14 SCC 295.

(b) Uttam Ganpat Ajgekar vs. State of Maharashtra, 2021 (2) Bom. C.R. (Cri.) 120 : 2021 (5) Mh.L.J. (Cri.) 433.

(c) Mir Mustafa Ali Hasmi vs. State of Andhra Pradesh, (2024) 10 SCC 489.

10. On the contrary, the learned APP appearing for the

respondent/ State has strongly opposed this appeal. According to learned APP, the statements of witnesses proved the guilt of the appellant beyond all reasonable doubt and, therefore, their evidence cannot be discarded. Learned APP has strenuously supported the impugned judgment and order passed by learned Special Judge. According to him, learned Special Judge after analyzing evidence brought on record in proper perspective, has rightly delivered the impugned judgment and order and has rightly convicted the appellant.

11. The learned APP has relied upon the judgment of the Hon'ble Supreme Court in *C.S. Krishnamurty vs. State of Karnataka, (2005) 4 SCC 81*, to submit that the sanction in this case is properly accorded by the sanctioning authority PW-1 and therefore, the sanction order is valid in this case. There is no scope for interference in the impugned judgment. He, therefore, prayed for dismissal of the present appeal.

12. After hearing the submissions of learned advocates and with their assistance, after going through the evidence on record carefully, it is apparent that the witnesses have not supported each other on the point of demand. PW-2/complainant,

who is the material witness on the point of demand, has not supported the prosecution case and has specifically stated that the appellant did not demand Rs.300/- as bribe for returning the stepni. He has, therefore, been declared hostile. The evidence of PW-3, who is examined as a shadow panch, also does not inspire confidence so as to establish the demand of illegal gratification by the appellant. The evidence of PW-3, as referred to hereinabove, also creates doubt as to the manner in which the demand was verified. In such circumstances, the evidence of the complainant and the shadow panch, when considered together, does not establish the demand of illegal gratification beyond reasonable doubt. The Constitution Bench of the Hon'ble Supreme Court in *Neeraj Dutta v. State (Government of NCT of Delhi)*, reported in (2023) 4 SCC 731, has reiterated that demand and acceptance of illegal gratification are required to be proved by the prosecution and that mere acceptance or recovery of the amount, without anything more, would not by itself establish the offence. The prosecution, therefore, having failed to prove the demand, which is the gravamen of the offence, the conviction of the appellant cannot be sustained merely on the basis of alleged recovery of the amount.

13. It is well settled that the statutory presumption under Section 20 of the Prevention of Corruption Act can arise only upon proof of the two basic facts in issue, namely, demand and acceptance of illegal gratification in case under Section 7 of the Act. In the present case, as discussed hereinabove, the prosecution has failed to establish the foundational facts necessary for drawing such presumption. Consequently, the statutory presumption under Section 20 cannot be invoked. The prosecution has failed to establish the demand of illegal gratification by the appellant beyond reasonable doubt. It is well settled that mere recovery of currency notes, in the absence of proof of demand and acceptance of illegal gratification, is insufficient to sustain conviction.

14. Another aspect which needs to be considered in this case is the sanction order. After considering the evidence of PW-1/Sanctioning Authority, it is evident that he has clearly and unequivocally admitted that he had received a draft sanction order and that the sanction order issued by him at Exhibit 11 is having the same wording. He has also admitted that he did not specifically mention after perusal of which documents he

accorded sanction and that he had not considered the explanation given by the appellant. It has further come on record that the sanctioning authority had not perused the daily duty distribution register and station diary of the concerned police station while according sanction. These admissions assume significance in the facts of the present case, particularly when the appellant had given his explanation to the ACB. The sanctioning authority is required to consider the material placed before him and to arrive at his own satisfaction as to whether the facts and circumstances justify prosecution of the public servant. In the present case, the admitted fact that the sanction order is verbatim the same as the draft sanction order, coupled with the fact that the explanation of the appellant was not considered, clearly shows that there was no independent application of mind while according sanction. Therefore, the learned senior counsel is right in attacking the sanction order and the sanction order cannot be said to be a valid sanction order.

15. In catena of judgments, the Hon'ble Supreme Court as well as this Court in numerous cases have held that when the sanction order is not issued after perusing the relevant documents

and material placed before the sanctioning authority, and when the sanctioning authority did not apply its own independent mind, and it is issued in a casual manner on the basis of draft of the sanction order, then in such cases, such sanction order cannot be considered to be a valid sanction order, and accordingly, had acquitted the accused persons. On this ground of sanction also, which is not valid, the appeal of the appellant is required to be allowed for the reason that the prosecution has failed to establish that there is a valid sanction against the appellant to prosecute him for the offences charged under the provisions of Prevention of Corruption Act.

16. The learned APP has relied upon the judgment of the Hon'ble Supreme Court in *C.S. Krishnamurthy vs. State of Karnataka*, reported in (2005) 4 SCC 81. However, the facts of the said case are clearly distinguishable from the facts of the present case. In the said case, the sanctioning authority had deposed that he had perused the report submitted by the Superintendent of Police, had discussed the matter with the vigilance cell and had thereafter accorded sanction. The Hon'ble Supreme Court, on consideration of the sanction order as well as

the evidence of the sanctioning authority, found that there was due application of mind. In the present case, on the contrary, PW-1/ sanctioning authority has admitted that the sanction order issued by him is verbatim the same as the draft sanction order received by him and that he had not considered the explanation of the appellant. He has also admitted that he had not perused the daily duty distribution register and station diary of the concerned police station. Thus, the factual position in the present case is materially different from that case. Therefore, the said judgment relied upon by the learned APP would not assist the prosecution in the facts of the present case.

17. In view of the above discussion, the prosecution has failed to establish the demand of illegal gratification by the appellant beyond reasonable doubt. The prosecution has also failed to establish that the sanctioning authority had applied its independent mind while according sanction for prosecution of the appellant. Thus, on both the material aspects, namely, demand of illegal gratification and validity of sanction, the prosecution case suffers from serious infirmity. In such circumstances, the conviction of the appellant under Sections 7

and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, cannot be sustained. The learned Special Court has, therefore, committed an error in convicting the appellant. The impugned judgment and order, therefore, deserves to be quashed and set aside. The appeal deserves to be allowed. Hence, the following order:-

ORDER

- (a) The Criminal Appeal is allowed.
- (b) The impugned judgment and order dated 28.12.2004 passed by the learned Special Judge, Parbhani, in Special Case No.1 of 2003, convicting and sentencing the appellant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, is hereby quashed and set aside.
- (c) The appellant/accused is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.
- (d) The fine amount, if deposited by the appellant be refunded to him.
- (e) The appellant is on bail. His bail bond stands cancelled and the surety stands discharged.
- (f) The record and proceedings be sent back to the concerned court.