



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 65 OF 2015

The State of Maharashtra,
Through Police Station Officer, Shivoor,
Tq.Vaijapur, District Aurangabad. Appellant

Versus

Asaram s/o Fakirrao Agale
PHC B.No.268, Police Station Shivoor,
Tq.Vaijapur, District Aurangabad. Respondent
(Ori. Accused)

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Shri G.O.Wattamwar, APP for Appellant.
Shri Rajendrraa Deshmukh a/w. Shri Hashmi Ubaid S. i/b.
Shri Devang Rajendrraa Deshmukh
.....

CORAM : ABHAY S. WAGHWASE, J.

**Reserved on : 30-09-2026
Pronounced on : 01-10-2026**

JUDGMENT :

1. Feeling aggrieved and dissatisfied by Judgment and order dated 29-09-2014 passed by learned Special Judge (PC Act), Vaijapur in Special Case (PC) No.8 of 2012 acquitting respondent from charges under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, State has come up in appeal.

PROSECUTION CASE IN BRIEF

2. In brief, case of prosecution in trial Court is that, in the

backdrop of quarrel between complainant's maternal sister and her brother-in-law on account of construction of house in her field, complainant and her maternal sister went to Police Station Shivoor and lodged report against her brother-in-law and they had also filed a private complaint in the Court at Vaijapur. Thereafter, when complainant's maternal sister returned to her matrimonial house, her father-in-law abused and beat her. Therefore, again complainant and his maternal sister went to Police Station Shivoor and lodged report against her father-in-law. The said father-in-law had also filed a complaint against maternal sister of complainant at Shivoor Police Station. Both such cases were investigated by present respondent/original accused, who was a Police Head Constable at Shivoor Police Station. It is the case of prosecution that, accused demanded Rs.5,000/- from complainant to initiate proceedings under Chapter Case against his maternal sister's father-in-law. On negotiations, the amount was brought down to Rs.3,500/-. But as complainant was not willing to pay bribe, he approached Anti Corruption Bureau (ACB), gave complaint, as a result of which, ACB authorities initially summoned panchas, introduced them to complainant, gave necessary instructions and demonstrations and laid main trap and after it was allegedly successful and on apprehension of accused, complaint was lodged, which was duly investigated and

finally, accused was tried vide above special case, but on trial, he stood acquitted. Hence, instant appeal by State.

SUBMISSIONS

On behalf of Appellant State :

3. Learned APP took this Court through evidence of complainant PW2 and pointed out that, after initial demand, ACB authorities sent complainant with tainted currency by giving necessary instructions to pay bribe on demand. That, complainant accordingly went along with shadow pancha. That, this witness complainant PW2 has categorically deposed about accused demanding money. Learned APP took this Court through the testimony of PW3 shadow pancha and would point out that, even this witness, who was shadow pancha, has deposed about demand raised by accused. That, both these witnesses speak about accused accepting the bribe. Consequently according to him, there is both demand as well as acceptance in prosecution evidence. He pointed out that, minor discrepancies in evidence of complainant and shadow pancha have given undue importance by the trial Court. That, there were no major and material contradictions, but learned trial Court failed to consider and appreciate the above evidence in its correct perspective.

4. He further pointed out that, even learned trial Court erred in holding that, sanction was invalid even when the authority, who accorded sanction, had deposed before the Court about his competence to accord sanction, about studying the papers, and on due application of mind, granting sanction. He pointed out that, service book extract of accused placed on record clearly shows that PW1 sanctioning authority was competent to accord sanction, but learned trial Court unfortunately has not exhibited the said document. Resultantly, for above reasons, he seeks indulgence of this Court to set aside the impugned judgment by allowing the appeal.

On behalf of Respondent/original accused :

5. Shri Rajendraraa Deshmukh, learned Senior Counsel for respondent, at the outset, would point out that, here, PW1 sanctioning authority was not competent authority to accord sanction and that accused was appointed by Commissioner of Police, who was higher in rank to the rank held by PW1 sanctioning authority. That, there was admission by PW1 in cross-examination to that extent and therefore, when sanction was by incompetent person, it is his submission that the same is invalid and rightly held so by the learned trial Court.

6. He further pointed out that, PW2 complainant and PW3 shadow pancha are not consistent and are not lending support to each other. He pointed out that, though these witnesses claimed to be together at the time of main trap, they are at variance and therefore, their evidence is not worthy of credence. He pointed out that, according to PW2 complainant, bribe amount was kept by accused in left side pocket of his shirt, but contrary to it, PW3 shadow pancha speaks about bribe amount kept in right side pocket of his pant and resultantly, it is his submission that, such contradiction and variance being material on the point of demand and acceptance, learned trial Court has rightly disbelieved case of prosecution and acquitted the accused. For such reasons, he justifies the Judgment and order of acquittal and prays to dismiss the appeal for want of merits.

ANALYSIS AND CONCLUSION

7. Perused the evidence. As regards validity of sanction is concerned, there is testimony of **PW1** Amitesh Kumar, who is examined at Exhibit 11 and in his deposition, he has stated that he studied the papers received by him, applied mind to it, and concluded that it was a fit case to accord sanction. According to him, he was competent authority to appoint and remove the Police Head Constable.

In his **cross-examination**, after admitting that appointing authority is competent to remove an employee and after admitting that Commissioner of Police is higher in rank to Superintendent of Police, in paragraph 4 of cross-examination, he admitted that, in the service record of the accused, it is referred that, accused was appointed by the Commissioner of Police, Aurangabad. Resultantly, as this witness was Superintendent of Police at the relevant time and he having admitted that Commissioner of Police is higher in rank than Superintendent of Police and in view of above admission of appointment of accused by the Commissioner of Police, obviously PW1 sanctioning authority was not competent to accord sanction and therefore, sanction accorded by him is invalid.

8. As regards to aspects of demand and acceptance are concerned, which are *sine qua non*, evidence of PW2 complainant and PW3 shadow pancha is put to scrutiny.

PW2 Vilas is the complainant and he, in his evidence at Exhibit 19, deposed about quarrel between brother-in-law of his maternal sister and her over construction of house in her field and his material sister lodging report and also filing a private complaint and subsequently, her father-in-law filing a complaint against her and therefore, he and she going to Shivoor Police Station and he claims to

have approached accused, a Police Head Constable, who was handed over investigation of above complaints. In paragraph 2 of his examination-in-chief, he speaks of demand of Rs.5,000/- by accused for initiation of chapter case proceedings against opposite party of her sister and he also deposes about figure of bribe amount being brought down to Rs.3,500/- on negotiations, but he approaching ACB with a complaint and said authority entertaining his complaint, calling pancha PW3 Macchindra. In paragraph 3 of his examination-in-chief, he deposed about procedure of application of anthracene powder and necessary instructions being issued. In paragraph 4 of his examination-in-chief, he claims that when he and shadow pancha were proceedings towards the office of accused to pay bribe, on the way, he received a phone call from accused and told him about change in the venue of meeting from Shivoor Police Station to Sai Mewad Hotel. He deposed that he, shadow pancha and accused sat in the said hotel, took tea and breakfast and thereafter, accused asked him whether he had brought the amount and when he was told about it being brought, according to him, accused demanded the amount saying that it was promised to pay amount in respect of complaint filed by complainant's sister. He talked with accused about his work and he further said that accused told him to pay amount then only he will do work of his sister. That time he removed tainted currency

from his shirt pocket, held it before accused, who accepted it, and thereafter, kept the tainted currency in the left side pocket of his own shirt. He deposed that, thereafter he gave predetermined signal after which raiding party caught accused. After stating so much, he deposed in examination-in-chief itself that he does not remember on which document his signature was obtained. On repeated questioning, he deposed that, accused kept the bribe amount in the left side pocket of shirt.

While under **cross-examination**, he admitted that, on the date of arrest of accused, chapter case was already filed before the Court of Executive Magistrate, Vaijapur. In cross-examination, he denied that after the trap, statement is recorded by ACB. He is unable to give colour of clothes of accused. Again in cross-examination, he stated that shadow pancha had taken out amount from shirt pocket of accused.

Thus according to this witness, after accepting tainted currency, accused kept it in his shirt pocket and even shadow pancha took out from there.

However, as pointed out, **PW3** Macchindra, shadow pancha, who is looked upon as an independent witness and who is expected to corroborate to complainant on the events of trap, has not stated about accused accepting the bribe and keeping it in his shirt pocket, but he

deposed about accused keeping tainted currency in his pant pocket. Therefore, his such answer creates doubt about whether PW3 shadow pancha was at all in the company of PW2 complainant and was party to the act of demand and acceptance.

9. Further PW2 complainant and PW3 shadow pancha are not consistent about the actual conversation which took place between complainant and accused while they were in the hotel, as according to PW2 complainant, accused placed order for tea and breakfast and demanded the amount again saying that it was promised to pay amount in respect of complaint filed by his sister and accused had asked whether he had brought the amount, however, PW3 shadow pancha has a different narrative as in paragraph 3 of his examination-in-chief, he deposed that, after he and complainant went to the hotel, that time a person came and complainant told him that he is accused and thereafter, there were exchange of greetings between them and according to this witness, complainant offered cold drinks to the accused. However, PW2 complainant himself has stated about accused ordering tea and not cold drinks. Again this witness PW3 shadow pancha has not deposed like PW2 complainant about accused making a phone call to complainant for changing the venue of meeting from Shivoor Police Station to Sai Mewad Hotel and PW3

shadow pancha, as stated above, has directly deposed about he and complainant sitting in a hotel and thereafter, a person i.e. accused coming there. Therefore, witnesses are not consistent.

10. Further though PW2 complainant speaks of receiving a phone call from accused for change of venue, CDR is not placed on record. Even PW4 Investigating Officer does not speak about PW2 complainant receiving a phone call from accused for changing the venue from Shivoor Police Station to a hotel. Apparently, PW2 complainant himself does not seem to have supported prosecution as post-trap, he denied his statement being recorded by the PW4 Investigating Officer or he causing sign over any document. Not finding him supporting, learned APP does not seem to have sought permission of the trial Court declaring him hostile and his testimony after deposition to above extent seems to have been concluded.

11. Resultantly, for above reasons, case of prosecution is not proved beyond reasonable doubt. PW2 Complainant and PW3 shadow pancha are not consistent and corroborating each other for reasons stated above. Sanction is not by the competent authority. Consequently, no fault can be found on the part of the learned trial Court in acquitting the accused. Therefore, appeal deserves to be

dismissed. Accordingly, following order is passed :

ORDER

The Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]

SPT