



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

CRIMINAL APPEAL NO. 31 OF 2016

The State of Maharashtra
Through Sundar Rambhau Bhandwale
Age: 57 years, Occu.: Dy.S.P., Anti Corruption
Bureau, Osmanabad.

....Appellant

Versus

Gunvant Damodhar Salve
Age: 55 years, Occu.: Service as
Senior Assistant, Education Dept.,
[Secondary Division], Zilla Parishad,
Osmanabad, R/o. Hasegaon [Kaij],
Tq.Kallam, District Osmanabad.

.....Respondent
[Ori. Accused]

.....

Mr.N.D.Raje, APP for Appellant.
Mr.Tushar Shinde h/f. Mr.Chandrakant K.Shinde, Advocate for
Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 AUGUST, 2026

PRONOUNCED ON : 19 AUGUST, 2026

JUDGMENT :

1. Dissatisfied and aggrieved by the judgment and order of acquittal dated 27-03-2015, State has come up by way of instant appeal thereby questioning the said judgment passed by learned Special Judge, Osmanabad, in Special (A.C.) Case No.8 of 2012, which was tried for offence under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (PC Act).

BRIEF FACTS OF THE CASE

2. In short, prosecution case in trial Court was that, complainant was Secretary of an educational institution namely Gokul Shikshan Prasarak Sanstha, Raigavhan. Said Sanstha has two schools namely Sharadchandraji Pawar Vidyalaya, Khondala and Sant Goroba Kaka Vidyalaya, Saundana (Amba), which were fully granted schools and were receiving grant-in-aid including rent for building in which schools were run. In spite of sending proposal to Zilla Parishad for getting grant of rent, accused a Senior Clerk, raised objections and finally, demanded bribe of Rs.5,000/- for sending the proposal further for sanction. Complainant approached Anti Corruption Bureau (ACB), lodged complaint resulting into planning of trap by engaging panchas, getting verification of demand done, drawing pre-trap panchanana and finally, laying main trap in which accused came to be apprehended and tried before learned Special Court for above charge.

As stated above, trial ended up in acquittal of accused and therefore, said judgment is impugned herein.

SUBMISSIONS

On behalf of Appellant State :

3. Learned APP would point out that, there is no dispute that

complainant had forwarded proposal for receiving rent of the school building. That, there is no denial that, accused, being a Senior Clerk, in Zilla Parishad, Osamanabad, had received the said proposal, however, according to him, with intention to seek bribe, accused raised several objections to the said proposal and finally, raised demand of Rs.5,000/- of which complaint was received by ACB, who conducted trap.

4. He next submitted that, complainant has deposed about demand of Rs.5,000/-. That, demand was repeatedly raised and this witness has deposed to that extent in his evidence. That, the aspect of demand has remained unchallenged inspite of searching cross-examination. According to him, there is testimony of PW2 shadow pancha lending support to testimony of PW1 complainant and therefore, aspect of demand was proved beyond reasonable doubt. However, according to him, learned trial Court failed to appreciate and consider the same.

5. As regards to acceptance is concerned, it is submitted that, there were anthracene traces to the hand of accused suggesting acceptance of bribe amount and as such, according to him, there being both demand as well as acceptance, offence is complete. But

learned trial Court has lost sight of the above crucial evidence and has erred in acquitting the accused by refusing to accept the case of prosecution.

6. He pointed out that, there was valid sanction and Sanctioning Authority was examined, but there is non-consideration of the same. According to him, there are strong circumstances and even though there was no direct demand, in view judgment of Hon'ble Apex Court in the case *Neeraj Dutta v. State (Government of NCT of Delhi)* (2023) 4 SCC 731, circumstances like spot, pre trap panchanama, post trap panchanama, ought to have been considered by the learned trial Court to accept the case of prosecution, but as it failed, he urges to set aside the impugned judgment by allowing the appeal. He also relied on judgment of the Hon'ble Apex Court in the case of *C.S.Krishnamurthy v. State of Karnataka*, (2005) 4 SCC 81.

On behalf of Respondent Accused :

7. Per contra, learned counsel for respondent accused would submit that prosecution miserably failed to bring home the charges. He further submits that, *sine qua non* like demand itself was not proved beyond reasonable doubt, rather according to him, prior to any demand, complainant has offered bribe.

8. He next submitted that, defence of accused is of thrusting of amount and therefore, mere traces of anthracene powder while removing the thrust currency has no significance and as such, according to him, there is no voluntary acceptance.

9. On the point of validity of sanction, it is submitted that, initially sanction was accorded by Deputy Director (Education) namely Honmane, but he unfortunately expired and in his place prosecution surprisingly adduced evidence of PW3 Vaijinath Kondiba Khandke, who was subordinate of above deceased and he merely affirmed the signature of his predecessor. But it is pointed out that, he went on to the extent of deposing as if he himself has studied the investigation papers while according sanction and on such count, attention of this Court is invited to testimony of PW3. Thus, according to learned counsel, there is non-application of mind coupled with incompetence to accord sanction.

For all above reasons, he justifies the order of acquittal and prays to dismiss the appeal for want of merits.

EVIDENCE OF PROSECUTION WITNESSES AND ITS ANALYSIS

10. Re-appreciated the evidence, more particularly, that of **PW1** Vishwanath Ramdas Narwade, complainant and **PW2** Mujib Ahmad

Mahmmad Usman Dongare, shadow pancha.

PW1 complainant at exh.16 deposed that, he is Secretary of an educational institution and said institute has two schools, which receive full grant from the Government and the school by name Sharadchandrajji Pawar is housed in a rented building and as the Government used to pay its rent, after getting the rent fixed from P.W.D., proposal is to be sent to Zilla Parishad and accordingly, he sent proposal to Education Officer. According to him, proposal was sent to office of Deputy Director of Education for sanction and work of forwarding proposal was with respondent accused namely Gunvant Damodhar Salve, who was Senior Clerk. He deposed that, whenever he met accused, he said that, he is not looked at and how proposal is to be forwarded for sanction. He claims that on 22-02-2012, when he met accused in the office and requested him to send proposal for sanction, accused told him to pay Rs.5,000/- for sending the proposal. Witness stated that, he had told accused that he did not have money at that time but he would arrange it and on the next day he made a phone call to accused to inform about arrangement being made, but accused said that he was busy and to come on next day. Witness deposed that, as he was not willing to pay bribe, he approached ACB, who called panchas, gave necessary

instructions and for verifying demand, initially he and shadow pancha were made to approach accused and they accordingly approached accused, had conversation with accused whereby he was asked to send proposal and that demand would be satisfied. The conversation, which was tape-recorded in voice recorder, was heard and its panchanama was drawn. Then he narrated about all steps taken by ACB authorities like application of anthracene powder and its demonstration and giving necessary instructions to complainant and shadow pancha.

Regarding main trap he deposed in paragraph 7 that, he and pancha went to office of accused. That, accused asked them to come and sit. Complainant himself deposed that, he told accused that he has brought Rs.5,000/- and accused asked him to give it.

Thus, during main trap, it is abundantly clear that, before any demand being made, accused has himself offered bribe. Therefore, as submitted by learned counsel for respondent and as rightly held by learned trial Court, there is no demand at the first count by accused either at the time of demand verification or at the time of main trap. Though complainant has deposed that on 22-02-2012, there was demand of Rs.5,000/-, there is no corroboration. As submitted by learned counsel for respondent and as held by learned trial Court,

sine qua non like demand itself is missing from the testimony of very complainant, rather there seems to be direct offer both at the time of demand verification as well as main trap.

11. **PW2** is the shadow pancha and he is examined at exh.22. He deposed in paragraph 2 about demand verification got done by sending him and complainant with a voice recorder to the office of accused and according to him, when complaint asked accused about his work, accused told complainant that he will do the work and whether he brought the amount. But as stated, PW1 complainant has not stated in such manner. This witness further deposed about steps taken by ACB for arranging the trap and in paragraph 4 of examination-in-chief itself, he stated that, when he and complainant approached accused, complainant asked about his work and accused asked whether he has brought as stated by him. Thus, according to this witness, accused demanded bribe.

12. In the testimony of PW1 complainant there are material omissions in paragraph Nos.14 and 15, which goes to root of the matter.

Resultantly, there is no demand by accused even when it is the case of prosecution.

In the cases of *P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh*, (2015) 10 SCC 152; *Mukhtiar Singh (since deceased) through his Legal Representatives v. State of Punjab*, (2017) 8 SCC, 136, *K. Shanthamma v. State of Telangana*, (2022) 4 SCC 574, the Hon'ble Apex Court has held that, if demand of bribe is not proved then acceptance/recovery of bribe from possession of accused is of no relevance.

13. As regards to sanction is concerned, prosecution has adduced evidence of PW3 Vaijinath Khandke at exh.34 and according to him, at the time of deposing, he was Deputy Director (Education), but in 2012, he worked as Education Officer (Secondary) and he knew accused, who was a Senior Clerk and was incharge for sending non-salary grant proposal of building rent for sanction. That, there were objections in the proposal of complainant's institution and to that extent, a letter was issued, but objections were complied and according to him, no Government charges are required to be paid for sending proposal.

In paragraph 2, he deposed that, Deputy Director is the appointing and removing authority and in 2012, Mr. Honmane was Deputy Director of Education and he identified his signature.

However, in examination-in-chief itself, he stated that, he could identify the signature having worked under him. This shows that, this witness was subordinate to Deputy Director Honmane, who accorded sanction. But surprisingly, as pointed out, he went on to depose that if any proposal for sanction to prosecute is sent, he himself used to scrutinize the papers and if it was found that there was sufficient ground and *prima facie* evidence, then he used to grant sanction.

Thus, apparently above witness merely identified the signature of actual Deputy Director of Education namely Honmane and nothing beyond it.

14. The citations relied by the learned APP cannot be made applicable to the case in hand as the facts are quite distinguishable.

SUMMATION

15. To sum up, here, predominantly there is no demand by accused. Rather, there is direct offer at the time of demand verification as well as main trap. When essential ingredients of demand is missing, entire prosecution case collapses.

16. Perused the impugned judgment. Learned trial Court has correctly appreciated the available evidence and has recorded findings based on sound reasons. No patent perversity or irregularity is brought to the notice of this Court so as to interfere in the impugned judgment. Therefore, appeal deserves to be dismissed. Accordingly, following order is passed :

ORDER

Criminal Appeal is dismissed.

(ABHAY S. WAGHWASE)
JUDGE