



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

CRIMINAL APPEAL NO.81 OF 2005

Mukund s/o Anantrao Rannavare (Ashtikar),
Age : 38 years, Occu. Service,
R/o Vivekanand Nagar, Sailu,
Taluka Sailu, District Parbhani.

...APPELLANT
(Orig. accused)

-VERSUS-

The State of Maharashtra.

...RESPONDENT

...
Shri Nilesh S. Ghanekar, advocate h/f Shri R.R. Imale and Shri
S.P. Chapalgaonkar, Advocates for the appellant.
Shri C.V. Bhadane, APP for the respondent/ State.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 11 September 2026

Pronounced on : 24 September 2026

JUDGMENT :-

1. The appellant/ accused is challenging the judgment and order dated 29.01.2005 passed by the learned Special Judge, Parbhani, in Special Case No.12 of 2000, whereby the appellant came to be convicted for the offence punishable under Section 7

of the Prevention of Corruption Act, 1988, and was sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for three months. He was also convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-, in default, to suffer rigorous imprisonment for two months. Both the sentences were directed to run concurrently.

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

(a) The appellant was working as a Talathi at Sailu, Taluka Sailu. The complainant is PW-2, namely, Shaikh Babar Shaikh Habib. One Mohammad Shiraz Mohammad Ashraf was joint owner of agricultural land bearing Gut No.50 along with his brother, namely, Mohammad Shafi Mohammad Ashraf. Since the said Mohammad Shiraz was not able to cultivate the land properly due to his service in the Police Department, he had given the said land to PW-2 Shaikh Babar, the complainant, for cultivation on contract basis, one year prior to the incident.

(b) A dispute arose between Mohammad Shiraz and

Mohammad Shafi. Therefore, Mohammad Shiraz filed a suit before the Court of the Civil Judge, Junior Division, Sailu, and obtained an injunction. He also filed an application at Police Station, Sailu, against Mohammad Shafi, seeking restraint against Mohammad Shafi from obstructing the peaceful possession and enjoyment of Mohammad Shiraz. The said Mohammad Shafi allegedly got the name of Mohammad Shiraz deleted from the record of land bearing Gut No. 50 in collusion with the Tahsildar, Sailu. The name of Mohammad Shiraz was recorded in the cultivation column of land bearing Gut No. 50 up to 10.03.2000. However, on 16.03.2000, the name of Mohammad Shiraz came to be deleted. Therefore, Mohammad Shiraz intended to file a suit against his brother Mohammad Shafi. Hence, he directed PW-2, the complainant, who was his brother-in-law, to collect the 7/12 extract for that year and the mutation extract.

(c) Accordingly, PW-2 Shaikh Babar, the complainant, approached the appellant, who was working as the Talathi of Sailu Sajja. On 13.06.2000, the complainant met the appellant and demanded 7/12 extracts for the period from 1985 to 2000. He

also demanded the extracts of the mutation entries in respect of the suit land. It is alleged that the appellant demanded Rs.1,000/- for issuing copies of the 7/12 extracts and mutation entries. As PW-2 Shaikh Babar expressed his inability to pay the said amount, he requested the appellant to reduce the amount. After negotiation, the appellant agreed to issue the copies on receiving an amount of Rs.500/-. The appellant allegedly insisted that the amount be paid on the very same day. PW-2 Shaikh Babar was having Rs.300/-, therefore, he paid Rs.300/- to the appellant and assured him that the balance amount would be paid later, at the time of collecting the copies of the revenue record. The appellant told PW-2 that he would prepare the 7/12 extracts and mutation entries and would ask him to collect the said copies after payment of the balance amount.

(d) Since PW-2, the complainant, was not willing to pay the bribe amount to the appellant, he approached the ACB Office at Parbhani on 13.06.2000. His complaint came to be recorded by the ACB authorities. PW-4 Manik Perke, however, instructed the complainant to visit the ACB Office again on 14.06.2000.

(e) On 14.06.2000, necessary formalities regarding

calling the panch witnesses and demonstration of anthracene powder were completed. Necessary instructions were given to the trapping party by the ACB Officer. Accordingly, as per his directions, PW-2 the complainant and PW-1 Panch Witness Shaikh Sabu Miya approached the office of the appellant, situated in a godown at Sailu, at about 10.00 a.m. According to the complainant, after giving the copies of the 7/12 extract and mutation entries, the accused demanded the bribe amount from him. PW-2 Shaikh Babar then paid the amount of Rs.200/- to the accused, and the accused allegedly accepted the same. Accordingly, PW-2 gave the predetermined signal. Thereafter, the police rushed to the Tehsil Office and apprehended the accused red-handed. The tainted currency notes came to be recovered. Necessary formalities regarding seizure of the currency notes and the shirt of the accused were completed. Thereafter, PW-4 Manik Perke lodged the complaint against the accused at the Police Station, which came to be registered as C.R. No. 3010 of 2000.

(f) PW-4 IO Shri Perke conducted the investigation, arrested the accused on the very same date and collected the necessary documents regarding his appointment, etc. Thereafter,

sanction came to be obtained from the competent authority and accordingly, the charge-sheet came to be filed against the accused before the Court on 03.11.2000. The charge came to be framed against the appellant-accused vide Exhibit 7. The accused pleaded not guilty and claimed to be tried.

(g) The prosecution examined six witnesses to prove the charges against the appellant. PW-1 Shaikh Sabu Shaikh Miya is the panch witness at Exhibit 20. PW-2 Shaikh Babar Shaikh Habib is the complainant at Exhibit 27. PW-3 Tulshiram Bhale is an eyewitness at Exhibit 34, who has been declared hostile. PW-4 Manik Perke is the Investigating Officer at Exhibit 37. PW-5 Annasaheb Shinde is at Exhibit 47, who had issued the sanction order. PW-6 Gopal Kulkarni is at Exhibit 61, who had prepared the map of the scene of the office. One Rajendra Patodkar came to be examined by the defence as a defence witness at Exhibit 69.

(h) After recording the evidence and hearing the parties, the learned Special Judge, Parbhani, vide the impugned judgment and order dated 29.01.2005 convicted and sentenced the appellant as mentioned in foregoing paragraph.

3. The learned advocate Shri Ghanekar appearing on

behalf of the appellant/ accused submitted that, if the testimony of the witnesses is perused, it does not establish that the prosecution has proved the guilt of the accused beyond reasonable doubt. He submitted that there was no demand-verification panchnama and that a direct trap was laid. According to him, this casts serious doubt on the prosecution case.

4. Shri Ghanekar further submitted that, as regards payment of the bribe amount, there is no corroboration as to whether the amount was paid outside the cabin or inside the cabin. It was also pointed out that, when the amount of Rs.200/- was about to be paid, the appellant/ accused had not demanded the said amount. The appellant had issued the 7/12 extracts and the revenue documents and handed them over to the complainant. Thereafter, the complainant paid the amount without there being any demand by the appellant. Therefore, the appellant cannot be held guilty for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act in the absence of strong evidence regarding demand, acceptance, recovery and valid sanction.

5. Shri Ghanekar further submitted that the

complainant had lodged the complaint against the appellant due to grudge against him on the ground that the appellant was helping the other opponent litigants in civil suit. The evidence of PW-1, the panch witness, discloses that there is no corroboration regarding the spot panchanama about payment i.e. whether the payment was made inside or outside the cabin. According to the learned advocate, even if it is assumed for the sake of argument that the appellant had accepted the amount, the said amount was towards payment of cess of the Revenue Department, which was payable by Mohammad Shiraz. PW-5 (Annasaheb Shinde), who was working as the Deputy Collector, Sailu and who is sanctioning authority, has admitted that fees of Rs.2/- per year is to be charged for issuing 7/12 extract.

6. Shri Ghanekar has invited attention of this Court to the evidence of PW-2 complainant and submitted that there is also improvement in the deposition of the complainant inasmuch as he had not stated before the ACB authorities, while recording the complaint and his statement, that he had approached the appellant on 13.06.2000. He had stated before the ACB authorities that he had paid an amount of Rs.300/- to the assistant

of the appellant. Thereafter, there is also an omission regarding the statement made to the police that the appellant had enquired with him whether his work had been done when he demanded the 7/12 extract. Thus, according to learned counsel for the appellant, there are major discrepancies in the evidence of the complainant and the prosecution witnesses. He, therefore, submitted that the conviction cannot be based upon such quality of evidence. According to him, the prosecution was required to prove its case beyond reasonable doubt by establishing that there was a demand for the bribe amount and subsequent acceptance thereof. This fact in issue can be proved either by direct evidence, which may be in the nature of oral evidence, or by documentary evidence.

7. Shri Ghanekar further submitted that the learned Special Judge committed grave error by convicting the appellant as it has not properly appreciated evidence brought on record. The prosecution has virtually failed to prove that the demand is made by the appellant and mere acceptance of amount is not sufficient to prove the demand. The prosecution witnesses have not corroborated each other at the time of recording their evidence. As such, learned advocate submitted that the

prosecution has failed to prove guilt of the appellant beyond all reasonable doubt. The appeal needs to be allowed and the appellant be acquitted.

8. *Per contra*, the learned APP strongly opposed the submissions of learned advocate for the appellant. According to the learned APP, the statements of witnesses proved the guilt of the appellant beyond all reasonable doubt and, therefore, their evidence cannot be discarded. The 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. There is no scope for interference in the impugned judgment. He, therefore, prayed for dismissal of the present appeal.

9. After hearing the submissions of learned advocates and with their assistance, after going through evidence on record carefully, it is apparent that the witnesses have not supported each other on the point of demand. The evidence of PW-2 complainant (Shaikh Babar) regarding the alleged demand is not

consistent with his earlier statement and there are material omissions in his evidence on the point of demand. The evidence of panch witness PW-1 (Shaikh Miya) does not satisfactorily cure this material deficiency. The evidence led by the prosecution, when considered as a whole, does not establish the factum of demand of illegal gratification beyond reasonable doubt. The learned advocate for the appellant has rightly placed reliance on the judgments of the Hon'ble Supreme Court in ***B. Jayaraj vs. State of A.P., (2014) 13 SCC 55*** and ***V. Sejappa vs. State, (2016) 12 SCC 150***, to submit that the proof of demand is an indispensable ingredient of the offence under Section 7 and in the absence of proof of demand, the question of acceptance does not arise. In the present case, the allegation of demand solely rests on the testimony of the complainant and there is no corroboration from independent witnesses. PW-3 panch witness turned hostile. Therefore, there is no independent evidence on record to prove that the appellant demanded the amount of Rs.200/-. The evidence of defence witness Rajendra Patodkar gives support to the explanation given by the appellant/ accused.

10. On careful appreciation of the evidence, this Court

finds that there is inconsistency about where the amount was paid whether, it was inside the cabin or outside the cabin. As per the spot panchanama, the amount was allegedly paid outside the cabin, however, there is no corroboration in the evidence of panch witnesses about this fact. It is part of evidence that at the time of paying Rs.200/- there was no demand by the appellant and when the appellant issued the revenue documents, the complainant paid voluntarily. There is admission given by the complainant in his evidence that the amount was due from Mohammad Shiraj.

11. In this case, even assuming the physical receipt/recovery of the amount is established, the prosecution has failed to establish that the amount was received as illegal gratification pursuant to demand made by the appellant. The basic requirement of demand is required to be proved beyond all reasonable doubt. In order to prove the charges for the offence punishable under Section 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. If the prosecution fails to prove this demand of illegal

gratification, the charge for the aforesaid offences would fail. It is clearly established in several judgments delivered by the Hon'ble Supreme Court including the judgment in ***Neeraj Dutta vs. State (Govt. of NCT of Delhi) reported in (2023) 4 SCC 731***, that mere possession and recovery of currency notes from the possession of the accused without proof of demand would not establish the offence under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act. In absence of proof of demand and illegal gratification and use of corrupt or illegal means to obtain any valuable or pecuniary advantage, it cannot be said that the offence of taking bribe is proved. Thus, the proof of demand has been held to be indispensable ingredient. Therefore, failure on the part of prosecution to prove demand and illegal gratification, would be fatal and mere recovery of the amount from the appellant/accused would not entail his conviction for the said offences.

12. Considering the evidence brought on record, this Court finds that the prosecution has failed to establish, beyond reasonable doubt, that the appellant had demanded Rs.200/- from the complainant as illegal gratification. The alleged demand

made immediately prior to the trap is not satisfactorily established through the testimony of PW-2 complainant. The evidence of panch witnesses also does not inspire confidence so as to cure the deficiency in the prosecution case about demand and acceptance. The prosecution was required to prove the nexus between the amount allegedly received and the demand of illegal gratification. Since the foundational fact of demand has not been proved beyond reasonable doubt, the alleged acceptance of the amount as bribe also becomes doubtful. Consequently, the benefit of such doubt must go to the appellant.

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. In view of the foregoing discussion, this Court is of the considered view that the prosecution has failed to prove beyond reasonable doubt that the appellant demanded illegal gratification from the complainant and that the amount allegedly received by him was accepted as illegal gratification pursuant to such demand. Consequently, the foundational facts necessary to sustain the conviction under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act have not been established. The appellant is, therefore, entitled to the benefit of doubt. Accordingly, the following order is passed:

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order dated 29.01.2005 passed by the learned Special Judge, Parbhani, in Special Case No.12 of 2000, 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.

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(SUSHIL M. GHODESWAR, J.)