



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

CRIMINAL APPEAL NO.135 OF 2006

Sudhakar Hari Kotkar,
Age : 45 years, Occ : Service,
R/o Kedgaon (Devi), Patil Colony
Road, Ahmednagar, Tq. & Dist. Ahmednagar.
...Appellant/ accused

-VERSUS-

The State of Maharashtra.
...Respondent

...
Shri Satej S. Jadhav, Advocate for the appellant/ accused.
Shri V.M. Lomte, APP for the respondent/ State.
...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 23 September 2026

Pronounced on : 08 October 2026

JUDGMENT :-

1. The appellant is challenging the impugned judgment and order dated 01.02.2006 passed by the learned Special Judge, Ahmednagar in Special Case AC No.3 of 2001, whereby the appellant came to be convicted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention

of Corruption Act, 1988 and sentenced to suffer imprisonment for two years and to pay fine of Rs.1,000/- and in default to suffer rigorous imprisonment for six months, for the offence under Section 7 of the Act and rigorous imprisonment for two years and to pay fine of Rs.1,000/- and in default to suffer rigorous imprisonment for six months, for the offence under Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act.

2. The prosecution case, in brief, is as under:

(a) The Complainant PW-1, Sheikh Maheboob Suleman, was working in the State Transport Department as a bus driver. He was having certain health issues and, therefore, was in need of medical certificates from the Civil Hospital, Ahmednagar. In the year 1999, he was required to submit a medical certificate and, therefore, he met the appellant-accused Sudhakar Hari Kotkar, who was working as a Junior Clerk in the TB Department of the Civil Hospital, Ahmednagar.

(b) The complainant PW-1, being a tuberculosis patient, was required to appear before the Board constituted by the Civil Hospital for examining the patient and issuing certificate. The said Board used to be constituted on every Wednesday. However,

though the complainant went to the said Civil Hospital, the Board was not constituted.

(c) The complainant met the appellant for obtaining the medical certificate. The appellant, who was working as Junior Clerk, asked him that if he required the medical certificate for a period of two months, he would be required to pay Rs.600/- to him so that the medical certificate for two months could be issued. The said amount was demanded at the rate of Rs.300/- per month. Since the complainant PW 1 was not willing to pay the said amount, he approached the office of the Anti-Corruption Bureau on 04.07.2000. Accordingly, PW 4 Manohar Joshi, PI, ACB, reduced his complaint into writing. He also called the panchas on the next date.

(d) On 05.07.2000, the complainant and the panchas remained present before the ACB officer, and the use of anthracene powder and ultraviolet lamp was demonstrated for the purpose of conducting the trap against the appellant. The complainant was instructed that if the accused accepted the amount, he should give a signal to the raiding party. Panch No.1 was also instructed to remain with the complainant and to see and

hear what transpired between them. Accordingly, the pre-trap panchanama was drawn.

(e) Thereafter, the trapping squad went to the TB Section. They met the accused. The appellant/accused asked the complainant whether, as told by him, he had brought the amount of Rs.600/-. The complainant told him that he had brought the amount. The accused told him to pay the said amount. Accordingly, the complainant removed the amount and gave it to the appellant, who accepted it and kept the same in his shirt pocket. Accordingly, the complainant went out and gave a signal to the raiding party. The Anti-Corruption squad accordingly entered the office and caught hold of the accused.

(f) The appellant removed the amount from his pocket and threw the same on the ground. At the instance of Panch No.2, the amount thrown on the floor was picked up. The numbers of the notes were checked and they tallied with the numbers noted in the pre-trap panchanama. The hands of the accused were checked under the ultraviolet lamp. On checking his palm, anthracene powder was found on his fingers. The necessary documents pertaining to the file of the complainant came to be

seized. Accordingly, a detailed panchanama was recorded. The statement of the accused was also recorded. PW-4 PI Joshi thereafter arrested the accused and accordingly Crime No.3031/2000 came to be registered with the Tofkhana Police Station, Ahmednagar on 05.07.2000 against the appellant.

(g) After registration of the aforesaid crime, the investigation came to be completed and the charge-sheet was filed before the Court. As per Exhibit-9, the charge came to be framed against the appellant. The appellant/accused pleaded not guilty and, therefore, claimed to be tried.

(h) The prosecution, in order to prove its case, examined in all five witnesses. PW 1/ complainant Shaikh Suleman, came to be examined at Exhibit 12. PW 2 is the shadow panch, namely, Chandrabhan Shelke, who came to be examined at Exhibit 24. Dr. Indumati Mathe came to be examined as PW 3 at Exhibit 36, who is the Civil Surgeon. The Investigating Officer, namely, Manohar Joshi of the Anti-Corruption Bureau, came to be examined as PW 4 at Exhibit 40, and Dr. Narayan Rathod came to be examined as the sanctioning officer as PW 5 at Exhibit 52.

(i) After recording the aforesaid evidence and the

statement of the appellant, the learned Special Court was pleased to convict and sentence the appellant as stated above. Being aggrieved by the aforesaid judgment, the appellant has approached this Court in the instant appeal.

3. Heard Mr. Satej Jadhav, the learned counsel for the appellant and Mr. V.M. Lomte, the learned APP for the State.

4. Mr. Jadhav, the learned counsel for the appellant, submitted that the demand is required to be proved as a matter of fact and, without proof of demand, the finding of money with the appellant is not sufficient to convict him. According to him, the prosecution must prove both demand and acceptance. If the main witness turns hostile and does not prove the demand, the accused cannot be convicted merely because the money was recovered from his possession.

5. Mr. Jadhav further submitted that the sanctioning authority was required to apply its independent mind before according sanction. The permission to prosecute a Government servant is serious safeguard. The officer granting sanction must examine the relevant papers before granting sanction. If the necessary documents have not been perused by the sanctioning

authority, the sanction accorded by the sanctioning authority would be invalid.

6. The learned counsel for the appellant further submitted that the first informant i.e. PW 1 complainant turned hostile and did not support the prosecution case. Thus, there is no reliable evidence against the appellant. It is also pointed out by the learned counsel for the appellant that the prosecution never conducted a demand verification panchanama. When the demand verification panchanama is not conducted, it raises doubt as regards the genuineness of the prosecution case and the involvement of the appellant-accused.

7. He further submitted that the shadow panch PW-2 Shelke has admitted in his deposition that initially the complainant PW-1 went alone and spoke to the appellant. Thereafter, he followed him. Therefore, there was no question of the shadow panch hearing any detailed demand, especially when the informant was already aware of the reason for payment. PW 1, in his complaint, stated that he was specifically warned to come alone. Hence, according to the learned counsel, the detailed demand, when a shadow panch entered thereafter, appears

improbable. Thus, the evidence of the shadow panch is not at all reliable. There are contradictory statements showing that he is a tutored and interested witness. He further submitted that there being no proper corroboration by PW 2/ shadow panch to the version of PW 1 complainant, it would be highly improbable to hold that the appellant was involved in the instant crime.

8. The learned counsel for the appellant further submitted that since prior demand is not proved and the demand during the trap remains extremely doubtful, the presumption under Section 20 of the Act cannot be invoked. The demand, which is required to be proved, being a sine qua non for an offence under the Prevention of Corruption Act, the prosecution was required to prove before the trial Court, by reliable evidence, that the witnesses had deposed in a manner inspiring confidence as regards the commission of the offence by the appellant. In the case under the Prevention of Corruption Act, the prosecution is required to establish its case beyond reasonable doubt. However, according to the learned counsel, the testimony of the witnesses itself reveals that there are several doubts in the prosecution case. Therefore, the prosecution has failed to establish its case beyond

reasonable doubt. As such, the conviction cannot be sustained against the appellant for the offences punishable under Sections 7 and 13 of the Act. He, therefore, prayed for allowing the instant appeal and acquitting the appellant.

9. *Per contra*, the learned APP for the State submitted that the prosecution witnesses have supported each other and there is full corroboration as regards the demand and acceptance of the amount. The prosecution has, therefore, established before the Court that it was the appellant-accused who demanded the bribe amount from the complainant and accepted the same in the presence of the panch witnesses and was caught red-handed. The appellant, therefore, does not deserve any sympathy, as the prosecution case has been fully proved against him.

10. According to the learned APP, the learned trial Court has properly appreciated the evidence brought on record by the prosecution. There is no lacuna or defect in the judgment passed by the learned trial Court and, therefore, the impugned judgment passed by the learned trial Court deserves to be maintained and the instant appeal deserves to be dismissed.

11. With the assistance of the learned advocates for the

respective parties, I have gone through the evidence on record and the impugned judgment. In the present case, admittedly, the complainant PW-1 was declared hostile. However, even if the complainant turns hostile, the legal position applicable to the instant case is well settled. The Constitution Bench of the Hon'ble Apex Court in *Neeraj Dutta v. State (Government of NCT of Delhi)*, (2023) 4 SCC 731, considered whether, in the absence of direct evidence of the complainant, demand and acceptance of illegal gratification could be established on the basis of circumstantial evidence. The Constitution Bench held, *inter alia*, that the fact in issue of demand and acceptance of illegal gratification has to be proved by the prosecution. It was further held that mere acceptance or receipt of illegal gratification, without proof of the demand or offer as the case may be, would not by itself establish the offence. The Court also held that demand and acceptance may be proved by direct as well as circumstantial evidence, provided the evidence as a whole establishes the relevant facts beyond reasonable doubt. The relevant proposition in paragraph 88.4 of the judgment is “mere acceptance or receipt of an illegal gratification without anything more would not make it an offence.” Thus, the law laid down in

Neeraj Dutta (supra) is that the absence of the complainant's supporting testimony does not automatically result in failure of the prosecution case. The prosecution can, in an appropriate case, establish the necessary facts through other reliable evidence, including circumstantial evidence. However, the foundational fact of demand and acceptance must nevertheless be established beyond reasonable doubt before the statutory presumption under Section 20 can operate.

12. The question, therefore, before me is whether, in the absence of the supporting evidence of PW 1, the prosecution has established its case beyond reasonable doubt on the basis of the other evidence on record. In this regard, the prosecution sought to rely principally upon the evidence of PW 2 (Chandrabhan Shelke), who is the shadow panch. The panch witness PW 2, in his cross-examination, has deposed that the complainant PW 1, had first gone alone and met the appellant. This being an admission on the part of PW 2, it is clear that the conversation which took place between the appellant and the complainant before PW 2 entered is not known to the shadow panch PW-2. This witness has stated in his cross-examination that the

appellant told the complainant to give the papers, however, subsequently, he stated that he did not remember whether the appellant had demanded the case papers from the complainant. Thus, the evidence of PW 2 does not satisfactorily establish what exactly transpired between PW 1 and the appellant before PW 2 entered the place of incident. In the absence of the evidence of PW-1 supporting the prosecution on the material aspect of demand, the evidence of PW 2 is required to be scrutinized with greater care and caution.

13. It is also pertinent to mention here that the issuance of the medical certificate was the job of the Medical Officer and not of the clerk. The appellant was working as Junior Clerk, and the necessary medical certificate for the purpose of sanctioning leave was issued by the Medical Officer of the Civil Hospital. Thus, apparently, the work of the complainant PW-1 was not pending with the appellant. Even the case of the appellant is that it was not his job to prepare the certificate. The Medical Officers working at the relevant point of time at the Civil Hospital had also not given any decision as regards issuing the certificate to the complainant or otherwise. Therefore, this circumstance also

assumes significance while considering whether the prosecution has established that the appellant had demanded the amount as illegal gratification for doing or causing to be done the work of issuing the medical certificate.

14. Further, it is also necessary to examine whether, the sanction order came to be issued by the sanctioning authority after due application of mind. The sanction order is dated 27.03.2001 and is at Exhibit 53. The said sanction order was sought to be proved through PW-5, namely, Dr. Narayan Jayaram Rathod, who was working as Deputy Director, Health Services, Nashik, at the relevant point of time. The said witness has admitted that he had received the panchanama, statement and one sealed pocket. On perusal of the papers, he felt that it was necessary to accord sanction. He further stated that in the pocket, there was a draft sanction order and he had used the same as a guideline. Accordingly, he accorded sanction.

15. Merely because a draft sanction order was placed before the sanctioning authority or was used as a guideline, the sanction cannot, by that fact alone, be held to be invalid. The material question is whether, the evidence on record

demonstrates that the sanctioning authority independently considered the relevant material and applied its mind before according sanction.

16. In the present case, the sanctioning authority PW-5 has stated that, on receiving the panchanama, statement and sealed material, he perused the papers and thereafter accorded sanction. However, the sanction order itself, as relied upon by the prosecution, is required to be examined to ascertain whether the relevant facts and materials were actually considered by the sanctioning authority. PW-5 admitted that the sanction order is similar to the draft sanction and he had received the summary case history along with the said draft. Thus, the record as produced before this Court, does not disclose sufficient material to demonstrate independent application of mind by the sanctioning authority.

17. The Hon'ble Supreme Court in ***State of Karnataka v. Ameerjan, (2007) 11 SCC 273***, has held that application of mind by the sanctioning authority is imperative and that the order granting sanction must demonstrate that there had been proper application of mind. Similarly, in ***C.S. Krishnamurthy v. State of***

Karnataka, (2005) 4 SCC 81, the Hon'ble Supreme Court held that the sanction order should speak for itself and, where the relevant facts do not appear from the sanction order, the prosecution may establish through evidence that all relevant particulars were placed before the sanctioning authority for due application of mind. Thus, the requirement of sanction under Section 19 of the Prevention of Corruption Act is not an empty formality. At the same time, the mere fact that a draft sanction order was supplied to the sanctioning authority would not, by itself, render the sanction invalid. What is required is an independent and conscious consideration of the relevant material.

18. In the present case, however, the evidence of the sanctioning authority PW-5, coupled with the contents of the sanction order, does not satisfactorily establish that there was such independent consideration of the relevant material.

19. Perusal of the testimony of PW 2 panch witness, coupled with the aspect of sanction, shows that the prosecution has not proved its case beyond reasonable doubt. There are certain doubts as regards the investigation conducted by the prosecution. The panch witness has also not fully corroborated

the prosecution case. In order to prove the charge against the appellant, it was required to be proved by the prosecution that there was a valid demand by leading strong and cogent evidence. As the complainant PW-1 has turned hostile, the prosecution is trying to rely upon the version of PW 2, the shadow panch. However, on minute and careful scrutiny of the evidence of PW 2, it is clearly discernible that he is trying to justify his case on the basis of whatever is written in the panchanama. He has not independently stated anything which goes to prove the charge against the appellant in a clear and satisfactory manner. PW 2 was required to point out to the Court that, even though the complainant PW-1 had turned hostile, his evidence was otherwise reliable and sufficient to establish the material facts. On the point of demand and acceptance of the amount by the appellant, this witness has not clearly deposed that it was the appellant-accused who, in order to issue the medical certificate, demanded Rs.600/- from the complainant.

20. During the course of the trap, the said witness PW-2 stated that PW 1 had gone inside and met the appellant. In that view of the matter, it is clearly discernible that whatever

communication took place between the appellant and PW 1 complainant before the shadow panch entered, he was not aware of the same. Therefore, the testimony of the said witness is not sufficient to establish the charge against the appellant as regards the demand is concerned.

21. The recovery of the amount from the appellant and the presence of anthracene powder on his hands are relevant circumstances. However, such circumstances, by themselves, cannot substitute proof of the foundational fact of demand. The Hon'ble Supreme Court has repeatedly held that mere recovery or possession of the currency notes, in the absence of proof of demand, is not sufficient to establish the offence. Reference may be made to *B. Jayaraj v. State of A.P., (2014) 13 SCC 55* and *P. Satyanarayana Murthy v. District Inspector of Police, State of A.P., (2015) 10 SCC 152*.

22. It is also settled that the presumption under Section 20 of the Prevention of Corruption Act can arise only after the foundational facts necessary for invoking the presumption are established by the prosecution. In the present case, the prosecution has failed to establish the demand for illegal

gratification beyond reasonable doubt. Therefore, the presumption under Section 20 of the Act cannot be used to fill the gap in the prosecution evidence.

23. In view of the aforesaid background, it is very difficult to hold that the appellant is liable to be convicted. The prosecution has failed to establish, beyond reasonable doubt, the essential ingredient of demand of illegal gratification. The evidence of PW 2 does not furnish the necessary corroboration to the prosecution case on the material aspect of demand, particularly when PW 1 complainant, has not supported the prosecution case.

24. In criminal jurisprudence, the prosecution is required to establish the guilt of the accused beyond reasonable doubt. The appellant is entitled to the benefit of doubt arising from the material deficiencies in the prosecution evidence. Consequently, the conviction recorded by the learned trial Court cannot be sustained.

25. Hence, in view of the aforesaid discussion, I am, therefore, passing the following order:

ORDER

(a) The Criminal Appeal is allowed.

(b) The impugned judgment and order dated 01.02.2006 passed by the learned Special Judge, Ahmednagar in Special Case AC No.3 of 2001, 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 bail bond, if any, furnished by the appellant shall stand cancelled and the surety, if any, stands discharged.

(e) The fine amount, if deposited, shall be refunded to the appellant in accordance with law.

(f) The record and proceedings be returned to the concerned Court.