



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

CRIMINAL APPEAL NO.53 OF 2012

Motilal s/o Shamrao Gaikwad,
Age : 63 years, Occ : Retired,
R/o Beed, Tq. And Dist. Beed.
Since deceased through L.Rs.

Latabai wd/o Motilal Gaikwad,
Age : 75 years, Occ : Household,
R/o Gramsevak Colony,
Nagar Road, Dist. Beed.

...Appellant

-VERSUS-

The State of Maharashtra.

...Respondent

...
Shri Shaikh Sohail Subhedar, advocate h/f Shri Nilesh S.
Ghanekar, Advocate for the appellant/ accused.
Mrs. Bharati B. Gunjal, APP for the respondent/ State.
...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 08 September 2026

Pronounced on : 08 October 2026

JUDGMENT :-

1. Heard the learned counsel for the appellant and the
learned APP for the State.

2. The instant criminal appeal has been filed by the

deceased appellant/ accused challenging his conviction and sentence for the offences punishable under Sections 7 and 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988 in Special Case No.5/2006 passed by the learned Special Judge, Beed, vide his judgment and order dated 21.01.2012, whereby the appellant has been directed to undergo rigorous imprisonment for two years and to pay fine of Rs.3000/- and in default to suffer rigorous imprisonment for 06 months, for the offence u/s 7 and to undergo rigorous imprisonment for two years and fine of Rs.3000/- and in default, to suffer rigorous imprisonment for 06 months, for the offence u/s 13(1)(d) r/w 13(2). Both the sentences of imprisonment were directed to run concurrently.

3. The facts giving rise to the present appeal are as under:-

(a) The father of the informant PW-1 (Narsingdas Maganlal Baheti), namely, Maganlal Baheti, was cultivating agricultural land situated at Survey No. 85, admeasuring 11 acres 04 guntas. The said land was in possession of the informant/ PW1. Since the father of the informant/ PW1 was not possessing the ownership certificate in respect of the aforesaid land, he had

filed an application dated 29.12.1998 before the Tahsildar and the said application was pending. In the meantime, on 15.11.2002, the father of the informant/ PW1 expired and, therefore, the informant started looking after the said work and pursuing the aforesaid application.

(b) PW1 learnt that the matter had been closed for orders on 30.08.2004. In order to make an inquiry, informant-PW1 went to the office of the Tahsildar and met the appellant. The informant demanded the ownership certificate. However, according to the informant, the appellant-accused demanded Rs.40,000/- for issuing the said ownership certificate. Thereafter, the deal was finalized for lower amount of Rs.12,000/-. The appellant-accused agreed to accept the said amount and asked the informant- PW1 to bring Rs.12,000/- on 11.04.2005 and, in return, agreed to issue the ownership certificate to him.

(c) Since PW1-informant was not willing to pay the bribe, he approached the Anti-Corruption Bureau office and met PW-5 Mr. Deshmukh, the Dy.S.P.. Accordingly his complaint came to be reduced into writing. Thereafter, PW5 Deshmukh, Dy.S.P., called two panchas from the Government Department.

Accordingly, two panchas, namely PW-3 Subhash Dhuraji Vikhe, who was appointed as panch No.1 and Shriram Narvane was appointed as panch No.2. Panch witnesses were introduced to the informant- PW1. The complaint, which had been reduced into writing, was handed over to the said panchas. The aforesaid Government panchas verified the complaint and, thereafter, it was decided to lay a trap against the appellant-accused.

(d) The currency notes amounting to Rs.12,000/- were treated with anthracene powder. The said amount was handed over to the complainant. After giving necessary instructions, the complainant and the trapping team proceeded towards the office of the appellant-accused. Accordingly, the complainant and panch No.1, namely PW3, went to the office of the appellant-accused at about 4.00 p.m. on 11.04.2005. The trapping team was standing outside the office. At about 4.50 p.m., panch No.1 and the complainant came outside the office. However, neither the complainant nor panch No.1 gave the predetermined signal.

(e) Thereafter, panch No.1 informed the trapping party that the appellant-accused had gone to his home. Therefore, they went near the Xerox centre, where they met Walewadikar and

Sonwane. They informed the complainant that his file was ready and asked him to come to the house. Therefore, PW1-complainant, panch No.1 Subhash Vikhe, Walewadikar and Sonwane went towards the house of the appellant-accused by rickshaw. The said rickshaw was followed by the trapping party. Accordingly, they reached the house of the appellant-accused.

(f) According to the case of the prosecution, the appellant met the informant at his house and allegedly demanded the money, whereupon the informant handed over the amount to the appellant-accused. After receiving the amount, the appellant allegedly kept the same in the pocket of his pant. Thereafter, the informant as well as panch No.1 gave the predetermined signal to the trapping team. Accordingly, the raid was carried out and further procedure was conducted. Thereafter, the procedure of registration of the crime and arrest of the appellant-accused came to be conducted. On the basis of the aforesaid incident, Crime No.40/2005 came to be registered.

(g) After completion of investigation, the charge sheet came to be filed. The charge exhibit-13 was framed. The appellant/ accused pleaded not guilty and claimed to be tried.

During the course of trial, the prosecution examined as many as six witnesses and the accused also examined himself as a defence witness. PW1 is the complainant (Narsingdas Baheti) and was examined at Exhibit 22. PW2 Shantaram Kudale, the sanctioning authority, was examined at Exhibit 26. PW3 Subhash Vikhe, panch No.1, was examined at Exhibit 33. PW4 Pratap Kale, Deputy Collector, was examined at Exhibit 46. PW5 Gautam Digambar Deshmukh, Dy.S.P., ACB, was examined at Exhibit 51. PW6 Govardhan Kolekar, Dy.S.P., ACB, was examined at Exhibit 60, who was subsequent Investigating Officer. The appellant-accused also examined himself as defence witness No.1 at Exhibit 62.

(h) After hearing the parties, the impugned judgment and order of conviction and sentence came to be passed. Hence, this criminal appeal.

4. The learned counsel for the appellant, while assailing the impugned judgment, has strenuously argued that the appellant has been falsely implicated in this case. The appellant submits that PW1-informant has not furnished the details of the office work pending with the appellant and has tried to implicate

him on fictitious and frivolous grounds. It is submitted that the evidence of PW1-informant is not corroborated by panch No.1, PW3, who was admittedly with him right from the beginning as per the prosecution case. The prosecution also did not examine the independent witnesses who were present at the time of the trap. Their non-examination by the prosecution creates serious doubt as regards the investigation as well as the alleged false implication of the appellant.

5. The learned counsel further submitted that the prosecution has not proved that the appellant was in a position to issue the ownership certificate in the absence of the legal heirs being brought on record by the complainant. There is no investigation with regard to the legal heirs to be brought on record and thereafter as to whether the appellant was in a position to issue the ownership certificate. There is no investigation as regards why the application of the father of the informant was pending from the year 1998 till 2004. There is also no corroboration as regards keeping the tainted amount in the pocket by the appellant-accused. He further submitted that the case of the prosecution as regards demand and acceptance has not at all

been proved by the prosecution and, as such, the appellant deserves to be acquitted.

6. The learned counsel for the appellant further submitted that the sanction order discloses that it was not issued by the competent authority and there are no reasons justifying the issuance of sanction to prosecute the appellant. Therefore, the conviction based on such sanction order needs to be set aside.

7. *Per contra*, the learned APP for the State vehemently opposed the instant appeal. According to him, the prosecution, by examining as many as six witnesses, has fully established the guilt of the appellant before the Trial Court. The learned APP submitted that the testimony of the complainant has been fully corroborated by panch No.1, namely PW3. He submitted that the appellant having been found demanding and receiving the bribe amount, was therefore rightly convicted by the learned Special Court.

8. The learned APP further submitted that the sanction order also discloses that, it was issued by the Under Secretary, who was competent to issue the sanction order. In this regard, the learned APP relied upon the government circulars/ notifications

at exhibits 28 dated 29.01.2004 and exhibit 29 dated 03.04.2000 and submitted that the sanction was legal and proper. He, therefore, submitted that, as the prosecution has fully established its case before the trial Court, the judgment and order passed by the learned Special Court be maintained and the instant appeal be dismissed.

9. With the assistance of the learned counsel for the parties, I have gone through the record of the case along with the impugned judgment in the light of the contentions raised on behalf of the parties. The only point for determination in this appeal is, whether the impugned judgment of conviction and sentence of the appellant suffers from any error of law or fact which requires interference in this appeal?

10. Before advertng to the evaluation of the evidence available on record, it is pertinent to discuss certain relevant judgments of the Hon'ble Apex Court. The Hon'ble Supreme Court in the case of *K. Shanthamma Vs. State of Telangana, reported in (2022) 4 SCC 574*, and *Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi), reported in (2023) 4 SCC 731*, has held that, for recording conviction under Section 7 and Section 13(1)(d) of

the Prevention of Corruption Act, as it stood prior to its amendment, the prosecution is required to establish the demand and acceptance of illegal gratification. In the absence of proof of demand and acceptance, the prosecution cannot succeed merely on the basis of recovery of the tainted amount. In *P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another, reported in (2015) 10 SCC 152*, the Hon'ble Apex Court observed in paragraph 23 that the proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and, in the absence thereof, the charge would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de-hors the proof of demand, would not, by itself, be sufficient to bring home the charge under the aforesaid provisions.

11. In the instant case, if the evidence of the complainant PW-1 is perused, it is revealed that he himself was not acquainted with the present appellant prior to lodging of the complaint. It is the case of PW-1 that his father Maganlal Baheti had filed an application on 29.12.1998 for issuing an ownership

certificate before the office of the Tahsildar at Beed. His father expired on 15.11.2002. Thereafter, he started looking after the proceedings pending before the Tahsildar. He had also received information that his application was reserved for orders on 30.08.2004. According to him, from 30.08.2004 he was making inquiries about the orders. On 08.04.2005 at about 4.00 p.m., he met the present appellant, who was working as a Tenancy Tahsildar. However, in his cross-examination, PW1-complainant stated that he personally did not attend the dates in the tenancy proceedings because his advocate was pursuing the matter. He was also not aware as to when the appellant-accused had joined as Tenancy Tahsildar at Beed. The PW1 further stated that he was taking follow-up from his advocate as regards his case. He did not go to the Tahsil office before 08.04.2005. However, in his examination-in-chief, he stated that he met the appellant-accused for the first time on 08.04.2005. However, in his cross-examination, he states that he met one Mr. Walewadikar on 08.04.2005. The said meeting with Walewadikar was neither reported by him to Dy.S.P. Deshmukh-PW5 nor was the said fact reduced into writing in his complaint. Thereafter, in his examination-in-chief, PW1 stated that when the appellant-

accused had demanded the amount of Rs.12,000/-, he had told his advocate about the same. However, his advocate told him that even without giving money, they can get the certificate. However, in the complaint which came to be reduced into writing at Exhibit 23, the said fact is missing. This omission assumes significance while appreciating the evidence of the complainant/ PW-1 regarding the alleged demand.

12. Further cross-examination of the complainant PW-1 discloses that on 08.04.2005 the complainant did not peruse his file. He visited the office of the appellant-accused at about 4.00 p.m. and remained there for about half an hour. One lady peon and one clerk were present in the office of the accused. The application submitted by the father of the complainant on 29.12.1998 was pending with the office of the Tahsildar. There are certain suggestions to this complainant from the defence side that the names of the legal heirs were not mentioned in Exhibit 24 i.e. the application dated 29.12.1998, and that he did not know whether the appellant-accused had asked his advocate to bring the legal heirs of his father on record. PW-1 denied the suggestion that the accused had asked him to bring the legal heirs

on record and, therefore, he got the information that the accused-appellant was unnecessarily asking him to bring the legal heirs on record. In the cross-examination, the presence of the appellant-accused at the office of the Tahsil is not satisfactorily established. On the contrary, the informant- PW1 has stated that other staff members were present in the office of the accused, but whether the appellant was present or not has not been clearly disclosed by the informant in his cross-examination.

13. Thereafter, the informant- PW1 stated in his examination-in-chief that the appellant-accused, after taking the amount, counted the said currency notes with both hands and, after counting the notes, kept those notes in the left-hand pocket of his pant. Thereafter, he stated that the appellant-accused kept the tainted notes in the right-hand pocket of his pant. Whereas, the examination-in-chief of panch No.1 PW3, discloses that the accused accepted the tainted notes by his right hand and kept the said amount by his right hand in the right-side back pocket of his pant. A specific question was put to this witness as to whether, the accused had counted the tainted notes with both hands. The witness answered that the accused accepted the tainted notes and

kept them in his pant pocket. Thus, as regards the counting of notes with both hands, there is no corroboration by panch No.1, namely PW3, who was stated to be along with the informant at the time of payment of the alleged bribe amount.

14. Thus, the evidence regarding demand and acceptance requires careful consideration. The prosecution case rests substantially upon the testimony of PW1-complainant and the corroboration allegedly furnished by PW3-panch No.1. However, as discussed hereinabove, there are material inconsistencies in the evidence of PW1 regarding the circumstances in which he met the appellant, the demand allegedly made by the appellant and the manner in which the tainted currency notes were handled and kept by the appellant. The evidence of PW1 regarding the alleged demand is also required to be considered in the light of the fact that he was not personally attending the tenancy proceedings and was taking follow-up through his advocate. The evidence also discloses that the appellant was not clearly shown to have been present in the office on the date and at the time stated by the complainant.

15. The prosecution has also not satisfactorily

established the official role of the appellant in issuing the ownership certificate, particularly in the absence of the legal heirs being brought on record. The issue as to whether the appellant was competent and in a position to issue the ownership certificate has not been satisfactorily investigated. The prosecution has also not satisfactorily explained why the application submitted by the father of the complainant in the year 1998 continued to remain pending till the year 2004 and thereafter till the alleged demand in April 2005. It is true that the evidence of the complainant in a trap case cannot be discarded merely because he is the complainant. However, his evidence has to be scrutinized carefully and, where material contradictions and omissions affect the core of the prosecution case, the Court has to consider whether the essential ingredients of the offence have been proved beyond reasonable doubt.

16. In the present case, the prosecution has failed to establish the demand of illegal gratification beyond reasonable doubt. The evidence regarding acceptance is also not free from doubt, particularly in view of the material discrepancy between the evidence of PW1 and PW3 regarding the manner in which the

currency notes were counted and the pocket in which they were allegedly kept. Mere recovery of the tainted currency notes, in the absence of satisfactory proof of demand and acceptance, cannot by itself establish the guilt of the accused under the provisions of the Prevention of Corruption Act applicable to the present case. The principle laid down by the Hon'ble Supreme Court in *P. Satyanarayana Murthy, K. Shanthamma and Neeraj Dutta (supra)*, therefore, squarely applies while appreciating the evidence in the present case. The prosecution was required to establish the foundational facts of demand and acceptance beyond reasonable doubt. The said burden has not been satisfactorily discharged.

17. As far as sanction is concerned, the evidence of PW2, Shantaram Kudale, the sanctioning authority, who came to be examined at Exhibit 26, is required to be considered. Before perusing the evidence of the sanctioning authority, I have verified the sanction order dated 20.06.2006 at Exhibit 30, issued by the said witness, who was the Under Secretary to the Government of Maharashtra. For the purpose of considering the validity of the sanction, the relevant portion of the sanction order is required to

be considered. The sanction order clearly reveals that it was brought to the notice of the Principal Secretary, Revenue and Forest Department, Mantralaya, that the appellant, whose name was specified in column No.2 of the Schedule, was working as Tahsildar, Tenancy Act, at the Collector's Office, Beed, on 11.04.2005 and thereabout. It further reveals that the Principal Secretary, Revenue and Forest Department, Mantralaya, having fully examined the material pertaining to Beed City Police Station, District Beed, Crime No.40 of 2005, under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, and considering all the facts and circumstances disclosed therein, was satisfied that a prima facie case was established against the said accused public servant and that, in the interest of justice, the said accused public servant should be prosecuted before the Court of competent jurisdiction for the said offences. Thus, it appears that the case papers of Crime No.40 of 2005 were forwarded to the Principal Secretary and that the Principal Secretary, upon consideration thereof, opined that a prima facie case was established against the appellant-accused and, therefore, sanction to prosecute was accorded. However, the sanction order dated 20.06.2006 was issued under the signature

of the Under Secretary to the Government of Maharashtra, namely PW-2.

18. I am afraid that such sanction order can be said to have been issued in accordance with Section 19 of the Prevention of Corruption Act, 1988, unless the prosecution establishes that the Under Secretary was the competent authority to grant sanction in the facts of the present case. The Hon'ble Apex Court has repeatedly emphasized the importance of the process of grant of sanction under the Prevention of Corruption Act. In ***Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, (1979) 4 SCC 172***, the Hon'ble Supreme Court emphasized that the sanctioning authority is required to consider the relevant material and apply its mind before granting sanction. The sanction is intended to afford protection against frivolous prosecution and, therefore, cannot be treated as an idle formality. The prosecution is required to establish that valid sanction has been granted by the competent sanctioning authority and that the sanctioning authority must be satisfied that a case for sanction has been made out constituting the alleged offence.

19. In the present case, the sanction order itself discloses

that it was the Principal Secretary who had examined the material and was satisfied that a prima facie case was made out against the appellant-accused. However, the order granting sanction has been signed by the Under Secretary. The Under Secretary who has signed the sanction order has not been shown, from the material on record, to have independently applied his mind to the material before granting sanction. The contents of the sanction order itself disclose that the superior officer, namely the Principal Secretary, had applied his mind and recommended/decided that sanction be issued. Thus, the witness PW-2 who came to be examined as the sanctioning authority appears to be merely the signatory to the sanction order and not the authority who independently applied his mind to the material for the purpose of granting sanction. In that view of the matter, it cannot be held, on the evidence available on record, that the prosecution has established that the sanction order was issued by the competent authority as required under Section 19 of the Prevention of Corruption Act.

20. The fundamental requirement of sanction under the Prevention of Corruption Act is to provide a procedural safeguard

so that prosecution is initiated only after due scrutiny by the competent authority. Thus, at the time of granting sanction, the sanctioning authority must be made aware of the relevant facts constituting the alleged offence and must apply its mind to the material placed before it. However, in the present case, it is not clear whether all the documents pertaining to the case of the informant, which was pending since 1998, were ever placed before the competent sanctioning authority. The sanction order merely states that the case papers pertaining to Crime No.40/2005 were perused. The purpose of obtaining sanction is to ensure that a public servant is not subjected to prosecution without application of mind by the authority competent to grant sanction. The protection is intended to maintain a delicate balance between accountability of public servants and protection against frivolous or vexatious prosecution. In the present case, therefore, the prosecution has failed to establish that there was a valid sanction granted by the competent authority after due application of mind to the relevant material.

21. In view of the above discussion, it is found that the prosecution has failed to establish that there was a valid demand

of illegal gratification by the appellant. The evidence of the complainant is not found to be sufficiently trustworthy to sustain the conviction. The prosecution has also failed to establish that there was a valid sanction granted by the appropriate competent authority in accordance with Section 19 of the Prevention of Corruption Act. In that view of the matter, the conviction imposed upon the appellant cannot be sustained. The impugned judgment and order of conviction and sentence, therefore, deserves to be set aside. Hence, the following order:

ORDER

- (a) The Criminal Appeal is allowed.
- (b) The impugned judgment and order of conviction and sentence passed by the learned Special Judge, Beed, is hereby quashed and set aside. Consequently, the appellant-accused is acquitted of the offences for which he was convicted.
- (c) The bail bond, if furnished by the appellant, stands cancelled and the surety, if any, stands discharged.
- (d) The record and proceedings be sent to the concerned Court.