



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.368 OF 2006

The State of Maharashtra
Through ACB, Latur,
District Latur

.. Appellant

Versus

Youraj s/o Baburao Nilangekar
Age: 56 years, Occu.: Service as
Draftsman, Z.P. M1 Division, Latur,
R/o. Nilanga, Tq. Nilanga,
District Latur.

.. Respondent

...

Mr. S. M. Ganachari, APP for appellant/State.

Mr. R. V. Gunale h/f Mr. V. D. Gunale, Advocate for respondent.

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.09.2026

Pronounced on : 24.09.2026

JUDGMENT :-

1. In the State appeal, there is challenge to the judgment and order of acquittal dated 30.12.2005 passed by learned Special Judge, Latur in Special (ACB) Case No.9 of 2002, thereby acquitting the respondent herein from charges under Sections 7, 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act [for short "P.C. Act"].

2. In brief, case of prosecution in Trial Court was that, PW1 complainant was the owner of agricultural land and out of said land, State had proposed to acquire 1 H 26 R land for Minor Irrigation Project i.e. percolation tank. But, actually acquisition was made only to the extent of 55 R land and remaining land was shown in the name of one Nagorao Maruti Pawar and, therefore, he approached the office of Minor Irrigation Department and there, the accused, who was a clerk, allegedly demanded Rs.500/- bribe for forwarding the proposal. Complaint to that extent was tendered by PW1 with ACB authorities, who entertained the complaint, planned trap, executed it and apprehended the accused. The accused was duly charge-sheeted and tried for above referred offences vide Special Case No.9 of 2002. The trial ended up in acquittal. Hence, the appeal by State questioning the judgment and order of acquittal.

3. Learned APP would point out that, here, the complainant has deposed about his work with the accused and has also identified the complaint filed by him, wherein there was an express reference to the demand of bribe. That, thereafter, according to him, the complainant did not support the prosecution. However, it is his submission that, though the complainant turned hostile, his entire evidence cannot be washed away. So much of the evidence, which supports the

prosecution, can still be relied upon and put to use. In support of such contention, he seeks reliance on the judgment of the Hon'ble Apex Court in the case of ***The State of Kerala vs. K.A. Abdul Rasheed***, 2026 LiveLaw (SC) 374.

4. Learned Counsel for the respondent would support the judgment and order of learned Trial Court by pointing out that *sine qua non* like demand itself is not proved beyond reasonable doubt and he pointed out that complainant's testimony is silent about demand of bribe itself and, therefore, learned Trial Court rightly acquitted the accused.

5. To put it briefly, case of complainant is that, he had agricultural land. State acquired 1 H 26 R land for percolation tank. However, only 55 R land was shown to be acquired, whereas 70 R land was shown in the name of one Nagorao Maruti Pawar and in that regard, he approached office of Executive Engineer, Minor Irrigation Department, Zilla Parishad, Sub Division, Latur. Said office was required to comply the deficiencies in forwarding subsequent proposal and in that regard it is alleged that on 10.05.2002, when he approached Executive Engineer Patil to put up his grievance, it is alleged that said officer Patil called accused, who was a clerk and said officer Patil asked accused to forward the proposal, which accused

agreed and asked complainant to furnish 5 copies of Award and to give Rs.500/-, but he stated in complaint that accused took him aside and asked him to pay Rs.500/- for said work and, therefore, complaint was lodged followed by arrangement of trap.

6. Complainant has adduced evidence at **Exhibit-39**, wherein in initial part, he deposed about acquisition of his land, he approaching office of Executive Engineer, meeting officer Patil, who in turn calling accused - a clerk and making inquiry with him regarding the proposal of acquisition. He testified that after verifying the file, accused told that there were some objections and deficiencies in the file of proposal, which will be required to be removed and asked complainant to submit copies of 7/12 extract and five copies of Award. He deposed that he told accused that he will not be in a position to collect the documents as he is not acquainted with anybody in Latur and, therefore, asked accused to collect the documents and gave him Rs.200/- and also tendered copies of 7/12 extract and extract of 8A. But his proposal was not forwarded and therefore, he approached ACB, met the officer, made oral grievance and he was asked to come on the next day and on his oral complaint, report was typed. He appended signature, which he identified. After he deposed to this extent, learned APP seems to have put up leading

questions to complainant as to whether it all happened that accused demanded Rs.500/- to him as bribe for forwarding the proposal and his answer was in negative.

7. Trial Court has noted that, on repeatedly being asked, witness was avoiding the answer and then finally deposed that according to him, accused demanded amount of Rs.500/- for collecting the copies of Award, panchanama and gave him Rs.200/- for collecting said documents. Thereafter, it seems that, learned APP, after seeking permission of the Trial Court, subjected his own witness complainant to cross-examination, wherein prosecution case was put up by putting leading questions and he has answered the same in affirmative. He also identified complaint Exhibit-40.

. While under cross-examination at the hands of accused, he deposed that there is variance between his complaint which was orally disclosed and complaint Exhibit-40 referred to him in the examination-in-chief and that, he was reading Exhibit-40 for the first time only. He also admitted that accused had not demanded any amount from him and he himself gave it to the accused.

8. Thus, here, complainant has not supported prosecution. Though he gave complaint and identified it to be carrying his signature, in examination-in-chief itself, he does not speak about

demand of bribe of Rs.500/- being raised by accused. As stated above, he also admitted that accused did not demand amount to him and he on his own accord gave him. In examination-in-chief also he has stated that he has given Rs.200/- initially for collection of documents as he was not acquainted with the place. Consequently, complainant has not supported prosecution.

9. Learned APP was very vociferous in submitting that complainant has identified his complaint in the Court and, therefore, even if he retracted at later point of time, his initial deposition can be acted upon and relied too. In this regard, he sought reliance on above referred ruling of Hon'ble Apex Court.

10. True it is that, it is fairly settled now that the Court need not discard the entire evidence of a hostile witness and that so much part of his testimony which favours the prosecution can definitely be acted upon and relied upon. However, it is noticed that, in the initial part, till being declared hostile, the complainant's examination-in-chief is found to be silent about the accused demanding a bribe of Rs.500/- for the work. In the judgment relied upon by the learned APP, it has been categorically observed that if a complainant prevaricates or turns hostile regarding the specific demand at the time of the **trap**, the prior demand established through the First Information Statement should

be affirmed in the Court, and that should be followed by corroboration from an independent witness, which itself would be sufficient to bring home the guilt of the accused. But, here, complainant's initial examination-in-chief is firstly silent about any demand of bribe of Rs.500/-. There is no solemn affirmation about demand of bribe in his testimony in the Court. Only had he affirmed the contents of FIR by stating that there was demand of bribe and that he had accordingly lodged the complaint, the above ruling could have been applied. Consequently, mere identification of signature over complaint is not sufficient to hold that the contents reflected therein in the complaint are also stated by complainant in the witness box. For above reasons, the ruling of Hon'ble Apex Court cannot be put to use here.

11. Here, as pointed out and it is also emerging from the complaint as well as from the testimony of complainant that, complainant has initially approached Executive Engineer Patil and put up his grievance, upon which accused was said to be summoned and in complaint, it is stated that, accused took complainant aside and then demanded Rs.500/-. If it was so, then Executive Engineer Patil was the important witness, who would have confirmed visit of complainant with grievance and thereafter, complainant meeting

accused. As pointed out said Executive Engineer Patil is not examined.

12. Another feature of this case is that, in complaint, there is reference of demand of Rs.500/-, but only Rs.200/- tainted currency is said to be accepted by accused. There is no material to suggest that initial demand was brought down from Rs.500/- to Rs.200/- and the said was duly accepted by accused.

13. Consequently, here, complainant has retracted and has failed to depose about initial demand in his examination-in-chief and therefore, even his testimony to that extent, i.e. prior to he being declared hostile, cannot be taken aid of and applied for recording guilt of the accused. Resultantly, case of prosecution about demand is not proved beyond reasonable doubt. When initial demand is not proved, case of prosecution suffers set back.

14. Though learned APP submitted that there is corroboration from the testimony of PW2 shadow panch, however, on carefully examining his testimony, it is noticed that, according to complainant, during conversation between complainant and accused when they had come out of the office, accused allegedly said “whether he has brought it” and thereafter, complainant handed over the tainted currency. But, PW2 speaks about “whether he has brought something

of his". Therefore, on the point of demand also, testimony of PW2 differs from what is stated by complainant in paragraph No.7. Therefore, on such count also doubt arises about actual demand.

15. In the light of above discussion and the quality of material discussed above and bearing in mind principles to be applied while dealing with appeal against acquittal, this Court does not find any merit in the appeal so as to interfere by allowing the appeal. Hence the following order :-

ORDER

. Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]