



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 305 OF 2012

The State of Maharashtra
Through the P.I. Anti Corruption Bureau,
Dhule.

....Appellant

Versus

Bhiva Ratan Mavachi (Deceased)

1-a) Smt. Mangalbai Bhiva Mavachi
Age: 68 years, Occu.: Household (Wife)

2-b) Jitendra Bhiva Mavachi
Age: 42 years, Occu.: Nill (Son)
Both R/o. Bhopkhel, Post.Dandshirwade,
Tq.Sakri, Dist. Dhule.

3-c) Sou. Kavita Harshad Gamit
Age: 38 years, Occu.: Household (Daughter)
R/o.: At. Dhat, Tq.Vyara, Dist.Tai (Gujrat).

4-d) Sow. Tanuja Ramchandra Ahire
Age: 32 yrs., Occu.: Household (Daughter)
R/o. At. Ukai Road, Songad,
Dist.Tapi (Gujrat)

.....Respondents

.....
Mrs.Chaitali Chaudhari Kutti, APP for Appellant.
Mr.Tapan Kishor Sant, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10-09-2026

Pronounced on : 11-09-2026

JUDGMENT :

1. This is a State appeal in which there is challenge to Judgment and order dated 11-08-2011 passed by learned Additional Sessions Judge (Special Judge), Shahada in Special Case No.13 of 2003, acquitting respondent/original accused from charges under Sections 7, 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988

BRIEF FACTS OF THE CASE

2. In trial Court, case set up by prosecution was that, complainant was a School Teacher at Zilla Parishad School, Dahel, Tq.Akkalkuwa, District Nandurbar. Accused, who is a Block Education Officer (BEO) paid visit to the said School on 03-12-2001. Complainant was not present in the School during inspection of School. On 04-12-2001, complainant approached accused to offer explanation of his absence that he was engaged in election duty work assigned by the Tahsildar, however, accused told him that he would report his absence as well as remark of his unsatisfactory work. It is the case of prosecution that, complainant requested him to not to do so, upon which accused demanded Rs.2,000/- for refraining from doing the same and hence, report to that extent was received by the Anti Corruption Bureau (ACB) after which trap was planned and executed. After apprehension of accused, Investigating Officer lodged complaint,

investigated the same, chargesheeted the accused. Evidence adduced by prosecution was appreciated by trial Court and accused came to be acquitted. Hence, instant appeal by State.

SUBMISSIONS

On behalf of Appellant State :

3. Learned APP would give brief account of prosecution story in trial Court. According to her, case of prosecution in trial court was rested on the evidence of PW1 complainant, PW2 Sanctioning Authority, PW3 shadow pancha and PW4 Investigating Officer. She pointed out that, though complainant, at a later point of time, in his evidence resiled and did not support story of prosecution, according to her, initial testimony before the learned trial Court deserves consideration as it is partly in favour of prosecution. At this juncture, she seeks reliance on the Judgment of Hon'ble Apex Court in the case of *Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731 as well as recent judgment of Hon'ble Apex Court in the case of *The State of Kerala v. K.A. Abdul Rasheed*, 2026 LiveLaw SC 374.

4. She next submitted that, there is sufficient corroboration from testimony of PW3 shadow pancha, who has stuck with his version about demand as well as acceptance. That, his testimony has

remained intact in cross-examination. That, he was party to both demand as well as acceptance. That, there is recovery from accused and consequently, it is her submission that, the learned trial Court ought to have accepted prosecution story, but it being failed to do so, she urges for indulgence at the hands of this Court by setting aside the impugned judgment.

On behalf of Respondent Accused :

5. Per contra, learned counsel for respondent would support the Judgment and order of acquittal. According to him, complainant has not supported prosecution story and has rather retracted and resiled from contents which were reported by him in the complaint. That, he did not support prosecution and thus he was also cross-examined by learned APP. Further according to him, sanction also is invalid as witness, who is examined, has admitted that appointing and removing authority was Maharashtra Government. Resultantly, for want of merits, he prays to dismiss the appeal.

ANALYSIS

6. Re-appreciated the evidence. It is in vernacular Marathi and sum and substance of its translated version is as under :

PW1 Gujar Tulshiram Choure, complainant deposed at Exhibit

32 that he works as Primary Teacher and accused to be Block Education Officer. According to him, between 04-11-2001 to 05-12-2001, he and one Dinkar Bahadur Pawara were assigned duty of preparing voters list by the Tahsildar, Akkalkuwa and as such, they were required to give visits to remote areas. That, on 03-12-2001 they had been to Baripada but on next day, when he reported at School on 04-12-2001, he learnt about accused paying visit to their School on 03-12-2001 and therefore, he met him. Accused told him that his work is not satisfactory and moreover, he was not present in the School and that he would give report of the same to the Chief Executive Officer (CEO), Zilla Parishad, Nandurbar. He also deposed that, at that time, accused told him that, if Rs.2,000/- is paid to him, he would not despatch such report and asked him to bring money at Panchayat Samiti Aakkalkuwa and if they do not meet there, then amount should be brought at Panchayat Samiti, Dhadgaon. Witness testified that on 12-12-2001, he approached ACB office and gave complaint of demand of bribe of Rs.2,000/- and said complaint is at Exhibit 33. In paragraph 5 of his examination-in-chief, he stated that on next day i.e. on 13-12-2001, he visited ACB office where Panchas were introduced to him, and on the same day at around 07:00 a.m., they proceeded towards Akkalkuwa. That, when he and shadow pancha visited the office of accused, he was not found there and

therefore, they came back and reported it to Investigating Officer. He deposed that at his request, it was decided to pay visit to Dhadgaon for laying trap and accordingly, they went there and after reaching there, he and shadow pancha paid visit to office of accused, greeted him. He deposed that, thereafter he offered accused to have tea and accordingly they went to a hotel and after taking tea, he told accused that he has brought Rs.2,000/- upon which accused told him that have a word with hotel owner and he went away. Therefore, he gave amount to hotel owner and went and gave signal, after which raiding party apprehended hotel owner. After stating so much, learned APP seems to have secured permission of learned trial Court to cross-examine the witness and at such time, he denied that he and accused went towards Dilkhush Chicken center and there accused said to him that if Rs.2,000/- is paid, then he will not send report. All suggestions put by learned Public Prosecutor were denied by complainant and subsequently, he was cross-examined by defence counsel wherein he denied that, on the instigation of one G.N.Patil, he has lodged false complaint against accused.

Therefore, it is emerging from above evidence that complainant has denied any demand being made and he on his own has informed accused about bringing Rs.2,000/- which according to him were accepted by hotel owner.

7. **PW3** More, shadow pancha, who is examined at Exhibit 40 deposed about he visiting ACB office, agreeing to act as pancha, listening to story of complainant, causing signature over complaint, and he and complainant proceeding towards Panchayat Samiti Akkalkuwa, reaching there, but accused to be not present in the office and about rather they informed that he had gone to Dhaddgaon and complainant suggesting to the Investigating Officer that they should go to Dhangaon and accordingly, they reaching there at 01:40 p.m. That, at the entrance gate of Panchayat Samiti, they met accused. Witness gave description of his attire and stated that, complainant told accused that first they should have tea and accordingly, they went in a hotel where complainant ordered tea. Witness deposed that, at that time, complainant requested accused to not to send report to the CEO, upon which accused told complainant to wait. At that time, one person in white dress was present there and he told accused that as he has work at Panchayat Samiti and he wish to go. Thereafter, again complainant requested accused to not to send report, after which complainant paid bill of the tea and thereafter, complainant and accused went towards Dilkhush Chicken Center and witness claims that he also went there. That, there also complainant requested accused to not to send report upon which accused agreed and asked whether Rs.2,000/- has been brought and it was affirmed

by complainant and he handed over tainted currency, which was accepted by accused and it was further pocketed and thereafter, predetermined signal was relayed by the complainant.

Above witness is subjected to extensive cross-examination on the point of how many signatures were caused by him on 12-12-2001 and 13-12-2001. He admitted causing signatures on the papers dated 03-12-2001 containing remark noted by accused i.e. Exhibit Nos.43 and 44. He also admitted that on 03-12-2001, three teachers namely Anil Ahire, Gujar Choure and Dinkar Paware were absent but he did not notice it. He admitted that Exhibit 44 is the show cause notice, copy of which is addressed to the Chief Executive Officer, Zilla Parishad, Nandurbar being already despatched. Then there is further cross-examination about writing work of panchanama and his statement recorded by Investigating Officer. He denied that on 16-12-2001, he did not give statement that complainant and accused came out of the tea stall, went towards Dilkhush Chicken Center and there, accused demanded money from complainant and complainant paid him, which he pocketed. However, on confronting the statement, he is unable to state why it is missing from his statement. Therefore, this is material omission. He is also unable to state why to this extent his supplementary statement was recorded on 07-08-2002. He answered that, it did not have so happened that after coming out of

hotel, complainant said to accused that he should not forward report to higher officer upon which complainant said that they would talk later. Rest is all denial.

8. Learned APP would submit that, in view of above evidence of PW1 complainant, initial part of his examination-in-chief is in consonance with the story of prosecution and therefore, so much part of examination-in-chief deserves acceptance coupled with evidence of shadow pancha. However, according to her, trial Court failed to do so. She has relied on above rulings of the Hon'ble Apex Court. No doubt, it is now fairly settled position that merely because complainant resiles or retracts and turns hostile, his entire testimony need not be discarded. However, so much part of the testimony, which deserves consideration, should atleast be in consonance with the story of prosecution. Here, it is noticed from testimony of complainant that, he deposed only to the extent of visit to office at Tasildar, Akkalkuwa and when accused was not present there, at his instance, they had been to Dhadgaon. But after stating that accused met them at the entrance of Panchayat Office and they went to take tea, tea was ordered and after taking tea, he deposed that, he told accused that, he has brought Rs.2,000/-. Therefore, here, apparently without any demand by accused, there is offer of bribe. After stating

so much, learned APP seems to have decided to cross-examine the witness, but even during cross-examination at the hands of prosecution, he has denied the events which took place near Dilkhush Chicken Center of which there is testimony of PW3 shadow pancha. He denied that there was demand by accused and denied giving statement to the ACB office.

Though PW3 shadow pancha deposed in examination-in-chief about demand of bribe by accused near Dilkhush Chicken Center, in paragraph 9 of his cross-examination, there is omission to that extent. His statement to Police is silent on this count.

9. Learned counsel for respondent accused would point out that, only because show cause notice was forwarded against the complainant to higher authorities, motivated complaint has been lodged on 12-12-2001. In this context, if record is put to scrutiny, it does emerge that complainant reported that, during his conversation with accused on 04-12-2001, there was demand by accused. However, there was no prompt reporting of bribe immediately that day or even on next day. Rather complaint is shown to be lodged on 12-12-2001. This witness has admitted Exhibit 44, which is a show cause notice and it is got exhibited after it was confronted to him by defence. Apparently, it is a show cause notice dated 10-12-2001

despatched by accused to the Chief Executive Officer, Nandurbar prior to the complaint dated 12-12-2001. Therefore, there are reasons to hold that complaint is motivated. It is to be noted that very accusation of prosecution is that, bribe was demanded to refrain from despatching remark to the higher authority i.e. Chief Executive Officer, but in the light of above discussion, it is emerging that show cause notice was despatched on 10-12-2001 and as such action has already been initiated against complainant prior to lodgement of complaint by complainant. Consequently, prior to the date of complaint, action was initiated and therefore, reasonable doubt crops up about very motive to demand bribe. Therefore, case of prosecution is indeed not free from doubt and it is not proved beyond reasonable doubt.

Keeping in mind the principles to be applied and borne in mind while dealing with appeal against acquittal, this Court is not inclined to accept the prosecution story, as has been done by the learned trial court. For above reasons, following order is passed :

ORDER

The Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]