



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.249 OF 2016

Bhagwan s/o Trambakrao Bhare
Age: 57 years, Occu.: Government
service as Assistant Sub Inspector
(Bakkal No.612) at Mahila Sahayyak
Kaksha in the office of the
Superintendent of Police Rural,
R/o. N-12, ED 13/7, Bharatmata
Nagar, HUDCO, Aurangabad,
Taluka and District Aurangabad.

.. Appellant

Versus

The State of Maharashtra
Through the Police Station,
Phulambri, Taluka Phulambri,
District Aurangabad.

.. Respondent

...
Mr. Rajendrraa S. Deshmukh, Senior Counsel i/b Mr. Devang R.
Deshmukh, Advocate for the appellant.
Mr. G. O. Wattamwar, APP for the respondent/State.

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 01.10.2026

Pronounced on : 05.10.2026

JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order of conviction dated 28.03.2016 rendered by learned Special Judge-5, Aurangabad in Special (ACB) Case No.21 of 2009. Vide this judgment and order, conviction has been recorded for offence under Sections 7,

13(1)(d) read with Section 13(2) of the Prevention of Corruption Act [for short "P.C. Act"].

2. In trial Court, case of prosecution was that, mobile and motorcycle of PW2 complainant was seized by police, when some persons including complainant were apprehended while involved in gambling i.e. playing cards. Though complainant was released, his mobile and motorcycle were seized and for that, he had approached Court and also succeeded in procuring the order of release of mobile as well as motorcycle. In that connection, he had approached accused, the Police Head Constable. According to prosecution, for releasing the vehicle and mobile, there was demand of bribe of Rs.1,000/-. Complainant approached ACB, lodged report, in consequence to which ACB authorities planned trap by engaging shadow panch PW3, giving both complainant and panch necessary instructions and demonstrations and accused was apprehended after accepting the bribe. Hence, he was chargesheeted and tried and also convicted by learned Trial Court. Hence, instant appeal.

3. Learned Senior Counsel Shri Deshmukh would submit that there is false implication. According to him, the prosecution has not discharged its burden of proving the case beyond reasonable doubt. He would submit that, at the outset, the sanction was invalid. He

would submit that the sanctioning authority had not studied or considered entire papers and that there was an admission to that extent. Thus, according to him, there was non-application of mind while according sanction.

4. As regards to demand is concerned, he submitted that complainant himself had not supported the prosecution and he was required to be cross-examined by prosecution. Resultantly, according to him, demand itself is not proved. He would submit that though shadow panch is examined and he has deposed about prosecution case, it has come in his cross-examination that he was habitual panch and, therefore, was not worthy of credence. That, even complainant was found to be habitual complainant. Therefore, with such quality of evidence, it is his submission that case of prosecution ought not to have been accepted by the learned Trial Court. Hence, by seeking reliance on the judgment of Hon'ble Apex Court in the case of ***State of Punjab Vs. Madan Mohan Lal Verma, (2013) 14 SCC 153*** and on the judgment of Hon'ble Supreme Court in the case of ***N. Sunkanna vs. State of Andhra Pradesh, 2015 ALL MR (Cri.) 4551 (S.C.)***, he urges to allow the appeal by setting aside the impugned judgment.

5. Per contra, learned APP would support the judgment and order of conviction. According to him, verification of demand was done and

thereafter, main trap was laid. He pointed out that, complainant had, in his initial part of deposition, supported prosecution and so much part of his testimony can definitely be relied. He seeks reliance on the judgment of Hon'ble Apex Court in the case of ***Neeraj Dutta Vs. State (Government of NCT of Delhi), (2023) 4 SCC 731***. He would submit that shadow panch has also supported prosecution. That, sanction is in fact held valid by Trial Court and, therefore, he prays to dismiss the appeal for want of merits.

6. Re-appreciated the evidence. As regards to first ground raised by appellant regarding validity of sanction is concerned, this Court has studied the evidence of PW1, who was Superintendent of Police. He has deposed about studying the papers and applying his mind and thereafter, according sanction. He was also empowered to accord sanction. Mere failure to carry the papers received from the ACB to the Court, by itself, is no good ground to disbelieve his otherwise trustworthy evidence. In the opinion of this Court, there is sanction after due application of mind.

7. As regards to demand and verification is concerned, **PW2** Complainant, who is examined at Exhibit-30, in his deposition has stated that on 22.02.2009, when he had been to village Chauka, he was arrested by police with other 14 persons while playing cards and

his mobile and Hero Honda motorcycle were seized. That, he was required to approach the Court and he obtained order for release of both items and thereafter, he claims to have approached accused, who was posted at Phulambri Police Station. He has deposed that in spite of handing over Court order, accused did not comply and moreover, asked him how much amount was with him and when he stated that he had no money, but showed his inclination to pay Rs.1000/-. Thereafter, he lodged the report. He then stated about his visit to the ACB office, where the panchas were called, and thereafter, about the visit to the house of the accused at Himayatbag and subsequently, to Phulambri Police Station. However, at this point, he denied having paid Rs.1,000/-.

. While facing cross-examination at the hands of learned APP, he admitted that he had filed complaint with ACB and he also admitted and identified the complaint. He is unable to offer any explanation about the contents of the complaint.

8. Therefore, bearing in mind the settled law that, the testimony of a hostile witness need not be discarded in toto, if a part of such testimony supporting the prosecution can be relied, here also the complainant's initial deposition about his approaching the accused for the release of his vehicle and mobile phone and the accused making a

demand, can definitely be taken recourse to and relied upon.

9. **PW3** shadow panch, who is examined at Exhibit-41, initially deposed about visiting ACB office, meeting complainant, hearing his story, signing the complaint and verification of demand being done by Investigating officer. In paragraph No.4 of his examination-in-chief, he has stated that when he accompanied complainant to the house of accused, they meeting him in a lane and there, accused asking complainant, whether he has brought the agreed amount. Therefore, shadow panch corroborates complainant on the point of demand. This witness also deposed about accused being apprehended after the main trap, regarding which he deposed in paragraph Nos.10 and 11.

10 True it is, that this witness, in his cross-examination, has admitted that he has acted as panch in two cases, but except giving such suggestions, details of he appearing in which case, has not been brought on record. Therefore, his such answer itself could not be considered to be damaging.

11. Therefore, in the light of the above discussion, here, both demand as well as acceptance have been established. The sanction is also valid. Such quality of evidence has rightly been taken aid of by the learned Trial Court in accepting the case of the prosecution. There

is no infirmity or perversity so as to warrant interference. Hence, the following order is passed :-

ORDER

. Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

scm