



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.502 OF 2005

The State of Maharashtra
Through Police Station,
City Chowk, Aurangabad.

.. Appellant

Versus

Ramdas Sambhaji Nitnaware
Age: 42 years, Occu.: Service,
R/o. Sale Galli, Veer Hanuman
Road, Latur, Dist. Latur.

.. Respondent

...

Mr.G.O. Wattamwar, APP for Appellant/State.

Mr.Suraj N. Pradhan, a/w Ms. Dnyaneshwari R. Jadhavar i/b
Mr. Hemantkumar F. Pawar, Advocate for respondent.

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 24-08-2026

Pronounced on : 25-08-2026

JUDGMENT :-

1. In instant appeal, there is challenge by State to the judgment and order dated 16-04-2005, passed by the learned Special Judge, Aurangabad, in Special Case No.17 of 2001, thereby acquitting the respondent from charges under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (PC Act).

FACTS IN NUTSHELL

2. In short, prosecution was launched against present respondent

(accused) on the premise that, he, in the capacity of Senior Clerk in the Office of the District Sports Officer, Aurangabad, demanded bribe of Rs.500/- for handing over a demand draft received in the name of complainant's Society. However, as complainant was having only Rs.100/- he requested accused to give demand draft and he will arrange and pay the remaining Rs.400/- afterwards, upon which accused handed over the demand draft, but told complainant that the remaining amount of Rs.400/- has to be paid within working hours else he would stop the payment of said demand draft. As complainant was not willing to comply, he approached Anti Corruption Bureau (ACB) authorities and lodged complaint, which was followed by arrangement of shadow panchas by ACB authorities and giving demonstration of necessary procedures and issuing necessary instructions to complainant and shadow pancha. After drawing pre-trap panchanama, trap was laid in the office of accused, where complainant and shadow pancha made to accompany together to give bribe amount on demand and to relay predetermined signal after acceptance. Accordingly, on 20-04-2001, PW1 complainant and PW2 shadow pancha approached accused and balance amount of Rs.400/- was paid on demand, and thereafter, predetermined signal was relayed resulting into apprehension of accused.

PW3 Investigating Officer, who carried out investigation and

planned trap, filed chargesheet against accused and after obtaining sanction from PW4 Sanctioning Authority, accused was made to face trial, which ultimately ended up in acquittal. Hence, appeal by State.

SUBMISSIONS

On behalf of Appellant State :

3. Learned APP would apprise the Court and reiterated the case of prosecution in trial Court. He pointed out that, accused is undisputedly a public servant. That, for handing over a demand draft in favour of complainant's society, there was demand of bribe of Rs.500/-. That, complainant had made upfront payment of Rs.100/- and before remaining amount was handed over, ACB was approached vide complaint exh.19. That, ACB authorities had engaged pancha witnesses and a trap was planned and it was successful.

4. He next submitted that there was demand as well as acceptance by the accused. That, shadow pancha, who was in the company of complainant, had supported complainant's version, but according to him, same is unfortunately not considered and appreciated by the learned trial court. That, there is incorrect appreciation of evidence on record resulting into perverse and unsustainable judgment. Consequently, he prays for allowing the appeal by setting aside the

impugned judgment.

On behalf of Respondent Accused :

5. Per contra, while defending the judgment and order of acquittal, learned counsel for respondent would point out that, complainant's evidence is unworthy of credence. That, complainant is giving different stories at different times, and that, moreover, there was no corroboration to testimony of complainant. That, from the testimony of complainant, it was evident that he alone went into room of accused while shadow pahcha stayed out of room and therefore, independent witness was unaware of the events that took place in the room.

6. He further pointed out that, there was no motive to put up demand of gratification as admittedly complainant has received demand draft prior to the main trap and therefore, as there was no work pending so as to demand bribe, he justifies the findings and conclusion reached at by the learned trial court.

BRIEF ACCOUNT OF EVIDENCE OF PROSECUTION IN TRIAL COURT

7. Re-appreciated the entire evidence. Prosecution has rested its case on the testimony of four witnesses i.e. PW1 Madhukar Sakharam

Gavali, complainant (exh.18), PW2 Kailash Jadhav, shadow pancha (exh.26), PW3 Bhanudas Sonawane, Investigating Officer (exh.34), and PW4 Ganesh Pundlikrao Thakur, Sanctioning Authority (exh.38).

8. Here, there is no challenge or dispute that accused was working as Senior Clerk in the Office of District Sports Officer. There is also no dispute that complainant is President of a registered Society and was due to receive grant from Government to the tune of Rs.2,500/.

Here, accusations of prosecution are that, accused demanded Rs.500/- to handover the demand draft and received Rs.100/- as part consideration and remaining Rs.400/- was to be paid at a later point of time. Meanwhile, complainant approached ACB and lodged complaint exh.19 alleging demand of bribe.

9. As usual in the light of charge, evidence of PW1 complainant and PW2 shadow pancha is of significance and therefore, same is put to scrutiny.

PW1 Madhukar Sakharam Gavali, complainant is examined at exh.18 and its substance is that, he is president of Akar Sanskrutik Gramin Vikas Sanstha and receives grant of Maharashtra State Sports Authority. That, the State Government had sanctioned Rs.2,500/- for the year 2000-2001 through District Sports Authority and so he had

been to the said office on 12-04-2001 to collect the demand draft and claims to have approached accused, who was an Accountant but according to him, for issuing cheque/demand draft, there was demand of Rs.500/- and complainant claims that as he had no money, he told him that, he would give him after 2-3 days and he left.

On 20-04-2001, he again claims to have met accused, who again put up demand of Rs.500/-, but complainant told that he does not have such amount and he has only Rs.100/-. He stated that he collected the demand draft and while he was passing, he claims that one person asked him that as he had to give Rs.100/-, give it to him and he accordingly, paid Rs.100/- to accused and assured to give Rs.400/- within working hours. Then he claims that, as he was not willing to pay, he decided to approach ACB where he gave complaint and also handed over the demand draft. He deposed that, accused had told him to pay Rs.100/- to that person and he thought that said person was Peon and he paid Rs.100/- to said peon for accused. Then in paragraph 3, he narrated all steps/procedures taken by ACB officers for planning and laying trap and drawing pre-trap panchanama. In paragraph 4 of his examination-in-chief, he stated that, as per instructions, he and pancha Jahdav walked to the office of accused and found accused sitting in one room. He claims that, he sat opposite to accused when pancha Jadhav stayed outside the room.

He took out tainted currency and held before accused, who collected those notes and kept above the drawer and below the top of table and he came out and gave predetermined signal.

Surprisingly in further examination-in-chief, he stated that, he does not remember what had happened as accused was apprehended, but he denied shadow pancha sitting by his side and also denied asking accused about his work or accused telling him to give balance amount as work was already done. He deposed that, he paid the notes on his own accord.

In paragraph 6, he denied paying Rs.100/- to accused on 20-04-2001 and admitted that, there were no talks between him and accused. But again in paragraph 7, he stated that on 20-04-2001, he had paid Rs.100/- to the accused and on that day, pancha was sitting by his side and he asking accused about his work who allegedly told him that he already done the work and demanded Rs.400/- which was handed over.

While under **cross-examination**, he admitted that, on 20-04-2001, he had received demand draft of Rs.2,500/-. He admitted that, while visiting ACB office, he carried demand draft. He also admitted that, he received demand draft and therefore, no work was pending with accused. He answered that, he kept tainted currency in the hand of accused after reaching there. He also

admitted that, after arrival of pancha, who was at the door, he got frightened and kept the currency in the space on the table. Rest is denial.

10. PW2 Kailash Jadhav, shadow pancha, who is looked upon as an independent witness, is also examined at exh.26 and he deposed about visiting ACB office, getting introduced to complainant, listening to his grievance, signing the complaint exh.19 and demonstration of application of anthracene powder being given by ACB authorities and pre-trap panchanama exh.27 being drawn. In paragraph 3, he deposed that, he accompanied complainant to the office of accused and there, complainant asking accused what happened about his work and accused telling him that, his work was done and to give balance amount, and accordingly complainant took out tainted currency and held it before accused, who collected the currency and kept in the gap between the drawer and top of the table and complainant leaving the office to transmit signal.

While under **cross-examination**, he admitted that, he did not know when complainant had received demand draft and also he did not check what was complainant's work with accused, but he stated about some work pertaining to demand draft. Rest is all denial.

ANALYSIS

11. Thus, here, complainant as pointed out, is sometimes supporting prosecution and at one point of time, denying demand being made, part payment being made, shadow pancha to be in his company. He appears to be thus a flip-flop witness, who is unworthy of credence. Moreover, he has admitted in examination-in-chief as well as in cross-examination that he has already received demand draft on 20-04-2001 i.e. prior to the main trap. Therefore, apparently, no work was pending on the date of main trap.

PW2 shadow pancha does not seem to be aware of exact nature of complaint of PW1 complainant. He also admitted that, he cannot state what was the work of complainant with accused.

Consequently, when very prosecution's case was that accused has already received a demand draft of Rs.2,500/- and he had handed it over to the Investigating Officer at the time of giving complaint exh.19, apparently, on 20-04-2001, there was no work pending with accused. Complainant himself has admitted that, he has received demand draft. As Demand Draft was already handed over to complainant, the very motive to put up demand assumes importance. Though complainant claimed that, he paid Rs.100/- in advance i.e. towards part amount, there is no distinct evidence to that extent. Resultantly, motive to raise demand itself having come under shadow

of doubt, case of prosecution does not stand.

12. Moreover, here, complainant himself has admitted that, he alone approached the accused in his room and prior to any demand, he gave currency to accused. Therefore, there being mere acceptance, in absence of any demand, the story of prosecution comes under shadow of doubt.

Law is fairly settled that mere recovery in absence of any demand has no significance. In the recent case of ***State of Lokayuktha Police, Devanagere v. C.B.Nagaraj***, MANU/SC/0746/2025, the Hon'ble Supreme Court has observed in paragraph 25 that, *"Law requires that for conviction under the Act, an entire chain beginning from demand, acceptance and recovery has to be completed. When the initial demand itself is suspicious, even if the two other components of payment and recovery can be held to have been proved, the chain would not be complete."*

In the cases of ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh***, (2015) 10 SCC 152; ***Mukhtiar Singh (since deceased) through his Legal Representatives v. State of Punjab***, (2017) 8 SCC, 136, ***K.Shanthamma v. State of Telangana***, (2022) 4 SCC 574, the Hon'ble Apex Court has held that, if demand of bribe is not proved then acceptance/recovery of bribe amount from

possession of accused is of no relevance.

13. Learned trial court, in the considered opinion of this court, has rightly disbelieved prosecution story and for above reasons, committed no error in not relying on the testimony of complainant. Hence, there being no merits, appeal fails. Accordingly, following order is passed :

ORDER

Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]