



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

CRIMINAL APPEAL NO.378 OF 2009

Sakharam s/o Motiram Wawhale,
Age : 49 years, Occ : Helper,
MSEDC, Fuse Call No.5,
Basmath Road, Parbhani,
R/o Sakhala Plot, Parbhani.

...APPELLANT
(Orig. Accused)

-VERSUS-

The State of Maharashtra.

...RESPONDENT

...
Shri R.N. Dhorde, Senior Advocate a/w Shri Harshavardhan
Shinde, Advocate i/by Shri Vikram R. Dhorde, Advocate for the
appellant/ accused.

Shri M.A. Aher, APP for the respondents/ State.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 20 August 2026

Pronounced on : 23 September 2026

JUDGMENT :-

1. The appellant is challenging the judgment and order dated 21.07.2009 passed by the learned Additional Sessions Judge, Parbhani, in Special Case No.1/2008, whereby, the

learned Additional Sessions Judge was pleased to convict the appellant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. By the impugned judgment and order of conviction, for the offence under Section 7, the appellant is sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/- and in default, to suffer rigorous imprisonment for one month. For the offence under Section 13(1)(d) r/w 13(2), he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- and in default, to suffer rigorous imprisonment for one month. Both the sentences are directed to run concurrently.

2. The brief facts of the case are as under:-

(a) The complainant PW-1, namely, Jiwan Bhimashankar Swami had constructed five small shops in front of his house. He was intending to have new electric connection for his shop premises. Therefore, he had applied for getting new electric connection and paid Rs.1125/- as installation charges to the MSEB (Electricity Board). The junior engineer, namely, Shri Jogdand had directed the appellant/accused, who was lineman, to take necessary steps to fix the meter for giving new connection in

the premises of complainant.

(b) On 11.9.2007, when the complainant met appellant, it was told to him that connection is not being given free of charge and unless Rs.500/- is paid, the new meter shall not be installed. At around 12:30 in the noon, the complainant went to the ACB office and lodged the complaint against the appellant.

(c) The ACB officer called two panchas, then pre-trap panchanama was drawn. The five currency notes of Rs.100/- denomination each were produced by the complainant. The anthracene powder was applied to it. The notes were kept in the right pant pocket of the complainant. All instructions were given to the complainant and panchas.

(d) After completing all formalities, the complainant and panch No.1 went in the premises of fuse call center and other members of the trap had taken necessary position. After 15 minutes, the appellant with one person came on motorcycle. The complainant greeted him and asked him why the electric meter is not installed yet. The appellant told him that he had already informed him to pay Rs.500/- and as the same is not paid, therefore, meter is not installed. When the complainant took his

hand towards pant pocket, the appellant told him that he should pay the amount at his home, as he would install the meter at his home.

(e) Accordingly, the complainant and panch witness (PW-2) Kailash Sharma went towards the house of the complainant. The accused and his companion were standing there. The complainant provided GI wire and service wire from his house to the appellant. The appellant accordingly started work at the shop premises which were in front of the house of the complainant. The electric supply of DP was disconnected and meter was fixed in the shop premises of the complainant. Then the appellant came near the complainant and said that the work was done. The complainant said thank you. They all sat in the hall of the house of the complainant. The complainant offered them tea. Then, the appellant-accused told that the work was done and the complainant should pay the amount as agreed. The complainant removed Rs.500/- tainted currency notes kept in his pocket and offered it to the appellant by his right hand. The appellant accepted the amount, counted the notes and kept it in his shirt pocket.

(f) Then the complainant went outside and gave requisite signal by swinging the handkerchief. The members of the raiding party entered the house. Mr. Pande caught hold the hands of the appellant. Thereafter, necessary formalities were completed. Tainted notes were removed from the shirt pocket of the appellant. The hands and the shirt pocket of the appellant and the currency notes were observed under the ultraviolet lamp and anthracene powder was found shining green. Accordingly, FIR was lodged and Crime No.3033/2007 was registered for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act against the appellant.

(g) Investigation was set into motion. The statements of witnesses came to be recorded and the final report was submitted to the office of Superintendent of Police, ACB, Nanded, to obtain sanction to prosecute the appellant. The papers were sent to the sanctioning authority i.e. Executive Engineer, MSEB, to obtain sanction to prosecute the appellant. Sanction was granted and after completing the investigation chargesheet was submitted against the appellant. At exhibit 10, the charge came to be framed against the appellant. The appellant pleaded not guilty and

claimed to be tried.

(h) The prosecution has examined in all seven witnesses to prove the charge. PW-1 is the complainant, namely, Jiwan Swami. PW-2 is panch No.1, Kailash Sharma. PW-3 Mirza Ali Baig is the sanctioning authority. PW-4 is Pandernath Bhosale, Dy.SP PW-5 is Namdev Nalge, panch No.2. PW-6 is Bandu Bhujbal, Electrician. PW-7 Dilip Bhagwat, PI of Anti-Corruption Bureau.

(i) After recording the evidence and hearing the learned counsel for the parties, the learned Additional Sessions Judge, Parbhani, vide impugned judgment and order dated 21.07.2009, was pleased to convict the appellant for the offences punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, and sentenced him to suffer as noted above.

(j) Being aggrieved by the aforesaid judgment, the appellant has preferred the instant criminal appeal.

3. Shri R.N. Dhorde, the learned Senior Advocate appearing for the appellant/ accused, submitted that the

prosecution has not at all established its case beyond all reasonable doubts. The evidence brought before the trial court is not at all trustworthy. The witnesses have not at all corroborated each other and as such, there is no case made out against the appellant.

4. Shri Dhorde further submitted that in order to convict the appellant for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2), the prosecution is required to prove that there was valid demand and acceptance and recovery from the accused. However, the evidence brought by the prosecution against the appellant is itself very doubtful and not convincing, as such, same cannot be relied upon. He further submitted that in absence of strong proof as regards the demand and acceptance and as there is also no corroboration from the surrounding witnesses, the testimony of the complainant is, therefore, cannot be considered as trustworthy. He, therefore, submitted that the prosecution having failed to establish its case beyond all reasonable doubts, the impugned judgment and order passed by the learned trial court is required to be quashed and set aside by acquitting the appellant.

5. Shri Dhorde pointed out the evidence of pancha witnesses and the complainant himself and submitted that the prosecution failed to prove that appellant has demanded money, as there is no specific evidence for arriving at a conclusion that the appellant has made any demand to PW-1 complainant. According to the learned Senior Advocate, the complainant has not brought the GI wire, but he has asked the appellant to bring the said GI wire and therefore, the appellant has brought the GI wire and fixed the electric meter. However, the Trial Court has disbelieved the fact that the appellant has brought the said GI wire and erroneously held that the service wire and GI wire had been brought by the complainant, in the absence of evidence on the record to support that the complainant has brought the GI wire. It has come on record that the appellant has demanded the GI wire from the complainant before installing the meter. There is nothing to say that the said GI wire has been purchased by the complainant as no such receipt is produced on record. Thus, the amount which is paid by the complainant was towards the charges of the said GI wire.

6. Shri Dhorde further submitted that it has come in

evidence of PW-1 complainant that when he went near the ACB officers vehicle, they asked him as to why they have returned. The complainant told them that the accused has not accepted the money. The evidence further discloses that the appellant asked them to pay them money after the work is over. Thus, the evidence as regards the demand and paying the amount would show that the appellant had even refused to accept the said amount. Had it been the intention of the appellant to receive the amount, he could have easily accepted the amount when it was offered to him. However, there is record to show that the appellant when tried to be given the alleged bribe amount, has refused to accept it. In such quality of evidence, the appellant cannot be held guilty for the alleged offences.

7. Shri Dhorde further submitted that the sanctioning authority, which has been examined by the prosecution, cannot be relied upon as the sanction ordered by the said authority is on the basis of draft sanction order and without application of mind. Shri Dhorde has taken this court through the evidence of PW-3 sanctioning authority to point out that upon confronted with the sanction order, the said sanctioning officer has replied that he has

seen the spot panchanama and other documents before granting the sanction. However, perusal of the sanction order discloses that it is issued on the basis of draft sanction order, and there appears no application of mind, and particularly which documents have been perused by the sanctioning authority while according sanction is not at all mentioned, and as to how the said authority has come to the conclusion for issuing the sanction order, is also not specifically stated. Therefore, Shri Dhorde submitted that the sanction order is not a valid sanction as per the requirement of law, and therefore, same cannot be relied upon by the court while taking cognizance of the matter.

8. Shri Dhorde further submitted that there is no corroboration by the panch witnesses to the testimony of the complainant. On the basis of such evidence, it is very inappropriate to convict the appellant. The evidence of the prosecution does not inspire confidence, as it is seen from the record that when the work of the appellant of installing the meter was over and they were about to leave, the complainant himself took them to his house and offered them tea. After having the tea, he has offered the amount of tainted currency notes to the

accused. It is not clear as to why the complainant has not offered the amount at the shop premises itself, when the work of the appellant was already over and the appellant could have easily accepted the amount at the said place. Hence, the evidence of the complainant as regards paying the bribe amount in order to bring success to the trap, goes to show that the complainant was having grudge against the appellant. The fact that the appellant had not accepted the money at the shop premises would infer that he had not made demand and he never intended to accept the money for installation of meter. In the teeth of such evidence, the appellant does not deserve to be convicted under the offences charged against him on the basis of evidence brought by the prosecution. Shri Dhorde, therefore, prayed for acquittal of the appellant by allowing the instant criminal appeal.

9. In support of his above submissions, Shri Dhorde has relied upon the following judgments:-

(a) Neeraj Dutta vs. State (Govt. of NCT of Delhi), AIR 2023 SC (Criminal) 631.

(b) State of Kerala and another vs. C.P. Rao, (2011) 6 SCC 450.

- (c) A. Subair vs. State of Kerala, 2010 ALL SCR 1115.
- (d) Subash Parabat Sonvane vs. State of Gujarat, AIR 2003 SC 2169.
- (e) P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SCC 152.
- (f) Mukhtiar Singh vs. State of Punjab, (2017) 8 SCC 136.
- (g) Salimkhan Sardarkhan vs. State of Gujarat, AIR 1986 SC 307.
- (h) State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede, 2009 AIR SCW 5411.
- (i) Paritala Sudhakar vs. State of Telangana, AIR Online 2025 SC 457.

10. *Per contra*, Shri Aher, the learned APP for the respondent/ State, strongly opposed the instant appeal. He submitted that on the basis of evidence brought before the trial court, it is sufficiently clear that the prosecution has proved its case beyond all reasonable doubts. The evidence of the

complainant as well as the panch witnesses is found to be truthful and there are no doubts in their testimony and as such, it inspires confidence. He further submitted that the complainant as well as the other witnesses have in unequivocal terms clearly stated that the appellant has demanded and accepted the amount and same is recovered from his possession. It is also found that the appellant in presence of the panch witnesses, has demanded and accepted the tainted amount. The said amount has been recovered from the possession of the appellant in presence of panch witnesses.

11. The learned APP further submitted that there is no procedural flaw as regards the investigation as well as recording the evidence by the prosecution against the appellant. The learned trial court has committed no error while convicting the appellant accused for the offences charged against the him. The appellant having accepted the tainted amount and same having been recovered from his possession, is therefore liable to be convicted and punished for the charged offences. The learned trial court as such has not committed any error in passing the impugned order, therefore, same requires to be maintained by dismissing the instant appeal.

12. After hearing the learned counsel for the rival parties and going through the evidence on the record, it is clear that for the case under the Prevention of Corruption Act, the prosecution is required to establish by adducing very clear and cogent evidence that there is valid demand and acceptance. The basic requirement of demand is required to be proved beyond all reasonable doubt. In order to prove the charges for the offence punishable under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, the proof of demand of illegal gratification is absolutely necessary as it is *sine qua non* of the offence. If the prosecution fails to prove this demand of illegal gratification, the charge for the aforesaid offences would fail. It is clearly established in several judgments delivered by the Hon'ble Supreme Court including the judgment in ***Neeraj Dutta vs. State (Govt. of NCT of Delhi) reported in AIR 2023 SC (Criminal) 631***, that mere possession and recovery of currency notes from the possession of the accused without proof of demand would not establish the offence under under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act. In absence of proof of demand and illegal gratification and use of corrupt or illegal means to obtain any valuable or pecuniary advantage, it cannot

be said that the offence of taking bribe is proved. Thus, the proof of demand has been held to be indispensable ingredient.

13. The foundational facts of the aforesaid parameters are required to be followed by the prosecution in order to establish the charges against the appellant. In view of the aforesaid guidelines and the provisions of the Prevention of Corruption Act, it is to be seen that whether, the prosecution has established the guilt of the accused beyond all reasonable doubts. In this case, initially the complainant PW-1 stated to have approached to the office of the MSEB on 07.09.2007 and he alleged to have deposited the demand amount for installing the new meter at his commercial premises. However, till 11.09.2007, since nobody had come to install, therefore, he again went to the MSEB office and met the engineer Jogdand. The said engineer informed him that his work will be completed by the appellant. Thereafter, the appellant is alleged to have demanded the amount of Rs.500/- and is alleged to have stated that until and unless the said amount is paid, the work of the complainant will not be done. The complainant thereafter approached to the ACB office and his complaint came to be reduced into writing. The said

activities were completed till 4:30 PM at the office of ACB. Thereafter, the parties went to the fuse call center to execute the trap. However, the complainant when offered the amount to the appellant, he alleged to have told him that he would accept the amount after the work is done. Then there is evidence to show that the GI wire was given to the appellant. After receiving the said wire, the appellant has started the work. The prosecution could not establish as to who had purchased the said GI wire and who had brought this wire which was installed at the electric poles for facilitating the electric connection at the commercial premises of the complainant. After the work is over, the complainant is alleged to have asked the appellant and others to come to his house, which was in front of the shop premises. It has come on record that, the appellant was also having one private labourer and after the work was over, they were about to leave, however, the complainant instead of paying the tainted amount to the appellant, took them to his house and offered them tea. However, the prosecution has not brought on record satisfactory evidence to establish the nature and purpose of the amount of Rs.500/- allegedly demanded by the appellant. The evidence regarding the GI wire and service wire, which were

admittedly supplied before the meter was installed, is not sufficiently clear as to who had procured the same and whether any amount was payable towards such material or related work. The prosecution has also not produced any documentary material to establish that the complainant had incurred no such expenditure. More importantly, the circumstances in which the amount came to be offered and accepted, namely, after completion of the work and after the complainant had taken the appellant and the accompanying person to his house, coupled with the appellant's earlier response that the amount would be accepted after completion of the work, create a reasonable doubt as to whether the amount accepted by the appellant was proved to be illegal gratification pursuant to the alleged demand.

14. It is also significant that when the complainant initially offered the tainted amount to the appellant at the fuse call centre, the appellant did not accept the same and stated that the amount could be paid after completion of the work. Thereafter, the appellant proceeded to install the electric meter. The evidence relating to the purpose for which the amount of Rs.500/- was paid, the circumstances in which the amount came

to be offered after completion of the work, and the absence of clear evidence regarding the procurement and payment for the GI wire, taken cumulatively, do not establish beyond reasonable doubt that the amount accepted by the appellant was illegal gratification. The prosecution having failed to establish this essential link in its chain of evidence, the appellant is entitled to the benefit of reasonable doubt.

15. Another aspect which is required to be considered while dealing with the case in hand is as to whether, the sanction order issued by the authority is in accordance with law. Bare perusal of the order would reveal that the sanction order is issued in mechanical manner because the contents therein clearly indicate that it was issued in routine manner, without application of mind. In the sanction order, it is observed that the case of the appellant was referred to it and certain documents of the police case were also referred and same have been perused, and thereafter, the sanction order is issued. However, the sanctioning authority did not explain as to what made it to arrive at a conclusion that the appellant is required to be prosecuted before the trial court and in absence of such expression, it can be said

that the sanctioning authority did not apply its independent mind while issuing the sanction order. It is true that mere use of a draft sanction order, by itself, would not render the sanction invalid. However, in the present case, the evidence of the sanctioning authority, read with the contents of the sanction order, does not satisfactorily establish that the authority independently considered the material placed before it and arrived at the requisite satisfaction for according sanction. The sanction order merely records that certain papers were referred to and perused, without disclosing any indication of independent consideration of the material facts constituting the alleged offence. In the facts and circumstances of the present case, therefore, this Court is unable to hold that the statutory requirement of application of mind before according sanction has been satisfactorily established by the prosecution. The sanctioning authority thus has issued the sanction order in routine and mechanical manner, and therefore, it cannot be considered as a valid sanction to prosecute the appellant.

16. Since this Court, on appreciation of the evidence, has found that the prosecution has failed to establish beyond

reasonable doubt the foundational fact of demand of illegal gratification and the acceptance/obtainment of the amount as illegal gratification pursuant thereto, the question of drawing the presumption under Section 20 of the Prevention of Corruption Act does not arise.

17. In view of the foregoing discussion, this Court is of the considered view that the prosecution has failed to establish beyond reasonable doubt that the amount accepted by the appellant represented illegal gratification pursuant to a prior demand. So also, there is no valid sanction to prosecute the appellant. Consequently, the foundational facts necessary to sustain the conviction under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act have not been established. Mere recovery of the currency amount, in the absence of proof of demand of illegal gratification, cannot sustain the conviction. The appellant is, therefore, entitled to the benefit of doubt. Accordingly, the following order is passed:

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The impugned judgment and order dated 21.07.2009 passed by the learned Additional Sessions Judge, Parbhani, in

Special Case No.1/2008, convicting and sentencing the appellant for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, is quashed and set aside.

(iii) The appellant/accused is acquitted of the offences with which he was charged.

(iv) The appellant is on bail. His bail bond stands cancelled and the surety, if any, stands discharged.

(v) The fine amount, if deposited, be refunded to the appellant.

(vi) The record and proceedings be sent back to the concerned Court.

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(SUSHIL M. GHODESWAR, J.)