



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

CRIMINAL APPEAL NO. 346 OF 2016

. Dilip Bhikanrao Solunke
(Original Appellant) (Died)
Through his L.Rs.
1-A Chandrakala W/o Dilip Solunke
Age : 50 yeas, Occu.: Housewife,
R/o. Tembhurni, Tq.Jafrabad,
District: Jalna. Appellant
(Wife of deceased - Dilip
Bhikanrao Solunke)

Versus

. The State of Maharashtra Respondent
.....
Mr. Joydeep Chatterji, Advocate for Appellant.
Mrs.Chaitali Chaudhari Kutti, APP for Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 25 AUGUST, 2026

PRONOUNCED ON : 27 AUGUST, 2026

JUDGMENT :

1. Appellant, original accused, challenges judgment and order dated 12-05-2016 passed by learned Additional Sessions Judge-2, Jalna, in Special Case (PCA) No.1 of 2011 by which conviction has been recorded for offence under Section 7 of the Prevention of Corruption Act (PC Act).

BRIEF FACTS OF THE CASE

2. In brief, case of prosecution in trial Court was that, complainant, in order to get some land owned by his father transferred in his name, approached accused, a Talathi and for carrying out necessary mutation entry, it is the case of prosecution that, for the said work, accused demanded Rs.1,500/-, and as complainant was not willing to pay bribe, he approached Anti Corruption Bureau (ACB), lodged complaint exh.17, on the basis of which, ACB authorities planned and executed trap, complaint was filed against accused by the Investigating Officer and further investigation was carried out and subsequently, accused was tried vide above special case and he stood convicted for above offence. Hence, the appeal by accused.

SUBMISSIONS

On behalf of appellant/accused :

3. Learned counsel for appellant would point out that, there is false implication. That, there is no convincing, cogent and reliable evidence to prove the charges. He would submit that, in view of the charge, it was incumbent upon prosecution to prove very demand, but here, there was no demand at all and thus, according to him, case of prosecution collapsed then and there itself. On the point of

demand, he invited attention of this Court to paragraph 1 of examination-in-chief of complainant. He also submitted that, evidence of complainant and shadow pancha is full of material omissions and contradictions.

4. It is submitted that, specific defence of accused in trial Court was that, he had cordial relations with father of complainant. That, complainant and other siblings have agreed to pay the Rs.10,000/- each to their father for recording the land in their name. That, informant herein, who is son of Court Witness Bhanudas Jadhav, had paid merely Rs.8,500/- and therefore, at the instance of Court Witness, accused had accepted the said amount. That, it was not a bribe amount. That, even there is admission of complainant to that extent on the point of he paying only Rs.8,500/-. Thus, according to him, in view of the evidence of Court witness i.e. none other than father of complainant, accused has probalilized defence by answering to that extent while facing answers to the questions under Section 313 of the Cr.P.C. Consequently, learned counsel submits that, accused has probalilized his defence and therefore, learned trial Court ought to have accepted the same, but as it failed, he urges for reconsideration of defence case by setting aside the impugned

judgment.

On behalf of State :

5. Learned APP would also took this Court through testimony of complainant and would submit that, there was clear demand by accused. That, evidence of complainant has to be read in its entirety and not in isolation. That, there is clear reference of demand followed by acceptance and therefore, according to her, learned trial Court has rightly accepted the case of prosecution and same needs no interference.

6. On the point of Court witness and credibility of this witness, she would submit that his evidence has rightly discarded by learned trial Court. For all above reasons, she urges to dismiss the appeal for want of merits.

BRIEF ACCOUNT EVIDENCE IN TRIAL COURT

7. Re-appreciated the evidence. Though prosecution has adduced evidence of as many of six witnesses, crucial evidence is of PW1 complainant and PW2 shadow pancha, which is decisive on the point of demand as well as acceptance. Here, equal importance is of the

evidence of Court witness i.e. in view of defence taken by accused. Hence, testimonies of such witnesses are put to scrutiny.

8. **PW1** Janardhan Jadhav, who is examined at exh.16, in initial examination-in-chief deposed about approaching accused for transferring 1.5 acre land owned by his father in his own name. He claims that, during initial talks, accused told him to bring bond, which was brought and handed over and after which he again claims to have visited the office of accused to verify whether his work is done and it is deposed that, accused demanded Rs.1,500/- from him. Therefore, as he was unable to pay, he approached ACB and gave complaint exh.17.

In further examination-in-chief, he deposed that he alongwith pancha had been to office of Talathi to make enquiry whether his work was over and accused stated to pay the amount and get the work done and they came back and informed the events to the Investigating Officer. In paragraph 2 of the examination-in-chief, he narrated events of demonstration of application of anthracene powder to the currency notes and about he again going in the company of shadow pancha Kulkarni to the office of accused. However, in examination-in-chief, as pointed out, he deposed that,

“he stated accused to get his amount and to do the work and thereafter, handed over amount to accused which was said to be accepted”. Thus, as pointed out, during the events of main trap, there does not seem to be any demand by accused. Further as pointed out, though accused has initially twice approached accused, when exact demand was raised has not been stated by him. Even in cross-examination, complainant has admitted that, demand of cash was made at the third visit, but as stated above, during the third visit, there does not seem to be distinct demand by accused. He admitted that, during visit to office of Talathi, 5-6 villagers were present and conversation between him and accused took place in their presence. But none of the villagers seems to have been examined.

9. **PW2** Vilas Kulkarni, shadow pancha, who is examined at exh.19, claims to have acted as pancha. In paragraph 2 of examination-in-chief, he deposed that, Talathi had called complainant with cash amount. That, verification panchanama exh.20 was drawn and he accompanied complainant to the office of accused. There, complainant greeted accused and further asked him, whether his work was over, upon which accused allegedly said that his work would not be done unless he complies with demand and

further said that, he would have to pay as decided earlier. (Such is not the narrative of complainant himself). Then he deposed that, complainant enquired how much amount is to be paid and accused replied and demanded Rs.1,500/- and witness deposed that, upon such reply, complainant told accused that, his father had been to sell he-goat and he will pay the amount by selling the same. In further examination-in-chief, he deposed that, after application of anthracene powder to the currency, which was in possession of complainant and pre-trap panchanama exh.22, he accompanied complainant to the office of accused, who was found to be sitting on a chair. Witness deposed that, complainant stated to him to reduce the amount upon which accused said that it cannot be done and then complainant stated that, he had brought the amount as per his say and accused stated him to pay the amount.

While under **cross-examination**, he also admitted that, during the first conversation between complainant and accused, accused has not started with demand of cash amount. He also admitted that, 2-3 persons were present in Talathi office during first visit and further admitted that Police have noted names of those persons, but he does not remember whether Police made enquiry with such persons.

ANALYSIS

10. Therefore, on carefully going through evidence of PW1 complainant and PW2 shadow pancha, as stated, complainant does not speak of any demand and rather he himself makes an offer. Even PW2 shadow pancha, at the time of demand verification, has narrated a very different story than the one stated by complainant himself. Regarding the main trap, even he too states that after occupying seats, complainant started discussion by saying that amount should be reduced and when accused denied, according to this witness, complainant himself has stated that he has brought amount as per his say. But both PW1 complainant and PW2 shadow pancha in cross-examination admitted that, there was no demand during initial meeting.

Resultantly, the very crucial and essential aspect like demand comes under shadow of doubt. It is fairly settled position that, mere recovery of tainted currency is of no avail unless demand is proved and law to this extent has been time and again reiterated and the few cases that can be named are *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.

11. Here, specific defence of accused is that, he indeed accepted the amount from complainant but it was so done at the instance of father of complainant. In support of such defence, reliance is placed on the evidence of Court Witness Bhanudas Jadhav and it will be appropriate to give brief account of Court Witness, which is at exh.60. This witness Bhanudas deposed that, he has 3 sons and 4 daughters. That, he effected partition of his land in the last summer and it was settled that, his each son shall pay him Rs.10,000/- upon which land would be transferred in their names. In further examination-in-chief i.e. in paragraph 2, he stated that, he knew accused and prior to 2 years, it was agreed that his sons should deposit Rs.10,000/- each with Talathi and after collecting that amount, Talathi should pay the amount to him. His other sons paid the same, but Janardhan i.e. present complainant paid only Rs.8,500/-. He demanded remaining amount from accused.

In **cross-examination** at the hands of learned APP, he admitted that, Investigating Officer did not record his statement. He denied a suggestion that, it is not true that it was not agreed that his sons shall deposit money with Talathi. He expressed his ignorance about

accused demanding bribe to the tune of Rs.1,500/- from his son Janardhan.

While under **cross-examination** at the hands of accused, he admitted that, his son Janardhan was intending to apply for a well in the Government Scheme and needed atleast two acres of land in his own name and therefore, as only 1.5 acre land was standing in his name, 50 Are land of their family was agreed to be mutated in his name. He further deposed that, he accordingly executed partition amongst his sons and daughters. He also deposed about accused having cordial relations with his family members and therefore, he was a mediator and his son Janardhan deposited Rs.8,500/- towards his share, which he received from Talathi, who further told him that he will recover remaining Rs.1,500/- from Janardhan, who was avoiding to pay. He admitted that, it was agreed that, unless and until amount of Rs.1,500/- is paid, the matter shall not be forwarded for mutation.

12. Learned counsel for appellant invited attention of this Court to the cross-examination faced by PW1 complainant, more particularly paragraph 5 wherein he admitted that, he has other siblings. He also admitted that, six months prior to the incident, there were talks

pertaining to recording lands in his name as well as in the name of his brothers and sisters. He admitted that, it was decided in meeting before Talathi that he would pay Rs.10,000/- each to his brothers and sisters for recording the land in his name. He admitted that, he has given Rs.10,000/- each to his brothers and sisters except his father in the presence of very Talathi. He admitted that, out of Rs.10,000/-, an amount of Rs.8,500/- was only handed over by him to Talathi, who had asked him to bring remaining Rs.1,500/-. It is categorically admitted that, on the day when accused was caught, he has paid remaining amount of Rs.1,500/- to Talathi.

13. Thus, here, from the evidence of Court Witness, who is father of complainant, defence put-forth by accused is sought to be probabilized. As stated above, very complainant has also in cross-examination admitted that, he paid only Rs.8,500/- out of Rs.10,000/-, which was meant to be paid to his father through Talathi and that Rs.1,500/- had remained balance and on the day of trap, he had paid such amount to Talathi.

14. Learned trial Court has disbelieved the above defence and one comes across observations to that extent in paragraph 33 and 34 of

impugned judgment. Reason assigned by trial Court is that, witness was own over as complainant's evidence was over on 03-02-2014 whereas Court Witness was examined on 21-11-2015 and the deposition of Court Witness has no nexus with original complainant and trap by ACB and so the defence so put-forth has not probabilized.

However, as stated above, not only Court Witness acknowledges the transaction to be done through accused, but his own son complainant in paragraph 5 of cross-examination has categorically admitted that an amount of Rs.1,500/-, which was due to his father, was paid to the accused on the day of trap. Such admission has come from complainant in his cross-examination, who is apparently examined by trial Court on 03-02-2014 i.e. much prior to deposition of Court Witness. Further Court Witness has also categorically stated that, there were cordial relations between him and accused and said transaction has taken place on being mediated by accused. Consequently, such defence through above witness cannot be lightly brushed aside.

15. It is fairly settled position that, in criminal jurisprudence and trial, accused is merely expected to probabilize his defence and

burden upon him is not as high as the primary burden on prosecution. Here, in the considered opinion of this Court, through Court Witness, accused has discharged the said burden and therefore, learned trial Court ought to have accepted the same, but it chose to reject the same without assigning sound reasons.

SUMMATION

16. To sum up, here, prosecution case fails to inspire confidence for the reasons that, firstly demand itself is not cogently proved and secondly, accused has succeeded in probalizing his defence. For such reasons, on re-appreciation of available evidence, this Court has come to a conclusion that case of prosecution is not proved beyond reasonable doubt.

As learned trial Court has failed to consider and appreciate available evidence in its correct perspective and has further failed to appreciate defence of the accused, interference is called for. Accordingly, following order is passed :

ORDER

I. The appeal is allowed.

II. Conviction awarded to the appellant - Dilip Bhikanrao Solunke, by learned Additional Sessions Judge-2, Jalna in Special Case (PCA) No.1 of 2011 under Section 7 of the Prevention of Corruption Act, on 12-05-2016 stands quashed and set aside.

III. Appellant stands acquitted of the offence punishable under 7 of the Prevention of Corruption Act.

IV. The bail bonds of appellant stand cancelled.

V. Fine amount deposited, if any, be refunded to the Legal Representative of appellant after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of Muddemal.

(ABHAY S. WAGHWASE)
JUDGE