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

CRIMINAL APPEAL NO.397 OF 2007

Sanjay Balaji Yelgire,
Age: 35 years, Occu: Service
as Clerk in S.D.O. Office,
Osmanabad, R/o. Gote Niwas,
Post Colony, Osmanabad,
Tq. & Dist. Osmanabad

....APPELLANT

VERSUS

The State of Maharashtra

....RESPONDENT

.....

Mr Joydeep Chatterji, Advocate for Appellant
Mr C. V. Bhadane, APP for Respondent/State

.....

CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 20th AUGUST, 2026

PRONOUNCED ON : 04th SEPTEMBER, 2026

JUDGMENT :

1. By this appeal, the appellant (accused) has challenged the judgment and order of conviction and sentence dated 27/09/2007, passed by the learned Special Judge, Osmanabad in Special Case (AC) No.02/2006, convicting the appellant for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced to suffer one year rigorous imprisonment and to

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pay fine of Rs.1000/-, in default to pay fine, to suffer two months rigorous imprisonment. He was further convicted for the offence punishable under Sections 13(1)(d) read with Section 13(2) of the Act and sentenced to suffer two years rigorous imprisonment and to pay fine of Rs.2000/-, in default to pay fine, to suffer four months rigorous imprisonment.

2. The prosecution story in short is as under :-

(a) Appellant/accused was working as a Clerk with the Sub Divisional Office, Osmanabad. Complainant Suresh Mahadev Saste is a labour, resident of Yedshi, Tq. Osmanabad and was working in Toddy Centre at Yedshi. He was facing a case under Section 93 of the Bombay Prohibition Act for possessing illegal liquor, in the Court of Sub Divisional Officer, Osmanabad. On 18/10/2005, at about 2.00 p.m., police took complainant Saste before the Sub Divisional Officer. Sub Divisional Officer put some endorsement on the report lodged by Police. Thereafter, Constable Kolekar took complainant Saste towards the appellant/accused. It is alleged that, accused told complainant that he will be released, but he will have to pay Rs.1000/- to accused. Since amount was excessive and complainant was not capable to give such excessive amount, after negotiation, accused reduced the amount

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to Rs.500/-. On that day, complainant was having Rs.100/-. Accordingly, he paid the said Rs.100/- to accused. The accused accepted the same. Accused asked complainant to come with a surety on 21/10/2005 and bring remaining Rs.400/-.

(b) On 21/10/2005, complainant went to SDO office alongwith surety. Appellant/accused prepared requisite papers and demanded Rs.400/- from him. Since complainant was not having the said amount, accused asked to pay whatever amount he is having at the relevant time. Saste was having Rs.50/-, and accordingly, he paid Rs.50/- to accused. Thereafter, accused gave him next date as 07/11/2005 and told him to bring remaining Rs.350/- in order to dispose of his case.

(c) On 07/11/2005, since complainant was not willing to pay bribe, he went to Anti Corruption Bureau Office, Osmanabad at 9.30 a.m. Accordingly, his complaint was reduced in writing by the Investigating Officer Mr Nazan/PW-4. Accordingly, after completing formalities, the trap was laid with the assistance of two panch witness. The necessary instructions were given by the Inspector Nazan to complainant, panchas and all the members of raiding team. Thereafter, at about 12.35, complainant Saste alongwith panch Mali entered the office of Sub Divisional Officer. Accused took the complainant to

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have tea and accordingly talked about bribe amount and for disposing of case of complainant. Accused asked whether he has brought balance amount. Accordingly, the bribe amount came to be accepted by the accused from the complainant. Accused alleged to have counted the amount and kept in the left hip pant pocket. Thereafter, complainant gave pre-determined signal and trapping team came there.

(d) The tainted notes were recovered from the pocket of accused. The said notes were put under ultraviolet rays. Shining was noticed on both the sides of notes. In the darkness, hands of all members of raiding team were also put under ultraviolet rays, but they were not shining. Hands of accused were put under ultraviolet rays and were found to be shining. After completing the formalities, accused came to be arrested and the FIR came to be registered against the accused bearing Crime No.67/2005 for the offence punishable under Sections 7, 13 (1)(d) read with Section 13(2) of the Act. After completing investigation and after receiving sanction order on 23/01/2006 to prosecute against appellant, charge-sheet came to be filed on 01/02/2006 before the Court.

(e) Charges were framed under Sections 7, 13(1)(d) read with Section 13(2) of the Act at Exh.12. Accused pleaded not guilty and claimed to be tried. The prosecution examined four witnesses in

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support of its case. PW-1/Suresh Mahadev Saste/ complainant was examined at Exh. 17, who turned hostile. PW-2/Arvind Basappa Mali, panch witness was examined at Exh.21. PW-3/Machhindranath Sadashivrao Devnikar, Sanctioning Authority was examined at Exh.27 and PW-4/Kisan Laxman Najan, Investigating Officer was examined at Exh.31.

3. Learned Special Judge, Osmanabad, on the basis of evidence brought before it, convicted and sentenced the appellant for the aforesaid offence, and therefore, being aggrieved by the said judgment and order dated 27/09/2007 of the learned Special Judge, the appellant has approached this Court by filing present appeal.

4. Heard learned Advocate Mr Chatterji for the appellant and learned APP Mr Bhadane for the respondent/State.

5. According to Mr Chatterji, learned Advocate for the appellant, the impugned judgment of conviction to appellant is perverse and contrary to provisions of law. He submits that, if the deposition of the entire prosecution witnesses is scrutinized, it will reveal that, no offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Act can be proved against appellant. He submits that the prosecution has failed to prove charges against the accused

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persons. Learned Sessions Court, in order to prove charges against the accused, is required to observe and hold that there is valid demand, proper acceptance and recovery of tainted currency notes from the possession of the accused. He further submits that the complainant himself has turned hostile, and therefore, he is not supporting the prosecution. He then submits that, when complainant himself has not supported prosecution, his testimony cannot be relied upon by the Court to convict the appellant. Thus, he submits that there is no evidence to connect the appellant in the alleged offence.

6. Mr Chatterji further submits that the complainant was insisting for disposing of a case filed against him under Section 93 of the Bombay Prohibition Act, which was pending before the Sub Divisional officer. By no stretch of imagination, it can be said that the appellant, being a Clerk, was able to dispose of the said case. As the adjudication and disposal of case was empowered to the Sub Divisional Officer, the appellant, being a Clerk in the said office, at all cannot be said to have asked for bribe to dispose off the case. Therefore, any demand made by appellant for the purpose of said task cannot be termed as a bribe, as the act was not committed in discharge of official duty, which is not assigned to the appellant.

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7. Another limb of submission of Mr Chatterji is that PW-2/Arvind Mali, panch witness has admitted in his deposition that he had read panchnama once or twice previously. Therefore, such a witness is a tutored witness and his testimony, in absence of corroboration from complainant, who has already turned hostile, cannot be relied upon, as the allegations lack supporting evidence on record. In support of his submission, he relies on the judgment of the Division Bench of this Court in the matter of **Suresh Purushottam Ashtankar Vs. The State of Maharashtra and another, 2015 ALL M.R.(Cri.) 4243**. According to him, witness can be supplied his previous statement in the Court, however, at the time when he enters witness box, but such witness cannot be given or supplied his statement of previous occasions, for the reasons that, it would amount to show unnecessary interest on behalf of Police Officer, which would unnecessarily create doubt about the conduct of Police Officer in the case.

8. Mr Chatterji further submits that the accused is shown to have accepted the bribe amount in a busy area, where there was rush in the campus. According to the appellant, accused could not accept the amount in such a crowded area. He then submits that the complainant had forcibly tried to give money to appellant in order to success the

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trap as per instructions of the raiding team. He, therefore, submits that the prosecution has not proved the charges against appellant beyond reasonable doubts, and as such, appellant deserves to be acquitted. He, therefore, prays for allowing the present appeal.

9. Per contra, learned APP submits that the prosecution has sufficiently proved charges against the appellant. The evidence recorded by the prosecution is sufficient to impose conviction on the accused. According to him, though the complainant has become hostile, still the other witnesses have proved the charges against the appellant. He submits that PW-2/Mali, who is independent panch witness has fully corroborated the prosecution story. According to him, if money was forcibly thrust into the pocket of appellant, both hands would not test positive for anthracene powder, as the currency notes would realistically be pulled out using only one hand. Thus, according to him, learned Special Judge has committed no mistake by convicting the appellant, and therefore, he insists that the verdict of the Sessions Court be maintained by dismissing this appeal.

10. Having gone through the submissions of the learned Advocates for both the parties, I have perused the record available with the Court. It is true that, even if the complainant has turned

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hostile, still the prosecution case can be proved against the appellant with the assistance of evidence of other witnesses. However, the supporting evidence which is required to be proved the charges against appellant/accused must be free from any doubts and must be clear so as to attract provisions of the Act. In this case, admittedly the complainant came to be declared as hostile. Merely because the complainant has been declared hostile, his entire testimony does not stand deleted from the record. The Court is required to examine his evidence with greater caution and determine whether any part thereof inspires confidence and receives corroboration from other reliable evidence. In the present case, however, upon careful scrutiny of the deposition of PW-1, the prosecution has failed to derive reliable corroboration from the material portions of his testimony regarding the alleged demand and acceptance.

11. The prosecution has, therefore, sought to rely upon testimonies of panch witness. However, the panch witness has candidly admitted that he has read over his previous statement on one or two occasions. Reliance of learned Advocate for the appellant on the judgment of **Suresh Purushottam Ashtankar (Supra)** delivered by the Division Bench of this Court is important for deciding instant appeal. In the said judgment, Court had come across with the aspect of

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prosecution witness reading his previous statements on multiple occasions prior to entering the Court hall. The learned Single Bench of this Court in the case of **Sharad Namdeorao Shirbhate Vs. State of Maharashtra, 2006 (2) Mh.L.J. (Cri.) 1210**, in paragraph No.10, observed that though the witness was allowed to read over his statement and police had also asked to tender his evidence as per statement, there was nothing wrong in the refreshing memory of such witness, but the said aspect of refreshing memory ought to be made before the Court and not outside the Court. In order to test the veracity of a witness, he would be required to recollect the incident out of his own memory and should be falter on some material aspect and he could be allowed to refresh his memory with the reference to contemporaneous record of the incident created by the Police. It would not be permissible to such witness to stealthily refresh his memory before entering the Court and deposing about the entire evidence giving minute details, as if he was reeling them out of his memory. The Division Bench has approved the dictum of the learned Single Judge in the case of Suresh Purushottam Ashtankar (supra) observing that a witness cannot be permitted to refresh his memory on previous occasions before entering into Court hall.

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12. In the case in hand, PW-2/panch witness has candidly admitted in his statement that he was permitted to read his previous statement on two or three occasions. Meaning thereby, before entering the Court room, the witness was privy to all investigation papers, which clearly demonstrates the undue interest of the prosecution in the matter. This circumstance substantially affects the reliability of PW-2 and requires his evidence to be scrutinized with greater caution.

13. Upon careful scrutiny of the evidence, it is clear that the prosecution was required to establish, beyond reasonable doubt, the foundational facts of demand and acceptance of illegal gratification. The factum of recovery of tainted currency notes and the presence of anthracene powder on the hands of the appellant may constitute corroborative circumstances, but such circumstances by themselves cannot substitute the proof of demand and voluntary acceptance of illegal gratification. In the present case, the complainant has not supported the prosecution on the material aspects of the alleged demand and acceptance. Though the evidence of a hostile witness is not liable to be discarded in its entirety, the material portions of his testimony must inspire confidence and receive corroboration from other reliable evidence. On a careful scrutiny, the evidence of PW-1 does not provide such reliable corroboration to the prosecution case.

14. The prosecution principally relies upon PW-2 to establish the circumstances of the trap, including the alleged conversation regarding the bribe and acceptance of the amount. However, PW-2 has admitted that his previous statement was read over to him on one or two occasions before his evidence. In the facts of the present case, this circumstance assumes significance, particularly when the testimony of the said witness is the principal independent evidence relied upon to establish the demand and acceptance. In the absence of dependable corroboration to the material particulars of demand and acceptance, it would be unsafe to base the conviction merely on the recovery of tainted currency and the anthracene test. Consequently, the prosecution has failed to establish the essential ingredients of the offences charged beyond reasonable doubt.

15. It is also necessary to bear in mind that the statutory presumption under Section 20 of the Act cannot be mechanically invoked merely because tainted currency notes are recovered from a public servant. The prosecution must first establish the foundational facts of demand and acceptance of illegal gratification beyond reasonable doubt. Once those foundational facts are proved, the statutory presumption may operate in accordance with law. In the present case, for the reasons recorded hereinabove, the prosecution has

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failed to establish the foundational fact of demand and voluntary acceptance by reliable and cogent evidence. Consequently, the recovery of the currency notes and the result of the anthracene test, though circumstances appearing against the appellant, are insufficient by themselves to sustain the conviction.

16. In view of aforesaid observations, conviction cannot be based on the basis of evidence brought by the prosecution before the learned Sessions Court. Hence, the prosecution has failed to prove charges against the appellant. Thus, appellant has made out a case and this appeal deserves to be allowed. Hence, I pass the following order:-

ORDER

(I) The Criminal Appeal is allowed.

(II) The judgment and order of conviction and sentence dated 27/09/2007, passed by the learned Special Judge, Osmanabad in Special Case (AC) No.02/2006, convicting him for the offence punishable under Sections 7, 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, is hereby quashed and set aside.

(III) The appellant/accused is acquitted of the offence under the Act, for which he was charged.

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(IV) The bail bond of the appellant, if any, stands cancelled. The surety, if any, stands discharged.

(V) The fine amount, if any deposited by the appellant pursuant to the order of Trial Court, shall be refunded to him, after due verification.

[SUSHIL M. GHODESWAR, J.]

sjk