



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO FILE APPEAL BY STATE NO. 111 OF 2020

The State of Maharashtra,
Through Anti Corruption Bureau,
Jalna.

... Applicant
[Ori. Complainant]

Versus

Chandrabhan s/o Govindrao Ghavate,
Age 43 years, Occupation Service [suspend],
R/o. Satana, Post Karmad,
Taluka and District Aurangabad.
At present R/o. Yogesh Nagar,
Ambad Road, Jalna,
Taluka and District Jalna.

... Respondent
[Ori. Accused]

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Mr. V. V. Jahagirdar, APP for the Appellant-State.
Mr. Pratik A. Bhosle, Advocate for the Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 11.09.2026
Pronounced on : 21.09.2026

ORDER :

1. Instant leave to file appeal by the State is in the backdrop of the judgment and order of acquittal dated 18.07.2020 passed by learned Additional Sessions Judge, Jalna in Special Case (ACB) No. 23 of 2016 acquitting present respondent from charge under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

2. In short, prosecution was launched against the respondent on the premise that, he was working as a Co-operative Officer in District Milk Development Office, Jalna. According to prosecution, he demanded bribe of Rs.25,000/- from complainant PW1 for disposing off objection application raised against his election as Director of Vishal Co-operative Fishery Society. Bribe was reported to ACB, which further led to planning and executing trap, apprehending accused, chargesheeting him and trying him vide above Special Case which ultimately ended up in acquittal. As State is desirous in filing appeal, leave is applied for, vide instant application.

3. Learned APP took this Court through the testimonies of PW1 and PW2, who are complainant and shadow pancha respectively. He took this Court through the cross of these witnesses and according to him, the manner of cross and suggestions put therein by the defence clearly show that there is no serious challenge to the prosecution story. He pointed out that, after essential steps like verifying demand, drawing pre-trap panchanama, laying main trap, the trap was successful. According to him, there was conversation between complainant and accused and its script was also on record. He would thus submit that there was cogent, reliable and clinching evidence on

the point of both, demand as well as acceptance, and as such, prosecution having proved its case beyond reasonable doubt, learned trial court ought to have accepted the same. According to him, unfortunately it has not so happened and there is incorrect appreciation, misreading of evidence and ignoring the settled law.

4. Learned APP further submitted that, testimony of complainant found support and corroboration from independent witnesses like shadow pacha as well as Investigating Office. But such crucial evidence has not been correctly appreciated. According to him, there is unwarranted acquittal by giving undue weightage to variance in the timing of trap narrated by complainant and shadow pancha. On all above counts, he prays for leave as, according to him, prosecution has good case on merits in appeal. In support of such contention, he seeks reliance on the judgment of the Hon'ble Apex Court in the case of ***The State of Kerala v. K. A. Abdul Rasheed***, 2026 INSC 365.

5. Learned counsel for the respondent-original accused would support and justify the order of acquittal as according to him, prosecution failed to prove demand as well as acceptance beyond reasonable doubt.

6. In the light of nature of charge, obviously evidence of complainant, followed by that of the shadow pancha, is crucial and of significance.

7. Complainant PW1 in initial deposition stated that, he knew accused, a Co-operative Officer. That, this witness won election and was Director of Vishal Co-operative Fishery Society. One Gulab Pandu Chavan had raised objection petition in the office of accused, of which this witness had learnt from accused himself, and so he approached accused on 25.02.2016. That time, accused demanded Rs.1,00,000/- as bribe to settle the matter. On negotiations, figure was brought down to Rs.25,000/-. That, accused was frequently calling him on phone and therefore he approached ACB office on 16.03.2016 and gave complaint Exhibit 8. In paragraph 2, he deposed about he being introduced to pancha, they being given necessary instructions and they carrying voice recorder during visit to the office of accused, but not finding him there, he claims to have made phone call to accused who allegedly called them near Hotel Siddharth and there, accused questioned complainant whether he brought the amount which was assured to be paid. Thereafter, in paragraph 3 he narrated the procedure of application of anthracene powder to the currency notes

and necessary instructions being given to them by the P.I. In paragraph 4 he stated that again at 4.15 p.m. when they reached Siddharth Hotel, again accused asked whether amount was brought, and he took out the amount from his pocket and handed it to the accused, who accepted it and kept it in his pocket, after which signal was relayed.

Above witness, while under cross, admitted in paragraph 6 that, in the complaint Exhibit 8 there is no mention about initial demand being raised by accused on 25.02.2016 and thereafter frequent contacts by accused. He answered that, he had narrated details of the conversation both, at the time of demand verification as well as the main trap, but he is unable to state why it is missing from his statement before police. In para 7 he admitted that, accused was not empowered to decide the objection petition and he personally did not ask accused to show him the objection petition.

8. PW2 shadow pancha deposed about visiting ACB office, meeting complainant, hearing his oral complaint, signing over Exhibits 8 and 9 and then he and complainant proceeding towards Collector Office with voice recorder and that, when they reached there, accused was not present there and so they came back. Then

again complainant made contact with accused on phone, who allegedly asked them to come near hotel Indrayani and so he again accompanied complainant, and there discussion took place between complainant and accused during which accused demanded Rs.25,000/-as bribe which complainant agreed to pay and they came back and informed the Investigating Officer about the incident and trap was decided on the very day. In paragraph 2 he deposed about procedure of application of anthracene powder to the currency. In paragraph 3, he stated that he went with the complainant towards ST Stand at around 6.00 p.m. and saw accused waiting outside Hotel Siddharth. He stated that, then complainant handed over amount to the accused and he accepted the same after which complainant gave signal.

Above witness also has faced cross wherein he admitted that, verification panchanama Exhibit 13 itself shows that complainant himself had opened the topic of amount. He admitted that, at the time of conversation there was participation of other people around. He further answered that, after verification they reached Investigating Officer at around 5.30 p.m. but he was unable to state whether verification panchanama was noted or not.

9. It is squarely settled position that, it is incumbent upon prosecution to establish both, demand as well as acceptance. Law is also settled on the point that mere recovery or acceptance without any demand has no significance and there are series of judgments on this point. Thus, *sine qua non* is, firstly there has to be demand, followed by acceptance. That, it is equally settled position that complainant being interested party, corroboration from independent witness shadow pancha is insisted for.

10. In the light of above requirement, here, it is noticed that, firstly, during first visit to the Collector office and even prior to that, it is the story of complainant that, accused himself developed contact with him to inform about the objection petition received against the election won by complainant and even thereafter, it is alleged that, after the first meeting accused made frequent phone calls to the complainant. Even when complainant and shadow pancha went to meet accused, it seems that as accused was not available, complainant made phone call to accused to seek his whereabouts. Even Investigating Officer in paragraph 3 of his evidence stated that complainant talked with accused on phone. Therefore, apparently there are several occasions on which complainant had developed contact on telephone. If this was the case of prosecution, then

Investigating Officer ought to have gathered CDR to substantiate the alleged frequent contacts by accused to complainant and even contacts by complainant to accused. When complainant has deposed that after it was agreed to pay Rs.25,000/- accused was making contact to him frequently, it was bounden duty of Investigating Officer to collect CDR/SDR to demonstrate and substantiate the same, but no such exercise seems to have been undertaken by the Investigating Officer.

11. Though PW1 complainant deposed that there was demand of bribe of Rs.25,000/-, PW2 shadow pancha in his evidence at Exhibit 12 para 3 of his chief itself has stated that when they reached the vicinity of Siddharth Hotel, complainant handed over the amount to the accused and he accepted it. Therefore, *ex facie* prior to any demand by accused at Siddharth Hotel, according to this witness, complainant handed over amount to the accused. This is where prosecution suffered serious blow. As stated above, this witness was crucial for prosecution and therefore he was expected to corroborate complainant, but he does not seem to have done so. He has also admitted in cross that, complainant himself opened the topic of amount. Under such circumstances, it cannot be said that there was any demand .

12. Learned APP would submit that, undue weightage is given to the variance in the timing of events in the deposition of complainant and shadow pancha. He would submit that, mismatch on timing is a minor variance. However, it is not so. Considering the nature of charge, it is the duty of prosecution to show that there is consistency in the testimony of complainant and shadow pancha at least on the material point of trap. Both these witnesses are not consistent as, according to complainant, they went to meet accused in the vicinity of ST Stand at around 4.15 p.m., but contrary to it, PW2 speaks that they went around 6.00 p.m. PW2 in cross also admitted that, verification was done at around 5.30 pm. Resultantly, witnesses are not consistent.

13. Though learned APP sought reliance on the judgment in ***State of Kerala*** (Supra) it is on the point of proof of demand and acceptance, which is as per settled position that, it is the *sine qua non* to establish guilt under Sections 7 and 13(1)(d) of the PC Act, and there is no dispute to that extent. Further, the judgment of the Hon'ble Apex Court is also on the point of giving weightage to hostile witnesses and also on this count, there is no dispute. Here, in the above discussion, it is noted that, testimony of complainant about

demand being raised by accused followed by handing over of cash is not supported by PW2 shadow pancha, who directly deposed about complainant handing over amount to accused prior to or without any demand. Therefore, with such quality of evidence when the aspect of demand itself comes under shadow of doubt, in the considered opinion of this Court, no fault can be imputed to the conclusions drawn by the trial court for acquitting the respondent. No good ground being posed during hearing of this leave application, the following order is passed :

ORDER

- I. Leave is refused.
- II. The application is dismissed.

[ABHAY S. WAGHWASE, J.]

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