



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

CRIMINAL APPEAL NO. 489 OF 2014

The State of Maharashtra,
Through Police Station Officer,
Zilla Peth Station, Jalgaon.

... Appellant
[Orig. Complainant]

Versus

Shivaji Pandu Mahajan,
Age 56 years,
R/o. Plot No. 34, Bijli Nagar,
Deopour, Dhule.

... Respondent
[Orig. Accused]

.....
Mrs. A. S. Mantri, APP for the Appellant-State.
Mr. Joydeep Chatterji, Advocate for the Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 20.08.2026

Pronounced on : 21.08.2026

JUDGMENT :

1. State hereby assails the judgment and order dated 15.12.2012 passed by learned Adhoc District Judge-1 and Additional Sessions Judge, Jalgaon in Special Case No. 07 of 2011, thereby acquitting the accused from charges under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (PC Act).

CASE OF PROSECUTION IN BRIEF

2. In Nutshell, prosecution was launched against the present respondent on accusations that he, while working as clerk in the

office of Deputy R.T.O., Jalgaon, demanded bribe of Rs.600/- for issuing driving licenses to 25 candidates as well as certifying character certificates of two candidates. Complainant, who was Manager in a Motor Driving School, as was not willing to pay bribe, he approached ACB and gave complaint on 01.09.2010 based on which, PW4 Investigating Officer (IO) arranged trap by engaging shadow pancha, giving necessary instructions to complainant and shadow pancha, drawing pre-trap panchanama and sending complainant and shadow pancha with tainted currency. The trap was executed after which accused came to be apprehended and complaint was lodged against him, which was duly investigated and accused was chargesheeted and finally tried by learned Ad hoc District Judge-1 and Additional Sessions Judge, Jalgaon. At trial prosecution adduced evidence of four witnesses and rested its case on documentary evidence like complaint and various panchanamas.

Defence of accused is of false implication. Stand has been taken in trial court by accused that he accepted the bribe under genuine belief that the amount was returned by the owner of the Driving School who had requested him to time-being pay the charges for licenses and certificates. In support of such defence, accused has

adduced evidence of DW1, who is the owner of the said Motor Driving School where complainant was serving as Manager.

After appreciating the evidence adduced by each of the parties, learned trial court recorded a finding that, prosecution failed to prove the charges and moreover, accused succeeded in probalizing his defence. Hence, appeal by the State.

SUBMISSIONS

On behalf of the Appellant-State :

3. According to Learned APP, prosecution has proved the charges beyond reasonable doubt. By placing written notes of arguments it is submitted that, prosecution has established that accused was a public servant. That, accused raised demand of bribe for performing official duty and therefore, complaint was received and entertained. She pointed out that, complainant has categorically deposed that accused raised demand of Rs.600/-, i.e. Rs.20/- each for issuing 25 driving licenses and Rs.50/- each for certifying two character certificates, and as such, total sum of Rs.600/- was demanded. She pointed out that, complainant approached ACB and lodged complaint, after which ACB authorities planned trap. She pointed out that, independent pancha

witness PW3 was engaged and introduced to complainant, who heard the story of complainant about demand and he agreed to act as pancha and therefore, PW4 IO gave necessary instructions to both these witnesses. That, currency obtained from complainant was used to pay bribe after application of anthracene powder and its demonstration was given to both the witnesses. That, IO has drawn pore trap panchanama. That, during verification there was demand in presence of shadow pancha. Both, complainant and shadow pancha have testified to that extent. Thus, according to her, demand was proved and evidence of both the witnesses has remained intact.

4. She next submitted that, PW2 complainant and PW3 shadow pancha together visited the R.T.O. office and approached accused, who was occupying seat at window no. 27. That, second time also there was demand and it was complied and pre-determined signal was relayed after which, accused was apprehended red handed. That, both, PW2 and PW3, are lending support to each other on above count.

5. Thus, it is her submission that, prosecution has cogently established that there was demand and acceptance, but according to

her, merely on the basis of got up witness DW1, defence has been accepted and accused has been acquitted. She pointed out that, DW1 always had work with R.T.O. authorities and therefore he supported accused. According to her, DW1 was thus an interested witness and therefore, trial court ought not to have relied on his testimony to acquit accused in spite of availability of cogent and reliable evidence on the point of demand and acceptance, and moreover when there was valid sanction. For all above reasons, she urges to set aside the impugned judgment and allow the appeal.

On behalf of the Respondent-Accused :

6. Per contra, learned counsel for the respondent-accused justified the order of acquittal by submitting that, accused has admitted acceptance of money, but it was the same money which accused had paid on behalf of DW1 and on his request. That, there is documentary evidence in the form of chit received from DW1. The amount accepted was towards said transaction and therefore, amount was accepted under genuine belief, however, complainant, who was annoyed and upset, lodged false complaint. Learned counsel took this Court through the evidence of DW1 as well as PW2 and PW3. He would submit that, accused has probalilized the defence and therefore,

learned trial court has rightly accepted the same. For above reasons and for want of merits, he prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

7. In support of its case, prosecution has adduced evidence of **PW1** sanctioning authority, **PW2** complainant, **PW3** shadow pancha and **PW4** Investigating Officer, whereas **DW1** is the defence witness who is owner of the Driving School, namely, Kalane Motor Driving School at Chalisgaon.

Re-appreciated and reanalyzed the testimonies of above witnesses.

8. **PW2** Sham Jadhav is the complainant and he is examined at Exhibit 11. Substance of his testimony is that, he works as a Manager in Kalane Motor Driving School. That, in the month of August, he was given work to get permanent driving licenses of 25 persons those who took training in the driving school, and accordingly he tendered the documents with the office of Deputy R.T.O. Jalgaon. According to him, in above connection, when he approached accused, accused allegedly told him that Rs.20/- for each of the 25 driving licenses, (i.e.

total Rs. 500/-) and Rs.50/- each for character certificates of two candidates (i.e. total Rs.100/-), and thus total of Rs.600/- would be required to be paid and therefore, he lodged complaint with ACB authorities on 01.09.2010. In further chief, he narrated about independent pancha being called, introduced to him, he handing over currency notes to the IO, regarding procedure of application of anthracene powder to it and necessary instructions being given to him and shadow pancha. On the point of demand verification, he has deposed in para 6 about approaching accused at window no. 27 with shadow pancha PW3 and accused rising demand and he assuring to pay and time was sought to collect the amount, and thereafter the events were narrated to the IO about confirmation of demand. Regarding main trap, he deposed in para 7 about accused again making demand, he giving Rs.600/-, accused accepting it and pre-determined signal being relayed.

The relevant cross is only dealt herewith. This witness has admitted that, for the first time he had been to the R.T.O. in connection with the said work. He admitted that, application is required to be moved for getting license, but he is unable to tell when such applications were moved. He is also unable to tell as to when the

fees of the candidates were deposited. He answered that, he informed owner about demand of Rs.600/-. He also admitted that bribe amount was given to him by his owner. When his attention was invited to a document dated 09.08.2010, he admitted it to be on the letter head of the Driving School and it to be in the handwriting of son of the owner, upon which said document was marked as D1. He also admitted that the said letter was addressed to accused. In further cross, he denied lodging complaint against accused previously. He answered that, on the day of trap he himself did not see 25 driving licenses. He admitted that with the accused at window no. 27, a boy named Suraj was present near the accused. He also admitted that when he met accused for the first time and handed over list of 25 licenses to accused, the same were handed over to said Suraj. Rest is all denial.

9. PW3 shadow pancha, who is examined at Exhibit 15, has deposed in para 4 about he accompanying complaint to the office of accused, going to window no.27 and there, conversation taking place between complainant and accused about character verification report of 2 candidates and licenses of 25 candidates, and accused asking complainant whether he brought money and complainant told that he

would get it within 15 minutes, this witness and complainant then going and informing the IO. In para 7, he deposed about the events of main trap and about accused once more asking complainant whether he brought the amount and complainant taking out tainted currency and passing it on to accused who accepted it. Then, he narrated about the further procedure on arrival of raiding party.

Nothing adverse has been brought in his cross except his admission that, at the time when they went to the window of accused, one Suraj was sitting there. Rest is all denial.

10. As pointed out, very bold defence of accused is that, he had accepted taking the amount from complainant, however the explanation which he offered is that, due to acquaintance of DW1, who is very owner of the Driving School, on his behalf accused agreed to pay Rs.600/- towards the charges of preparation of licenses. That, complainant being employ of DW1, he presumed that the amount paid that day to the tune of Rs.600/- was towards said already paid amount, and so it was accepted under said genuine belief. In support of such defence, accused, apart from giving his written statement at paper book page no. 253, has also adduced evidence of DW1, which is at Exhibit 34.

11. This defence witness Bhimrao Kalane deposed that he runs motor driving school at Chalisgaon by name Kalane Motor Driving School. He knows Sham Jadhav i.e. PW2, who works as a Manager in his Driving School. Attention of this Witness was drawn to the document Exhibit D1 which was on the letter head of the Driving School and he admitted it to be under his signature and addressed to the accused. He deposed that, he had sent letter to accused with Sham Jadhav, i.e. PW2, and vide said letter, he had requested accused to pay license fees of two of their candidates. The fees of driving license has to be calculated as per Government Rules. He deposed that, vide above letter he had requested accused to deposit the fees for time being and that he would send the amount later on. He specifically deposed that he had requested accused to deposit the fees as the said two candidates were in need of license urgently. He claims that, accused informed about the fees of Rs.350/- and Rs.250/- respectively, through complainant and he claims to have received message accordingly, but complainant did not tell him that he was going to lodge complaint against the accused.

Above witness is subjected to cross, wherein he admitted that he did not carry document to demonstrate his ownership of Driving

School. He admitted that license cannot be prepared before depositing the required fee and unless license is prepared, it cannot be numbered. He admitted that the licenses of the candidates, who take training at their Driving School, are got prepared by them through the R.T.O. On being confronted with the document D1, he admitted that complete address of the candidates is not provided therein, nor it is stated that the two candidates were taking training in his school. He also admitted that there is no reference in the document that Rs.350/- is in respect of one candidate and Rs.250/- is in respect of another candidate. He also admitted that there is no outward number mentioned over the said letter.

12. Pointing to the above testimony, learned APP would submit that, the above witness was not worthy of credence. That, moreover, document D1 is carrying date which are interpolated and it bears no outward number.

13. Thus, as stated above, specific defence of accused is that, as he knew DW1, at his request and on his behalf he paid Rs.600/- towards the license of two candidates and under the belief that said amount was being returned, he accepted the currency handed over by PW2.

14. Resultantly, here is the defence witness on behalf of accused in support of above stand. It is fairly settled position that, burden on accused to be discharged is not as heavy as it is on prosecution. Accused is merely expected to probabalize the defence. Here, evidence of the very owner and employer of complainant has been adduced as a defence witness, who stepped into the witness box and deposed that, at his instance accused paid the charges and the money sent through complainant was accepted. There is document in the form of D1 which even complainant has categorically admitted.

15. The Hon'ble Apex Court in the case of ***State of U.P. v. Babu Ram*** (2000) 4 SCC 515, has observed as under :

“23. Depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.”

16. Likewise, in ***Munshi Prasad and others v. State of Bihar*** (2002) 1 SCC 351, the Hon'ble Apex Court has observed that ;

“..... The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution. A lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutor's witnesses”.

17. In the light of above settled position, as submitted, accused has succeeded in probalizing his defence which is in consonance with his written statement. There is no reason to doubt it. The very signatory to the document even has stepped into the witness box to verify and depose and therefore, his testimony indeed deserves consideration and cannot be brushed aside merely on the ground as put forth by the State that, said witness is interested witness.

18. Perused the judgment. Learned trial court seems to have appreciated the respective cases put forth by each of the parties. No error is committed by trial court in giving due weightage to the stand taken by the defence. The trial court rightly held that it deserves

consideration. Having probalilized the defence, trial court has accepted the same. In the considered opinion of this Court, there is no illegality of perversity in accepting the version of defence witness to acquit the accused. There being no merits in the appeal, following order is passed :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

vre