



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 516 OF 2011

The State of Maharashtra
Through Deputy Superintendent of Police,
Anti Corruption Bureau,
Jalna, District Jalna.

.... Appellant

Versus

Sk. Ayub s/o Mahetabsab,
Age 56 years, Occupation Service,
Police Inspector, Police Station,
Jafrabad, R/o. Ayodhya Housing Society,
Khadgaon Road, Latur,
Taluka and District Latur.

... Respondent
(Original Accused)

.....
Mr. V. V. Jahagirdar, APP for the Appellant-State.
Mr. Sudarshan J. Salunke, Advocate for the Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 28.09.2026

Pronounced on : 29.09.2026

JUDGMENT :

1. The State hereby questions the judgment and order of acquittal dated 15.12.2010 passed by learned Judge, Special Court, Jalna in Special Case (PCA) No. 7 of 2009 acquitting present respondent from charges under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (PC Act).

2. In nutshell, case of prosecution in trial court was that, complainant, who was booked for chapter proceedings, had approached accused, a police official, to desist him from arresting complainant in above proceedings. According to prosecution, there was demand of Rs.1000/- which on negotiations was brought down to Rs.500/-. In stead of complying with demand of bribe, complainant chose to approach ACB and lodged report. Thereafter, ACB authorities planned trap, summoned panchas, introduced complainant to them, panchas heard his story and agreed to act as pancha. Thereafter, Investigating Officer gave necessary instructions as well as demonstration and after pre-trap panchanama, main trap was laid and executed. Accused was apprehended and after complaint, he was chargesheeted and tried vide above Special Case. The trial ended up in acquittal and aggrieved by the same, the State has preferred instant appeal.

3. Learned APP would point out that, case of prosecution is rested on as many as five witnesses. He was candid enough in pointing out that during trial, as complainant expired, he was not available for adducing evidence. However, according to learned APP, there was credible evidence in the form of testimony of PW1 who was

independent shadow pancha and was party to the demand as well as acceptance. Learned APP pointed out that, learned trial court has failed to consider and appreciate the testimony of PW1 in its correct perspective. That, learned trial court on one hand has given weightage to the substantive evidence of PW1, but has not considered it to be corroborative piece of evidence. According to him, learned trial court also erred in holding that, pre-trap panchanama was silent on the point of demand when it was so reflected in the complaint itself. On both counts, he finds fault on the part of trial court in acquitting the accused and prays to interfere by allowing the appeal by relying on the evidence of PW1 shadow pancha and PW5 Investigating Officer.

4. In answer to above, learned counsel for the respondent/accused would justify the order of acquittal to be just, legal and proper and in consonance with the settled legal principles. According to him, very demand is not proved by prosecution beyond reasonable doubt and so, mere recovery is of no significance.

5. In the line of above submissions, evidence on record is put to scrutiny. As pointed out, it does appear that very *de facto* complainant's evidence is not available as he died before adducing

evidence. Therefore, the only evidence that remains for consideration is that of PW1 shadow pancha and PW5 Investigating Officer.

6. Evidence of PW1 shadow pancha at Exhibit 17 and in initial part of his examination-in-chief, he deposed about attending ACB office, being introduced to complainant, hearing his narrative about accused demanding Rs.1000/- to not to arrest complainant in proceedings under Section 110 of Cr.P.C. and that finally, bribe amount was reduced to Rs.500/-. He identified complaint Exhibit 18 to be containing his signature. In paragraph 3 of his chief, he deposed that the Investigating Officer asked deceased complainant to establish contact with accused on mobile phone and to inform him that he is coming to take bail. This witness also identified pre-trap panchanama Exhibit 19 and in paragraph 4 he deposed about the events that took place at the residence of accused. According to him, after conversation between deceased complainant and accused, when they stood up to go to Tahsil office for conducting proceedings of bail, at that time, accused asked complainant whether he had brought the amount and to give it, and accordingly complainant gave Rs.500/- which accused accepted and kept below a pillow and thereafter complainant gave signal after which raiding party came and apprehended accused and further proceedings took place.

While under cross, he admitted that *de facto* complainant had not disclosed to ACB authorities on which date and time accused had raised demand of Rs.1000/-. He answered that, entire conversion between complainant and them was reduced in pre-trap panchanama. However, he is unable to state why pre-trap panchanama was silent about complainant revealing that accused had demanded bribe of Rs.1000/-, but he was not ready to give so much amount and was only ready to give Rs.500/-. In paragraph 6 of his cross, he admitted that he did not hear the conversion from the tape recorder. He admitted that when complainant told accused that he wants to give surety, at that time, accused asked him to “give it”. He is unable to state why post-trap panchanama Exhibit 20 is silent about accused asking complainant whether amount was brought by him.

7. Thus, from the above discussed testimony it is emerging that, this witness has admitted that deceased *de facto* complainant had not stated exactly when initial demand was raised. He has also admitted in cross that initially accused asked Rs.1000/-, but after negotiations amount was brought down by complainant to Rs.500/- and pre-trap panchanama to be absolutely silent on this point.

8. Exhibit 20 seems to be the post-trap panchanama i.e. spot panchanama. However, as pointed out, it is silent about accused asking complainant whether he brought the amount. Consequently, whatever PW1 has deposed is apparently an improvement. Further, whatever accused had allegedly said regarding “give it”, cannot be co-related that bribe amount was meant, as there is contemporary case about complainant saying that he has brought surety and therefore, it is possible that what accused meant was to give the said surety at Tahsil office.

9. Consequently, here, when the demand itself has come under shadow of doubt, entire of prosecution collapses. When very foundational facts are not demonstrated or substantiated, it is not open for prosecution to put into play Section 20 of PC Act which permits drawing of presumption.

10. Further, it appears that currency was not recovered from the person of accused and it was rather recovered from beneath the pillow on a cot. The pancha no.2 Manikrao, at whose instance recovery of tainted currency was caused, is surprisingly not examined by prosecution. Even otherwise, mere recovery of tainted currency is of no significance unless demand itself is cogently and clearly proved.

11. Resultantly for above reasons, there are major short falls and lacuna on the part of prosecution, apart from deceased *de facto* complainant himself having doubtful integrity and having criminal antecedents and therefore, possibility of false implication cannot be completely ruled out.

For above reasons, case of prosecution cannot be said to be proved beyond reasonable doubt.

12. Perused the judgment under challenge. Learned trial court has considered each and every aspect and thereafter, has refused to accept the case of prosecution as proved. The view taken by learned trial court being the possible view, no interference is called for. Hence, the following order :

ORDER

The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]