



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.420 OF 2010

Dnyandeo Bhagwanta Yenare,  
Age : 52 years, Occupation : Service,  
R/o Raitale, Tq. Parner,  
District Ahmednagar.

...Appellant/ accused

- *Versus* -

The State of Maharashtra.

...Respondent/ State.

...

Shri Joydeep Chatterji, Advocate for the appellant/ accused.  
Mrs. Bharati B. Gunjal, APP for the respondent/ State.

...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 18 August 2026

**JUDGMENT :-**

1. By this appeal filed under Section 374(2) of the Code of Criminal Procedure (for short, 'the CrPC'), the appellant/ accused challenges the judgment and order dated 23.09.2010 passed by the learned Additional Sessions Judge, Ahmednagar, in Special Case No.12/2005 by which, he has been convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988, (for short, 'the PC Act') and

he is sentenced to suffer Rigorous Imprisonment for two years and to pay fine of Rs.3000/-, in default of payment of fine, he is directed to suffer further Rigorous Imprisonment for six months. He is also convicted for the offence punishable under Section 13(2) r/w 13(1)(d) of the PC Act and is sentenced to suffer Rigorous Imprisonment for two years and to pay fine of Rs.3000/- and in default, to suffer Rigorous Imprisonment for six months. Both the sentences were directed to run concurrently.

2. The brief facts leading to filing of the present appeal are as under:

(a) The appellant–accused Dnyandeo Bhagwanta Yenare was serving as a Police Havildar at Jamkhed Police Station. The complainant Sheshrao Bhanudas Doke (PW-1) and his relatives were involved in dispute with certain persons, against whom complaints had been lodged at Jamkhed Police Station. On 16.05.2005, the appellant/ accused informed the complainant (PW-1) that a complaint had been lodged against him and others and called him to the police station. According to the prosecution, the accused demanded Rs.2,500/- for settling the matter, which was subsequently reduced to Rs.1,000/-. The

accused allegedly asked the complainant (PW-1) to bring the said amount on 18.05.2005.

(b) The complainant was unwilling to pay the amount and approached the Anti-Corruption Bureau, Ahmednagar, on 17.05.2005. Accordingly, a trap was arranged on 18.05.2005 in the presence of panch witnesses. After the pre-trap formalities, the complainant and panch witness proceeded to Jamkhed Police Station. The accused met the complainant at tea canteen opposite the police station and again demanded the amount. The complainant allegedly paid Rs.1,000/- treated with anthracene powder to the accused, who accepted it and kept it in his pocket. On receiving the predetermined signal, the ACB officers and panch witness entered the canteen and apprehended the accused. The tainted amount was recovered from his pocket. The accused, however, claimed that the amount was towards hand loan transaction.

(c) The ACB officer thereafter lodged the FIR for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. After completion of investigation and obtaining sanction for

prosecution under Section 19 of the Act, charge-sheet was filed against the accused.

(d) The learned trial Court framed charge (exhibit 7) for the aforesaid offences. The accused pleaded not guilty and claimed to be tried. The prosecution examined the complainant (PW-1), panch witness Nandu Parkhe (PW-2), the sanctioning authority Vishwas Patil (PW-3) and the Investigating Officer Munja Mulse (PW-4) and relied upon the documentary and trap evidence i.e. pre-trap panchanama (exhibit 16) and post-trap panchanama (exhibit 17). The incriminating circumstances were put to the accused under Section 313 of the Code of Criminal Procedure. He denied the allegations and contended that he had neither demanded nor accepted any bribe and that the amount recovered from him had been sent by one Ramesh Doke (DW-1) through the complainant (PW-1). He also questioned the validity of the sanction (exhibit 24). In defence, the appellant/ accused examined Ramesh Tukaram Doke (DW-1) and Bhausahab Nanasaheb Doke (DW-2) as defence witnesses.

(e) After recording evidence and hearing the appellant and prosecution side, the learned Special Judge was pleased to

pass the impugned judgment as above.

3. Learned advocate appearing for the appellant submitted that the testimony of PW-1 complainant as regards demand from the accused of Rs.1000/- suffers from omission and, therefore, it cannot be relied upon. Learned advocate has invited attention of this Court to the testimony of PW-1 wherein, it is stated that the accused had told the complainant that he has withdrawn the case which was lodged against him and he demanded Rs.1,000/- from the complainant as the matter is settled. The said omission has been proved through the evidence of Investigating Officer (PW-4), who has categorically stated in his deposition that the complainant has not stated before him that the accused asked the complainant if Rs.1000/- are brought by him as settled. Learned advocate pointed out that even evidence of PW-2 Nandu Parkhe (panch witness) cannot be relied upon for the reason that the said panch witness has stated that the copy of his statement was given to him 04-05 months back by the ACB office. This witness admitted that after reading the said statement, I deposed before the Court.

4. Learned advocate for the appellant has relied upon

the judgment of this Court in ***Suresh Purushottam Ashtankar vs. The State of Maharashtra and another, 2015 ALL MR (Cri) 4243*** wherein, the Division Bench has observed that the Investigating Officer or the Police Officer should take care and steps in order to see that the culprit is brought home to his guilt, however, at the same time, the Police Officer should not show unnecessary interest which would unnecessarily create doubt about the Police Officer. Learned advocate for the appellant has pointed out that in ***Suresh Ashtankar (supra)***, the Division Bench has considered the observations of the learned Single Judge Bench in ***Sharad Namdeorao Shirbhate vs. State of Maharashtra, 2006(2) Mh.L.J. (Cri) 1210*** wherein, the learned Single Judge has observed that “*There would indeed be nothing wrong in the witness refreshing his memory, but that ought to be done 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, he could be allowed to refresh his memory with reference to the contemporaneous records of the incident created by the police. It would not be permissible for such witness to stealthily refresh his memory before entering the Court and depose about the entire*

*evidence giving minute details as if he was reeling them out from his memory. Therefore, the objection to the reliability of evidence of PW-2 Prabhakar taken by learned Counsel for the appellant is valid.”* The said view of the learned Single Judge Bench came to be upheld by the learned Division Bench. Learned advocate for the appellant submits that the fact remains that the witness can be given the statement to read in the Court room, however, not outside the court room. In the case in hand, the panch witness was given his statement 04-05 months back. Therefore, according to learned advocate, the testimony of this panch witness cannot be relied upon.

5. Learned advocate for the appellant further pointed out that immediately after trap, the appellant/ accused has given explanation which is at exhibit 39 that he has given the amount of Rs.1000/- as hand loan to Ramesh Doke, who was examined as defence witness (DW-1). Learned advocate has pointed out the explanation of the appellant that on 16.05.2005, the appellant had gone to the house of DW-1 Ramesh Doke for demanding hand loan, however, he was not found at home. On 18.05.2005, the appellant had informed the complainant (PW-1) to come to the

Police Station along with Rs.1000/- which is given to Ramesh Doke (DW-1). In short, according to the appellant, the amount which he had accepted was not bribe amount, but the hand loan amount given to Ramesh Doke. Learned advocate for the appellant, therefore, submitted that Ramesh Doke (DW-1) and Bhausahab Doke (DW-2) have duly corroborated the explanation, therefore, the prosecution case as regards demand is not sustainable.

6. Learned advocate for the appellant further submitted that the learned Special Judge committed grave error by convicting the appellant as it has not properly appreciated evidence brought on record. The prosecution has failed to prove guilt of the appellant beyond reasonable doubt. Learned advocate submitted that the prosecution has virtually failed to prove that the demand is made by the accused and mere acceptance of amount is not sufficient to prove the demand. The prosecution witnesses have not corroborated each other at the time of recording their evidence. As such, learned advocate submitted that the prosecution has failed to prove guilt of the appellant. The appeal needs to be allowed and the appellant be acquitted.

7. *Per contra*, learned APP strongly opposed the submissions of learned advocate for the appellant. According to learned APP, the statements of witnesses proved the guilt of the appellant beyond all reasonable doubt and, therefore, their evidence cannot be discarded. Learned APP has strenuously supported the impugned judgment and order passed by learned Special Judge. According to him, learned Special Judge after analyzing evidence brought on record in proper perspective, has rightly delivered the impugned judgment and order and has rightly convicted the appellant. There is no scope for interference in the impugned judgment. He, therefore, prayed for dismissal of the present appeal.

8. After hearing the submissions of learned advocates and with their assistance, after going through evidence on record carefully, it is apparent that the witnesses have not supported each other on the point of demand. The evidence of PW-1 regarding the alleged demand is not consistent with his earlier statement, and the material omission brought on record through PW-4 affects the credibility of his version. The evidence of PW-2 does not satisfactorily cure this material deficiency. The evidence

led by the prosecution, when considered as a whole, does not establish the factum of demand of illegal gratification beyond reasonable doubt. Learned advocate for the appellant has rightly placed reliance on the judgment in ***Suresh Ashtankar (supra)*** and has rightly pointed out the testimony of PW-2 panch witness, who deposed that he was given the statement prior to 04-05 months for reading. This circumstance certainly affects the weight to be attached to the testimony of PW-2, particularly when his version on the material aspect of demand is not otherwise satisfactorily corroborated.

9. The evidence of Ramesh Doke (DW-1) and Bhausahab Doke (DW-2) is corroborated with regard to the explanation given by the appellant/ accused that the amount which he had accepted was not bribe, but it was hand loan given to Ramesh Doke. Even assuming the physical receipt/recovery of the amount is established, the prosecution has failed to establish that the amount was received as illegal gratification pursuant to a demand made by the appellant. The basic requirement of demand is required to be proved beyond all reasonable doubt. In order to prove the charges for the offence punishable under Section 13(1)

(d) r/w Section 13(2) of the PC Act, the proof of demand of illegal gratification is absolutely necessary as it is *sine qua non* of the offence. If the prosecution fails to prove this demand of illegal gratification, the charge against for the aforesaid offences would fail. It is clearly established in several judgments delivered by the Hon'ble Supreme Court including the judgment in *Neeraj Dutta vs. State (Govt. of NCT of Delhi) reported in (2023) 18 SCC 251*, that mere possession and recovery of currency notes from the possession of the accused without proof of demand would not establish the offence under under Section 13(1)(d) r/w Section 13(2) of the P.C. Act. In absence of proof of demand and illegal gratification and use of corrupt or illegal means to obtain any valuable or pecuniary advantage, it cannot be said that the offence of taking bribe is proved. Thus, the proof of demand has been held to be indispensable ingredient. Therefore, failure on the part of prosecution to prove demand and illegal gratification, would be fatal and mere recovery of the amount from the appellant/accused would not entail his conviction for the said offences.

10. On careful appreciation of the evidence, this Court

finds that the prosecution has failed to establish, beyond reasonable doubt, that the appellant had demanded Rs.1,000/- from the complainant as illegal gratification. The alleged demand made immediately prior to the trap is not satisfactorily established through the testimony of PW-1, and the material omission brought on record through the evidence of PW-4 assumes significance in this regard. The evidence of PW-2 also does not inspire sufficient confidence so as to cure the said deficiency in the prosecution case. In the absence of reliable proof of the initial demand, the mere recovery of Rs.1,000/- from the appellant cannot, by itself, establish that the amount was accepted by him as illegal gratification. The prosecution was required to prove the nexus between the amount allegedly received and the demand of illegal gratification. Since the foundational fact of demand has not been proved beyond reasonable doubt, the alleged acceptance of the amount as bribe also becomes doubtful. Consequently, the benefit of such doubt must go to the appellant.

11. It is well settled that the presumption under Section 20 of the PC Act can be invoked only after the prosecution

establishes the foundational facts of demand and acceptance of illegal gratification. In the present case, as discussed hereinabove, the prosecution has failed to establish the demand of illegal gratification by the appellant beyond reasonable doubt. Consequently, the foundational facts necessary for invoking the statutory presumption under Section 20 are absent. The Supreme Court in *B. Jayaraj v. State of Andhra Pradesh*, (2014) 13 SCC 55, *P. Satyanarayana Murthy v. District Inspector of Police*, (2015) 10 SCC 152, *N. Vijayakumar v. State of Tamil Nadu*, (2021) 3 SCC 687 and *Neeraj Dutta v. State (Govt. of NCT of Delhi)*, (2023) 2 SCC 353, has reiterated that mere recovery of currency notes, in the absence of proof of demand and acceptance of illegal gratification, is insufficient to sustain a conviction. Therefore, in the absence of proof of the foundational facts, the presumption under Section 20 cannot be drawn in favour of the prosecution.

12. In view of the foregoing discussion, this Court is of the considered view that the prosecution has failed to prove, beyond reasonable doubt, the demand of illegal gratification by the appellant and its acceptance pursuant thereto. Consequently,

the foundational facts necessary to sustain the conviction under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act have not been established. Mere recovery of the currency amount, in the absence of proof of demand of illegal gratification, cannot sustain the conviction. The appellant is, therefore, entitled to the benefit of doubt. Accordingly, the following order is passed:

**ORDER**

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order dated 23.09.2010 passed by the learned Additional Sessions Judge, Ahmednagar, in Special Case No.12 of 2005, convicting and sentencing the appellant for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, is quashed and set aside.
- (iii) The appellant/accused is acquitted of the offences with which he was charged.
- (iv) The appellant is on bail. His bail bond stands cancelled and the surety, if any, stands discharged.
- (v) The fine amount, if deposited, be refunded to the appellant.
- (vi) The record and proceedings be sent back to the concerned Court.