



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

CRIMINAL APPEAL NO. 1125 OF 2023

Sanjay Nagendrabuwa Bharati
Age: 48 years, Occu.: Service,
R/o.:C/o. Sayal Post Marlak,
Now C/o. Maroti Chandapure,
Shankar Gunj, Dharmabad,
Nanded.

....Appellant
(Original Accused)

Versus

State of Maharashtra
Through Police Station Officer,
Umri Police Station, Taluka Umri,
District Nanded.

....Respondent

.....
Mr. Satyajit S.Bora, Advocate for Appellant.
Mrs.Chaitali Chaudhari Kutti, APP for Respondent
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09-09-2026
Pronounced on : 21-09-2026

JUDGMENT :

1. Appellant, a convict hereby challenges Judgment and order dated 01-11-2023 passed by learned Additional Sessions Judge-2, Bhokar in Special ACB No.1 of 2018 recording guilt for offence under Sections 7, 13(2) of the Prevention of Corruption Act.

BRIEF FACTS OF THE CASE

2. In trial Court, case of prosecution was that, accused, who was a Bailiff and was assigned with the duty of serving arrest warrant, demanded bribe of Rs.1,000/- from complainant, who was a judgment debtor and had fallen in arrears of maintenance i.e. for postponing date of his appearance before trial Court. PW1 complainant as was not willing to pay bribe, approached Anti Corruption Bureau (ACB) office, gave complaint Exh.24, on the basis of which, ACB authorities planned trap, which according to prosecution was successfully executed. After arrest of accused, he was duly chargesheeted and tried by learned Additional Sessions Judge-2, Bhokar and he came to be convicted for above offence. Hence, the appeal by accused.

SUBMISSIONS**On behalf of Appellant/Accused :**

3. Learned counsel for the appellant apprised this Court about story of prosecution in trial Court. He would submit that, prosecution has miserably failed to prove both; demand and acceptance. He pointed out that, both complainant as well as shadow pancha have resiled, not supported prosecution and were cross-examined by prosecution itself. Thus, according to him, there was no case at all

with prosecution. He also submitted that, Sanctioning Authority had given vital admissions in cross-examination rendering the aspect of application of mind to be doubtful. For above reasons, he prays to quash and set aside the impugned judgment by allowing appeal.

Apart from placing written notes of arguments on record, he sought reliance on the Judgments of Hon'ble Supreme Court in the cases of *Khaleel Ahmed v. State of Karnataka*, (2015) 16 SCC 350; *State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede*, (2009) 15 SCC 200; *C.M.Sharma v. State of A.P. Th. I.P.*, (2010) 15 SCC 1; *Rangnath v. State of Maharashtra*, MANU/MH/1206/2024, *Pannalal Damodar Rathi v. State of Maharashtra*, (1979) 4 SCC 526; and *Yashwant Nanubhai Pingle v. State of Maharashtra (CBI)*, 1999 Cri. L.J. 1270.

On Behalf of State :

4. Per contra, learned APP would submit that, though complainant and shadow pancha, at a later point of testimony, did not support prosecution, their initial part as was useful to the prosecution and it being in consonance with prosecution story, more particularly, on the point of demand and acceptance, the same was rightly relied by the learned trial Court. That, there is correct appreciation of available evidence by the learned trial Court and there being no perversity or

illegality in the impugned judgment, she prays to dismiss the appeal for want of merits. Learned APP relied on the Judgments of the Hon'ble Apex Court in the cases of *The State of Kerala v. K.A.Bdul Rasheed*, 2026 LiveLaw (SC) 374 and *Neeraj Dutta v. State (Govt. of NCT of Delhi)*, 2022 Livelaw (SC) 1029.

ANALYSIS

5. In the light of above submissions, evidence on record is re-appreciated and reanalyzed. As usual, it is to be seen whether essentials like demand and acceptance are cogently proved beyond reasonable doubt. For ascertaining the same, obviously one has to test the evidence of PW1 complainant followed by that of PW2 shadow pancha. It is settled position that complainant being interested party, corroboration from independent corner like shadow pancha has to be insisted for.

PW1 Madhav Mohan Wadikar has deposed at Exhibit 23 about his wife filing a suit against him for maintenance and verdict going in her favour. According to him, on 27-07-2017, while he was out of the town, accused, a Bailiff of Umri Court, had visited his house carrying arrest warrant. When this witness returned home, he learnt about said visit of Bailiff from his brother and that accused has passed his mobile number by writing on a chit, which was handed over to his

daughter and therefore, he made a phone call to accused, who asked him to call back in the afternoon as he was out for official work. During second call, he was called at Umri Municipal Council and there, he states that accused informed him about outstanding of maintenance amount to the tune of Rs.40,000/- and arrest warrant being issued against him, upon which he allegedly told accused to take him along, but accused said to him that do not go to the Court, give Rs.1,000/-, which is to be passed to the senior officer and date of hearing will be got extended by two months. He told accused that he would meet on 04-08-2017. However, as he was not willing to pay bribe, he approached ACB and gave complaint Exhibit 24, based on which, he testified that panchas were called, introduced to him, they heard his story and they caused signature over complaint.

In further testimony, he deposed about Investigating Officer inserting SIM card in voice recorder machine. Witness stated that, he is unable to remember exact conversation, but ultimately decided to go and he set out to go to Umri at around 3:00 to 3:30 and reached there at around 04:30 and he halted near Library at Umri, which was located next to the Court. There, Investigating Officer asked him to make a phone call to accused and said telephonic conversation was recorded during which accused asked him to meet at Municipal Council. Thereafter, as per instructions of the Investigating Officer,

on reaching the location, he was asked to tell accused to wait for half an hour and that money would be brought. He deposed that, he was not told what to specify regarding individual accompanying him and then he was further told that, if he meets accused, to ask him to come near Jeep. There again Investigating Officer gave instructions to him and accordingly, he made a phone call to accused, who asked him to meet near Yashwant School and accordingly, he went there and again gave a call to accused, who said that he is on the way. After accused arrived near the school, he asked complainant if he had brought the money and it has answered in affirmative.

After deposing to this extent, witness stated that he does not recall what happened thereafter and therefore, with permission of learned trial Court, PW1 complainant was cross-examined by prosecution. However, it is noticed that, during cross-examination, he has agreed and admitted all suggestions put to him by learned Public Prosecutor like the person, who approached at the school, was signaled to be accused, they spoke about his work for extension of date by two months and accused demanded Rs.1,000/- from him, upon which, he told that he would bring the money. He also admitted that, accused demanded Rs.1,000/- from him near the school and he was told that, money would be arranged in half an hour and then he and pancha going towards the Police, who were waiting. Thereafter,

voice recorder was switched off and events being narrated to the Investigating Officer in presence of pancha No.1 and that thereafter, it was decided to conduct pre-trap proceedings. In paragraph 6, he deposed about handing over two currency notes of Rs.500/- each and 2 currency notes of Rs.100/- each and its numbered being noted. In paragraph 7 and 8, he deposed about procedure of application of anthracene powder to the currency and use of ultra violet lamp. Again instructions being given by the Investigating Officer to handover currency on demand. He also deposed that, instructions were given in presence of panchas. In paragraph 9, he deposed about again SIM card being inserted in the voice recorder, which was kept in his pocket and he and shadow pancha going towards eastern gate of school and that, accused accepted bribe amount from him, after which he gave predetermined signal and accused came to be comprehended.

Therefore, though this witness in initial part of examination-in-chief stated that he met accused near Yashwant School and there accused asked him whether he had brought money and on answering in affirmative to that extent, thereafter, he could not recall further events and in cross-examination at the hands of learned Public Prosecutor, he has virtually admitted the very story of prosecution.

In **cross-examination** by learned counsel for defence, this

witness has admitted that, accused submitted unserved warrant report on 31-07-2017. He admitted that, he met first time to accused at the time of main trap. He further admitted that, accused was called near a Car and there, he told his name as Madhav Wadikar and kept two currency notes of Rs.500/- in the pocket of the accused.

6. Likewise, **PW2** Dilip Gangadhar Zhudpe, shadow pancha also in his evidence at Exhibit 30 deposed about going to ACB office, agreeing to act as Pancha, meeting complainant, hearing him, but he is unable to recall full name of complainant. He deposed that, complainant was asked to narrate his complaint orally during which complainant narrated complaint in their presence, which was as per the written complaint given to Investigating Officer. After deposing that, the Investigating Officer brought digital voice recorder and one Memory card being inserted in said recorder, learned trial Court has noted demeanour of this witness as "Prosecution explained to the witness five times and even Court explained to the witness 7 times whether anything happened during the period in between verification of complaint and bringing digital voice recorder after verification of complaint, however, the witness did not state anything about what had happened and he stated that "I do not remember what has happened". Thereafter, it seems that, learned Public Prosecutor

sought permission of learned trial court to cross-examine his own witness and in the cross-examination at the hands of learned Public Prosecutor, he has admitted that both panchas signed on the written complaint. He admitted that, it was decided to verify demand before arranging trap. He further stated that a digital voice recorder would be given to complainant and conversation between complainant and accused would be recorded in the same. That, there was verification about no previous conversation in the memory card. He admitted that, they reached Umri where Investigating Officer instructed complainant to make a phone call to accused with further instructions to record conversation between complainant and accused. In paragraph 3, he admitted that complainant made a phone call to the accused at 03:55 p.m. He admitted that, whatever conversation took place between complainant and accused was recorded in voice recorder. In paragraph 3, he has admitted the very conversation that took place between complainant and accused, which was heard on phone. In paragraph 8, he answered regarding main events which took place near school at around 06:30 p.m. and he also admitted about conversation again took place between complainant and accused which was recorded. However, in paragraph 8, he answered that accused made gestures by use of his right hand fingers and thereafter, complainant took out amount from front pocket of right

side of his pant and held it before accused and accused accepted the said amount.

Thus, it is seen that this witness merely deposed in his examination-in-chief about the events that took place at ACB office till he agreeing to act as pancha and voice recorder being brought with memory card and said card being inserted in voice recorder. In examination-in-chief, he has not stated about any pre-trap verification being done or about accused making any demand in his presence. On the contrary, in the cross-examination at the hands of learned APP, he stated about some gestures were allegedly made by accused, after which complainant gave amount to accused, who accepted it. Therefore, gestures are presumed as demand by this witness and he admits to that extent.

7. Though, here, there is valid sanction, on the point of demand and acceptance both; PW1 complainant and PW2 shadow pancha in their examination-in-chief, have not supported prosecution. Though they admitted to every suggestions given by learned Public Prosecutor during their cross-examination, it is particularly noticed that, PW2 shadow pancha, who is a crucial witness, in his examination-in-chief has not stated about any events of demand raised by accused being heard by him during conversation between complainant and accused,

rather he speaks about gestures being made at the time of main trap and the complainant handing over amount to accused. Therefore, with such quality of evidence, case of prosecution cannot be said to be proved beyond reasonable doubt. As it is seen from above discussion, both PW1 complainant and PW2 shadow pancha were required to be declared hostile and further cross-examined by learned Public Prosecutor wherein every suggestions put to them are admitted by them in mechanical manner.

8. Consequently, for above reasons, case of prosecution cannot be said to be proved beyond reasonable doubt as both PW1 complainant and PW2 shadow pancha have apparently not supported prosecution.

9. I have gone through the rulings relied by the learned APP, however, the facts in the said case and the case in hand are quite distinguishable.

10. Perused the judgment under challenge. Learned trial Court does not seem to have appreciated the aspect of PW2 shadow pancha failing to depose in examination-in-chief about any demand being raised in his presence. Even regarding main trap, this shadow pancha deposed about gestures being made by accused with his right hand index finger. Thus, assumption cannot be directly drawn that he

meant demanding bribe. Therefore, though learned trial Court extensively dealt with numerous citations relied by the parties, the crucial aspect of demand as stated by even complainant did not found support from independent witness shadow pancha, and conviction seems to have been recorded, which is an error committed by it. Hence, indulgence is called for at the hands of this Court. Accordingly, following order is passed :

ORDER

- I. The Criminal Appeal is allowed.
- II. The conviction awarded to the appellant Sanjay Nagendrabuwa Bharati by by learned Additional Sessions Judge-2, Bhokar, in Special ACB No.1 of 2018, under Sections 7, 13(2) of the Prevention of Corruption Act, on 01-11-2023 stands quashed and set aside.
- III. The appellant Sanjay Nagendrabuwa Bharati stands acquitted of the offence punishable under Sections 7, 13(2) of the Prevention of Corruption Act
- IV. The bail bonds of the appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]