

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPEAL NO. 328 OF 2002.

The State of Maharashtra.

}

Appellant.

Versus

(1) Ankush s/o Ramchandra Kunte.
Age : 40 Years, Occ.: Service.
In the Office of Inspector of Land
Records, Vaijapur,
Taluka – Vaijapur,
District – Aurangabad.

}

Respondents.

(2) Baburao s/o Nanasahab Ardad.
Age : 61 Years, Occ.: Pensioner.
R/o.: Khokadpura, near Vitbhatti.
(brick kiln) Aurangabad.

Appearance =>

Mr. V.P. Kadam, Assistant Public Prosecutor for the State of Maharashtra.

Mr. R.S. Deshmukh, Advocate for Respondent No.1.

Mr. P.R. Patil, Advocate for Respondent No.2.

CORAM : M.T. Joshi, J.

Reserved On : 26th August, 2015.

Pronounced On : 23rd September, 2015.

JUDGMENT :-

Being aggrieved by Judgment and Order dated 8th March, 2002 passed by the learned Special Judge, Jalna, District – Jalna in

Special Case (PCA) No.11 Of 1997 thereby, acquitting Respondent Nos. 1 and 2 from offences punishable under Section/s. 7, 13(2) read with 13(1)(d) and Section 12 read with Section 7 of the Prevention of Corruption Act, 1988, present Criminal Appeal is preferred by the Appellant.

[2] Prosecution case, in short, is as under :-

That, during the relevant period, present Respondent No.1 (accused No.1) namely Ankush Ramchandra Kunte was serving as a Clerk, while Respondent No.2 (original accused No.2) namely Baburao Nanasaheb Ardad, was serving as Taluka Inspector of Land Records, Jalna.

Complaint was filed by PW No.2 – Premchand Phulchand Jangade with Anti Corruption Bureau, Jalna at Exhibit – 51 on 9th October, 1995. In the complaint, he detailed that, dispute between him and his uncles as well as cousins over the partition of undivided family property, since the time of death of his grand father Lalman was pending. His uncle Kanhayyalal being eldest son of Lalman was the Karta of the family. In the year 1985, father of the Complainant had suggested to his uncle that the property be partitioned. Therefore, the Complainant and his father started to collect the relevant documents regarding the entries made in the government offices, concerning their various properties. At that time, it was found that, one plot - CTS No.10606 of Sheet No.38 was mutated in the name of sons of Kanhayyalal. Therefore, at that time itself, enquiry was made with the City Survey Office from which, it was gathered

that, in fact, mutation had taken place in the year 1873-74. Therefore, even the complaint was filed with the City Survey Office at that time but, no action was taken. In the meanwhile, since all the members of joint family decided to resolve the dispute, no further enquiry was made by the Complainant or his father. Dispute however, cannot be resolved.

In the circumstances, Complainant Premchand took upon himself a lead. In the matter, on 5th October, 1995 he visited the house of his uncle Kanhayyal and requested him to get the mutation entry cancelled, made in the names of his sons - Narendra and Deelip. However, his uncle abused him and drove him away from his house and challenged him to take what ever action, he wanted to take. In the circumstances, on 7th October, 1995 he filed complaint with the Superintendent of Land Records, Jalna and asked for correction of the mutation entry. Previous to that on 26th September, 1995, he filed application with the City Survey Office for measurement of undivided agricultural property bearing Survey No.482.

In this regard, he met present Respondent No.1, being Clerk serving with the City Survey Office. That time, Respondent No.1 told him that he would see as to what can be done and, thereafter, on 7th October, 1995 at about 8.30 p.m. Respondent No.1 visited him. That time, meeting took place in the house of PW No.1 Gopal Ramchandra Abewal, another cousin of the Complainant. At that time, Respondent No.1 was accompanied by two unknown persons. Respondent No.1 told the Complainant that he has sent the application regarding cancellation of mutation entry filed by the

Complainant on that date to his superior. He promised that, he would get the work done through his superior officer. During the talk, Respondent No.1 made a demand of Rs.3000/- and further told that separate amount will have to be paid to his seniors. During further talk with Respondent No.1, he directed that amount of Rs.2000/- will be required to be paid as an advance and balance of Rs.1000/- to be paid after completion of the work. Though the Complainant tried to negotiate, Respondent No.1 told that said amount cannot be reduced. Upon that, Complainant agreed to pay the amount. Thereupon, Respondent No.1 asked the Complainant to meet him in his office on next Monday i.e. 9th October, 1995. That time, he promised that both the works of the Complainant i.e. cancellation of the mutation entry and measurement of the land would be done immediately and, thereafter, he went away. Since the Complainant did not wish to pay the bribe, on 9th October, 1995, he approached to the office of Anti Corruption Bureau, Jalana and filed the complaint.

[3] PW No.7 Police Inspector – Khushalchand Govindlal Baheti of A.C.B., Jalna took over the investigation. He called two panch witnesses from the Government offices, including PW No.3 – Anil Manikrao Kulkarni, Senior clerk from the office of District Rural Development Agency (D.R.D.O.).

[4] The Investigating Officer has decided that there should be verification of the demand of bribe. Therefore, the Complainant and PW No.3 Anil Kulkarni were directed to visit the office of the Respondents. That time, Investigating Officer kept micro cassette recorder with the Complainant, after taking due precaution of seeing

that cassette is blank. The Complainant was directed to record the conversation between him and the Respondents and, thereafter at about 3.00 p.m. Complainant alongwith panch witness proceeded to the office of the Respondents.

[5] Respondent No.1 was present in the office at his table. At that time, 2 to 3 unknown persons were already in meeting with Respondent No.1. After the completion of their work, the Complainant offered Respondent No.1 to have tea in a outside hotel. Thereafter, all of them proceeded to have tea. In the tea stall, introduction with the panch witness was made. The Complainant introduced the Panch witness as his cousin by name – Kishor, as interested in the work. The Complainant also explained that since his cousin will have to share the responsibility, in order to ward off any misunderstanding, Kishor is also required to be involved in all the transactions.

[6] That time, Respondent No.1 asked that Complainant should pay agreed amount i.e. Rs.2000/- at that time and to pay remaining amount of Rs.1000/- after the work is completed. During the dialogue, Respondent No.1 stated that all of them would also talk to his Senior. Thereafter, all of them returned to the office. Respondent No.1 took both of them to his senior i.e. present Respondent No.2 Baburao Nanasaheb Ardad. That time, when Respondent No.1 opened the topic of work of the Complainant, Respondent No.2 stated that, since he was busy in another important work, after completion of the same, he would look into the matter of the Complainant. Thereupon, Respondent No.1 told Respondent No.2

that Complainant would pay for his work. That time, Respondent No.2 stated that it would be O.K. Upon that, Respondent No.1 asked as to whether he should visit the house of the Complainant to accept the amount, to which Respondent No.2 consented for the same. During the talk, Respondent No.1 asked as to whether the work should be assigned to one Bhale. Upon which, Respondent No.2 stated that he would unnecessarily complicate the matter, therefore, he should assign the work to others.

[7] Thereafter, the Complainant and the panch witness returned to the raiding party in the office of Anti Corruption Bureau. Panchnama of all these activities was recorded at Exhibit – 56.

[8] Thereafter tape recorder was played and in the voice of panch witness, it was recorded that he had worked as panch witness in the case. Thereafter, transcription of the entire record was made by the Stenographer under the signatures of both the panch witnesses at Exhibit – 58. Thereafter, Investigating Officer decided to lay a trap and catch Respondent No.1 red handed, while accepting the amount of Rs.2000/- at the house of the Complainant in the evening, as was agreed to between the Complainant and Respondent No.1.

[9] Regular exercise of demonstration of application of anthracene powder was given. Anthracene powder was applied to the decoy money. Decoy money consisted of two currency notes in the denomination of Rs.500/- and 10 currency notes of denomination of Rs.100/- each. Pre determined signal was also arranged between the Complainant and the Investigating Officer in case, trap is successful. Decoy money was kept in the chest pocket of the Complainant and

after preparation of all the necessary panchnama of the activities, raiding party alongwith panch witnesses and the Complainant reached at Mahavir Square at 6.30 p.m., by a jeep.

[10] When the Complainant and the panch witnesses were proceedings towards the house of the Complainant, they saw Respondent No.1 coming towards Mahavir Square. At that time, two persons were with him. Namaskar was offered from both the sides. Respondent No.1 suggested that juice should be taken, therefore, all of them i.e. the Complainant, panch witness, Respondent No.1 and his two companions went to Aanand Soda Factory, Juice and Pav Bhaji Center. After preliminary talks were over, Respondent No.1 enquired as to whether the amount was brought. The Complainant told that amount of Rs.2000/- is brought however, work should be done. Upon that, Respondent No.1 assured that in presence of the Complainant himself he had enquired with his senior Respondent No.2, therefore, it is guaranteed that work would be done, therefore, the Complainant should pay the money. Accordingly, the Complainant presented the decoy money by his right hand to the Respondent No.1. Respondent No.1 accepted the same by his right hand and kept the same in a pocket of his safari shirt. Thereafter, the Complainant went towards the door of the shop and gave the pre determined signal.

[11] Upon receipt of pre-determined signal, raiding party including the Investigating Officer reached at the spot. Dy.S.P Paliwal had caught hold one of the hand of Respondent No.1, while one Police Constable – Rathod caught hold another hand of Respondent No.1 near his wrist. Thereafter, it was made known to Respondent

No.1 that they are officials from the Anti Corruption Bureau. Respondent No.1 started sweating. Thereafter, the officials of the Anti Corruption Bureau started next exercise of examination of the hands of Respondent No.1 and relevant part of the person and clothes of Respondent No.1 and thereafter of the Complainant, under the ultra violet lamp. Decoy money was recovered from Respondent No.1 and examination under the ultra violet lamp confirmed the above activities. Panchnama of all these activities was recorded at Exhibit – 57 and Respondent No.1 was arrested.

That time, micro cassette recorder was kept with the Complainant to record the conversation. However, as all of sudden, Respondent No.1 met them on the road, the Complainant forgot to switch on the tape-recorder, therefore, nothing could be recorded.

[12] Respondent No.2 was also arrested. After making further necessary investigation and after recording the statements of all the relevant witnesses, sanction to prosecute Respondent No.1 was obtained from PW No.4 Pandit Ramaji Kanekar, the then Regional Deputy Director of Land Records at Exhibit – 61.

Deputy Secretary to the Government, Revenue and Forest Department, Mr. G. Chakrabarty had accorded the sanction to prosecute Respondent No.2 at Exhibit – 75. (Admitted by the defence.) Thereafter, charge sheet came to be filed.

[13] Before the learned Special Judge, in all seven witnesses were examined. As already described, PW No.1 Gopal Ramchandra

Abewal is the cousin of the Complainant. PW No.2 Premchand Phulchand Jangade is the Complainant. PW No.3 Anil Manikrao Kulkarni is the shadow panch witness. PW No.4 Pandit Ramji Kanekar is the Deputy Director of Land Record, who accorded sanction to prosecute Respondent No.1 at Exhibit – 61 and PW No.5 Haribhau Jijabhau Ghare, Cadastral Surveyor serving in the office of the Taluka Inspector of Land Records, Jalna was examined as the person who accompanied Respondent No.1 at the time of acceptance of decoy money. He however, did not support the prosecution. The learned Assistant Public Prosecutor in the trial court surprisingly, appears to have not sought permission to cross-examine the said witness. PW No.6 Anil Anandprasad Jaiswal, is the proprietor of Anand Juice and Pav Bhaji Center, where, according to the prosecution, decoy money was accepted while, PW No.7 Khushalchand Govindlal Baheti is the Investigating Officer. Sanction to prosecute Respondent No.2 was admitted by him at Exhibit – 75.

[14] Defence of Respondent No.1, as is found from the line of cross-examination and his statement recorded under Section 313 of the Code of Criminal Procedure appears as under :-

Prior to the present episode, PW No.1 and the Complainant has falsely implicated various government employees in Anti Corruption Cases.

That, he had told the Complainant and PW No.1 that measurement of the land would not be carried out, as the application made by them was not as per the Rules. The Complainant however made enquiry about the mutation of the plot. Respondent No.1 told

them that correction of the mutation entry is beyond the jurisdiction of his office and it falls within the jurisdiction of the Superintendent of Land Records.

Though an understanding was given to them that none of the work can be done, for the reasons as detailed supra, on the date of the trap, both of them followed him while he was going towards the canteen. They insisted that, work should be done. Upon that, again Respondent No.1 told them that work cannot be done by his office, therefore, they implicated him falsely in a false trap.

Suggestions were given to the prosecution witnesses that in the juice center the Complainant tried to thrust decoy money by putting it in his left side chest pocket and at the same time, raiding party arrived and apprehended him.

[15] The defence of Respondent No.2 was of total denial. The learned Special Judge acquitted both the Respondents for the reasons forwarded by him, in the Judgment. Hence, the present Appeal.

[16] Mr. V.P. Kadam, the learned Assistant Public Prosecutor submitted before me that, case of the Complainant is corroborated by his cousin PW No.1 Gopal Ramchandra Abewal and independent shadow panch witness PW No.3 Anil Kulkarni. The voice recorded in the tape recorder at the time of verification exercise lends credence to the version of the witnesses including of independent panch witness. He further argued that, the learned Special Judge however had given weightage to each and every contradictions and omissions found in

the statements of these witnesses. Further the learned Special Judge without any basis held that sanction granted as regards Respondent No.1 was not valid. He, therefore, took me through the record and submitted that, reasons forwarded by the learned Special Judge are perverse. In the circumstances, he submitted that present Criminal Appeal be allowed.

[17] On the other hand, Mr. R.S. Deshmukh, learned counsel for Respondent No.1 and Mr. P. R. Patil, learned counsel for Respondent No.2 also took me through the record and submitted that, the learned Special Judge has taken reasonable and probable view of the matter before him. Reasons recorded by the learned Special Judge in the impugned Judgment cannot be said to be perverse, therefore, they submitted that, in the present Appeal against acquittal, no interference in the impugned Judgment and Order is warranted.

[18] On the basis of this material, following points arise for my determination :-

Points.

(1) Whether the prosecution has proved that Respondent No.1 being a public servant attempted to obtain amount of Rs.3000/- for himself and for Respondent No.2, a public servant, on 7th October, 1995 at the house of PW No.1, as gratification, other than legal remuneration, as reward for doing official work of carrying measurement of agricultural land and cancellation of mutation entry, as alleged.?

(2) Whether the prosecution has further proved that on 9th October, 1995 present Respondent No.1 repeated the demand and agreed to accept the amount of Rs.2000/- as first installment on the very same day in the evening.?

(3) Whether the prosecution has further proved that, on the very same day i.e. 9th October, 1995 at about 6.40 p.m. present Respondent No.1 accepted amount of Rs.2000/- from the Complainant, as gratification, other than the legal remuneration, as detailed above.?

(4) Whether the prosecution has further proved that, both the Respondents have obtained and accepted the pecuniary benefit from the Complainant by corrupt and illegal means and, thereby, committed criminal misconduct.?

(5) In the alternative, whether Respondent No.2 abetted commission of offence, committed by Respondent No.1.?

(6) Whether sanction granted to prosecute Respondent No.1 is valid.?

(7) What Order.?

My findings to all above points No.1 to 4 and 6 are in the affirmative. The Appeal is therefore allowed for the reasons to follow :-

REASONS

[19] The reasoning of the learned Special Judge would show that the learned Special Judge agreed with the defence that PW No.1 Gopal Abewal was the master-mind of the conspiracy of planning the false trap. The learned Special Judge took into consideration the statement of the Complainant in evidence that the said witness was well versed with the work of various government officers and application for measurement was in his hand writing. Thus, in view of this, the learned Special Judge drawn the inference that, since beginning PW No.1 Gopal had interest in the work of the Complainant. In the circumstances when PW No.3 Anil Kulkarni, shadow panch witness deposed that, when he attended the office of Anti Corruption Bureau on the first occasion, one person was accompanying the Complainant, according to the learned Special Judge it had strengthened the said inference. Further, it was observed that, when admittedly the Complainant had suddenly visited the house of PW No.1 Gopal on 7th October, 1995 and when Respondent No.1 Ankush had earlier never visited the house of PW No.1 Gopal, the alleged visit of Respondent No.1 to the house of PW No.1 Gopal for finding PW No.2 Premchand is not believed. It was also observed that statement of PW No.1 Gopal was recorded belatedly by Investigating Officer.

[20] Further, certain improvements and omissions in their statements were taken into consideration. Further, the learned Special Judge found the discrepancy in the evidence as to for what purpose the remuneration of Rs.3000/- was sought by Respondent No.1, the

discrepancy in the evidence as to whether conversation about demand of money took place in the hotel, in the office of the Respondents or while going down by the stair-case. It was further observed that when according to the shadow panch witness, in the office of Respondent No.2, Respondent No.1 told something in his ear and thereafter they left the office, would show that no dialogue took place between Respondent No.2 and Complainant – Premchand. According to the learned Special Judge, shadow panch witness was totally silent about conversation and consent of Respondent No.2 for accepting the bribe amount. Further, discrepancies in the details of the incident as given by the Complainant and the shadow panch witness were highlighted. Discrepancy was also found as to the place where the Complainant introduced shadow panch witness as his cousin Kishor i.e. whether in the Office or whether in the Hotel etc. The discrepancy in the details of the incident that had occurred in the office of Respondent No.2, as given by the Complainant and the shadow panch witness was also highlighted.

As regards tape-recorder conversation, it was found that the transcription of the tape-recorder conversation at Exhibit – 56 is some what contrary to the oral evidence of the Complainant and the panch witness. It was further found that, both these witnesses have admitted that dialogues were not clearly recorded in the tape-recorder.

The learned Special Judge hold that this piece of evidence is of no use to prove the prosecution case, as regards the actual trap. Also, the learned Special Judge taken into consideration variance between the statements of the witnesses as to whether the call was

given to Respondent No.1 from the very jeep by which the Complainant and the raiding party was proceedings. Further, the variance was found, as to who had given signal and as to who has kept tainted money in the chest pocket of the Complainant at the time of pre-trap panchnama. Discrepancy as to whether money was kept in the envelope was also taken into consideration. Even the language of the dialogue between the Complainant and the panch witness i.e. whether it mostly took place in Hindi or Marathi language, was also considered. Further, sequence about the procedure followed after acceptance of money is also at variance. It was found that since the shadow panch witness did not depose that before removing money from the pocket of Respondent No.1, hands of the police officer and panch witness were tested in the ultra violet lamp, defence that Complainant thrusting decoy money in the pocket of Respondent No.1 was found probable. It was also taken into consideration that PW 5 Haribhau Jijabhau Ghare, Cadastral Surveyor did not support the prosecution case, while PW 6 Anil Jaiswal, proprietor of Anand Juice and Pav Bhaji Centre did not speak anything regarding the acceptance of decoy money. In that view of the above appreciation of evidence, the learned Special Judge has observed that, prosecution has failed to prove the 'demand and acceptance'.

[21] As regards the Sanction, it was observed that the Sanctioning Authority PW No.4 Pandit Ramaji Kanekar, the then Regional Deputy Director of Land Records, who has granted sanction to prosecute Respondent No.1 had admitted that he has entrusted the work of preparation of Sanction Order to his Clerk and did not carry the work personally. Therefore, according to the learned Special

Judge, as to whether the Sanctioning Authority has applied its mind, would be doubtful. In the circumstances, the order came to be passed.

[22] It is to be noted that, the incident has occurred in the month of October, 1995. The learned Special Judge recorded the statements of witnesses from 17th January, 2002 onwards i.e. after a period of 6 years and 3 months. Respondent No.1 Ankush has admitted that on the date of verification, the Complainant and the shadow panch witness met him. In his statement recorded under Section 313 of the Code of Criminal Procedure, in answer to question No.12, he stated that, on that day, while he was going towards the canteen for tea, the Complainant and panch witnesses followed him.

Similar is the case regarding his meeting with these witnesses at the time of trap on the next evening. According to him, in that evening he alongwith his two friends was going from vegetable market. All of sudden, Complainant – Premchand met him on the way and offered him for taking tea / juice, therefore, all of them went to said Juice Centre. In the juice centre however Complainant suddenly took out one bundle of currency from his pocket and thrust the same into his left side pocket of shirt and thereafter he was caught by the Investigating Officer PW No.7 Khushalchand Baheti.

[23] It is his case that PW No.1 Gopal and the Complainant wanted that measurement of land should be done. He however told them that as per the record submitted by them, measurement of land

is not possible, as per the Rules. Thereafter, the Complainant made inquiry about the mutation in respect of CTS No.10606. He however told them that correction of record is not within the powers of his Office and only the Superintendent of Land Records can do so. Thus, he told the Complainant and PW No.1 Gopal that none of their work is possible for him. On the day of trap, they followed him to the canteen and repeatedly insisted for doing such work and thereafter in the juice centre, he was falsely implicated. Further, according to both the respondents, PW No.1 Gopal and the Complainant had falsely implicated various government employees in corruption cases.

[24] From all these facts, it is clear that, PW No.1 Gopal and PW No.2 Premchand were known to Respondent No.1. In the First Information Report dated 9th October, 1995 (Exhibit – 51) itself it is recited that on 7th October, 1995 while he was at the house of Gopal, Respondent No.1 came there. In the circumstances, fact that statement of PW No.1 Gopal was recorded after 2/3 weeks of the incident, could not have been found to be significant by the learned Special Judge. Further tone and tenor of First Information Report and deposition of the Complainant would show that he wanted to get measured land Survey No. 482, therefore, when he went to the City Survey Office in connection with measurement of land. There Respondent No.1 met him. At that time, reference was made to the earlier application given in his office regarding cancellation of mutation entry of another plot bearing No.10606 and it was Respondent No.1, who himself on his own, took upon the work of cancellation of mutation entry and got it done from his superior officer but asked Rs.3000/- for himself, as a mediator.

This material would show that the Complainant had been to Respondent No.1 for getting the land measured, while Respondent No.1 by himself took upon the work of cancellation of mutation entry regarding the another plot. In that view of the matter, when certain statements were made during the cross-examination by the Complainant regarding the work he wanted to get done from the office of City Survey, no importance ought to have been given by the learned Special Judge.

[25] The learned Special Judge brushed aside the evidence of recording of dialogue in the tape-recorder by observing that these witnesses themselves have admitted that conversation was not clearly recorded. It should however be noted that, recording of conversation at the office, in the stair case, at the hotel would take place when all the general hustle and bustle would be around the respective persons, who would be taking part in the conversation. In a way, it was a sting operation. Studio quality of the conversation is not expected and in fact, if the quality of the sound would be studio like then that itself would be a ground for raising suspicion.

[26] Not only the Complainant but the independent panch witness i.e. PW No.3 Anil Manikrao Kulkarni has also deposed that present Respondent No.1 during dialogue again made demand of Rs.3000/- and agreed to accept Rs.2000/- in the evening at 6.00 p.m. at the house of the Complainant. Thereafter Respondent No.1 himself took both of them in the office of Respondent No.2 wherein talk regarding the money had taken place between these Respondents in low tone however, conversation including dialogue of present

Respondent No.1 that he would be visiting the house of Complainant for acceptance of money and Respondent No.2 assenting thereto, had taken place in regular voice.

During this dialogue between the respondents even the name of their colleague namely Shri. Bhale had emerged. Respondent No.1 suggested that said Bhale may be assigned the work of measurement, upon that Respondent No.2 told that he being a mischievous person, he would create certain trouble.

[27] Transcription of said tape-recorded conversation Exhibit – 58 fully corroborates the above evidence. It would show that at some place the dialogue could not be recorded fully. The reading of the said transcription in general however regarding the material particulars corroborated the oral version of PW No.2 Premchand and and PW No.3 Anil. This transcription would show that, PW No.3 Anil, shadow panch witness was introduced as Kishor. The name of the place “Khamgaon” i.e. from where Kishor hails also finds place in this transcription. Upon asking of the amount, figure of Rs.3000/- also finds place with further sentence that amount of Rs.2000/- should be paid immediately. Further request to approach in the evening, thereafter name of Bhale, his mischievous nature and apprehension that he would create certain trouble also finds place in this transcription. Further the dialogue seeking permission to go to the house of the Complainant in the evening and the permission from the other persons also figures in the said transcription. After this conversation (referable to the office conversation between Respondent No.1 and Respondent No.2 in the office of Respondent

No.2), further conversation regarding the place of next meeting at 6.30 p.m. in the evening as the residence also finds place.

It is to be noted that there is nothing on record to show that PW No.1 Gopal is busy body interested in prosecuting government officials, except the fact that once he had filed single complaint against one City Surveyor.

[28] PW No.3 Anil Manikrao Kulkarni had not axe to grind against the respondents. His independent deposition is corroborated by the tape-recorder conversation during the verification. While it is prosecution case that at about 6.30 p.m. in the evening, Respondent No.1 had agreed to visit the house of the Complainant to receive the gratification. Therefore, all the raiding party proceeded to the house of the complainant. According to Respondent No.1 at the same time, out of blue, meeting took place between him and the Complainant with the panch witness near Ambika juice centre. It is to be noted that, residential address of the Complainant is "Hirakhan road" and the spot of trap i.e. Ambika Juice Centre, as is found in the panchnama Exhibit – 57 is towards southern side of "Hirakhan Chawl".

In that view of the matter, statement of the Complainant and the shadow panch witness that while they were proceeding by the jeep of the Anti Corruption Bureau towards the house of the Complainant, Respondent No.1 was seen coming from the direction of the house itself would show that the meeting was per-determined, as deposed by the Complainant and panch witness. The Complainant or

officials of the Anti Corruption Bureau would not have dreamt that the present Respondent No.1 would be found in the evening at 6.30 p.m. in the vicinity of the house of the Complainant, as according to Respondent No.1 himself the act of thrusting of the decoy money has taken place in Ambika Juice Centre.

[29] The learned Special Judge has taken into consideration each and every contradiction and variance in the oral evidence without adverting to the fact that, it was not a memory test of the witness and they were deposing after 6 years of the incident.

[30] The learned Special Judge highlighted even negligible contradictions. The complainant stated to Investigating Officer that, he himself told Respondent No.1 that he would come to the City Survey Office on next Monday to meet him while in the deposition he deposed that, Respondent No.1 himself told the Complainant to come on the next Monday. This contradiction, according to the learned Special Judge, was a material contradiction.

[31] The Complainant has deposed that during verification it was decided to meet at 6.30 p.m. at his house for payment of Rs.2000/-. The discrepancy has arisen in the examination-in-chief and in cross-examination, as to where this talk took place i.e. whether at the time of leaving the office of Respondent No.2, whether in the hotel or whether in the office of the respondents. In that view of the matter, the learned Special Judge observed that the Complainant has made different statements regarding this place. Similar is the case of

making the statement by Respondent No.1 that he had already made demand of Rs.3000/-. Location of the said conversation again i.e. as to whether office, hotel or while leaving the office is highlighted. In the same breath, the issue regarding introduction of the panch witness as Kishor, resident of Khamgaon has been considered with reference to the place of said conversation.

[32] As regards involvement of Respondent No.2 in all episode, I have already adverted to the transcription. The Complainant deposed that at the time of verification, Respondent No.1 himself took the Complainant and the shadow panch witness to the chamber of Respondent No.2. During the conversation, Respondent No.1 told Respondent No.2 in low tone that Complainant is ready to pay the money for his work and during the said talk, Respondent No.1 asked whether he should go to the Complainant in the evening for accepting the money and Respondent No.2 replied that he may go for accepting the money.

[33] PW No.3 Anil, shadow panch witness regarding this episode, deposed on the similar lines, except the dialogue that Respondent No.1 asked Respondent No.2 as to whether he should go to the Complainant to accept the money and Respondent No.2 agreed for the same. The transcription of the tape-recorder conversation however makes it clear that Respondent No.2 told Respondent No.1 that he may go to the Complainant to collect the money and further that when Respondent No.1 told that the Complainant would pay money, Respondent No.2 agreed for early measurement of the land. In the circumstances, only because PW No.3 Anil – the panch witness

failed to reproduce one of the dialogue between Respondent No.1 and Respondent No.2, the same cannot be doubted for the reasons already pointed out that both these witnesses were in the witness-box after a period of 6 years from the date of incident. Independent corroboration in the nature of tape-recorder conversation is already there.

[34] As regards actual trap, fact of presence of Respondent No.1 and the decoy money in his pocket, is an admitted fact. The issue would be as to whether, Respondent No.1 has accepted the amount and kept it in his pocket.

In the situation, place of occurrence, as highlighted supra is most important. According to the defence, all of a sudden meeting took place near Ambika Juice Centre. The place however as detailed supra would corroborate the prosecution case that it was agreed that in the evening at 6.30 p.m., the meeting would be held at the house of the Complainant. Therefore not only the complainant and the panch witness but also admittedly entire raiding party was present.

[35] As regards the deposition of PW 5 Haribhau, Cadastral Surveyor, is required to be appreciated. This witness was cited by prosecution. He however deposed that he alongwith Respondent No.1 and Mr. Kolte went to the Juice Centre upon invitation by the Complainant. Thereafter, the Complainant suddenly thrust bundle of money in the chest pocket of Respondent No.1. This witness has not supported the prosecution case. Surprisingly, the learned Additional Public Prosecutor did not seek any permission from the

learned Special Judge to cross-examine this witness. This witness however is already described as his own friend by Respondent No.1, in his statement recorded under Section 313 of the Code of Criminal Procedure while answering Question No..

[36] The learned counsel for the Respondents submitted that the learned Special Judge has taken a reasonable and probable view of the material before him. The same cannot be said to be perverse. In the circumstances, relying on the ratio laid down in case of State of Rajasthan V/s. Raj Ram, reported in (2003) 8 S.C.C., it was submitted that, unless the impugned judgment is clearly found to be unreasonable, no interference in the reasoning is warranted.

[37] It is true that presumption of innocence of the accused runs not only during the trial but the same presumption even get strengthened by acquittal of the accused by the trial court. In the circumstances, unless and until, the appellate court finds that the order of the acquittal resulted into miscarriage of the justice, the appellate court would not interfere.

[38] In the present case, the learned Special Judge failed to take into consideration the fact that the prosecution witnesses were asked to restate the details of the case after the period of 6 years. They had generally supported the prosecution case and were corroborated by the tape-recorded version of the events. The learned Special Judge however has taken into consideration the minor discrepancies like location of each and every dialogue. He did not advert to the fact of location of trap. Testimony of independent panch

witness is corroborated in material particular not only by the Complainant but also by the transcription of the tape-recorder version. The learned Special Judge had wrongly observed that the tape-recorder version is totally useless as the dialogue cannot be recorded clearly, in the natural location in the office, hotel, road etc.

[39] In that view of the matter, in my view, if there would be no interference from this court in the order of the learned Special Judge, then it would be the miscarriage of the justice. In my view, for the above reasons the prosecution has proved its case beyond reasonable doubt.

This takes me to consider the case of legality and/or validity of sanction granted to prosecute Respondent No.1 Ankush, as defence has admitted the sanction granted to prosecution Resp.No.2.

[40] PW No.4 Pandit Ramaji Kanekar, the then Regional Deputy Director of Land Records has accorded the sanction to prosecute Respondent No.1 at Exhibit – 61. He deposed that he had gone through entire documents, those were supplied to him by the Anti Corruption Bureau. Upon application of mind, he came to the conclusion that Respondent No.1 had accepted from the complainant an amount of Rs.2000/- as consideration for early conducting the measurement of the land Survey No.482, as well as cancellation of mutation entry as regards CTS No.10606. He was satisfied from the matter on record and, therefore, accorded the sanction.

During the cross-examination, he further stated that after he went through the documents, he asked his Clerk to prepare a draft. Some alterations were made while preparing the sanction order. He

denied that, he did not go through the evidence and without applying his mind, he accorded the sanction to prosecute Respondent No.1.

[41] The learned Special Judge observed that, draft sanction was already received by this witness from the Anti Corruption Bureau. It was further observed that, sanction order was not prepared by this witness itself but, he has entrusted this work to his Clerk. As the witness has further deposed that he did not recollect as to which alterations were made by him in the draft prepared by his Clerk, the learned Special Judge observed that, statement of witness that he has applied his mind, becomes doubtful.

[42] The learned Special Judge failed to consider the fact that this witness, during the relevant period, was serving as Regional Deputy Director of Land Records for entire Aurangabad region. It was therefore, not expected from him that, he would either prepare sanction order in his own handwriting or himself would prepare the same on the typewriter. Upon perusal of the documents, naturally the Officer would call for his subordinate to prepare a draft and then after making necessary correction, if required, the final order/sanction would be prepared. The witness did not recollect in the witness-box as to which alterations were made in the draft. For the senior Officer who is regularly required to go through innumerable cases and correspondence, to expect from him that he would recollect exact alterations made in the draft, which was prepared five years ago, would be rather an unreasonable expectation. In view of that matter, I am of the view that the learned Special Judge has committed mistake in doubting the deposition of this witness.

[43] Merely because the draft sanction by the Anti Corruption Bureau is used as guideline for preparation of another draft on the directions of this witness by the Clerk and thereafter the witness upon making certain alterations passed the final sanction order, would not amount to non application of mind. In that view of the matter, the reasoning of the learned Special Judge in this regard are required to be set aside.

[44] In my view PW No.4 Pandit Ramaji Kanekar has applied his mind at the time of grant of sanction to prosecute Respondent No.1. In the result, the Appeal deserves to be allowed. Hence, I pass the following order :-

ORDER

(i) Criminal Appeal is allowed.

(ii) Impugned Judgment and Order dated 8th March, 2002 passed by the learned Special Judge, Jalna, District – Jalna in Special Case (PCA) No.11 Of 1997 thereby, acquitting Respondent Nos. 1 and 2 is hereby set aside.

Instead both the Respondents are hereby convicted for the offences punishable under Section/s. 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

(iii) The Respondents are hereby sentenced to suffer minimum rigorous imprisonment for six months on each of the counts for the offence punishable under Section 7

of the Prevention of Corruption Act, 1988 and minimum rigorous imprisonment for one year for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

(iv) All the sentences shall run concurrently.

(v) Bail bond of both the Respondents shall stand cancelled.

(vi) The learned Special Judge, Jalna, District – Jalna to take steps for securing presence of the present Respondents for serving of the sentences by them.

(M.T. JOSHI, J.)