

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 161 OF 1995

Shabir Ismail Shaikh
Police Constable Buckle No. 1608
Shindewadi Out-post, Bhore Police
Station, Dist. Pune.
R/at C/o Shri. Shaikh, Room no. 7,
Police Line, Pune-2

.....Appellant

V/s.

The State of Maharashtra

....Respondent

Mr. V. N. Shingnapur a/w Mr. Harshad V. Singnapur Advocate for Appellant
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : DECEMBER 14, 2015.

JUDGMENT:

Appellant herein is convicted for offence punishable under section 7 of Prevention of Corruption Act, 1988 and is sentenced to suffer rigorous imprisonment for one year and fine of Rs. 500/- i.d. to suffer further rigorous imprisonment for two months. Appellant is also convicted for offence punishable under section 13 (1) (d) r/w section 13 (2) of Prevention of Corruption Act and is sentenced to suffer rigorous imprisonment for

one year and fine of Rs. 500/- in Special Case No. 10 of 1992 by Special Judge, Pune vide Judgment and Order dated 09/03/1995. Hence, this appeal.

2) Such of the facts necessary for the decision of this appeal are as follows:

3) It is the case of prosecution that on 02/04/1992, one Palraj Naidu approached office of Anti Corruption Bureau at Pune and filed a report alleging therein that he is residing in a chawl owned by Rama Nama Pangre. He pays the rent of Rs. 300/-. In the same room, he used to conduct a small business where he sells cigarettes, bidee, bread and butter, tobacco, tea powder, biscuits etc, since 1991. That the area is thickly populated. He does good business. He further reported that on 01/04/1992, he along with Laxman Pangre had travelled by S. T. bus to Pune. Shri. Pangre had some work in the bank. They returned to Shindewadi at about 4.00 p.m. There, after alighting from the S.T. bus, one police constable in civil dress had stopped him. He asked the complainant whether he is the same person who runs a grocery shop near Kelkar company. Complainant had answered in the affirmative.

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The said police person had asked him to accompany him to the police station. Pangre had gone to his own house. Police had asked him as to what he sells in the grocery shop. Complainant had informed him that he sells grocery. He had specifically informed police personnel that he does not sell liquor in the said shop. He had admitted that he does not have a licence. At that stage, police personnel had threatened him that he would file a case against him every day and the minimum fine that he would have to pay is Rs. 100/-. Thereafter, police personnel had told him that if he wants to save himself from the said harassment, he should pay him Rs. 1000/-. The amount was negotiated and it was agreed that original complainant would pay Rs. 800/- to him. Thereafter, complainant had asked the police personnel his name and he was informed that the name of the police personnel was Shaikh. That the police personnel had told him to pay the amount by the next day evening. Complainant was slapped by the police personnel. It appears that original complainant was annoyed with the said act of police and therefore had approached Anti Corruption Bureau office. He had specifically reported to the A.C.B. that he was not knowing the

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police person prior to 01/04/1992. That he has no enmity with him and neither there was any transaction between them.

4) Anti Corruption Bureau had decided to take report to its logical end and therefore two public servants were summoned by the A.C.B. for conducting raid. On 02/04/1992, raiding party had been to Shindewadi police station. One Anil Pataskar was instructed to act as shadow witness. That the shadow witness had accompanied original complainant to the police station. There was a demand by the police person. The amount was parted with as per instructions. Soon thereafter, raiding party had apprehended the accused. The A.C.B. had conducted the pre-trap panchanama in accordance with law and thereafter Dy.S.P. of A.C.B. (P.W.5) had lodged a report to the police station. Crime no. 30 of 1992 was registered against the accused for offence punishable under section 7 of Prevention of Corruption Act, 1988. The case was registered as Special Case No. 10 of 1992. Prosecution examined 6 witnesses to bring home the guilt of the accused.

5) P. W. 1 happens to be original complainant to whom the accused

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had allegedly demanded Rs. 1000/- as illegal gratification. That P. W. 1 has deposed before the Court as per his report. P. W. 1 has proved the contents of the report which he filed before A.C.B. and the same is marked at Exhibit 16. Learned counsel for the appellant has placed implicit reliance upon the admission given in the substantive evidence that :

“After registration of the case I came to know the name of that police constable who is accused in this case and present before the court.”

P. W. 1 has further stated that said police person had asked him to accompany him to the police station. That according to learned counsel for the appellant witness P. W. 1 did not know the identity of the present appellant till the offence was registered. Upon perusal of Exhibit 16 which is a report lodged by P. W. 1 it is clear that he had stated in the report that he had asked the name of the constable because the constable was not in the uniform. The constable himself had disclosed his name as Shaikh. Learned APP submits that all that the witness tried to explain was that he did not know the first name of the

appellant.

6) P. W. 1 further stated that in the police station, accused/appellant had asked him as to whether the amount was brought as per the instructions given the earlier day. P. W. 1 had informed him that he had brought Rs. 800/-. Thereafter, accused had gone towards the closed door. He had called the complainant. Then accused demanded the amount. P. W. 1 parted with the tainted currency notes. Accused had accepted the amount by his right hand. He put tainted currency notes in his right hand pocket. Soon thereafter, P. W. 1 walked in the veranda and gave a signal as instructed by P. W. 5. Immediately, members of raiding party had apprehended the accused. At that time, accused was shivering, he was sweating. The amount was removed from his pocket. At that stage, accused had not said anything. The amount was seized and put in a sealed envelope. Similarly, the traces of anthracene powder were found on fingers, palm of the accused. Traces of anthracene powder were also reflected on the inner side of the pant pocket. The clothes were seized and sealed. In the cross-examination, P. W. 1 has not been shattered as far as demand and acceptance of the

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tainted currency notes is concerned. It appears from the tenor of the cross-examination that the main defence of the accused was that it is a case of 'mistaken identity.' Today also, learned counsel for the appellant has specifically and vehemently urged that it is the case of mistaken identity. A suggestion was given to P. W. 1 in the cross-examination that present appellant is not the person who demanded the amount to him. Accused has been identified by P. W. 1 in the court. This is an unfounded suggestion and submission. The suggestions given in the cross-examination that his complaint was reduced into writing on 03/04/1992 and the signature was antedated, is also without any foundation.

7) Learned counsel for the appellant has also reiterated vehemently in his submission that in fact, report lodged by P. W. 1 is antedated as the panchas have signed the said report and put the date as 03/04/1992. This submission is considered and appreciated in consonance with other evidence adduced by the prosecution.

8) Learned counsel for the appellant submits that P.W. 1 would be an accomplice and no implicit reliance can be placed upon substantive

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evidence of P. W. 1 as far as demand and acceptance is concerned. This is an unwarranted submission since Section 165-A of the Indian Penal Code is repealed by the P.C. Act 1988 (49 of 1988) with effect from 09/09/1988. The accused appellant is tried under the provisions of P.C. Act, 1988. At the most it can be said that he is an interested witness.

9) P. W. 2 Anil Pataskar was working as Junior Clerk in the Director of Higher Education, Pune which is situated in the Central Building Pune. He has deposed before the court that on 02/04/1992, one Sanjay Waghmare along with P. W. 2 was called by superior officers and was directed to attend A.C.B. office, Pune. After they reached A.C.B. office, they were introduced to P. W. 1. They were also informed that P. W. 1 has complaint against one person in respect of illegal gratification. That P. W. 2 has categorically deposed in the examination-in-chief itself that inadvertently both the panchas had put the date as 03/04/1992 on the report which is at exhibit 16. That they had in fact read and signed the said report on 02/04/1992 itself. He has deposed before the court the steps taken by A.C.B. while recording pre-trap panchanama. In the examination-in-chief P. W. 2 has further contended that when they went

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to Shindewadi Police Station accused was in civil dress. Accused had requested them to take a seat. Before they went to the police station, there were two other persons who were asked to leave the police station by the accused on arrival of P. W. 1 & 2. Only after two persons had departed, the accused had inquired with the complainant i.e. P. W. 1 about the identity of P. W. 2. P. W. 1 has disclosed to the accused that he happens to be his cousin. Thereafter, accused had asked the complainant as to whether he had brought the amount as per instruction. Complainant had informed that he had brought Rs. 800/-. Accused had then alighted from his chair. He went near the door of the police station and called the complainant and asked him to pay Rs. 800/-. Thereafter, complainant had paid the amount and given a signal to the raiding party. P.W. 2 had seen the accused putting the amount in his pocket. After being apprehended by the raiding party, P. I. Chorge had shown his identity card to the accused. Police officers had caught hold of both the hands of the accused. Accused was frightened. He was sweating. His body was shivering. P. I. Chorge had asked the accused as to where he had kept the tainted currency notes. Thereafter, panch

Waghmare taken out those notes from pant pocket of the accused. P. W. 2 has further stated that traces of anthracene powder were found on the fingers and on the hands of the accused as well as the inside portion of his pant pocket. P. W. 2 has proved the contents of the panchanama which is at exhibit 20. In the cross-examination, P. W. 2 has specifically stated that on the report dated 02/04/1992 lodged by P. W. 1 he had put the date as 03/04/1992. He had realized his mistake immediately. He had brought it to the notice of P. W. 5, however, P. W. 5 had in the fitness of circumstances informed him not to carry out any over writing or score anything. P. W. 2 has denied the suggestion that the report exhibit 16 and the first panchanama i.e. pre-trap panchanama exhibit 18 were prepared on 03/04/1992.

10) Learned counsel for the appellant has placed implicit reliance upon para 14 of the deposition of P. W. 2 wherein P. W. 2 has deposed that in the police station he was sitting facing towards road. He was facing the accused in front of him. That the door where the transaction took place was behind him and therefore, according to learned counsel, he could not have seen the act of acceptance of amount by the accused.

To an answer to the court question, P. W. 2 has answered accordingly:

“Both the doors of that chowky were at both sides of the wall and not on the middle. Chair and table of the accused was in the middle portion of the chowky. It is in between the door and the back side of the chowky.”

11) According to learned counsel for the appellant the transaction of acceptance of tainted currency notes had taken place behind P. W. 2 and therefore he could not have noticed that accused had accepted the amount. It is pertinent to note that demand was made in front of P. W. 2. It was the guilty mind of the accused which forced him to call the complainant near the door and the amount was clandestinely accepted by the accused. The panchanama at exhibit 19 clearly indicates that traces of anthracene powder were found on the fingers of the accused as well as the inside portion of the pant pocket. This is sufficient to arrive at a conclusion that the amount which was demanded in front of P. W. 2 was accepted behind his back. The shadow witness P. W. 2 has further clarified that after P. W. 1 answered in the affirmative that he has brought Rs. 800/- as per instructions, accused had called him near

the door and then accepted the amount is not denied. In any case the accused had not denied that he had accepted the amount. There was no question of instant reaction or explanation from the accused when he was apprehended by A.C.B.

12) In appeal, learned counsel for the appellant submits that accused had accepted the amount but it was accepted on behalf of somebody else. According to learned counsel for the appellant, on 01/04/1992 it was not the present accused who had demanded the amount, however, complainant had gone to the police station along with A.C.B. and handed over the amount to accused to be paid to somebody else. This submission is devoid of any substance as there is no evidence to that effect. There is no suggestion in the cross-examination some that police officer had demanded the amount and that it was given to the accused to pay it to third person. Evidence is otherwise. There is cogent and convincing evidence to the effect that in the police station the dialogue between accused and complainant was to the extent that accused had specifically asked the complainant as to whether he had brought the amount as per the instructions given one day before and complainant

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had answered in the affirmative. There is no suggestion to the contrary in the cross-examination and therefore the said submission cannot be taken into consideration as it would be a submission in the air without there being any foundation for the same. P. W. 2 admitted the contents of Exhibit 19 & 20 and there is no challenge to that effect in the cross-examination.

13) P. W. 3 Ramchandra Bhor was officiating at the same police station. He was in charge of Shindewadi outpost at the relevant time. The police constable Deshpande and accused Shaikh were attached to that outpost. Both the constables were residing at Shindewadi whereas P. W. 3 was residing at Nasarapur. According to P. W. 3 he was inquiring into crime no. 6 of 1992. On 02/04/1992 he had reached Shindewadi outpost at about 7.00 p.m. and at that time he had learnt about the raid. P. W. 3 was confronted with register at Exhibit 8. He has deposed before the court that it was incumbent upon the police personnel to make entries while leaving the police station but it was not mandatory to report after they had returned.

14) Learned counsel for the appellant submits that in fact, P. W. 3 had

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returned to the police station at the time of raid i.e. at about 7.00 p.m. and it appears from the panchanama tht the panchanama was recorded between 5.00 p.m. to 8.30 p.m. According to him, P. W. 5 has stated that P. W. 3 was not in the police station at that time. Learned counsel for the appellant also vehemently submits that there is no cogent evidence to accept the deposition of P. W. 3 as the panchanama also does not indicate that P. W. 3 had reached the police station at the time of recording the panchanama.

15) P. W. 4 Bhagwant More is the sanctioning authority who had accorded sanction for prosecution of the accused under section 7 of Prevention of Corruption Act.

16) P. W. 5 Mahadeo Chorge was officiating as Dy.S.P. A.C.B. at the relevant time. He has deposed before the Court that on 02/04/1992 P. W. 1 had approached A.C.B. and set the law into the motion against present appellant. He had called upon two public servants to act as panchas. Both the panchas had gone through the report and had signed the same which is at exhibit 16. P. W. 5 has stated in the examination-in-chief itself that both the panchas had written the date as

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03/04/1992. They had tried to correct the same but they were advised by P. W. 5 not to carry out the correction. P. W. 5 had introduced the complainant to the panchas. He has deposed before the court in respect of pre-trap panchanama as well as post-trap panchanama. He has deposed in consonance with the F.I.R. lodged by him at the police station after trap was successful. The said report is at exhibit 26. Learned counsel for the appellant at this stage submits that report under section 154 of Cr.P.C. was lodged by P. W. 5 on 03/04/1992 which is at exhibit 26 but the report at exhibit 16 was not sent to the court along with exhibit 26. According to learned counsel, it was incumbent upon Dy.S.P. to send the report at exhibit 16 to the court also. At this stage, learned APP rightly submits that it was only exhibit 26 which is report under section 154 of Cr.P.C. and it has to be necessarily lodged by the officier of A.C.B. It is rightly submitted that in cases of anti corruption it is only after the trap is successful, officer of A.C.B. would lodge the report on behalf of the State as the offence has been committed. The status of the original complainant would only be to the extent that he sets the law into the motion. At that stage, there is

no offence committed by the accused and therefore no crime is registered. At that stage an allegation is made that there is demand of illegal gratification. It is only after the demand culminates into acceptance the offence is deemed to have been committed. Section 157 of Cr.P.C. contemplates that F.I.R. which is filed under section 154 of Cr.P.C. should be sent to the court of the nearest Magistrate forthwith or at the earliest. The said requirement of law has been carried out by P. W. 5 and there cannot be any doubt that exhibit 26 was sent to the court immediately. In the cross-examination also P. W. 5 has categorically explained before the court that soon after the panchas had written the date 03/04/1992, he had realized the mistake, however, although the panchas wanted to correct the same, he had restrained them from doing so, so that there is no scoring on it. In the cross-examination P. W. 5 has denied the suggestion that at about 7.00 p.m., head constable Bhor P. W. 3 had reached Shindewadi outpost. Learned counsel has put in best of efforts to make capital of this admission as according to him it is against the deposition of P. W. 3 who has stated that he reached the police station at 7.00 p.m. on 02/04/1992. In fact,

in the present case, in the given circumstances, this would not be a relevant factor. Accused cannot take advantage of any and every lacunas in the prosecution case. Minor discrepancies in the evidence of witnesses cannot be considered as fatal to the prosecution.

17) Learned counsel for the appellant has placed reliance upon the Judgment of Hon'ble Apex Court in the case of **Jaswant Singh Vs State of Punjab (A.I.R. 1973 S.C. 707)** wherein Hon'ble Apex Court in the facts of the said case had observed that :

“Non examination of such important witness by the prosecution is totally unjustified.”

18) In that case, plea of the appellant was one of total denial. Despite the said observation, appeal filed by the appellant was dismissed. Learned counsel while showing discrepancy between the evidence of P. W. 3 & P. W. 5 has placed reliance upon the Judgment of Hon'ble Apex Court in the case of **Suraj Mal Vs. The State (A.I.R. 1979 S.C. 1408)** wherein Hon'ble Apex Court had held that:

“Where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of

such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.”

19) In the present case, there is no inherent discrepancy in the substantive evidence of the witnesses. P. W. 3 has stated that he had reached police station at 7.00 p.m. and the said aspect is denied by P. W. 5. This cannot be said to be inconsistency and in any case the witnesses have not been confronted with the said discrepancy.

20) Learned counsel has also placed reliance upon the Judgment of Hon'ble Apex Court in the case of **Gulam Mahmood A. Malek Vs. State of Gujarat (1980 (Supp) S.C.C. 684)** wherein Hon'ble Apex Court has held that:

“In appreciating the evidence **in this case** the background should not be forgotten. Though the panch witness corroborates the complainant, regarding the recovery, the delay in effecting the recovery of the money, the failure to examine independent witnesses who were admittedly in the court hall and in the next room to which the accused was taken, and the recovery made, makes the entire prosecution case unacceptable. ”

21) The facts in the present case are at variance in as much as the recovery was effected soon after the amount was accepted by the accused in the police station. There was no delay in recovery. Hence, the said citation would not be applicable in the present case. The ratio of any decision must be understood in the background of the facts of that case and the case is only an authority, on what it actually decides in that case and not what logically follows from it. There is no similarity in two cases.

22) Accused/appellant has taken a strange defence. It is admitted that he had accepted the amount. But not for himself. It is the case of the accused that the complainant had not met him on 01/04/1992. That there was no demand by the appellant. According to the appellant

“Document Exhibit 12 produced by the prosecution shows that complainant was not involved in any offence and that there was no application too against him. As such the accused had no reason to question the complainant about the licence of his shop and put forward a demand of the bribe. That the accused made a demand of Rs. 1000/- and in next breath reduced it to Rs. 800/-

is also not the conduct of the corrupt official, more so, when there have been no negotiation between complainant and the accused.”

This by itself would show that accused/appellant has, in other words contended that just because there was no negotiation to reduce the amount of gratification from Rs. 1000/- to Rs. 800/-, case of the complainant is falsified. This contention would not appeal to any prudent mind to hold that appellant is innocent.

23) According to the accused F.I.R. Exhibit 16 was prepared on 03/04/1992 since the panchas had put the date 03/04/1992. Learned counsel for the appellant has vehemently reiterated his submission that complainant had learnt the name of the appellant after registration of the offence. This Court has observed “Supra” the name of the appellant finds place in the F.I.R. Itself. The submission as far as mistaken identity is concerned is not only unfounded but is unwarranted and would not appeal to any prudent mind.

24) Learned counsel for the appellant has further submitted “In consonance with the statement under section 313 (2) of Cr.P.C.

“(D) That, if the accused was obtaining money from the complainant, independently of the PHC or any other police attached to out-post, he would not have asked the complainant to bring the money and pay him at the out-post, more particularly when the accused had no independent authority to take any legal action against the complainant.”

25) In the case of **L. Laxmikanta Vs. State by Superintendent of Police (2015 (4) S.C.C. 222)** The Hon'ble Apex Court has held as follows:

“It is a settled principle in law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow Under Section [7](#) *ibid* against the accused. Indeed, these twin requirements are *sine qua non* for proving the offence Under Section [7](#)”.

26) Section 20 of Prevention of Corruption Act, 1988 reads as follows:

“20. Presumption where public servant accepts gratification other than legal remuneration

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be Inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and

(2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.”

27) This Court cannot be oblivious of the fact that cases of corruption are on the rise. Corrupt public servants are given latitude on the basis of loopholes in the prosecution case. The court cannot go beyond the evidence adduced by the prosecution unless the accused on the same set of evidence is able to present a different view of the matter. Only in such a situation where two views are possible the court may take a view in favour of the accused.

28) Section 3 of The Evidence Act, 1872 interprets the word 'Proved' as:

“A fact is said to be proved when, after considering the matter before it, the court either believes it to exist, or considers its existence so probable, that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

29) In the present case;

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- (i) The first demand caused the complainant to approach the Anti Corruption Bureau
- (ii) The effect is the arrangement of a trap.
- (iii) A subsequent demand afforded an opportunity to the complainant to extend the tainted currency notes to the accused.
- (iv) The transaction had taken place. The tainted currency notes were rather accepted and found in the possession of the accused for which he had not offered any plausible explanation.
- (v) The elements requisite to prove the offence are substantially brought before the court.
- (vi) This court is bound by the mandate of the legislature 'shall presume'. Hence the appeal deserves to be dismissed.

30) Learned Special Judge has recorded justifiable reasons for recording conviction. Hence, it can be safely said that prosecution has established the guilt of the accused beyond reasonable doubt.

31) In the present case, on 07/03/1995, learned Special Judge had observed as follows:

“While dictating the Judgment I felt that charge no. 2 in respect of offence under section 13 (1) (D) r/w 13 (2) of Prevention of Corruption Act not framed correctly and all the ingredients have not been included. So I propose to amend the charge no. 2. I also inform Advocate. The amended charge is framed accordingly.”

32) The said order was passed on 07/03/1995. It is pertinent to note that Judgment and Order of conviction is delivered on 09/03/2015 i.e. just within two days without giving sufficient opportunity to the accused to plead his case as per amended charge. Unfortunately the said order dated 07/03/1995 was not challenged. It appears that there was no time to challenge the said order since the final Judgment was pronounced on 09/03/1995.

33) Section 215 of Cr.P.C. reads as follows:

“No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.”

34) In the present case, it is apparent on the face of record that learned Special Judge had observed that only at the time of dictation of

the Judgment he had realized that charge is not framed in accordance with law. A notice was given to the Advocate for the accused, however, issuance of notice or appraisal of amendment of charge by itself would not be sufficient in view of the mandate of section 217.

35) Section 217 of Cr.P.C. reads as follows:

“Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-

(a) To recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) Also to call any further witness whom the Court may think to be material.”

36) Needless to say that the intention of Legislature was clear when the word used is in the nature “Shall”. Learned Special Judge has not recorded any special reasons for recording conviction under section 13 (1) (d) r/w section 13 (2) of Prevention of Corruption Act. This Court is of the opinion that in the interest of justice, after charge was altered, it was incumbent upon the court to give sufficient opportunity to the

accused to question the charge and plead his innocence accordingly. The order dated 07/03/1995 also shows that information was given to the Advocate and the amended charge is framed separately. All this would cause grave prejudice to the accused and hence accused deserves to be give the benefit of doubt under section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988. Conviction of the appellant is confirmed under section 7 of Prevention of Corruption Act, 1988.

37) In the present case, prosecution has substantially established the demand as well as acceptance. Once the element of acceptance is proved, it would be incumbent upon the court to draw a presumption under section 20 of Prevention of Corruption Act, 1988 against the accused and the onus would shift to the accused to rebut the said presumption. It is no doubt a rebuttable presumption. The burden of proof upon the accused is not the same as that on the prosecution, however, accused has to at least put forth the preponderance of probabilities to enable the court to hold that the presumption is rebutted. In the present case, the defence of the accused is strange.

Accused/appellant has tried to create a doubt in the mind of the court only by harping upon the peripheral issues in the matter. The core issue would be whether the demand is proved and whether the acceptance is established pursuant to the said demand. It is difficult to digest the submission that the accused/appellant had accepted the amount for a third person as according to him he was not the same person who had put forth the demand for illegal gratification on 01/04/1992. Accused/appellant has not disclosed the name or identity of person on whose behalf he had allegedly accepted. This issue would be within the special knowledge of the accused and it is to be pleaded accordingly. Accused/appellant was identified in the court by the complainant as the same person who had demanded illegal gratification on 01/04/1992. It cannot be the case of mistaken identity. In the present case, there is a direct evidence. The mistaken identity may be an issue in a case of circumstantial evidence. In view of the discussions made herein above, it can be safely held that prosecution has proved the guilt of the accused beyond reasonable doubt.

38) The appeal was filed in 1995. Appeal is being heard finally after a

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lapse of 20 years. Appellant is a senior citizen. He has lost all pension benefits. The sword of damocles was hanging upon his head for the past 23 years since the incident is of the year 1992. In view of this, this Court is of the opinion that the substantive sentence imposed upon the appellant deserves to be modified. The punishment contemplated for offence under section 7 of the Prevention of Corruption Act, 1988 is imprisonment which shall not be less than 6 months but which may extend to 5 years and fine. Hence, the substantive sentence is reduced to 6 months. Sentence of fine along with default sentence is maintained.

ORDER

- (i) Appeal is partly allowed.
- (ii) Conviction of the appellant is confirmed under section 7 of Prevention of Corruption Act, 1988.
- (ii) The substantive sentence is reduced to 6 months. Sentence of fine along with default sentence for offence punishable under section 7 of Prevention of Corruption Act, 1988 is maintained.
- (iii) Appellant is acquitted for offence punishable under section

13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988.

(iv) Appellant is granted 6 weeks time to surrender. Appellant shall cause his formal appearance within two weeks from today i.e. 14/12/2015, before Special Court at Pune in order to ensure that after completion of six weeks the appellant would be taken into custody to serve the rest of the sentence.

(v) Appellant, upon appearance, shall furnish his permanent address, present address where he normally resides, cellphone no. as well as address and cellphone no. of the surety to the Special Court, Pune.

(vi) Appeal stands disposed of.

(vii) Parties to act on authenticated copy of the judgment.

(SMT. SADHANA S. JADHAV, J.)