

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPEAL NO.213 OF 2003**

Pramod s/o Namdeo Choudhary,
Age-47 years, Occu:Medical Officer,
Cottage Hospital, Chopda,
At present residing at 102,
Darshan Apartment, Air India
Housing Society, Bhivandi,
Dombiwali (West), Taluka-Kalyan,
Dist-Thane.

...APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra,
Through Deputy Superintendent
of Police, Anti-Corruption, Dhule.

...RESPONDENT

...

Mr. K.C. Sant Advocate for Appellant.
Mr. S.M. Ganachari, A.P.P. for Respondent.

...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 5TH MAY,2016.

DATE OF PRONOUNCING JUDGMENT: 9TH JUNE, 2016.

JUDGMENT :

1. Appellant, a Medical Officer had been

convicted by the Special Judge, Amalner in Special Case No.11 of 1999 under Section 7 of the Prevention of Corruption Act 1988 ("Act" in brief) and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.750/- and in default to suffer simple imprisonment for four months. He has been further convicted of offence punishable under Section 13(2) of the Act and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.750/-, and in default to suffer simple imprisonment for four months. The sentences have been directed to run concurrently. Thus, this Appeal against conviction.

2. In short, the case of prosecution is as under:-

(A). On 28th September 1993 complainant Ramsing Walvi (PW-1) approached the Dy.S.P. PW-5 Prabhakar Shankar Patil in the Anti Corruption Bureau (ACB), Dhule and filed complaint (Exhibit 12). The

complainant, resident of Hisale, Tq-Shirur, raised grievance that he had taken his wife Bairabai for treatment to the Cottage Hospital at Chopda as she was complaining of stomach ache. He met the Appellant-accused at the hospital. The accused examined the wife of the complainant and told him that the uterus of the wife would have to be removed in an operation and it would require expenses. The complainant asked that it is Government Hospital and so why expenses were required. Accused said that he would properly do the treatment and operation and if complainant would go to some other doctor outside, he would have to spend Rs.5000/-. Complainant said that he is poor person and does labour work and does not have such money. Accused told him that at least Rs.1000/- should be given and he would operate wife of the complainant. Complainant told the accused that he does not have Rs.1000/- but he will bring Rs.500/-. Accused insisted that he should give Rs.800/-. Complainant told the accused

that he will bring Rs.500/- some-how and remaining Rs.300/- he would give later on. Consequently, the wife of complainant was admitted in the hospital on 24th September 1993. Complainant came back to his village and told the facts to one Arjun Dada and asked him for Rs.500/-. Said Arjun told the complainant that he would arrange the money by Monday i.e. 27th September 1993. Arjun agreed to bring the money to Chopda and give it to the complainant. Accordingly complainant, on 27th September 1993, was waiting for Arjun when the accused — Dr. Choudhary asked him if he had got money and complainant told that a person would be coming with the money. Accused told him that on that day the operation would not be possible and when complainant receives money, operation will be done on Tuesday (i.e. 28th September 1993). Complainant told accused that he is waiting for the person to come and moment he comes, money would be available. Accused told complainant to give the money when there is no crowd or

complainant may call him aside.

. The complaint further mentioned that the said Arjun came on 27th September 1993 at about 1.00 p.m. and gave complainant Rs.500/- and at the same time told complainant that in Government Hospital money is not required to be paid and he should not pay the amount. Consequently, the complainant came to the ACB office on 28th September 1993 and was filing the complaint.

(B). Dy.S.P. Prabhakar Patil (PW-5), on receipt of such complaint on 28th September 1993, sent letter to Public Works Department (PWD), Dhule and secured presence of two Panchas i.e. Dhudku Malich (PW-2) and Ramrao Patil (PW-4). Thereafter procedure regarding introduction, explaining the complaint and use of anthracene powder was completed. The complainant and Panchas were given guidance as to how the trap is to be executed. The amount of Rs.500/- which was with

the complainant, was kept in the right pocket of the pajama of the complainant. He was instructed that when the accused accepts the currency notes, he should give signal by folding his right hand full sleeve by his left hand. Necessary pre-trap Panchnama Exhibit 16 was executed.

(C) According to the prosecution, thereafter the trap party proceeded to Chopda by Jeep. Some distance before the hospital, complainant and shadow Panch PW-2 Dhudku got down and went ahead. They reached the hospital at about 3.20 p.m. However, they could not meet accused even till 6.30 p.m. as he was busy in operations and consequently they came back. The trap party, then went back to Dhule. Panchnama regarding such failed attempt was prepared and the pajama of the complainant, which still had the marked and noted currency, was sealed. The concerned Panchnama Exhibit 26 was completed and the complainant and Panchas were asked to attend early morning on the

next day i.e. 29th September 1993.

(D). On 29th September 1993, the trap party again went to Chopda and like before, waited at some distance. The complainant and shadow Panch PW-2 Dhudku went ahead. They reached the hospital at about 9.10 a.m. According to the case of prosecution, there were some patients with the accused and when they came out, the complainant was called in and he went along with shadow Panch PW-2 Dhudku and the accused asked if he had brought the money and complainant gave the same to the accused, who received it by his left hand and kept the same in his left hand back pocket of the pant. The complainant gave signal to the rest of the trap party and immediately the Dy.S.P. and others entered the cabin of the accused and he was caught.

(E). As per prosecution, thereafter the necessary procedure of checking as to reflection

of anthracene powder was completed and it was found that the back pocket of the pant of accused reflected in the ultra violet lamp and his left hand fingers has also reflection of anthracene powder. The Trap Panchnama (Exhibit 17) was completed and the Dy.S.P. went and filed FIR (Exhibit 31) to the police station at Chopda and Crime No.16 of 1993 came to be registered on 29th September 1993 at 8.15 p.m. Thereafter further procedures regarding trap were completed. Letter was given to Tahsildar to prepare map and map (Exhibit 24) was got prepared at the hands of PW-3 Waman Badgajar (City Surveyor). The papers regarding the trap and other concerned documents were sent to the State Government and sanction of the State Government was obtained. The order of sanction (Exhibit 33) was issued on 5th February 1996 under signatures of PW-6 Linganna Ippewar, Under Secretary to the Government of Maharashtra.

3. The accused came to be prosecuted. He

denied the charge for Sections mentioned. His defence is of denial. According to him, the wife of complainant was admitted in the hospital and she was required to be operated but there was no anesthetist posted at the said hospital and there was no arrangement of blood bank and medicines required for the operation were not available in the hospital stock. Such things were required to be arranged by the concerned person on personal basis. These conditions were explained to the complainant, however, he being illiterate Adivasi and who did not even understand Marathi properly and speaks Ahirani, did not understand although the things were explained to him 2-3 times. He had the feeling that in the Government Hospital, everything is free and under misunderstanding he went and filed complaint. On the day of incident, accused was busy examining the patients and suddenly found officials of ACB coming in and they removed the other patients and the officer pointed out towards money lying on the table and asked as

to what is the same. At that time, the accused noticed that on his left hand side on table notes of Rs.100/- had been kept. Accused explained that he did not know about it and the officer asked him to handover that money to the another person standing there. Accused had got frightened as to what is happening and understood that these are police officials and thus did as he was told. As such, he picked up the money and gave it to that person. In view of the directions which were given to him, the accused took out things from his shirt and pockets and showed the same to the raiding party. According to the accused, it appeared that the complainant quietly came in the cabin when he was busy with other patients and put the money on the table and had gone away and the raid had been carried out.

4. The prosecution, however, has relied on the evidence of PW's 1 to 6 regarding the complaint which was filed and how earlier there

was attempt made on 28th September 1993 but the same could not be completed and the trap was finally executed on 29th September 1993. The prosecution relied on the documents proved and the oral evidence brought on record. The trial Court considered the evidence and the defence and convicted the accused, as mentioned.

5. I have heard learned counsel for Appellant. Grounds have been raised and it is argued that there is evidence of the complainant showing that he simply went in the cabin of the accused and kept the money on table and came out. Even on earlier occasion there was no evidence given by complainant of demand of money by the accused as illegal gratification. The factual conditions of the Hospital were explained to the complainant but he mis-understood and under that concept he went and filed complaint. The admitted fact is that he is a simpleton and not good in Marathi and speaks Ahirani. According to the

learned counsel, the oral evidence of PW-1 and PW-2 does not match with the documents which have been proved and the evidence of PW-5 Dy.S.P. Patil. The demand and acceptance has not been established. If the accused had really demanded money, he would have made himself available to receive money even on 28th September 1993. The evidence of PW-1 and PW-2 does not even match regarding what signal was given by the complainant. Complainant being illiterate, misunderstood expenses for bribe and trial Court wrongly concluded that only because it was told to the complainant that money would be required, bribe was demanded.

6. Per contra, the learned A.P.P. submitted that there is sufficient evidence of six witnesses on record and which has been accepted by the trial Court. The learned A.P.P. referred to the reasonings recorded by the trial Court to submit that the Judgment of the trial Court is well

reasoned and the offence was proved beyond reasonable doubts. From Rs.800/- asked, Rs.500/- were received by the accused. The accused had demanded the money to give better treatment to the wife of the complainant. The complainant being illiterate, did not give complete details in his oral evidence but admitted the contents of his FIR and thus the offence was properly proved. According to A.P.P., the evidence of complainant needs to be read in such context.

7. The learned counsel for the accused in reply further argued that sanction was not duly accorded and PW-6 Linganna Ippewar did not have authority to give sanction. It has to be proved that amount accepted was towards gratification and the same is not proved in the present case.

8. I have gone through the oral and documentary evidence as well as the Judgment of the trial Court and the reasons recorded by it for

the conviction. I am keeping in view the arguments raised before me. It would be now appropriate to refer to the evidence.

9. I have already referred to the relevant and material contents of the complaint Exhibit 12 which the complainant filed with Dy.S.P. Patil. In the complaint, there are portions put into inverted commas regarding the conversation which took place between the accused and the complainant. PW-5 Dy.S.P. Patil tried to claim in the cross-examination that the complainant narrated the incident to him in Marathi and Ahirani language. However in the further cross-examination, he deposed that the contents written in the complaint Exhibit 12 in inverted commas, were translated by him while writing the complaint. The complainant himself in cross-examination, stated that he narrated the information to the officer in Ahirani language. It appears "Ahirani" is an Indo-Aryan language in

Maharashtra. It is spoken in parts of Khandesh region. It consists of Khandeshi proper, and the Dangri and Ahirani dialects. A Marathi speaking person also would require to strain to understand what the person speaking Ahirani is saying. There is no evidence of Dy.S.P. Patil that he is well-versed in Ahirani language. I am discussing this, as the accused has taken a defence of misunderstanding by the complainant as to what the doctor was explaining to him. Although the Dy.S.P. Patil (PW-5) claimed that he did not feel that complainant is illiterate person having very little understanding and he could not follow instructions and conversations with him, there is material to the otherwise. Trap Panchnama Exhibit 17 itself shows that when the shadow Panch was asked as to what happened in the course of trap, he stated (page 11 of the said Panchnama), that the complainant after giving money went outside the room and doctor called for the case papers, and the said Panch kept standing in front

of the doctor and doctor asked him as to what is his relation with the complainant and he told the doctor that Ramsing (i.e. complainant) is his uncle and he does not understand anything and so he has come with complainant. Thus, the documents of the prosecution itself indicate that the Panch himself, at that time, had formed the opinion that the complainant does not understand things and thus requires assistance.

10. Although an exhaustively detailed complaint Exhibit 12 was recorded before Dy.S.P. Patil, if the evidence of complainant himself is perused, it reveals his simplicity. The complainant deposed that his wife was suffering from stomach ache and so he had earlier taken her to one Dr. Lathi at village Hisale, who asked him to take his wife to the doctor at Taluka place and so he brought his wife to Cottage Hospital, Chopda. Complainant PW-1 deposed that the accused examined his wife and admitted her in the

hospital. Complainant deposed that the doctor advised that the wife is required to be operated and that uterus was required to be removed. Complainant deposed that doctor told him that some of the medicines were not available at the Cottage Hospital, Chopda. Doctor told him, near about Rs.500/- to Rs.700/- were required for the purchase of medicines. According to him, he told the doctor that he did not have the said money. Thus, this is the only evidence of the complainant himself recorded in the Court, regarding the alleged demand before the trap was executed.

. In his further evidence, complainant claimed that he went back to his village and met one Arjun Dada and took Rs.500/- from Arjun and according to him, as the doctor was demanding money from him, he went to Dhule to trap the doctor. According to him, he told the police at the said office that doctor is demanding money from him and in Civil Hospital no money is

required. Although the evidence mentions that the complaint was shown to the complainant and he deposed that contents of the complaint are correct, the evidence does not say that in the Court the complaint was read over and explained to the complainant. As such, I am not impressed by the argument of A.P.P. that whatever is lacking in the oral evidence of the complainant, be treated as filled up because he has proved the complaint.

11. Now, coming to the trap as was tried to be executed on 28th September 1993, the evidence of complainant shows that the officer concerned had applied powder to the currency notes and the notes had been kept in the back of his pant as per instructions of the officer and then he and other person present in the office came to Chopda at about 10.00 a.m. The doctor was busy in operation and could not meet them. According to him, they waited till 4.00 - 5.00 p.m. and then returned back to Dhule. Thus, the complainant deposed that

the amount had been kept in his pant pocket. In fact, even PW-2 shadow Panch Dhudku in cross-examination accepted the suggestion that after application of anthracene powder to currency notes, the complainant had kept the said notes in the right side pocket of his pant. PW-2 Dhudku was asked in the cross-examination and accepted that he knows difference between Pajama and Pant. He was referred to the Panchnama Exhibit 16 and asked and he stated that he did not point out that the word "Pajama" used in the Panchnama was incorrect. The pre-trap Panchnama Exhibit 16 and Trap Panchnama Exhibit 17 as well as Panchnama Exhibit 26 referred to Pajama of the complainant as regards keeping of money in the pocket of complainant. Now, the complainant as well as PW-2 Dhudku, both referred to keeping of money in the Pant.

12. Evidence of complainant further is that after the earlier day, they went back to Dhule and

he deposited the amount of Rs.500/- in the office. He claimed that he stayed at the office itself and woke up at 4.00 a.m. and thereafter all of them had come to Chopda at about 9.00 am. Evidence of complainant is that doctor was in his room and 2-3 persons were sitting in his room and he entered in the room of the doctor and kept the amount on the table of the doctor and came out of the room. According to him, the officer had asked him to give signal after receipt of the money by the doctor and so after coming out, he gave signal to the officer by scratching the head. His evidence is that thereafter persons accompanying him, went in the room. He was further asked in the examination-in-chief and he deposed that officers asked him whether doctor has received the amount and he had replied that he had kept the amount on the table.

13. I have already referred to the earlier incident where complainant claimed that doctor

told him that medicines were not available and money would be required for purchase of medicines, which could hardly be considered as demand of gratification. Now even for the incident of trap execution, the complainant simply deposed that he went in the room and kept the money on the table and walked out. In fact in the cross-examination this complainant deposed that on the day of trap, he alone went inside the room and kept the money on the table and all other persons were waiting outside. Thus, this complainant even did not claim that the shadow Panch PW-2 Dhudku came inside the room with him. For the above reasons, either at the pre-trap stage or at the trap stage also, there is no evidence of the complainant that the doctor demanded the money as gratification or for himself. The complainant, who appears to have been of the concept that in Government Hospital no amount is required, appears to have been told by said Arjun (as is mentioned in Complaint Exhibit 12) that no money is required in the

Government Hospital and he should not pay the money and make a complaint. He accordingly, appears to have made the complaint and at the time of execution of trap, went and kept the money on the table and came out and he says that he gave the signal. The complainant, under such concept, may have given signal to the rest of the trap party, but I do not think that the same can be construed as he giving signal that the money has been accepted. In fact complainant specifically stated to the officer that he had kept the amount on the table. The complainant was not declared hostile. He was not confronted with the contents of his complaint to the contrary. The prosecution accepted the examination-in-chief of the complainant as it is and thus the prosecution cannot disown the examination-in-chief of material witness like the complainant. There is no substance in the argument of the A.P.P. that the Court should look at the illiteracy of the complainant and the gaps may be allowed to be

filled up by reading his evidence along with the complaint.

14. Now coming to the evidence of shadow Panch Dhudku, he claims that he was called to the ACB Office on 28th September 1993 and reached there at 9.30 a.m. If his evidence is read, it would appear as if he was called on 28th September 1993 and pre-trap procedure was completed and the whole trap was executed on 28th September 1993 itself. This witness did not claim that on 28th September 1993 they had gone to the hospital and waited and came back as the accused could not become available being busy in operations.

. PW-2 Dhudku gave details regarding the procedure which was explained regarding pre-trap and deposed as to how the currency reflected blue light in ultra violet rays. He deposed that the notes were kept in packet. Then he referred to execution of Panchnama Exhibit 16. According to

this witness, they then went to the Cottage Hospital at Chopda. According to him, they went near the cabin of the accused. The accused was busy in examining patients and they were waiting outside. Then one person came from the cabin and asked who is Ramsing (complainant). This shadow Panch says that thereafter they both entered the cabin of the doctor. The evidence of this Panch is that doctor asked Ramsing whether he has brought the money, to which he replied yes. The doctor asked as to how much amount he has brought and complainant replied Rs.500/-. This Panch says that the complainant assured that he would give Rs.300/- to the doctor on Sunday. Doctor then asked Ramsing to give the amount which he had brought with him and the witness says that complainant gave Rs.500/- to the doctor. Although this Panch refers to such conversation between the complainant and accused, the complainant himself has not spoken anything in this regard.

. Further evidence of the shadow Panch PW-2 Dhudku is that doctor received the amount in his right hand and kept in his pocket. Now, the whole case of the prosecution, as appearing from documents, is that the doctor was handed over money which was received by the doctor by his left hand and kept in his back pocket on the left side. Thus, this shadow Panch has given different statement as to how the money was received and kept. Although the case of prosecution is that the signal fixed was of moving the sleeves of shirt, complainant deposed that he had given signal by scratching his head. PW-2 Dhudku claims that signal was given by moving of sleeves. Although this witness had, in his examination-in-chief, deposed that currency notes were kept in packet, in cross-examination he accepted that when the currency notes were taken out in the hospital, they were not in packet. In cross-examination PW-2 Dhudku deposed that accused kept the currency notes in the right pocket of his pant. He deposed

that accused gave currency notes to the police by taking out notes from his pocket by his left hand. No doubt the witness stated that in the ultra violet rays glow was found on the left hand and left pocket of the accused, but the witness was clearly making different statements. Even if some concession was to be given considering the fact that trap was executed on 29th September 1993 and witness was deposing in 2002, still the contradictions are with reference to material aspects. In the background where the complainant himself has not deposed clearly regarding demand for gratification and receipt of the money by the accused himself, much weight cannot be given to the evidence of PW-2 Dhudku.

15. The second Panch PW-4 Ramrao Patil and Dy.S.P. PW-5 Prabhakar Patil have given evidence as to how the complainant had filed complaint and earlier effort was made on 28th September 1993 but could not succeed and again an attempt was made on

29th September 1993 and the trap was executed successfully. Their evidence goes to prove the documents of Panchnamas Exhibit 16, 17 and 26. However, for reasons discussed earlier, there is serious doubt whether the demand was by way of gratification and if really the accused received the money. It is necessary for the prosecution to prove that attempt was made to receive gratification other than legal remuneration.

16. I have gone through the Judgment of the trial Court. On the point of demand, the trial Court referred to the evidence in Para 14 and 15 of its Judgment and observed that even the defence of the accused seems to be that he admitted that he has demanded money from the accused but for purchase of medicines. I have gone through the written say of the accused which was filed at the time of his statement under Section 313 of the Code of Criminal Procedure. What the written statement mentioned was that, there was no

anesthetist posted for the operation and there was no arrangement of blood bank and such arrangements were required to be made on personal basis and medicines are required at the time of operation as well as subsequent to operation which were not available and all these difficulties had been reported to the superiors and as operation cannot be refused, these facts were being explained to the patients. According to the written say, the complainant was illiterate Adivasi who did not even understand Marathi and he was explained all this but he could not understand. The written say does not say that the accused told the complainant to bring and give money. Thus, the trial Court appears to have filled in the gap in the case of prosecution by observing that it seems that accused has admitted that he demanded money but for purchase of medicines. The trial Court concluded that the evidence of complainant coupled with the defence is sufficient to prove that accused had demanded money from the complainant. I

do not think that this can be upheld. Apart from the evidence of demand, it is necessary for the prosecution to prove that the demand was by way gratification.

17. The trial Court then discussed point regarding acceptance from Para 16 of its Judgment. Trial Court was aware that PW-2 Dhudku had not stated regarding withdrawal of trap on the first day. In Para 17 of the Judgment, trial Court observed that there was no doubt that in his evidence complainant had not stated about the demand and acceptance of bribe amount by the accused person. Trial Court observed that however from the evidence of the complainant it appears that he has given a pre-arranged signal to the raiding party and this pre-supposes that the doctor has accepted the amount. I find myself in disagreement. Firstly, even the alleged signal given by the complainant was not the signal which was pre-determined by the trap party. Secondly,

merely giving of such signal does not mean that the doctor accepted the amount. In the face of evidence of the complainant that he told the officer after the signal that he had kept the money on the table, would show that the complainant did not say that the accused accepted the amount.

18. The trial Court discussed that the evidence of PW-2 shadow Panch Dhudku and PW-4 Panch Ramrao did not match as to in which pocket the doctor had kept the money. Trial Court observed that minor contradictions here and there are bound to be there when the evidence was being recorded after so many years. I agree that there can be minor contradictions and some concession can be given to witness when the evidence is being recorded after some years, however, when it relates to major contradictions, the concession cannot be given. PW-2 Dhudku has been in service as clerk with PWD Department and in his evidence

gave so many other details including conversation at the time of trap, but regarding handing over the money, claimed that the accused received the same by right hand, although the case of prosecution is that it was received by left hand. In the set of present facts, this is major contradiction.

. In this context, before discussing the further Judgment of the trial Court, mention needs to be made that PW-5 Dy.S.P. Patil admitted in cross-examination that the doctor did not appear to be left hander. If this is so, ordinarily the person would not receive the money by left hand. The case of prosecution is little surprising where it claims that the money was received by left hand and kept in left hand pant pocket. The evidence of Dy.S.P. Patil shows that at the time of execution of the trap, personal search of the doctor was taken and one handkerchief, one vicks bottle, Rs.175/- cash and thread were found in his right

side pant pocket. (A small fact. Though not conclusive, but a Doctor with heavy pressure of patients, if corrupt should have had better money in his pocket.) Ordinarily right handed person would receive money by his right hand and would ordinarily keep the same with the other money which he keeps in his pocket. Here it appears as if the money received by way of gratification was not to be mixed with the other articles in his pocket and so it is claimed that it was received by left hand and kept in left hand pant pocket while the legitimate lay in the other side pocket. It appears that the money had been kept by the complainant on the left hand side of the table of the accused and thus trap party appears to have claimed that the money was received by left hand and kept in left hand back pocket.

19. Coming back to the Judgment of the trial Court, trial Court observed that the prosecution witnesses, namely Panchas and Investigating

Officer had stated that the currency notes were found with the accused when tested under ultra violet rays. The trial Court observed that there was no reason for the Investigating Officer to involve the accused falsely and the positive test found on the clothes of the accused goes to show that he had accepted the amount.

. When I have perused the evidence of PW-5 Prabhakar Patil, in the cross-examination he stated that he did not find the doctor to be left hander. He further stated that doctor kept the notes on the left side of the table where he was sitting. He deposed that when the doctor refused that he had accepted the money, they had asked him to put the currency notes on the table. The defence of the accused also is that he was asked to take up the money which was kept on the table and handover the same to the person present (second Panch PW-4 Ramrao). It is also the defence of the accused that he was asked to take out

articles from his pocket and show and he had accordingly followed the instructions. Keeping such evidence of the Dy.S.P. in view, as mentioned, I am not impressed by the strange reasoning of the trial Court that reflection of anthracene powder on the clothes and hands of the accused is enough to conclude that there was acceptance of the amount. When basic evidence of demand and acceptance is wanting, the periphery evidence as to how clothes reacted to anthracene powder is not of much help. I do not find that the Judgment of the trial Court convicting the accused, is maintainable regarding the demand and acceptance.

20. Although the learned counsel for Appellant – accused argued that the sanction given by PW-6 Linganna Ippewar was not proper and legal, I have gone through the evidence of PW-6 Linganna in the trial Court and the detailed and exhaustive sanction order Exhibit 33 issued by the Under-

Secretary in the name of the Governor. There does not appear to be any defect as far as regards the sanction is concerned. This has been accepted by the trial Court. I do not think that on that count there is an error in the matter.

21. I thus, hold that the prosecution failed to prove that the accused demanded money by way of gratification for himself or that the accused had accepted the money by way of gratification. For reasons discussed, there is room for serious doubts and it would not be appropriate to uphold the conviction. I thus pass the following order:-

O R D E R

(I) The Appeal is allowed.

(II) The conviction and sentence, as imposed by the Special Judge, Amalner vide the impugned Judgment dated 5th March

2003 in Special Case No.11 of 1999, is quashed and set aside.

(III) The Appellant – original accused is acquitted of the offence punishable under Section 7, 13(2) of the Prevention of Corruption Act, 1988. His bail bonds are cancelled.

[A.I.S. CHEEMA, J.]