

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.171 OF 2005

SURYAKANT SHANKARRAO GAIKWAD)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Smt.Varsha Palav i/b. The Laureate, Advocate for the Appellant.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

WITH

CRIMINAL APPEAL NO.176 OF 2005

GOPAL VISHNU GADHAVE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri V.S.Talkute, Advocate for the Appellant.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 10th FEBRUARY 2016.

COMMON JUDGMENT :

1 Both these appeals can be conveniently disposed of by this common order as the appellants were tried and convicted on a single trial held by the Special Judge appointed under Section 3 of the Prevention of Corruption Act. The appellant Gopal Gadhave (Criminal Appeal No.176 of 2005) was the accused no.1 and the appellant Suryakant Gaikwad (Criminal Appeal No.171 of 2005) was the accused no.2 in the trial court. The learned Special Judge convicted the appellant Gopal Gadhave (accused no.1) of the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as “the P.C.Act”) and sentenced him to suffer Rigorous Imprisonment for 1 year and to pay a fine of Rs.1,000/- on each of the said two counts. The learned Special Judge convicted the appellant Suryakant Gaikwad (accused no.2) of an offence punishable under Section 12 of the P.C.Act and sentenced him to suffer Rigorous Imprisonment for a period of Six months and to pay a fine of Rs.1,000/-. The learned Special Judge imposed

default sentences in respect of the sentences of fine imposed upon the appellants. He directed that the substantive sentences imposed upon the appellant Gopal Gadhave would run concurrently.

2 Being aggrieved by their conviction and the sentences imposed upon them by the Special Judge, the appellants have approached this court by way of these separate appeals.

3 The prosecution case, as put forth before the trial court, in brief, be stated thus :

One Pundalik Yadav, working as a Clerk in *Yashwant Sahakari Sakhar Karkhana* intended to construct a house, and in order to raise amount for that, he wanted to obtain a loan from his Provident Fund. On 1st August 2000, he went to the Office of the Provident Fund at Golibar Maidan, Pune, and filed an application for grant of advance / loan, the receipt of which was duly acknowledged by the said office. On 25th September 2000, the said Pundalik Yadav (hereinafter referred to as 'the

complainant') went to the Office of the Provident Fund, where he met the appellant Gadhave (accused no.1), who was, at the material time, working as a Head Clerk in the said office. When the complainant made enquiries about his application of advance / loan, appellant Gadhave told him that his work had not been done, and that, he should come after fifteen days. The complainant again went to the office of the Provident Fund on 30th November 2000 and met the appellant Gadhave. Appellant Gadhave, told the complainant that unless the complainant would pay Rs.2,000/- to him, his work would not be done. The complainant then told appellant Gadhave that he was not having that much amount. Appellant Gadhave then said, that he should bring an amount of Rs.2,000/- on Monday the 11th December 2000 and give it to appellant Gadhave in the office.

The complainant was, thus, convinced, that unless the amount of Rs.2,000/- would be paid, his work would not be carried out. He did not want to pay the bribe amount, and therefore, on 11th December 2000, went to the office of the Anti Corruption Bureau (hereinafter 'ACB'), Pune, in the morning. He

reported the matter to the ACB, which was recorded and reduced into writing (Exhibit 26) by Ganpat Nikam, Inspector of Police (PW4). Police Inspector Nikam then decided to lay a trap, and for that purpose, called two panchas – Deepak Gholap (PW2) and Sadanand Yadav, who, both, were working in Maharashtra Jeevan Pradikaran. When the panchas came to the ACB office, Police Inspector Nikam introduced them to the complainant and made the complainant narrate his complaint orally to the panchas. The complaint / report (Exhibit 26) that had been recorded, was read over to the panchas. Police Inspector Nikam then explained to the panchas, after they had agreed to act as such, that a trap was to be laid, and as to how it was to be laid. The bribe amount was produced by the complainant, to which, anthracene powder was applied. The panchas and the complainant were explained the characteristics of the anthracene powder. Pre-trap panchnama (Exhibit 39) was drawn. Panch Gholap (PW2) was instructed to be with the complainant and to hear and see what would transpire between the complainant and the appellant Gadhave. The other panch – Yadav – was to be with the raiding party.

4 The police party and the panchas, then, left for the office of the Provident Fund by a jeep. The jeep was made to stop at some distance from the said office. The complainant and panch Gholap (PW2) went to the office. When they went to Section No.5, the complainant greeted the appellant Gadhave who was there. Appellant Gadhave told the complainant to contact appellant Gaikwad, who was also working as a Head Clerk in the said Provident Fund office, though in a different section. The complainant, then, went to appellant Gaikwad, who accepted the amount and kept it in the pocket of his pant. The complainant, thereafter, gave the pre-determined signal to the raiding party, whereafter, the raiding party came inside and apprehended the appellant Gaikwad. The tainted currency notes were recovered from the possession of the appellant Gaikwad. Both the accused were then placed under arrest. Police Inspector Nikam then himself lodged a report, carried out further investigation into the matter, and on completion of investigation, filed a charge-sheet, alleging commission of offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the P.C.Act by both the appellants.

5 The prosecution examined four witnesses during the trial. The first witness, as aforesaid, is the complainant, and the second, a panch – Deepak Gholap. The third witness Amarendranath Roy, who was, at the material time, working as Regional Provident Fund Commissioner, is the one who had granted sanction under Section 19 of the P.C.Act, for prosecution of the appellants. The fourth witness is Ganpat Nikam, Inspector of Police, who is the trap laying Officer, and also, the Investigating Officer.

6 I have heard Smt.Varsha Palav, the learned counsel for the appellant Gaikwad. I have heard Shri V.S.Talkute, the learned counsel for the appellant Gadhave. I have heard Shri V.B.KondeDeshmukh, the learned APP for the State. With the assistance of the learned counsel, I have gone through the record of the trial court and considered the evidence adduced during the trial. I have carefully gone through the impugned judgment.

7 The learned counsel for the appellant Gaikwad submitted that there was, clearly, no case against the said appellant. It is submitted that in the original complaint filed by the complainant with the ACB, no mention of appellant Gaikwad was made. Appellant Gaikwad had not made any demand of any bribe and that appellant Gaikwad was also not dealing with the work of the complainant. The learned counsel for the appellant Gadhave submitted that, even against appellant Gadhave, there was absolutely no case. It is submitted that the bribe amount was, admittedly, not given to appellant Gadhave. It is submitted that there was evidence indicating that the complainant and appellant Gadhave knew each other; and that, for what reason and in what circumstances the complainant had paid the tainted amount to appellant Gaikwad, was not known to appellant Gadhave. It is submitted that there was sufficient evidence to indicate that the complainant was not entitled to get an advance / loan from his Provident Fund, and that, inspite of this having been made clear to the complainant, the complainant was persistently asking him to get the loan / advance sanctioned. It is submitted

that because of the refusal of appellant Gadhave to do so, the complainant was angry and had implicated him falsely.

8 I have carefully examined the evidence of the complainant. According to him, after having filed an application for grant of advance / loan from the Provident Fund account for the construction of his house, he used to visit the Provident Fund Office at Golibar Maidan, Pune, from time to time, and that, even in the month of September 2000, he had contacted the said office on two occasions. According to him, he had met appellant Gadhave at that time; and that, at that time, appellant Gadhave had told him that the work could not be completed quickly and that the complainant should come after fifteen days or one month. That, again in the month of November – around 10th November 2000 – and 30th November 2000 – the complainant had visited the Provident Fund Office, and that, it was on that date, that appellant Gadhave told him that the advance would be released only if the complainant pays Rs.2,000/- as a bribe. The complainant further stated that he had demanded 80% of the

amount, which was into the credit of his Provident Fund account. According to the complainant, on 13th November 2000, appellant Gadhave had told him that he should come after about fifteen days along with an amount of Rs.2,000/-.

9 The complainant's narration about the happenings on 11th December 2000 before the actual trap may be examined. According to him, appellant Gadhave told him to bring the amount of Rs.2,000/- on 11th December 2000 '*on phone.*' It is at this stage that the complainant introduced the appellant Gaikwad saying that he (Gaikwad) '*used to act as a mediator*' between himself and appellant Gadhave. The complainant, then, stated that on telephonic talk with the appellant Gaikwad, he told him to visit the Provident Fund Office on 11th December 2000 with the amount of Rs.2,000/-.

10 It is in the afternoon of 11th December 2000, that the complainant went to the office of the ACB. It is, thereafter, that he made a complaint to the ACB which was reduced into writing (Exhibit 26).

11 Thus, according to the complainant, the demand of bribe was made by the accused Gadhave on 11th December 2000 *on phone*; and on the same day, appellant Gaikwad had also made a demand of bribe of Rs.2,000/- *on phone*. The complainant is not clear as to whether this demand by the two appellants was separately made by each of them, by making separate telephone calls, or whether both the appellants had made the demand while talking to the complainant separately during one and the same telephone call. That apart, in the complaint (Exhibit 26) the complainant has not mentioned about appellant Gaikwad – not even his name. He had mentioned only about appellant Gadhave. If appellant Gaikwad had demanded the amount on telephone, *on the very day on which the complainant subsequently lodged the complaint*, the complainant would not have failed to mention about the demand made by appellant Gaikwad. *In the light of the fact that the money was actually recovered from appellant Gaikwad, the possibility of complainant having introduced the theory of a previous demand by appellant Gaikwad also to lend*

credibility to his version and overcome the difficulty in logically establishing the connection between the demand having been made by appellant Gadhave and bribe having been accepted by appellant Gaikwad, cannot be easily ignored.

12 The complaint also does not disclose complainant's repeated visits to the Provident Fund Office, after he had given the application for loan / advance on 1st August 2000. *He says about his having gone to the Provident Fund Office thereafter, only on 25th September 2000, and thereafter, only on 30th November 2000.*

13 The demand for illegal gratification, however, was made on 30th November 2000 for the first time, going by either of the versions – the one in complaint and the other in the evidence.

14 The version in the complaint Exhibit 26 is that, thereafter, the complainant went to the ACB office on 11th December 2000, the day on which appellant Gadhave had allegedly called him with the bribe amount. He does not speak

about any contacts between him and either of the appellants between 30th November 2000 and 11th December 2000. He does not speak of having telephonic conversation even with appellant Gadhave on 11th December 2000.

15 *As per the version in the complaint, the date on which the bribe was to be paid i.e. 11th December 2000, was fixed by the appellant Gadhave on 30th November 2000 itself when the complainant and appellant Gadhave had met each other and when the demand of bribe was, for the first time, made.*

16 *Though there are a number of variations of the complainant's version in the complaint Exhibit 26, and his evidence; and though the complainant in his evidence has stated about his visits to the Provident Fund Office, which were not disclosed in the complaint, even as per his evidence, the demand of bribe was for the first time made only on 30th November 2000, and that too, only by appellant Gadhave. Till then, the other appellant Gaikwad was not in the picture at all.*

17 In the cross-examination, the complainant said that he could not assign any reason why it was not mentioned by him in the complaint that the appellant Gaikwad had also demanded the amount of bribe from him.

18 We may now examine the evidence of the complainant as to what happened on 11th December 2000 after he had reported the matter to the ACB. According to the complainant, on being asked by the Officer from ACB, he gave an amount of Rs.2,000/- which was to be used in laying of the trap. According to him, this amount was consisting of twenty notes of Rs.100/- each. This is not the case of the prosecution, and apparently, therefore, he was questioned further by the APP in the examination-in-chief itself in that regard, when he stated that he did not remember the exact denomination of the notes, and that, he did not remember 'how many notes of Rs.500 denomination were there among the trap money.' According to panch Gholap (PW2) the bribe amount consisted of three notes of Rs.500/- each and five notes of

Rs.100/- each. This is consistent with the case of the prosecution as is reflected in the panchnama. It is, therefore, rather strange that the complainant should not remember this, inspite of the specific questioning, and should say that the amount consisted of twenty currency notes of Rs.100/- each.

19 The learned counsel for the appellants had also pointed out that there are some other discrepancies in the evidence of the complainant with respect to the time as to when he went to the ACB office and reported the matter. According to the complainant, he went to the office of the ACB at about 4 p.m. However, later, he said that the demonstration in respect of the properties of anthracene powder was shown at about 3 p.m. in the ACB office. Though I am not inclined to give much importance to this discrepancy, that there should be a discrepancy in the evidence of the panch also about the time as to when he was called, cannot be ignored. According to Gholap (PW2) he and the other panch were called in the office of the ACB at about 11.30 a.m. Even if the statement of the complainant to the effect that he

went to the ACB office at 4 O'Clock is ignored, still, as per the pre-trap panchnama (Exhibit 39) the panchnama was drawn during the period from 15.10 hours to 16.10 hours. What the panchas were doing from 11.30 a.m. to 3.00 p.m. is difficult to comprehend. In any case, the complainant had not gone to the ACB office prior to 11.30 a.m., and therefore, if Gholap had indeed gone to the ACB office at about 11.30 a.m., the things in reality might be quite different. The case that has been made out by the complainant is that 11th December 2000 was fixed as the date for making the payment of bribe and that this date was fixed on 30th November 2000 itself. According to him, he went to the ACB office on the last date, and not in the meantime. In the light of this version and the fact that the trap was laid without making any verification of the alleged demand by appellant Gadhave, that the panchas were called immediately and a trap was laid, and the unlikelihood of the complainant having waited till the date on which bribe was to be paid to arrive, for reporting the matter to the ACB, it appears that things, in reality, might have been different. It is likely that, earlier some information unofficially was

given to the ACB by the complainant and the panchas had already been called on 11th December 2000 after it was already decided to lay a trap on that date; and that it is to conceal the earlier unofficial handling of the matter, the rather unusual story of the matter being reported to the ACB only on the last date, i.e., the date on which the bribe amount was to be paid, is being put forth.

20 We may now examine what happened after the complainant and the panch Gholap went inside the Provident Fund Office and met appellant Gadhave. The complainant's version is that appellant Gadhave was asked by him about his (complainant's) work. Appellant Gadhave then asked him 'if he had got the amount as settled.' The complainant told him that he had brought the amount and then asked appellant Gadhave to join him for a cup of tea, whereafter the complainant, panch Gholap and appellant Gadhave all went to the canteen for having tea. They all had tea there and the bill thereof was paid by the complainant. It is, at that time, according to the complainant, that appellant Gadhave told him to pay the amount to appellant

Gaikwad of Section No.4, and that the complainant's work would be done. All three came out of the canteen. The complainant and panch Gholap (PW2) then went near the table of the appellant Gaikwad. Appellant Gaikwad asked the complainant 'if he had brought the amount of Rs.2000/- as per the demand of appellant Gadhave.' The complainant said that he had brought the amount. Appellant Gaikwad, thereupon, asked him to 'join for a cup of tea' and then all three i.e. appellant Gaikwad, complainant and panch Gholap came to the same canteen, had tea, and complainant again paid the bill for the tea. They, then, came out and went near the table of appellant Gadhave; and appellant Gadhave asked appellant Gaikwad to accept the amount which the complainant had brought. It is then that appellant Gaikwad, complainant and Gholap decided to go to the lavatory for giving the amount of bribe. All three went inside the lavatory and it is in the lavatory that the complainant paid the amount of Rs.2000/- to the appellant Gaikwad. The complainant, then came out of the lavatory and gave the agreed signal, whereafter the appellant Gaikwad was apprehended by the members of the raiding party.

21 Now, according to the complainant, he went to the canteen twice and had tea twice – once with appellant Gadhave and once with appellant Gaikwad; and on both the occasions the panch Gholap was present. The bill of the tea was paid, on both the occasions, by the complainant. Apart from the bribe money, the complainant was having a currency note of Rs.50/- with him, which was kept separately. Now, when the complainant says that he paid the amount of the bill of tea from out of the said amount of Rs.50/-, when he went into the canteen for the first time, – i.e. with appellant Gadhave, - nothing strange about it; but when he says, while describing the second incident of going to the canteen, that he paid the amount of the bill from the amount of Rs.50/- that was in his pocket, it is rather strange. He could not have had the amount of Rs.50/-, if earlier he had paid the bill from out of the said amount. Such type of narration gives an indication of the fact that the complainant has deposed like a tutored person – rather than a person who narrates the happenings in a natural and usual way – and as they took place.

22 Anyway, what is more significant is that the version of the happenings as given by Gholap (PW2) is different from that given by the complainant. According to him, when he and the complainant went to appellant Gadhave on 11th December 2000, the complainant asked appellant Gadhave whether his work had been carried out. So far so good; but what Gholap says is that *'appellant Gadhave thereupon told the complainant that the complainant was having residential bungalow and that he could not get loan from the Provident Fund.'* Gholap does not say about any demand made by appellant Gadhave. *Rather, he speaks of appellant Gadhave having categorically told the complainant that he would **not** get any loan – something which has not been stated by the complainant.*

23 Gholap also says that, then, he, the complainant and appellant Gadhave went for a tea in the canteen and appellant Gadhave did so on being asked by the complainant to have a cup of tea with him. After having tea, appellant Gadhave asked the

complainant to contact appellant Gaikwad in Section 4. *This time also, appellant Gadhave did not make any statement that the complainant would have to pay the amount to appellant Gaikwad.* What happened, when they went to appellant Gaikwad, is also stated differently by the panch Gholap, than what has been stated by the complainant. *Gholap does not say that when they met each other, appellant Gaikwad asked the complainant 'if the complainant had brought the amount of Rs.2000/- as per the demand of appellant Gadhave' – a version of the complainant, which at once and conveniently (so to say) implicates both the appellants.*

24 Clearly, the complainant has been making improvements to overcome a basic infirmity in the prosecution case, viz., *'that the demand was said to have been made by appellant Gadhave but amount was found to have been taken by appellant Gaikwad.'* The complainant's endeavour appears to be to show that appellant Gaikwad was acting at the instance of appellant Gadhave and had accepted the amount for and on behalf of appellant Gadhave – without which the infirmity would

be fatal. However, because of the omission of the complainant to state about this vital aspect in his complaint with the ACB, the story of their having been a previous demand by appellant Gaikwad also, cannot be safely accepted.

25 There is one rather crucial aspect of the matter. It is that the complainant was not entitled to get any loan / advance from his Provident Fund as per the rules. It is for sanctioning such loan / advance that the bribe was allegedly demanded. In this context, it would be appropriate to refer to the categorical defence taken by appellant Gadhave as is reflected from the suggestions given to the complainant in the cross-examination, and also more directly from the written statement filed by him in the trial Court. The version of appellant Gadhave is that when the application for loan / advance made by the complainant was scrutinized, it was revealed that he had been already granted loan/advance from his Provident Fund for construction of house. It was also revealed that he had again applied for a loan / advance in the prescribed form for construction of a house on the same plot of land, and had

suppressed certain information. That, the complainant had been told that as per the rules, once he had obtained an advance for that purpose, he could not be given again an advance for the same purpose. This was told to him orally as well as in writing, but still, the complainant had been urging and pleading with appellant Gadhave to help him in getting the loan / advance. Appellant Gadhave had refused to do so. That, on 30th December 2000, when the complainant came to the Provident Fund Office, he told appellant Gadhave that a notice for attachment of his property had been received from the bank and that, he had also to spend for the medical expenses of his daughter and that, therefore, somehow, appellant Gadhave should sanction the loan / advance. Appellant Gadhave categorically refused to do so and told him that as per the rules, it was not possible to sanction the loan / advance, and that, the complainant should not come back to the Provident Fund Office. However, inspite of categorically telling so, the complainant again insisted on sanctioning the loan / advance. He was, therefore, driven out of the office. The complainant was angry and while leaving the office, said to appellant Gadhave “I

will teach a lesson to you”. According to appellant Gadhave, the complainant had, therefore, lodged a false complaint against him in order to take revenge. Appellant Gadhave has also stated that the appellant Gaikwad was acquainted with the complainant and that, by misleading him, the complainant gave the bribe amount to appellant Gaikwad, and thus, falsely implicated both appellant Gadhave and appellant Gaikwad.

26 The complainant in the cross-examination denied that he had begged before appellant Gadhave for help by stating that his daughter was seriously ill and / or that, there was 'attachment on his house.' He, however, admitted both these things – about the illness of the daughter, as also the attachment of his house – were true. *It is not clear, as to how, the cross-examiner would know these facts if they had not been told by the complainant to appellant Gadhave.*

27 Appellant Gaikwad has also filed his written statement, in which, he stated that the complainant was working

in the Co-operative Sugar Factory, and that, since appellant Gaikwad is also a member of the said factory, they were acquainted with each other. However, that the complainant had made an application for loan / advance from his Provident Fund, was not known to appellant Gaikwad till the case was registered. That, at about 5.00 p.m, the complainant came to the Provident Fund Office along with one person and met appellant Gaikwad in his section. Since the complainant insisted that they should have tea, appellant Gaikwad, the complainant and the person along with him went to the canteen in the office building and had tea. That, while returning back to his section, appellant Gaikwad went to the lavatory. That, at that time, complainant and the person with him came behind him in the lavatory. That, there, the complainant gave the amount which was with him, and said that since he could not meet appellant Gadhave, the money was being given to him (Gaikwad), who should give it to appellant Gadhave. Appellant Gaikwad asked as to for what the money was being given, but the complainant, without giving any reply, was attempting to put the amount in the left pant pocket of appellant

Gaikwad. Appellant Gaikwad then took the notes in his left hand, and while he was putting it in his pocket, the members of the raiding party apprehended him. That, for some time, appellant Gaikwad did not realize as to what was happening and it is only later that he realized that a case for having accepted bribe amount was registered against him and appellant Gadhave.

28 There is no dispute that the loan/advance could not have been sanctioned in favour of the complainant. Even after the trap, by letter dated 16th January 2001 (Exhibit 36), the complainant was clearly informed that since he had already availed of an advance of Rs.20,000/- for construction of house, and since a building already exists on the same plot, for construction on which the complainant had applied for the loan/advance, loan/advance could not be sanctioned to him. It was pointed out that he could seek an advance for the said purpose only once, and that, advance could be availed of only under other provisions and for other reasons. In fact, the complainant had also not disputed that he was not entitled to get a loan/advance as per the rules. What he

disputes is only that this was told to him by appellant Gadhave. According to appellant Gadhave, this was told to the complainant, and the complainant denied this; but that he was not entitled to have the loan / advance as per the rules, has not been disputed by the complainant.

29 When no doubt can be entertained about the fact that the loan / advance could not be sanctioned in favour of the complainant, that the appellant Gadhave had not told so to the complainant, is rather difficult to accept. It may be recalled that the panch Gholap (PW2) has clearly stated that *as soon as he and the complainant went to the Provident Fund office on 11th December 2000 and met appellant Gadhave, the complainant asked appellant Gadhave whether his work had been carried out; and that appellant Gadhave then told the complainant that the complainant was having a residential Bungalow, and he could not get loan from the Provident Fund.* This certainly supports the claim of appellant Gadhave that the complainant had been told that he would not be able to get any loan / advance from the Provident Fund as per the rules.

30 Ordinarily, when it was impossible to do the work of the complainant even after obtaining bribe, appellant Gadhave was not expected, or likely, to make a demand for the same. This would be possible only if appellant Gadhave was in a position to overcome the problem in getting the loan/advance, and was able to manipulate the things so that inspite of the rules to the contrary, the complainant would actually get an advance. Since there is absolutely nothing to show that appellant Gadhave could have done such a manipulation and could have secured a loan/advance in favour of the complainant, it is unlikely that appellant Gadhave had made any demand for illegal gratification claimed by the complainant.

31 When the prosecution evidence is examined, in the light of the defence taken by the appellants, it is not possible to hold that the prosecution had been successful in establishing the guilt against the appellants or any of them. In the first place, so far as appellant Gaikwad is concerned, there is absolutely no

mention of him in the complaint lodged by the complainant with the Anti Corruption Bureau. If appellant Gaikwad had indeed made a demand for illegal gratification, as claimed by the complainant in his deposition, the complainant would not have missed to mention his name in the complaint. In fact, in that case, he would have been aware that the money was actually to be paid to appellant Gaikwad, and would have naturally specifically mentioned so. Secondly, if the date “11/2/2000” as the date on which the bribe was to be paid, was fixed on 30/11/2000 itself, as per the version in the complaint, why did the complainant wait till the last date i.e. 11th December 2000 for reporting the matter to the Anti Corruption Bureau, is also not clear. As discussed earlier, the possibility of his having reported the matter to the Anti Corruption Bureau earlier unofficially, and a decision having been taken to lay a trap on 11th December 2000 already, cannot be overlooked. It is evident that in order to overcome this weakness in his case, the complainant, during his evidence, spoke vaguely about the telephonic demand having been made to him on 11th

December 2000 by appellant Gadhave and appellant Gaikwad both. Interestingly, the complainant also said in his evidence that appellant Gaikwad 'used to act as a mediator between him and appellant Gadhave.' The complainant has used an expression that appellant Gaikwad 'used to act as a mediator' which suggests a significant number of meetings having taken place between the complainant, appellant Gadhave and appellant Gaikwad, but still, the complainant has not mentioned anything about appellant Gaikwad. The complainant has also attempted to hide the fact that he had made a number of visits to the Provident Fund Office during the period from 1st August 2000 to 30th November 2000, which may be because the complainant wanted to avoid stating what transpired during these meetings. The theory of appellant Gadhave having told the complainant that his work could not be done, is certainly quite plausible from the complainant's evidence itself. When such is the situation, it was hazardous to hold the appellants, or any of them, guilty of the alleged offences.

32 Interestingly, the learned Special Judge has held the appellant Gaikwad guilty only of an offence punishable under Section 12 of the P.C.Act. Thus, he has not accepted a theory that the demand was by both the appellants in furtherance of their common intention, and that appellant Gaikwad had been acting for an on behalf of the appellant Gadhave. He has held appellant Gaikwad, simplicitor, guilty of having abetted an offence punishable under Section 7, which is not very consistent with the prosecution case.

33 The appreciation of evidence as done by the learned Special Judge is not proper. He was in error in holding that the defence of the appellants was not plausible. In my opinion, not only the defence raised by the appellants was plausible, but the case was evenly balanced and the theory put forth by the prosecution was no more likely than the theory put forth by the defence.

34 The appellants were therefore, entitled to be acquitted.

34 The Appeals are allowed.

The impugned judgment and order of conviction is set aside.

The appellants are acquitted. Their bail bonds are discharged.

Fine, if paid, be refunded to the respective appellants.

(ABHAY M. THIPSAY, J.)