

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

CRIMINAL APPEAL NO. 22 OF 2003

Tarachand Vishram Janjale
Age : 42 Yrs., Occ. Agriculture,
R/o : Bhorkheda, Tq. Shirpur,
Dist.: Dhule.

**.... APPELLANT/
[ORI. ACCUSED]**

VERSUS

The State of Maharashtra
Thr. Pradip Bapurao Khairnar
Dy. Superintendent of Police,
Anti Corruption Bureau,
Dhule.

.... RESPONDENT.

.....

Mr. D.S. Bagul, Advocate for Appellant.
Ms. S.S. Raut, A.P.P. for Resp. - State.

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CORAM : V.L. ACHLIYA, J.

JUDGMENT RESERVED ON : 04/07/2017

JUDGMENT PRONOUNCED ON : 15/09/2017

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JUDGMENT :

1. This Appeal is directed against the Judgment and Order dated 18/12/2002 passed in Special Case No.

42/1998 by Additional Sessions Judge/Special Judge, Dhule. By the impugned Judgment, learned Special Judge, Dhule convicted the appellant/accused for the offence punishable u/ss 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988 [for short, 'the Act']. For the offence committed u/s 7 of the Act, the appellant/accused is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- [Rupees One Thousand], in default to suffer rigorous imprisonment for three months. He is also convicted for the offence u/s 13 (1) (d) read with section 13 (2) of the Act and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 2,000/- [Rupees Two Thousand], in default to suffer rigorous imprisonment for six months. Being aggrieved, the appellant/accused has preferred this Appeal.

2. Brief facts of prosecution case, as unfolded during the course of trial, are summarised as under :

The appellant/accused was charged with the offences u/s 7 and 13 (1) (d) read with section 13 (2) of the Act with allegations that during the period 1989 to 10/09/1997 the appellant/accused was appointed as a

Police Patil of village Borkheda, Taluka Shirpur, District Dhule. He had demanded Rs. 2,500/- from Mahendrasing Machhindrasing Rajput [P.W.1], the complainant so as to avoid his arrest by the police officials attached to police station Thalner. On 10/09/1997 at 10.15 a.m. near Thalner fata, the appellant/accused was caught while accepting bribe amount of Rs. 2,500/- from Mahendrasing Rajput [P.W.1]. It is alleged that by indulging into an act of making demand of Rs. 2,500/- and accepting the same, the appellant/accused has committed offences punishable u/ss 7 and 13 (1) (d) read with section 13 (2) of the Act.

3. The prosecution has approached with a case that on 09/09/1997, the complainant approached to the officials of Anti Corruption Bureau at Dhule and lodged complaint vide Exh. 12 alleging therein that in the year 1992 he along with 23 other persons from the village were prosecuted for committing offence under the provisions of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act, 1989 [for short, ' SC and ST Act'] and they were prosecuted before the Court below. He was acquitted in said case. Subsequently, another complaint was lodged on 15/08/1997 against him

for committing offence under the same Act. On 04/09/1997, the appellant/accused met him and told that there is record of his involvement in criminal cases and in order to maintain peace during Ganpati festival, Police Sub Inspector attached to police station Thalner has asked him to attend the police station. On 05/09/1997, Mahendrasingh, the complainant went to police station Thalner along with the appellant/accused. The appellant/accused produced him before P.S.I. Mr. Jadhav attached to police station Thalner. He told the police officer that as per instructions, he has produced Mahendrasingh, the complainant. Thereafter, the police officer asked the complainant to wait outside police station. He, therefore, came outside police station and waited for the appellant/accused. Some time thereafter the appellant/accused came and told that in order to avoid the arrest, P.S.I. Jadhav was demanding Rs. 5,000/-. He told him that you may not be able to give such amount and at his request, P.S.I. Jadhav has agreed to take Rs. 2,500/-. He told the appellant/accused that he is not having such amount. The appellant/accused told him that if he fails to pay such amount to P.S.I. Jadhav, he will arrest him. The complainant expressed his desire to personally meet the police officer. However, the appellant

told him that P.S.I. Jadhav asked him to take the amount and he will not talk to him. He agreed to give amount after two days. On 07/09/1997, the appellant met him near Ganesh pendol and enquired about the amount to be payable to the police officer and further told that in the previous night the police had come to village and he caused the police to go back without arresting him. When he told the accused that he is unable to pay the amount, the accused told him that any how he has to arrange the amount. Thereafter, the complainant told him that he will make the arrangement on 10/09/1997. The complaint lodged by complainant was recorded. Thereafter the trap was arranged. On 10/09/1997, the raiding party, which includes the complainant, panch witnesses and police personnels, went in a police jeep to village Thalner. At about 10.15 a.m., the appellant/accused accepted bribe amount in presence of panch witness Ravindra Devare [P.W.2]. The accused was detained and taken to nearby school. The bribe amount of Rs. 2,500/- accepted by accused was recovered in presence of panch witness. On completion of the investigation, the papers of investigation were sent to Sub Divisional Officer/Dy. Collector, Dhule for sanction to prosecute the appellant. On receipt of sanction to prosecute the appellant/accused

received from Manojkumar Suryawanshi, the then Sub Divisional Magistrate, Dhule [P.W.3], the charge sheet came to be filed.

4. In due course, the charges were framed against the appellant/accused. The appellant/accused pleaded not guilty and claimed to be tried. In order to prove its case, the prosecution has examined four witnesses. In defence, the accused has examined himself and also examined one defence witness.

5. On the basis of cross examination of the prosecution witnesses and the evidence as laid in defence of the accused, it appears that the accused has taken the defence that he has been falsely implicated in the case at the instance of the complainant on account of politics in the village. The accused has denied the case of the prosecution that he had demanded any amount from the complainant so as to avoid his arrest by police as a preventive measure during Ganpati festival. The appellant/accused has not disputed receipt of Rs. 2,500/- from the complainant. According to accused the amount of Rs. 2,500/- was paid to him by the complainant to pay

it to Eknath Sukha Shirsath, who has filed complaint against the complainant leading to registration of offence under the provisions of the SC and ST Act. The appellant/accused has taken a specific defence that a meeting was held at the house of one Babruwahan Kashiram Rajput and in the said meeting it was decided to compromise the criminal case filed by Eknath Sukha Shirsath by paying amount of Rs. 2,500/- to him by the complainant. It was also decided that as Eknath Shirsath was not on talking terms with the people from Rajput community, it was decided that amount be given through the appellant/accused as he was then working as Police Patil. Beside the appellant/accused, the defence has examined Eknath Shirsath as defence witness No. 2 to corroborate the testimony of the appellant/accused.

6. On due consideration of the evidence as adduced in the case, the learned Special Judge has found the appellant/accused guilty of the offence punishable u/s 7 and 13 (1) (d) read with section 13 (2) of the Act and awarded sentence as stated above. Being aggrieved, the appellant/accused has preferred this Appeal.

7. I have heard the arguments advanced by the learned counsel for the appellant and learned A.P.P. for the respondent – State and further carefully perused the record and proceedings of the case.

8. If we consider the over-all case of the prosecution and the defence of the appellant/accused, then the accused has not disputed the fact that on 10/09/1997 he has accepted Rs. 2,500/- from the complainant and later-on the officials from Anti Corruption Bureau recovered said amount from him. However, it is the case of the appellant/accused that he neither demanded bribe amount nor received any bribe from the complainant. What is received is an amount to be payable to Eknath Shirsath [D.W.1], the complainant who has filed complaint leading to registration of the case under the provisions of the SC and ST Act against the complainant. According to the defence of the accused, there was meeting in the village to compromise the case. Since the complainant was not on talking terms with the people from Rajput community i.e. community to which the complainant belongs, it was decided that the amount of Rs. 2,500/- agreed as per settlement to be paid to Eknath

Shirsath through the appellant/accused, who was then working as Police Patil.

9. Mr. D.S.Bagul, the learned counsel for the appellant strenuously contended that there is no cogent, convincing and reliable evidence to sustain the conviction. By referring the evidence on record, the learned counsel submits that the testimony of Mahendrasing [P.W.1], the complainant inspires no confidence and it is highly unsafe to place implicit reliance on testimony of such highly interested witness. It is pointed out that it has been brought on record that there were two rival groups in the village. The complainant belongs to Rajput community. Whereas appellant belongs to people belonging to Scheduled Caste. There was rivalry between two groups. Mahendrasingh [P.W.1] has admitted that there were 40-50 houses of Mahar caste in the village. The complainant has admitted that he was prosecuted for offence punishable under the provisions of S.C. and S.T. Act. The complainant has admitted that his father was involved in active politics in the village. He has admitted that one Anandsing Umedsing contested election against his father. In said election, the persons belonging to Mahar caste

compaigned in favour of Anandsing Umedsing. He has also admitted that two cases under the provisions of the SC and ST Act were registered against him. He has admitted that in the year 1997, Police Sub Inspector attached to police station Thalner got executed bond from him in a proceeding registered under the provisions of Section 110 of Code of Criminal Procedure. In the background of the evidence on record, the learned counsel submits that in absence of corroboration to the testimony of the complainant from independent witness, the trial Court ought not to have convicted the appellant.

10. It is pointed out that the appellant/accused has stepped into witness box and deposed as per the defence of the accused. The testimony of the accused finds due corroboration from the testimony of Eknath Shirsath [D.W.2].

11. It is pointed out that though the complainant stated in the complaint that amount of Rs. 2,500/- was demanded by the appellant/accused to be payable to P.S.I. Jadhav attached to police station Thalner so as to avoid the arrest during Ganpati festival, no case was

registered against P.S.I. Jadhav. So also the prosecution has not examined him as a witness. By referring the complaint and the testimony of the complainant, the learned counsel pointed out that no case of demand of bribe on the part of the accused is proved against the appellant/accused. It is contended out that if the allegations made in the complaint even if taken into consideration and presume to be true, still it make out no case to sustain the commission of offence u/s 7 as well as sec 13 (2) of Prevention of Corruption Act. In discharge of the duty as a Police Patil, the accused has only communicated the message of P.S.I. Jadhav to the complainant. The facts deposed by P.W. 1 itself spell out that the accused has only communicated the demand made by P.S.I. Jadhav to complainant. It is contended that the role of the accused in the entire episode restricted to the extent of messenger of P.S.I. Jadhav. Neither the appellant had a power of arrest the complainant nor he had power to save the complainant from arrest. In this view, it is contended that there was no act of demand of gratification by appellant to show favour to the complainant. In absence of demand being proved, the evidence of acceptance of amount is of no consequence. In this context, the learned counsel referred

and relied upon the decision of Apex Court in the case of ***Rakesh Kapoor Vs. State of Himachal Pradesh reported in 2013 ALL MR (Cri.) 324 (S.C.)***.

12. The learned counsel for the appellant also contended that the entire prosecution against the appellant is vitiated in law as there was no legal and valid sanction to prosecute the appellant. The testimony of prosecution witness Manojkumar [P.W.3], who had accorded sanction to prosecute the appellant reveals that draft sanctioned order prepared and brought by the stenotypist was signed by him without applying mind and recording subjective satisfaction as required u/s 19 of the Prevention of Corruption Act.

13. On the other hand, learned A.P.P. has supported the Judgment and order passed by the trial Court. By referring the testimony of the witnesses examined by the prosecution, learned A.P.P. submitted that there is cogent, convincing and reliable evidence to sustain the conviction. It is pointed out that there is no dispute as to the fact of receipt of Rs. 2,500/- by the accused from the complainant. Once the accused has not

disputed that he has received the amount from the complainant, it raises a presumption that the amount has been accepted as gratification unless the contrary is proved by the accused. In this context, learned A.P.P. has referred and relied upon Section 20 of the Prevention of Corruption Act. So far as the sanction to prosecute the appellant/accused is concerned, learned A.P.P. submits that the testimony of Manojkumar Suryawanshi [P.W. 3] is sufficient to establish that he has accorded sanction after examining the papers of investigation received from Anti Corruption Bureau. Manojkumar [P.W.3] categorically deposed that the papers which were received by him were consisting of statement, panchanama and the complaint. He has minutely examined those documents and after applying mind, satisfied that the appellant had demanded and received the bribe of Rs. 2,500/- from the complainant accorded sanction to prosecute the appellant. It is contended that there is nothing brought through the cross examination of P.W. 3 to accept the contention that the sanction was accorded without application of mind. It is contended that the reasons and findings recorded by trial Court are quite consistent with the evidence on record. There is no perversity in the impugned Judgment so as to call for

interference in exercise of appellate jurisdiction. Learned A.P.P. urged to dismiss the Appeal.

14. In order to appreciate the submissions advanced, I have carefully perused the oral and documentary evidence adduced by the prosecution as well as the defence. In order to prove its case, the prosecution has examined four witnesses. The prosecution has examined Mahendrasing Rajput [P.W.1], the complainant vide Exh. 11. He has deposed that in the year 1992 he was booked for committing the offence under the provisions of the SC and ST Act. He along with 22 persons were prosecuted for said offence and tried before the Special Judge, Dhule. They were acquitted in said case some time in the year 1994-95. On 15/08/1997, another offence under the provisions of the SC and ST Act came to be registered against him and 12 other persons at the instance of one Eknath Sukha Shirsath [D.W.2]. The said case was decided in the year 2001. He deposed that on 04/09/1997 the accused told him that he has been asked to appear before P.S.I. Jadhav of police station Thalner as he has a record of involvement in criminal cases and there is apprehension

that he may not keep peace in the village. He is, therefore, called at police station. He, therefore, went to police station, Thalner on 05/09/1997 along with the appellant/accused and appeared before P.S.I. Jadhav. The appellant/accused told P.S.I. Jadhav that he has brought me. Thereafter P.S.I. Jadhav asked him to wait outside his cabin. He, therefore, came out of cabin and waited for the appellant in the premises of police station. Within 7 to 10 minutes, the appellant came and told him that P.S.I. Jadhav is demanding Rs. 5,000/- not to arrest him during Ganpati festival. He further told that he told P.S.I. Jadhav that he is poor person and not able to give such amount. He further told that at his request P.S.I. Jadhav has reduced the amount to Rs. 2,500/-. He expressed his inability to pay such amount to P.S.I. Jadhav expressed his desire to meet P.S.I. Jadhav, but the appellant told him that P.S.I. Jadhav will not talk to him. The appellant told him that if such amount is not given, he will be arrested by police. He asked appellant for two days' time for giving such amount. On 07/09/1997 at about 9.00 p.m. near Ganpati pendal, the appellant took him aside and enquired about the amount to be payable to P.S.I. Jadhav. He told him that he could not collect the amount. Then the appellant told him that

on the previous day in the night, police jeep had came to the village. He again requested for 2 to 3 days for giving amount. The appellant asked him to arrange the amount up to 10/09/1997. He collected amount of Rs. 2,500/- from his friends and went to office of Anti Corruption Bureau as he was not willing to pay such amount as bribe. He met Mr. Khairnar, Dy. Superintendent of Police [P.W.4] and Police Inspector Mr. Patil and narrated the whole story which was later-on reduced into writing vide Exh. 12.

15. On 10/09/1997 after making all preparation to lay down the trap, he along with raiding party proceeded from Dhule to village Borkheda along with police officials and panch witnesses. At about 9.50 a.m. they reached near Khagriya nala located at the distance of 200 to 300 feet from village Borkheda. He along with panch witness Ravindra Devare [P.W.2] got down from the jeep. Other members of raiding party followed them. He noticed accused present below the Neem tree located nearby Thalner fata. He went to the accused. The accused told him that he had is going Thalner and whether he is giving him the amount to be given to P.S.I.

Jadhav. Thereafter, he enquired from him as to whether he is going to be arrested at the time of each festival. He further told him that presently he is giving the amount but in future on each and every occasion he will not be in a position to give such amount. The appellant told him that he can not take guarantee of the officers who will succeed Mr. Jadhav in future. Thereafter he told him that it is too late and asked whether he is giving the amount. Thereafter he gave amount of Rs. 2,500/- to the appellant/accused, which the appellant accepted. After counting the same, kept that amount in the pocket of his pant. Thereafter, he gave signal to the raiding party. The members of the raiding party immediately rushed towards accused. Police personnel caught hold the hands of the appellant/accused. Dy. Superintendent of Police Mr. Khairnar [P.W.4] disclosed his identity to appellant. The appellant was then taken in police jeep to the premises in the Gram Panchayat office which was also used as school. The police officer requested the head master to make available one room. Accordingly, one room was vacated. He was made to stand outside the room. After 20-25 minutes, he was called inside the room and his hands were inspected in the light of ultra violet lamp.

16. Thus, if we consider the facts deposed by Mahendrasing [P.W.1], the complainant in Examination-in-Chief then it spell out that the alleged demand of Rs. 2,500/- was not made by appellant for himself to show favour or disfavour to the complainant. If we consider the testimony of Mahendrasing [P.W.1] in its totality, then it make out that in order to avoid preventive action of detention during Ganpati festival, the demand of money was made by P.S.I. Jadhav through the appellant/accused, who was then working as Police Patil of village Borkheda. The testimony of Mahendrasing [P.W.1] no-way sufficient to infer that the demand was originated and made by the accused for himself and same was sought as gratification either as a motive or reward for doing or forbearing to do any official act or for showing or forebearing to show favour in exercise of his official function to the complainant.

17. In order to constitute an offence u/s 7 of the Prevention of Corruption Act, it is incumbent upon prosecution to prove the demand of bribe on the part of the accused and that too for doing or forebearing to do any official act. In order to

prove the offence u/s 7 of the Prevention of Corruption Act, following requirements needs to be satisfied :

[1] *that the accused at the time of the offence was, or expected to be, a public servant,*

[2] *that he accepted, or obtained, or agreed to accept, or attempted to obtain from some person a gratification,*

[3] *that such gratification was not a legal remuneration due to him, and*

[4] *that he accepted the gratification in question as a motive or reward, for -*

[a] *doing or forbearing to do an official act; or*

[b] *showing or forbearing to show favour or disfavour to someone in the exercise of his official functions; or*

[c] *rendering, or attempting to render, any service or disservice to someone, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant.*

18. Thus, to prove the offence u/s 7 of the

Prevention of Corruption Act, the prosecution has to establish that the accused being public servant had obtained illegal gratification for showing or forbearing to show favour or disfavour to complainant in exercise of his official functions.

19. The appointment of Police Patil are made under the provisions of the Maharashtra Village Police Act, 1967. Section 6 of the Act lay down the duties of Police Patil, which reads as under :

" 6. *Subject to the orders of the District Magistrate, the Police Patil shall,*

[i] act under the orders of any other Executive Magistrate within whose local jurisdiction his village is situated;

[ii] furnish such returns and information as may be called for by such Executive Magistrate;

[iii] constantly keep such Executive Magistrate informed as to the state of crime and all matters connected with the village police and the health and general condition of the community in his village;

[iv] afford every assistance in his power to all Police Officers when called

upon by them in the performance of their duty;

[v] promptly obey and execute all orders and warrants issued to him by a Magistrate or Police Officer;

[vi] collect and communicate to the Station Officer intelligence affecting the public peace;

[vii] prevent within the limits of his village the commission of offences and public nuisances and detect and bring offenders therein to justice;

[viii] perform such other duties as are specified under other provisions of this Act, and as the State Government may, from time to time, by general or special order specify in this behalf. "

20. Thus, if we consider the statutory duties of Police Patil, then to arrest a person as a preventive measure do not falls within the duties to be discharged as a the Police Patil. In absence of any such powers being vested with the accused to arrest the complainant as a preventive measure in exercise of powers as a Magistrate under the Code of Criminal Procedure, no question of making any demand by appellant to complainant to show any favour or disfavour arose on the

face of prosecution case against the appellant. On the contrary, the duties as mentioned above provides that it is his statutory obligation to provide assistance to police officers. In performance of duty as a Police Patil, he has to obey and execute all the orders and warrants issued to him by the Magistrate or police officer.

21. If we consider the testimony of the complainant coupled with the complaint lodged as well as the charge framed, then it spell out that the alled demand of Rs. 2,500/- was originated from P.S.I. Jadhav. The instructions received from the police officer to inform the complainant to appear before him was communicated by the appellant/accused in due discharge of his duty as a Police Patil of the village. Therefore, the fact deposed by Mahendrasing [P.W.1] as to the incident dated 04/09/1997 noway leads to draw inference that the demand was made on the part of the appellant/accused for showing favour or disfavour to the accused.

22. Similarly, if we consider the facts as to incident dated 05/09/1997 narrated by the complainant, then it further leads to draw inference that in compliance

of the instructions and the directives from P.S.I. Jadhav, the appellant/accused produced the complainant before P.S.I. Jadhav. The fact is also not in dispute that the appellant/accused had produced the complainant before P.S.I. Jadhav, who in-turn asked him to wait outside his cabin. The fact is also not in dispute that there was criminal record of complainant and he was twice involved into offences punishable under the provisions of S.C. and S.T. [Prevention of Atrocities] Act and earlier the Bond was obtained from him to maintain peace in the village. The testimony of Mahendrasing [P.W.1] spell out that 5 to 7 minutes after he left the cabin of P.S.I. Jadhav and waiting for the appellant/accused, the appellant/accused came and conveyed that P.S.I. Jadhav was demanding Rs. 5,000/- for not taking preventive action against him during Ganpati festival and at his request he has reduced his demand to Rs. 2,500/-. Thus, the incident dated 05/09/1997 narrated by the complainant also establishes that the demand of payment of Rs. 2,500/- not originated from complainant nor personally made any demand to the complainant for showing favour or disfavour in discharge of his official function as Police Patil. The gratification in fact demanded by P.S.I. Jadhav to complainant showing favour not to arrest him during the Ganpati festival. The

appellant has only acted as messenger of P.S.I. Jadhav to communicate his demand to complainant.

23. Therefore, if we consider the overall evidence adduced by the prosecution in its totality, then though the prosecution has proved that the appellant/accused accepted Rs. 2,500/- from the complainant, but the prosecution has failed to prove that there was demand of gratification on the part of the appellant/accused to the complainant to show favour or disfavour in discharge of his official function.

24. It is quite settled position in law that mere proof of acceptance of amount on the part of the accused is not sufficient to constitute an offence u/s 7 of the Prevention of Corruption Act. The prosecution has to establish that there was a demand of gratification on the part of the accused. On failure to prove the demand of gratification on the part of the accused as contemplated u/s 7 of the Prevention of Corruption Act, the charge u/s 13 (1) (e) read 13 (2) (d) of the Prevention of Corruption Act also fails.

25. In bribery case, the complainant is an interested witness and his evidence has to be considered with great caution. Ordinarily, it is not safe to accept the testimony of such interested witness unless there is material corroboration in the form of other evidence adduced by the prosecution. In order to rely upon the testimony of such interested witness i.e. the complainant in trap case, it is desirable to look for corroboration in some material particular so as to lend assurance to the Court that the testimony is worthy of credit.

26. On due consideration of the testimony of Mahendrasing [P.W.1], I am of the view that it is highly unsafe to rely upon the uncorroborated testimony of the complainant to base the conviction. It has been brought on record that the complainant and the appellant/accused belongs to two rival groups in the village. It has come on record that the complainant belongs to Rajput community whereas the appellant belongs to Mahar caste. In the election of village panchayat, the community belonging to the appellant/accused supported the rival group of the complainant. Complainant's father contested the election

from rival group. It has also come on record that in the year 1992 at the instance of a person belonging to Mahar caste, the case under the provisions of the S.C. and S.T. Act was registered against the complainant and 22 other persons. The complainant and other persons were acquitted. Later-on, on 15/08/1997 i.e. few days prior to registration of offence against the appellant at the instance of complainant, a case under the provisions of the S.C. and S.T. Act came to be registered against complainant and 12 other persons. The said case was registered on the basis of the complaint lodged by Eknath Shirsath [D.W.2] belonging to Mahar community. The defence of the accused is that after the registration of offence, there was a meeting in the villages, in which it was decided to settle the case and amount of Rs. 2,500/- was agreed to be paid by the present complainant Eknath Shirsath [D.W.2], who lodged complaint under the provisions of S.C. and S.T. [Prevention of Atrocities] Act since said complainant [D.W.2] was not on talking terms with the persons belonging to Rajput community as that of complainant [P.W.1], the amount was agreed to be paid through the appellant/accused who was then serving as a Police Patil of the village. Considering the overall evidence and particularly the evidence brought on record

through the cross examination of P.W. 1 as well as defence evidence, the possibility of implication of accused in false case at the instance of the complainant [P.W. 1] can not be ruled out. In this view, it is highly unsafe to place implicit reliance upon the uncorroborated testimony of the complainant as to alleged demand of gratification by appellant/accused. No other independent witness was examined by the prosecution to prove the demand of gratification by accused. Except oral testimony of complainant, there is no evidence to provide corroboration to the testimony of the complainant. The complainant though deposed that he had borrowed the money from his friend in the village to pay the gratification, still neither the investigating Officer recorded statement of such person nor prosecution has examined any such person to corroborate the testimony of the complainant. In cross examination, the complainant has deposed that his family owns 21 Acres of land. Out of 21 Acres of land, 9 Acres of land was irrigated land. It is also brought on record that at the time of incident, the complainant was prosecuting education in the college at Shirpur. Thus, if we consider this evidence, then it make out that the complainant hails from financially sound family. So also, the complainant was well educated person. In this backdrop, it is difficult

to believe that the complainant has borrowed the amount from his friend and went to the office of Anti Corruption Bureau, Dhule. This itself raises serious doubt as to truthfulness of fact deposed by complainant and overall case of prosecution against accused. The possibility of false story being cooked to falsely implicate the appellant in the case on account of politics in the village can not be ruled out.

27. The another glaring aspect which raises serious doubt as to overall story of prosecution case is that the complainant has nowhere stated in his complaint as well as testimony the date, time and place fixed for accepting bribe amount by the accused. In the complaint [Exh.12], nothing is stated about the same. So also, P.W.1, P.W.2 and P.W. 4 have not deposed anything about the same. It is, therefore, difficult to believe that in absence of any understanding as to date, time and place fixed for accepting the bribe, the appellant/accused found standing below neem tree located far away from the village. It is also pertinent to note that it has come through the testimony of P.W.1, P.W.2 and P.W.4 that number of persons were present around the place where

alleged trap was laid and the accused caught raid handed. The witnesses have deposed that the accused was taken in a jeep from the shop to the office of Gram panchayat as large number of persons have gathered there. But, the prosecution has examined not a single witness who has witnessed the alleged incident that the accused being caught at alleged place near Thalner fata with bribe money. It is also pertinent to note that no panchanama was prepared of the place where bribe amount was accepted by the accused. The appellant/accused claims to be taken in a jeep to the office of Gram panchayat. The alleged recovery of bribe amount shown to be made at Gram Panchayat. The post-trap panchanama reveals that the panchanama was prepared in between 10.15 to 16.10 hrs. in the office of Gram panchayat. The panchanama in respect of house search of the accused shown to be made in between 16.00 to 19.15 hrs. The manner in which alleged trap has been laid and the accused shown caught with bribe amount, raises serious doubt as to truthfulness story of the prosecution. It is difficult to believe that accused called complainant at place surrounded by number of persons to accept bribe money that too in public view.

28. The complaint in respect of the incident was lodged on the same day with police station Thalner, while P.S.I. Jadhav was posted as police officer, on whose behalf alleged demand of bribe made by applicant.

29. If we consider the case the defence of accused and the testimony of defence witnesses, then the defence of the accused can not be brushed aside. In the statement recorded u/s 313 of Code of Criminal Procedure, the appellant/accused has categorically put-forth an explanation that P.W. 1 has deposed against him as his relative, prosecuted him for committing offence under the provisions of S.C. and S.T. Act. He has stated that the complainant Mahindrasing [P.W.1] was arrested under the provisions of the S.C. and S.T. Act registered at the instance of his relatives. As a police Patil, he assisted the police machinery in causing arrest of complainant and, therefore, he has been falsely implicated him in this case. It is pertinent to note that the accused has stepped into witness box as a witness. As per section 21 of the Prevention of Corruption Act, the accused charged with the offence under the provisions of the Prevention of

Corruption Act, is a competent witness. He can give evidence on oath in support of his defence. The evidence of the accused stands on same footing as that of the other witnesses. In fact, the evidence of such accused stand on better footing than the other witnesses.

30. The appellant has examined himself vide Exh. 37 as D.W. 1. He has categorically deposed that there was caste conflict in the village between the people belonging to his community i.e. Scheduled Caste and the people belonging to upper caste i.e. Rajput community as that of complainant. The appellant/accused belongs to Mahar caste. The people belonging to Rajput community had assaulted persons belonging to the Scheduled Caste which resulted into lodging criminal complaints against the persons belonging to Rajput community which includes the complainant. He has further deposed that Eknath Shirsath [D.W.2] who is a son of his paternal aunt, filed criminal complaint in the year 1992 as well as in the year 1997 under the provisions of the Scheduled Caste and Scheduled Tribes Act against complainant and few other persons belong to his group. In the complaint filed in the year 1977, in all 13 persons were made accused, which

include the complainant. He further deposed that since the year 1989 he was Police Patil of the village Bhorkheda. When complaint was lodged in the year 1997, he asked to assist police to arrest the accused. Subsequent to lodging of complaint by his relative Eknath Shirsath [D.W.2], the meeting was held at the house of one Babruwahan Rajput and it was decided to compromise the case filed by Eknath Shirsath [D.W.2]. It was decided to pay Rs. 2,500/- to Eknath Shirsath as compensation. Since the complainant Eknath Shirsath was not on talking terms with the persons belonging to Rajput community, it was decided that amount to be given through him. He further deposed that on the bus stop of village Borkheda, the complainant gave him Rs. 2,500/- to pay the same to Eknath Shirsath. He accepted the amount to be paid to Eknath [D.W.2]. There was no talk of demand taken place between him and accused to avoid his arrest taken place during Ganpati festival. He has been falsely implicated in the case.

31. If we consider the cross examination of D.W. 1 i.e. the appellant/accused, then nothing is brought through his cross examination except the fact in his

statement recorded by the Investigating Officer. He has not specifically stated that amount was paid to him for giving it to Eknath Shirsath [D.W.2]. Thus, there is no substantial challenge to the fact deposed by the witness.

32. The testimony of the accused [D.W.1] is duly corroborated through the testimony of Eknath Shirsath [D.W.2]. He has categorically deposed that the appellant belongs to his community and he is son of his maternal aunt. He deposed that in Borkheda there are two groups, one belongs to Babruwahan Rajput and another belongs to Rajendra Rajput. They were on cross terms since the year 1997. He filed complaint on 15/08/1997 against Mahendrasing [P.W.1]. It was decided by the persons of both the groups that case filed by him be compromised. A meeting to that effect was held in the house of Babruwahan. In the meeting it was decided to compromise the case and the complainant will pay Rs. 2,500/- to him as compensation. Since the appellant/accused being a respectable person and his relative, the amount was agreed to be given through him. If we consider the cross examination of the witness, then nothing has been elicited through his cross examination to

discard and disbelieve his testimony.

33. Thus, on evaluation of overall evidence, I am of the view that there is no cogent, convincing and reliable evidence to prove the guilt against the appellant/accused beyond reasonable doubt. The evidence as discussed raises serious doubt as to the overall credibility of the testimony of the complainant and other witnesses examined by the prosecution. As discussed, there is no evidence to show that the demand was originated from the accused. On the contrary, the evidence on record establish that the demand was originated from P.S.I. Jadhav. The appellant/accused has just acted as a messenger of P.S.I. Jadhav to carry the demand made by P.S.I. Jadhav to the complainant. In absence of any cogent and convincing evidence of demand of bribe by the accused the prosecution has failed to prove charge u/s 7 as well as sec. 13 (1) (d) r/w sec. 13 (2) of Prevention of Corruption Act.

34. It is quite settled position in law that the burden to be discharged by accused not stands on same standard as required to be discharged by prosecution to

prove its case beyond reasonable doubt. It is quite settled position of law that accused in a trap case is not required to establish his defence beyond reasonable doubt. If the defence of accused is found to be probable, same deserves to be given due weightage. The accused has to establish his defence by preponderance of probability. If two views are possible, the view favourable to accused deserves to be adopted.

35. The evidence as adduced by the appellant/accused personally stepped into witness box and deposed in support of his defence, is more than sufficient to rebut the presumption exist u/s 20 of Prevention of Corruption Act, 1988.

36. Thus, considering the overall evidence, I am of the view that the prosecution has failed to prove the guilt against the accused beyond reasonable doubt. While evaluating the evidence, the trial Court has not properly scrutinized the evidence. The evidence adduced in defence was not properly considered. The fact that the demand was not originated from the accused, was at all not taken in to consideration by trial Court. If really the

accused intended to seek bribe amount from himself in the name of P.S.I. Jadhav, then it was not necessity for him to have taken the complainant to the police station and to produce him before P.S.I. Jadhav. The trial Court has failed to take into account the duties of the appellant/accused as a Police Patil. To initiate proceeding as a preventive measure and to arrest person, do not falls within the statutory duties assigned to the appellant/accused. There is no iota of evidence to show that the alleged demand was made by accused that too for showing favour or disfavour to complainant by accused to invite offence u/s 7 of the Prevention of Corruption Act. The trial Court has also lost sight of fact that there was strong rivalry and caste conflict in the village. The appellant/accused and the complainant were belonging to rival group. The trial Court has also failed to take into account that on 15/08/1997 i.e. about 20 days prior to the incident, the complaint was lodged by Eknath Shirsath [D.W.2], the close relative of the appellant/accused under the provisions of the S.C. and S.T. Act against the complainant and 13 other persons. Although it has come on record through testimony of P.W. 4 that the statement of P.S.I. Jadhav was recorded during the course of investigation, but he was not examined as a prosecution

witness. Thus, considering the overall evidence I am of the view that the reasons and findings recorded by the trial Court are based upon improper appreciation of evidence and not sustainable in law. It can safely stated that the prosecution has failed to prove its case beyond reasonable doubt.

37. In view of above, I have no hesitation to hold that there is no cogent, convincing and reliable evidence to sustain the conviction of the appellant/accused for the offence punishable u/ss 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act. In the facts and circumstances of the case, the appellant/accused deserves to be given benefit of doubt. I am, therefore, inclined to allow the Appeal and pass the following order.

ORDER

1] The Appeal is allowed in terms of prayer clause 'C'.

2] The Judgment and Order dated 18/12/2002

passed in Special Case No. 42/1998 by Additional Sessions Judge and Special Judge, Dhule convicting the appellant/accused u/s 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988 is hereby set aside.

3] The appellant/accused stands acquitted for the offence u/s 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988. Fine amount if deposited, same shall be refunded to the appellant/accused. He be released forthwith if not required in any other case.

[V.L.ACHLIYA, J.]

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