IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.289 OF 2015
WITH
CRIMINAL APPLICATION NO.5088 OF 2017

Sudarshan s/o Kashinath Waghmare,
Age:50 years, Occu.:Government Service,
with Police Department i.e. At present
Police Sub Inspector at Karmad Police
Station, Karmad, Taluka and District
Aurangabad, R/o. Karmad, Taluka
and District Aurangabad = **APPELLANT**
(Original Accused)

VERSUS

The State of Maharashtra
through the Police Station Officer,
Gangapur, Taluka Gangapur,
District Aurangabad = **RESPONDENT**
(Original Complainant)

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Shri. Rajendra Deshmukh, Advocate for Appellant;
Shri.S.P.Tiwari, A.P.P. for Respondent-State.

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT: 9th March,2018
DATE OF PRONOUNCING JUDGMENT : 23rd March,2018

JUDGMENT:

1) This appeal arises out of judgment and order dated 12th March, 2015 passed by Special Judge (PC Act) Vaijapur in Special Case (PC) No. 6/2012 (old Special Case (PC) No.20/2007).

2) Appellant was prosecuted for the offences punishable under sections 7, 13(1)(d) read with 13(2) of The Prevention of Corruption Act, 1988 (for short, PC Act) in the aforesaid Special case.

3) In brief, it was case of the prosecution that at the relevant time, appellant who was posted as Police Sub Inspector (for short PSI) at Gangapur Police Station district Aurangabad, has demanded bribe of Rs.25,000/- from complainant – Dadasaheb Bapudeo Pachpute and on negotiation, has agreed to accept Rs.10,000/- on 22nd January, 2007 and the remaining amount of Rs.15,000/- few days thereafter for not securing police custody of the complainant and for not forwarding the recommendation to the Supply Officer for cancellation of license of the fair price shop of the complainant and for closure of the case, which was registered against the complainant. The offence under Section 3 read with 7 of The Essential Commodities Act was registered against

the complainant and one another person. According to the case of the prosecution, investigation of the said offence was entrusted to the present appellant.

4) On the basis of the written complaint dated 22nd January, filed by the complainant – in the office of Anti-corruption Bureau at Aurangabad, further process was carried out by the Anti-corruption Bureau. A trap was led and it is alleged that the accused was caught red-handed while accepting the amount of Rs. 15,000/- from the complainant. The pre-trap and post-trap panchanamas were prepared; necessary articles were seized and after completing the investigation, charge sheet was filed against the accused for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act.

5) In order to prove the guilt of the accused, total four witnesses were examined by the prosecution. The prosecution evidence

commenced with testimony of Bhagwantrao More, the then Inspector General of Police, Kolhapur, who had accorded the sanction to prosecute the accused for the offences punishable under the PC Act. In the year 2007 when the sanction was accorded by PW 7 – Bhagwantrao More, he was working as Special Inspector General of Police, Aurangabad Range. The complainant was examined as the second witness of the prosecution. The shadow panch, viz. Dattatraya Sudamrao Kenekar was the third witness examined by the prosecution. The prosecution evidence was concluded by the evidence of the Investigating Officer viz. Anilsingh Rajput, who was serving as Dy.S.P., Anti-Corruption Bureau, Aurangabad at the relevant time. The defence of the accused was of total denial and false implication. The accused has also raised a preliminary objection as about the sanction accorded by PW 1 to prosecute him for the offences punishable under the PC Act. The learned Trial Judge, after having assessed the oral and documentary evidence brought before him, held the accused guilty for the offence charged against him and awarded the sentence, as noted herein above. Aggrieved by, the appellant has preferred the present appeal.

6) Shri Deshmukh, learned Counsel appearing for the appellant-accused, assailed the impugned judgment and order on various grounds. The learned counsel submitted that the order of conviction is liable to be set aside solely on the ground that the case was instituted against the accused without obtaining proper sanction. The learned Counsel further submitted that the aforesaid being the manifest defect in the prosecution, the entire proceedings are rendered *ab initio void*. At this juncture, it has to be stated that initially only the aforesaid aspect was argued by the learned counsel appearing for the appellant-accused and the other grounds raised in the memorandum of appeal were impliedly not pressed by him. However, subsequently, the learned counsel sought permission of this court to address the other issues also and to hear the

argument on the said point. Accordingly, the further arguments were advanced by the learned Counsel and the learned APP advanced the argument on behalf of the State in reply to the said argument. However, I would first like to deal with the objection as was raised about the validity of sanction and then to deal with the other objections raised in exception to the impugned judgment and order.

7) The sanction was accorded for prosecution of the accused for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act by Special Inspector General of Police, Aurangabad Range viz. Bhagwantrao Dattatraya More, vide his order dated 25th October, 2007. Said Shri Bhagwantrao More was examined as first witness in the trial of the Special Case. In his testimony before the Court, Shri Bhagwantrao More deposed that in the year 2007, he was posted at Aurangabad as Special Inspector General of Police, Aurangabad Range.

Shri More further testified that he had received the papers in case of Crime No.3005/2007 under Sections 7, 13(1)(d) read with 13(2) of the PC Act against accused Sudarshan. Shri More had further testified that he had gone through all the documents received to him including FIR, statements, pre-trap panchanama; post-trap panchanma and other related documents and after going through all those documents, he reached to the conclusion that it was a fit case for according sanction for prosecution of the accused. During the course of his evidence, order of sanction was duly proved and was marked as Exhibit-9.

8) In his cross-examination, PW 1– Bhagwantrao More had admitted that the post of Special Inspector General of Police is subordinate to the post of Director General of Police and Additional Director General of Police. PW 1 has further admitted that the accused was directly appointed as PSI through MPSC. PW 1 has

also admitted that appointing authority of an employee only can terminate the services of the said employee. PW 1 further admitted that he had not seen appointment order of the accused. PW 1 denied the suggestion that he was not competent authority to accord sanction against the accused for his prosecution for the offences under the PC Act. PW 1 also denied the suggestion that Draft sanction order was received to him and accordingly he has simply put his signature on the draft sanction order.

9) From the material on record, it is revealed that since beginning an objection was raised by the accused that sanction, as was accorded in his case for prosecuting him for the offences under the PC Act, was not accorded by the competent authority and hence was invalid sanction. The accused, during the course of the trial, had placed on record order dated 22nd March, 1996 pertaining to his posting on the post of PSI in Nagpur Range. It was a common order

giving postings to about 617 male and female PSIs. The order was under the signature of Additional Director General of Police and was forwarded to the Police Academy at Nasik under the signature of one Shri Ahmed Javed, who had signed for Director General of Police.

10) As provided under Section 19 of the PC Act, no court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.

11) As provided under Article 311(1) of

Constitution of India, in case of a civil servant, removing authority should not be lower in rank than the appointing authority. In the instant case, it has therefore to be examined whether Special Inspector General of Police, Aurangabad Range was the competent authority to remove the accused from services.

12) It is the case of the accused that he was appointed by the Director General of Police. During the course of the trial before the Special Judge, accused had also placed on record order dated 22nd March, 1996. As mentioned herein above, the said order pertains to posting of 617 male and female Police Sub Inspectors. Name of the accused is at Serial No.334 in the said order. The said order is admittedly under the signature of Shri Gyanchand Varma, who was at the relevant time, Additional Director General of Police. The order dated 22nd March, 1996 further reveals that the said order was forwarded to the Director of Police Academy, Nasik under the

signature of Shri Ahmed Javed, who has signed the said forwarding letter for and on behalf of Director General of Police.

13) PW 1 – Bhagwantrao More in his cross-examination has admitted that the post of Special Inspector General of Police is subordinate to Director General of Police and Additional Director General of Police. It is thus evident that PW 1 being subordinate to Additional Director General of Police, who had appointed the appellant – accused on the post of PSI, was not competent to remove the accused or terminate his services.

14) In the appellate proceeding, the accused has also placed on record his initial order of appointment dated 12th May, 1995. The said order is signed by Deputy Inspector General of Police (Establishment), for and on behalf of Director General of Police. The name of the present appellant is at Serial No.571 in the said order.

15) It was the contention of Shri Deshmukh, learned Counsel appearing for appellant-accused that though the initial appointment order was under the signature of Deputy Inspector General of Police (Establishment), he had signed for and on behalf of Director General of Police and thus the appointing authority was Director General of Police and not the Deputy Inspector General of Police (Establishment).

16) To buttress the aforesaid contention, the learned Counsel relied upon the order passed by the Maharashtra Administrative Tribunal (for short the Tribunal) in Original Application No.275/2006 filed by one Milan Balkrishna Koyal against Commissioner of Police, Brihan-Mumbai. Said Milan Koyal was also appointed as PSI vide the same order dated 12th May, 1995 by which the present appellant - accused was appointed. Said Milan Koyal was dismissed from the services vide order passed on 12th April, 2006 and he had challenged the said order by filing the aforesaid

original application before the Tribunal. The impugned order was challenged by said Milan Koyal on the preliminary ground that the authority, which has issued the said order was not competent to dismiss him from the services, since it was subordinate to his appointing authority. Said Milan Koyal was admittedly removed from the services under the signature of Commissioner of Police, Greater Bombay. It was not disputed that Commissioner of Police, Greater Bombay was subordinate to Director General of police. In the circumstances, the learned Members of the Tribunal held that the order issued by Commissioner of Police, dismissing the services of said Milan Koyal, was violative of Article 311(1) of the Constitution of India and was thus *void ab initio*.

17) It is significant to note that in the said order, the learned Members of the Tribunal have observed that the order dated 12th May, 1995, though was signed by Deputy Inspector General of

Police (Establishment), since it was signed for the Director General of Police, the said order shall be deemed to have been issued by the Director General of Police.

18) Shri Deshmukh, learned Counsel for the appellant further submitted that the accused was served with notice dated 30th October, 2015 under the signature of Commissioner of Police, Thane city, calling upon the accused to show cause as to why punishment of dismissal from services shall not be imposed upon him. To the aforesaid show cause notice, reply was given by the accused on 21st December, 2015, contending therein that he was appointed by the order issued under the signature of Director General of Police. The learned Counsel further submitted that after receiving the reply as aforesaid given by the accused, Commissioner of Police, Thane city cancelled the said show cause notice dated 30th October, 2015. The learned Counsel further submitted that thereafter a fresh show cause

notice came to be issued to the accused vide communication dated 30th April, 2016 under the signature of Director General of Police, Maharashtra State, Mumbai. The learned counsel pointed out that the Department itself has accepted that appointing authority of the accused was Director General of Police, and as such, no officer, subordinate to Director General of Police or Additional Director General of Police, could have terminated the services of the accused.

19) The learned Counsel further submitted that the accused has thus placed on record sufficient documentary evidence to substantiate his contention that the Special Inspector General of Police, Aurangabad Range, who was admittedly subordinate to the Director General of Police and Additional Director General of Police, could not have accorded sanction to prosecute the accused for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act. The

learned Counsel further submitted that in the circumstances, the sanction accorded by the Special Inspector General of Police, Aurangabad Range, to prosecute the accused for the offences punishable under the PC Act, was invalid and when there was no valid sanction to prosecute the accused, the Special Judge had no jurisdiction to try the accused. According to the learned Counsel, the entire trial, therefore, stands vitiated and the conviction and sentence passed against the appellant accused is liable to be set aside.

20) Learned Counsel further pointed out that the learned Special Judge, who has rejected the objection raised by the accused that the sanction accorded by Special Inspector General of Police, Aurangabad Range for his prosecution for the offences punishable under the PC Act, was invalid, has taken an absolutely contrary view while deciding the Special Case (PC) No.10/2012) decided by him on 6th July, 2015. Learned Counsel

invited my attention to paragraphs 35 and 36 of the said judgment, which read thus, -

> “35) It is specific submission of accused that he is appointed by Director General of Police. In support of such submissions along with list Exhibit 57 accused has tendered copy of order obtained by him under Right To Information Act. That copy of order dated 17.12.2005 includes name of accused at Sr.No.48. The order is in name of Shri P.S. Pasaricha, Director General of Police. However, on behalf of D.I.G. it is shown signed by Deputy I.G. (Establishment). It is specified that he signed it for D.I.G. of Police. This fact clarified that order is issued by Office of Director General of Police.
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> 36) Similar point was under consideration before Honourable High Court Bombay in Writ No.4050/2009 Spl. I.G.P. Kolhapur Vs. Ambadas Yadav – decided on 06.10.2009. Copy of this order is relied upon by accused. In this matter Honourable High Court has held that Director

> General of Police. So in our case also accused being Sub Inspector of Police a State cadre, his appointing authority has to be Director General of Police. PW3 was Special I.G. at Aurangabad. His rank was inferior than rank of Director General of Police. As accused is appointed by Director General of Police, being inferior in rank PW3 was not competent to dismiss accused from service. So I hold that sanction accorded by PW3 is not legal sanction. It is without authority."

21) Learned Counsel submitted that the Special Judge, who took the view, as aforesaid, while deciding the Special Case No.10/2012, has rejected the similar contentions raised by the accused while deciding the Special Case No. 6/2012 against him. Learned Counsel pointed out that an application seeking leave to appeal bearing Criminal Application No.4915/2015 was filed by the Stae against the judgment and order passed by the said Special Court in Special Case No.10/2012 and this Court *(Coram: M.T.Joshi,J.)*

vide order passed on 16th February, 2016, has rejected the said application, wherein this Court has concurred with the observations made by the Special Judge that the sanction granted by the sanctioning authority was invalid.

22) The learned Counsel further pointed out that the same Special Judge while deciding the Special Case No.4/2014, vide the judgment passed by him on 24th May, 2017, has again held the sanction invalid being granted by the officer subordinate to the appointing authority of the accused in the said case. The learned Counsel submitted that, the accused in both the aforesaid special cases, were also holding the posts of Police Sub Inspector alike the present accused.

23) In the aforesaid circumstances, it was the contention of the learned Counsel for the appellant – accused that the sanction accorded in the present matter by Special Inspector General of Police, Aurangabad Range to prosecute the

accused for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act, was invalid and consequently, the trial conducted against the accused was *void ab initio* and the accused was liable to be acquitted.

24) The submissions so made on behalf of the appellant accused are strongly opposed by the learned APP. While supporting the impugned judgment and order, the learned APP submitted that in view of the specific provision under Section 19(3) of the PC Act, no interference can be caused in the order passed by the Special Judge in absence of any material brought on record by the accused to show that the failure of justice has, in fact, occasioned because of the error in the order of sanction. The learned APP, therefore, prayed for dismissal of the appeal.

25) The learned APP placed on record the Government Resolution dated 12th February, 2013 pertaining to the sanction to be accorded for

prosecution of government employees for the offences under the PC Act. The learned APP submitted that as per the said Government Resolution, the Deputy Inspector General of Police is the competent authority to accord sanction for prosecuting the employees working on the post of Police Sub Inspector. The learned APP submitted that in view of the aforesaid Government Resolution also, the objection raised by the appellant accused is liable to be turned down.

26) After having heard the arguments advanced by learned Counsel appearing for the appellant accused and learned APP and on perusal of the material on record, there has remained no doubt that the Director General of Police, Maharashtra State is the appointing authority of the appellant. It is thus evident that no officer subordinate to the Director General of Police or Additional Director General of Police can terminate or remove the appellant from his

office. The Director General of Police is, therefore, the competent authority to accord sanction to prosecute the appellant for the offences under Sections 7, 13(1)(d) read with 13(2) of the PC Act. In the instant matter, such sanction has been granted by Special Inspector General of Police, Aurangabad Range. As has been admitted by PW - 1 Bhagwantrao More, who was at the relevant time, working as Special Inspector General of Police, Aurangabad Range and who has accorded sanction to prosecute the appellant, is subordinate to Director General of Police and Additional Director General of Police. PW 1 – Bhagwantrao More was thus not competent to grant sanction to prosecute the appellant for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act. The sanction accorded by the said authority, therefore, has to be held to have been accorded by the authority not competent to grant such sanction and consequently, thus would amount to an invalid sanction. The fact, as aforesaid, leads to further conclusion that the Special Judge ought not have taken cognizance of the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act, alleged to have been committed by the present appellant when the sanction was accorded by the authority, which was not competent to accord such sanction.

27) The appellant had specifically raised an objection during the course of the trial before the Special Court that the sanction accorded by Special Inspector General of Police, Aurangabad Range, was not a valid sanction since the said authority was not competent to remove the appellant from his office. The material on record further shows that the appellant has also placed on record the copy of the common order dated 22nd March, 1996 whereby the candidates appointed on the post of Police Sub Inspector through MPSC, who have completed training at Police Academy, Nasik, were given the postings. The said order is issued under the signature of

Shri Gyanchand Varma – Additional Director General of Police (Law & Order). The said order further reveals that it was forwarded to the Director of Maharashtra Police Academy, Nasik under the signature of Shri Ahmed Javed, who has signed for and on behalf of Director General of Police. In fact, the document so placed on record was sufficient to demonstrate that the Director General of Police was the appointing authority of the appellant. The learned Special Judge has however erroneously arrived at the conclusion that the said document was not sufficient to prove that the appellant accused was appointed by the Director General of Police.

28) It appears that the learned Special Judge, relying on the testimony of PW 1 – Bhagwantrao More, wherein he has deposed that he is competent to appoint and to remove Police Sub Inspector from the post, held that he was the competent authority to remove the appellant accused from his post. The learned Special Judge

however failed in appreciating that PW 1 – Bhagwantrao More has admitted that the post of Special Inspector General of Police is subordinate to the post of Additional Director General of Police and Director General of Police. When the document was there on record, evidencing that the appointment of the appellant accused was made by Additional Director General of Police, meaning thereby that the authority superior to PW 1 – Bhagwantrao More, the learned Special Judge must have appreciated that in view of the specific provision under Article 311(1) of Constitution of India, PW 1 – Bhagwantrao More was not the competent authority as envisaged under Section 19(1)(c) of the PC Act to remove the appellant from his office and thus also could not have accorded sanction to prosecute the appellant.

29) The learned Special Judge also ignored the admission given by PW 1- Bhagwantrao More that the appellant accused was directly appointed

as PSI through MPSC. PW 1 has also admitted that he has not seen the appointment letter of the appellant accused. It is thus evident that PW 1 was not aware or having knowledge as to who was the appointing authority for the appellant accused. The finding recorded by the learned Special Judge to the effect that PW 1 was competent authority to accord sanction to prosecute the appellant accused for the offences under the PC Act, thus cannot be sustained.

30) In the present appeal, the appellant has placed on record some more documents, which fortify the contention of the appellant accused that he was appointed by the Director General of Police. The appellant has placed on record his initial appointment order dated 12th May, 1995. The said order though is signed by the Special Inspector General of Police (Establishment), he has signed the said order for and on behalf of Director General of Police. As was submitted by the learned Counsel for the appellant, the

Maharashtra Administrative Tribunal in its order passed in Original Application No.275/2006 has held that the order dated 12th May, 1995 though may be signed by Special Inspector General of Police, since he had signed it for and on behalf of Director General of Police, the appointments under the said orders, shall be deemed to have been made by Director General of Police. As noted herein above, the applicant, who had filed the aforesaid Original Application before the Tribunal and the present appellant accused, both were appointed vide the same order dated 12th May, 1995.

31) As was argued by the learned Counsel for the appellant, in Special Case No.10/2012 similar issue was raised. In the said matter also, the accused was working on the post of PSI and his appointment order was signed by Deputy Inspector General of Police (Establishment) for and on behalf of the Director General of Police. The Special Judge in the aforesaid circumstances held

that though the order was shown to have been signed by Deputy Inspector General of Police (Establishment), since it was signed on behalf of the Director General of Police, the said order shall be held to have been issued by the Director General of Police. In the said case, the Special Court has further held that the accused in the said case being working on the post of PSI and was appointed by Director General of Police, the Special Inspector General of Police, Aurangabad Range was not competent to dismiss or remove said accused from services. It is thus evident that the learned Special Judge, who rejected the similar contentions while deciding the case against the present appellant, in the subsequent judgment passed by him in Special Case No. 10/2012 has, accepted the said contention in toto.

32) It has to be stated that the Government Resolution dated 12th February, 2013 placed on record by the learned APP may not be of any help

for the prosecution since the sanction in the instant matter was admittedly accorded by PW 1 – Bhagwantrao More prior to that. In view of the discussion made herein above, unhesitatingly, it can be said that PW 1 – Bhagwantrao More was not competent authority to grant sanction to prosecute the appellant-accused for the offences punishable under the PC Act.

33) As noted earlier, initially, learned Counsel for the appellant, has restricted his arguments only to the extent of validity of sanction accorded by the Special Inspector General of Police to prosecute the appellant accused for the offences under the PC Act, but subsequently advanced the argument on the other objections also as are raised in the memo of appeal. The learned APP also advanced his argument in reply to the other objections raised in exception to the impugned judgment.

34) The learned Counsel for the appellant

submitted that not only that sanction accorded in the present matter to prosecute the appellant was invalid, but the same was granted by the concerned authority without application of mind and on that count also, the sanction was liable to be held invalid. The learned Counsel submitted that draft of sanction order was forwarded to the Special IGP Aurangabad Range and the said authority had mechanically accorded the sanction to prosecute the appellant. The learned counsel further submitted that the prosecution has neither proved the motive nor the demand allegedly made by the appellant. The learned counsel submitted that the learned Special Judge has overlooked the facts which have come on record clearly suggesting that the purpose which was assigned by the complainant, for which the appellant was alleged to have demanded the bribe from the complainant, was already served. The learned Counsel further submitted that the prosecution has utterly failed in proving that any such bribe was demanded by the appellant/accused.

35) The learned Counsel further submitted that in the cases of trap the complainant being accomplice, his evidence always needs to be corroborated by some independent witnesses. The learned Counsel submitted that witness Dattatraya Kenekar (PW 3), who was the shadow panch, in his cross-examination has explicitly admitted that in his presence the accused has not demanded any money from the complainant. The learned Counsel submitted that this vital admission given by the shadow panch has been ignored by the learned Special Judge. The learned Counsel further submitted that mere recovery of the tainted amount from the person of the accused is not sufficient to hold him guilty for the offences under Sections 7 and 13(1)(d) of the PC Act. The learned Counsel submitted that unless the demand is proved, acceptance and recovery of the bribe amount has no relevance. The learned Counsel further submitted that the evidence adduced by

the prosecution as about the demand and acceptance of the bribe amount is shrouded with serious doubts and inconsistent versions have come on record. The learned Counsel submitted that the conviction of the accused could not have been based on such doubtful evidence. The learned Counsel submitted that the learned Special Judge was pre-determined in holding the appellant-accused guilty for the offences charged against him According to learned Counsel, the conviction of the appellant-accused is wholly unsustainable and he, therefore, prayed for setting aside the impugned judgment and order and consequently to acquit the accused of all the offences charged against him.

36) The learned APP resisted the submissions made on behalf of the appellant-accused. The learned APP submitted that the prosecution has sufficiently proved the demand of the bribe amount by the accused and the acceptance of the said amount in the trap led against the

appellant-accused. The learned APP further submitted that some immaterial inconsistencies may not negate the entire case of the prosecution. The learned APP further submitted that the appellant-accused was trapped while accepting the amount of Rs.15,000/- and the said amount was recovered from the person of the appellant-accused. The learned APP further submitted that presumption under Section 20 of the PC Act was liable to be raised against the accused, the moment tainted currency notes were recovered from the pant pocket of the accused. The learned APP submitted that the accused has failed in rebutting the said presumption raised against him. The learned APP pointed out that contradictory defences were raised by the accused which show the guilty mind of the accused. The learned APP submitted that the guilt of the accused has been proved beyond reasonable doubt and no interference is warranted in the impugned judgment and order. He, therefore, prayed for dismissal of the appeal.

37) It is already held by me that PW 1 – Bhagwantrao More was not the competent authority to accord sanction to prosecute the accused for the offences under the PC Act. Having considered the further arguments, it is noticed that there was also no proper application of mind by PW 1 in according the sanction to prosecute the appellant. I have carefully perused the testimony of PW 1 – Bhagwantrao More and the order of sanction issued by him on 25th October, 2007. As per the case of the prosecution, bribe amount was demanded by the appellant-accused mainly for not obtaining his police custody remand. The material on record shows that the complainant was already produced before the concerned court and was also released on bail. In his cross-examination PW 1 - Bhagwantrao More has deposed that the accused may have been produced before the court and may have been released on bail in this case. It is thus discernible that the sanctioning authority was either not provided with the entire material relating to the said

case or if it was provided, the sanctioning authority had not gone through the said record. The evidence on record further shows that sufficient material was already there on record showing that the complainant was released on bail even prior to his making the complaint to the Anti-corruption Bureau. The documents collected during the course of the investigation were also sufficiently indicating that the appellant-accused was not having any authority of cancelling the kerosene licenses or take any decision in that regard. Had the sanctioning authority perused the said evidence, perhaps it would not have accorded the sanction to prosecute the appellant-accused. Though the sanctioning authority has denied that the draft sanction order was forwarded to it and the same was mechanically signed by him, there is every reason to believe that without examining the entire material on record, the sanctioning authority seems to have signed the draft sanction order. Considering the material on record, it appears that the sanction was accorded without any application of mind. On the said count also the sanction accorded in the present matter has to be held invalid.

38) Further, It was the case of the prosecution that bribe was demanded by the accused -

(i) For not securing the police custody remand of the complainant;

(ii) For not forwarding the recommendation letter to the supply officer for cancellation of license of the fair price shop of the complainant;

(iii) For closure of the case which was filed against the complainant.

39) In so far as the first cause is concerned, the complaint himself in his complaint at Exh. 4, has stated that he was arrested on 21st January, 2007 and on the very same day, he was released on bail by the Court. If the evidence of the complainant in this regard is perused,

inconsistent statements are made by him. Firstly, he made a statement that two days before going to the Anti-corruption office, bribe was demanded from him. As per the complaint filed by him, the bribe was allegedly demanded from him on 21st January, 2017. If the statement given in the cross-examination is considered, bribe amount was stated to be demanded on 20th January, 2007. No reliance was liable to be placed by the learned Trial Court on such inconsistent evidence on the material aspect of the matter.

40) From the material on record, the fact which cannot be denied is that the complainant was released on bail on 21st January itself, i.e. on the day he was produced in the court by police constable Buckle No.648 of Gangapur police station. The allegation of the complainant is thus falsified that for not securing his police custody remand, the bribe was demanded by the accused. No evidence is brought on record by the prosecution to show that police custody remand of

the complainant was sought for but the same was not pressed on promise of the complainant to pay bribe to the accused. It appears that in ordinary course, the complainant was presented before the Court after his arrest and was released on bail by the court since MCR report was filed.

41) According to the case of prosecution another reason for demanding bribe was that the accused shall not forward or make recommendation to the Supply Officer for cancellation of license of the fair price shop of the complainant. The accused has produced before the Trial Court the copy of the recommendation letter dated 22nd January, 2007 forwarded by him to the Supply Officer. The said letter was received to the office of Supply Officer, Gangapur on the same day, i.e. on 22nd January, 2007. By the said letter, the accused had informed to Supply Officer, Gangapur that the offence was registered against the complainant and 400 liters kerosene

was seized and the further request was made for making arrangement in regard to the said kerosene which was *Muddemal* of that case.

42) From the documents, as aforesaid, produced on record by the accused, it is evident that before laying of the trap, the letter was forwarded by the accused to the authority and the said letter was duly received to the said authority. From the material on record, it is also clearly revealed that the complainant was fully aware of the fact that the license can be cancelled only after following due procedure by the Collector. The material on record further shows that show-cause notice in that regard was issued to the complainant by the Collector on the basis of the report forwarded by the accused. The evidence on record, therefore, clearly demonstrates that the complainant was aware of the fact that the accused had no role to play in respect of cancellation of his license and it was only the Collector, who could have cancelled the

license of the fair price shop.

43) The third aspect that the amount of bribe was demanded for closure of the case which was filed against the complainant. In the complaint, the complainant has alleged that amount of Rs.25,000/- was demanded by the accused. However, in his oral evidence before the court, the complainant has come out with the story that bribe of Rs.50,000/- was demanded by the accused from him for closing the case and for not securing his police custody remand. It is to be noted that when the complainant was produced before the Court, the accused was not present in the matter. Had there been any intention of the accused to demand and accept the bribe from the complainant, he would have requested for police custody remand of the complainant. The report shows that the complainant was sent to the court with MCR report. This falsifies the story of the complainant that the bribe amount was demanded for not securing police custody remand of the

complainant.

44) Now, as regards to the alleged demand and alleged acceptance of the bribe amount by the accused at the time of the trap. It need not be stated that the complainant in the cases of anti-corruption matters is accomplice and unless his evidence is duly corroborated by any independent witness, the same has not to be relied upon to base conviction of accused.

45) In the instant matter, Dattatraya Kenekar (PW 3) was the shadow panch, who was accompanying the complainant at the time of the alleged trap. The evidence of PW 3 – Dattatraya shows that only after putting a leading question by the prosecutor that he has made a statement that accused has demanded the bribe amount from the complainant. However, in the cross-examination, he candidly admitted that in his presence the accused did not make any demand of money from the complainant. Thus, there was no

corroboration to the evidence of the complainant as about the alleged demand. It need to be stated that unless the demand of the bribe is proved by the prosecution, acceptance and recovery of the amount has no relevance. Demand of the bribe is *sine qua non* for constituting offence punishable under the provisions of the PC Act. Law is further well-settled that presumption under Section 20 cannot be drawn if the demand of bribe is not proved by the prosecution.

46) In so far as acceptance of bribe by the accused is concerned, the evidence of complainant and the panch witness is inconsistent with each other. It is also inconsistent to the story of the prosecution. As per the case of the prosecution, the amount of bribe was kept by the accused in the right side pocket of his pant. Two wads of the currency notes, first containing Rs.10,000/- and the other Rs.5,000/-, were kept separately in the same pocket. If the evidence

of the complainant is seen, it is silent on this point. The complainant has not made any statement as to where the amount was kept by the accused. He simply had made statement that the accused had accepted the amount by his right hand. If the evidence of the panch witnesses is perused, it is silent on the point as to by which hand the accused had accepted the amount and where he had kept the same. Thus, there is no dependable evidence to prove the fact of acceptance of the bribe amount by the accused.

47) It is further significant to note that as stated by the panch witness in his cross-examination, the accused was in police uniform when he saw the accused in the police station and till he was arrested by the officials of the anti-corruption bureau. However, as per the case of the prosecution, the accused was wearing a cream-colour pant and was not in the police uniform.

48) After having carefully considered the entire evidence on record, I find it difficult to agree with the observations and the conclusions recorded by the learned Trial Judge. Glaring inconsistencies are noticed in the testimonies of the prosecution witnesses. It would be, therefore, very unsafe to base the conviction of the appellant on such evidence.

49) There are certain other factors which also create serious doubts about the prosecution case. In the complaint which was lodged by PW 2 – Dadasaheb Pachpute, it was his specific contention that the accused has called upon him to bring Rs.10,000/- on 22nd of January, 2007 and had given some latitude for paying the remaining amount of Rs. 15,000/- 203 days thereafter. That was the reason that PW 2 had carried with him an amount of Rs.10,000/-. It is a matter of record that after the said amount of Rs.10,000/- was handed over by PW 2 – Dadasaheb Pachpute to the Anti-corruption officer, anthracene powder was

smeared on the said currency notes and the necessary panchanama in that regard was prepared. It was also thus evident that the said amount was to be paid by way of bribe to the accused as per the demand raised by him.

50) In the above circumstances, the fact, as has come on record in the evidence of complainant - Dadasaheb (PW 2) that the accused has refused to accept the said amount of Rs.10,000/- and demanded Rs.15,000/-, appears to be doubtful. As noted above, when the concession was given by the accused himself for making payment of Rs.15,000/- in two installments, the accused was not likely to insist upon the said payment on 22nd January, 2007.

51) The further facts, which have come on record, have created more serious doubts about the genuineness in the allegation made by the complainant against the accused. As has come on record, father of the complainant (PW 2) was

accompanying him when he had been to the police station to pay the amount of bribe to the accused. In fact, as was decided in the office of Anti-corruption Bureau, complainant – Dadarao was to be accompanied only by PW 3 – Dattatraya Kenekar, the shadow panch witness and no one else. In the complaint lodged by the complainant or the facts, which the complainant has narrated to the anti-corruption officer, he had nowhere disclosed that his father was accompanying him and would also be accompanying him at the police station at the time of meeting the complainant. It is also surprising that father of Dadarao was at that time carrying the amount of Rs. 5,000/- with him as if he was aware that the accused would demand an amount of Rs. 15,000/- and would not accept the amount of Rs. 10,000/-.

52) Further, as was deposed by complainant – Dadarao (PW 2), the accused had directed him to pay the said amount of Rs.15,000/- to proprietor of Satane Medicals. In view of the fact, as

above, stated by complainant Dadarao, it appears quite doubtful that complainant – Dadarao, instead of making payment of the aid amount of Rs.15,000/- to the proprietor of Satane Medicals, few minutes thereafter, paid the said amount to the accused and the accused allegedly accepted the same.

53) It has come in the testimony of complainant – Dadarao (PW 2) that the amount of Rs.15,000/- was paid by him to the accused in two wads, one consisting of Rs.10,000/- and other of Rs.5,000/-. Dadarao has further deposed that both the wads were kept by the accused in separate pockets of his pant. He has further deposed that wad of Rs.10,000/- was kept by him in the right side pocket of his pant. It thus goes without saying that another wad of Rs.5,000/- was kept by the accused in the left side pocket of his pant. However, the record shows that in his statement recorded by the police immediately after the occurrence,

complainant – Dadarao had stated to the police that the accused had kept the entire amount of Rs.15,000/- in the left side pocket of his pant. Complainant – Dadarao was confronted with the said statement, whereupon it was stated by him that he cannot state whether his police statement to the effect that the accused had kept money of Rs.15,000/- in left side pocket of his pant, was correct or not. The discrepancy, as above, in the case of anti-corruption, cannot be said to be minor discrepancy and any variance in stating such facts certainly creates doubt about the veracity of the version of the complainant and ultimately of the prosecution case.

54) The discrepancy as about the clothes on the person of the accused at the time of trap is also a factor creating serious doubt about the version of the prosecution witnesses. As deposed by PW 3 – Dattatraya Kenekar the shadow panch, the accused was in uniform when the raiding party caught hold of him. The prosecution evidence

further says that after catching hold of the accused, the bribe amount of Rs.15,000/- was recovered from the pant pocket of the accused. It is also brought on record by the prosecution that the pant which the accused was wearing at the time of the trap was seized by the raiding party by giving another pant to the accused to wear it. Panchanama in that regard however, shows that the pant which was seized by the raiding party, was not of uniform, but it was a cream-colour pant. From the facts, as have come on record as above, create serious doubt about presence of PW 3 at the time of the alleged trap led on the accused and if the testimony of PW 3 is to be believed, the facts, which are recorded in the post-trap panchanama and the testimony of the Investigating Officer, stand falsified. In both the contingencies, the evidence of the prosecution remains doubtful.

55) It has to be further stated that the shadow panch viz. Dattatraya Kenekar (PW 3) in

his cross-examination first admitted that in his presence, there was no talk between the accused and the complainant about the reason for which the amount was demanded and thereafter gave fatal admission that in his presence the accused has not demanded the money from the complainant.

56) After having carefully scrutinized the entire evidence on record, it is apparently revealed that the prosecution has failed in proving the motive behind the payment of any such bribe by the complainant to the accused. The prosecution has also failed in bringing on record any unimpeachable evidence proving that the bribe amount was demanded by the accused. The prosecution evidence is also not free from doubt as about the acceptance of the bribe amount by the accused. In the circumstances, according to me, the accused was liable to be given benefit of doubt and could not have been convicted by the learned Special Judge.

57) For the reasons stated above, the impugned judgment and order deserve to be quashed and set aside. In the result, following order, -

ORDER

i) The judgment and order dated 12th March, 2015 passed by the learned Special Judge (PC Act) Vaijapur, Dist. Aurangabad in Special Case (PC) No.06/2012 (Old Special Case (PC) No.20/2007) is quashed and set aside;

ii) The appellant - Sudarshan s/o Kashinath Waghmare, stands acquitted of all the charges levelled against him. His bail bond stands cancelled;

iii) Fine amount, if any, paid by the appellant shall be refunded to him;

iv) The Criminal, Appeal thus stands allowed.

v) The Criminal Application stands disposed of.

(P.R.BORA)

JUDGE

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