

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

**CRIMINAL APPEAL NO. 114 OF 2002**

Raosaheb s/o Shrimantrao Gite,  
Age : 35 years, Occu. Service,  
R/o Khultabad, Taluka & District  
Aurangabad, at present N-6, M-2,  
346, Sinhagad, CIDCO, Aurangabad

**APPELLANT  
(Orig. Accused)**

**VERSUS**

The State of Maharashtra

**RESPONDENT  
(Prosecution)**

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Mr. V.D. Sapkal, Advocate holding for Miss R.V.  
Daxini, Advocate for the appellant  
Mr. S.M. Ganachari, A.P.P. for the respondent/  
Prosecution

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**CORAM : SANGITRAO S. PATIL, J.**

**JUDGMENT RESERVED ON : 19<sup>th</sup> DECEMBER, 2017**  
**JUDGMENT PRONOUNCED ON : 17<sup>th</sup> JANUARY, 2018**

**JUDGMENT :**

The appellant has questioned the legality and correctness of the judgment and order dated 24<sup>th</sup> January, 2002, passed by the learned Special Judge, Aurangabad in Special Case No. 6 of 1997, convicting him for the offences punishable under Sections 7 and 13 (2) read with Sections 13 (1)(d)(ii) and 13 (1)(a)

of the Prevention of Corruption Act, 1988 ("the Act", for short) and also under Section 465 of the Indian Penal Code ("IPC", for short).

2. The appellant was serving as a Talathi of Sajja Golegaon, Taluka Khultabad in the year 1996. The complainant namely Vilas Anantrao Randive, his wife namely Kanchan and their minor son namely Harshad, who were residing at Aurangabad, were holding agricultural lands situate within the local limits of village Shankarpurwadi coming within Sajja Golegaon. The name of Harshad was recorded to the land block No.20 to the extent of 2 Hectares 60 Ares. The complainant wanted to sell that land. Therefore, he wanted to record his name as the guardian of his minor son Harshad in the record of rights of the said land. He, therefore, approached the appellant in the second week of August, 1996 alongwith one Prabhakar Kashinath Gore, residents of Ghodegaon and Abbas Habib, resident of Shankarpurwadi and handed over the 7/12 extract of the land block No.20, the birth certificate of Harshad and other papers to the appellant, for the purpose of recording his name as the guardian of Harshad. At that time, the appellant demanded bribe of Rs.2000/- for taking necessary

mutation entry in the record of rights. Despite the requests made by the appellant to reduce that amount, the appellant did not reduce it. Therefore, left with no alternative, the complainant paid him Rs.500/-. He went to one Manikrao Trimbak Jadhav, resident of Ghodegaon alongwith Abbas Habib and borrowed Rs.1500/- from him. He handed over that amount of Rs.1500/- to Abbas Habib for being paid to the appellant. He came to know on the next day that Abbas Habib paid that amount to the appellant.

3. Then prior to about 20 to 21 days of the day on which the complaint was lodged, the complainant went to the office of the appellant and again requested him to take necessary entry in the 7/12 extract of the land block No.20 showing him as the guardian of his minor son Harshad. At that time also, the appellant demanded Rs.500/- from him. When the appellant told him that he had already paid Rs.2000/- to him, the appellant replied that he wanted Rs.500/- for being paid to his superior officers. The complainant asked the appellant for 7/12 extracts of the lands block Nos.18, 20 and 22 for the last three years whereon the appellant demanded Rs.1000/- more for that purpose. When the complainant

expressed that the amount demanded was excessive, the appellant scaled down his composite demand of Rs.1500/- (Rs.500/- + Rs.1000/-) to Rs.1000/-. The complainant assured the appellant that he would pay the said amount lateron. The appellant asked him to pay the amount of Rs.1000/- without fail. Thereafter, the appellant prepared a 7/12 extract of the land block No.20 showing the name of the complainant as the guardian of his minor son Harshad and informed the complainant that it was a *kachha* (unauthentic) 7/12 extract of which the entires have not been taken in the record of rights and asked the complainant not to use it for alienation of the said land.

4. Then on 26<sup>th</sup> September, 1996 at abut 2.30 p.m., when the complainant was at his house at Aurangabad, one Karbhari Shamrao Dale, resident of Shankarpurwadi and Karbhari Manikrao Jadhav, resident of Ghodegaon came to him in connection with alienation of the agricultural land. After some time, the appellant also reached there. The appellant demanded Rs.1000/- from the complainant. However, the complainant expressed that the said amount was not available with him. At that time, the appellant asked him to pay minimum Rs.100/-

for petrol. The complainant paid that amount of Rs.100/- to the appellant with reluctance. At that time, the appellant received Rs.250/- from Karbhari Shamrao Dale and Rs.500/- from Karbhari Manikrao Jadhav also in connection with mutation entry in respect of the agricultural land and asked them to pay the balance amount as well.

5. On 27<sup>th</sup> September, 1996 at about 6.30 a.m., the complainant went to the house of the appellant at Khultabad and demanded authentic 7/12 extract in respect of the land of his son Harshad. The appellant told him that he was going to attend a Gramsabha at village Golegaon and after attending the Gramsabha, he would come to the house of the complainant himself alongwith the entire record and would do the required work. The appellant asked the complainant to inform Karbhari Manikrao Jadhav as well, with whom the appellant had proposed to go to the house of the complainant. At that time also, the appellant took Rs.100/- from the complainant for filling petrol in the motorcycle. The complainant went to Ghodegaon and informed Karbhari Manikrao Jadhav that the appellant had proposed to visit his house at Aurangabad on that day at

about 12.00 noon to 1.00 p.m. and that he should accompany the appellant.

6. Since the complainant was not inclined to pay bribe to the appellant, he went to the office of Anti Corruption Bureau (ACB) at Aurangabad and filed complaint against the appellant in respect of his demand for bribe.

7. Dy.S.P. (ACB), Aurangabad namely H.P. Kulkarni got typed the complaint of the complainant as per his say. He decided to lay trap against the appellant. He summoned two witnesses from the office of the Assistant Commissioner, Sales Tax, Aurangabad. Accordingly, one Dadarao Tangade and Subhash Tondgire, the employees of the said office appeared in the office of ACB and gave consent to act as panch witnesses in the proposed trap. They were introduced to the complainant. The contents of the complaint were verified through the complainant in their presence. The complainant produced ten currency notes of Rs.100/- each for being paid to the appellant. They were smeared with anthracene powder, after giving demonstration before the panchas and the complainant about the characteristics and use of anthracene powder.

The tainted currency notes were kept in the left side chest pocket of the shirt of the complainant with the instructions that he should take out those currency notes by his right hand, only on being demanded by the appellant and hand them over to the appellant. He was further instructed to remove his specs by his left hand and give signal of having handed over the bribe amount to the appellant. The panch namely Dadarao Tangade was instructed to be with the complainant and to watch the activities and hear conversation between the complainant and the appellant at the time of the trap. Necessary instructions were given to the another panch and other members of the raiding party. Accordingly, the raiding party went to the house of the complainant and sat in ambush as instructed by Dy.S.P. Kulkarni. However, on that day, the appellant did not visit the house of the complainant. Therefore, the trap was postponed. The shirt of the complainant alongwith the tainted currency notes was removed and kept in a sealed condition in the office of the ACB.

8. Trap was arranged on 28<sup>th</sup> September, 1996 also as the appellant had informed the complainant to visit his house, however, it was postponed as the appellant

did not visit the house of the complainant on that day because of his personal difficulties. The appellant had informed the complainant through one Shankar Anna Jadhav, who was the friend of the appellant, that he would visit the house of the complainant in any case on 30<sup>th</sup> September, 1996 in the evening. The complainant went to the office of ACB and informed that fact to Dy.S.P. Kulkarni.

9. On 29<sup>th</sup> September, 1996 at about 6.00 p.m., the appellant went to the house of the complainant alongwith a policeman, who was in civil dress. He asked the complainant whether he had received the message that was given to him. The complainant answered in the affirmative. The appellant demanded Rs.1000/- from the complainant, but the complainant expressed his inability to fulfil that demand for want of money. The appellant then asked him to pay at least Rs.100/- for filling petrol. The complainant unwillingly paid Rs.100/- to the appellant.

10. Ultimately, on 30<sup>th</sup> September, 1996, the complainant received a message from the appellant through one Shankar Anna Jadhav that he would be

visiting the house of the complainant on 30<sup>th</sup> September, 1996 after noon. Accordingly, the complainant approached the Dy.S.P. (ACB) Kulkarni and informed that fact. All the preparations for trap were made, necessary instructions were given to the complainant, panchas and other members of the raiding party. The complainant put on the same shirt in which the tainted currency notes of Rs.1000/- were kept in the left side chest pocket on 27<sup>th</sup> September, 1996.

11. The complainant and the panch Dadarao Tangade were sitting in the living room on the ground floor of the house of the complainant. One Uttam Rambhaji Jadhav and Shankar Anna Jadhav came to the house of the complainant at about 5.30 p.m. to 6.00 p.m. The appellant and one more Talathi having surname Patekar followed them. The appellant and the another Talathi sat in the living room. The complainant asked the appellant whether he was keeping fast whereon the appellant answered in the affirmative. The complainant then paid Rs.50/- to Shankar Anna Jadhav and asked him to bring some eatables and sweets for the appellant. Accordingly, Shankar Jadhav and Uttam Jadhav went away to bring eatables. The appellant asked the complainant as to who

was the other person (i.e. panch Dadarao Tangade). The complainant replied that he was the maternal uncle of his son Harshad. The appellant then asked the panch Tangade as to where he was residing, whereon the panch Tangade replied that he was residing at Pune. On being asked by the panch Tangade, the appellant replied that he was working as Talathi, Sajja Golegaon. The appellant then asked the complainant to produce the birth certificate of Harshad on the say that it was required to show it to his superior officer and that he would return it within 2 to 3 days. The complainant brought the birth certificate and handed it over to the appellant. The appellant kept it in his bag. The appellant then told that he had brought 7/12 extracts of lands block Nos.18, 20 and 22. The complainant took those 7/12 extracts and kept them in the left side pocket of his pant. The appellant asked the complainant by signs to accompany him for going out of the house. Accordingly, the complainant went alongwith the appellant outside the house. The panch Tangade also went outside the house. The appellant told the complainant that all of his agricultural lands were recorded as Gairan lands whereon the complainant told him that he had old record showing that they were

agricultural lands. The appellant then told that it was the problem of the complainant and he should deal with that. Thereafter, all of them came back inside the house. The appellant with his right thumb and index finger gave a signal demanding money. The complainant told him that he had kept ready the amount of Rs.1000/-. Thereafter, the appellant and the complainant went towards the bedroom at the instance of the appellant. The panch Tangade followed them. The appellant asked the complainant to pay the cash amount by making signs with his right thumb and index finger. The complainant took out the tainted currency notes from his shirt pocket and held them before the appellant. The appellant took those currency notes by his right hand and kept them into his right side pocket of the pant. The appellant asked the complainant as to how-much that amount was, whereon the complainant replied that it was Rs.1000/- as demanded by him. The appellant then uttered that it was his amount and asked the complainant to pay Rs.700/- to Rs.800/- more for being paid to Mr. Kapadne and Mr. Jadhav, the staff members of Tahsil office. The complainant told him that he was not having any more money with him. The appellant asked the complainant to get that amount from his wife or his

relative i.e. the panch Tangade. On being asked by the complainant for money, the panch Tangade replied that he had no money. The wife of the complainant also told that she had no money. Thereafter, the complainant, the appellant and the panch Tangade occupied their seats. Then the complainant gave the predetermined signal by removing his specs. The other members of the raiding party immediately reached there and caught hold of both the hands of the appellant. The tainted currency notes of Rs.1000/- were recovered from the right side pocket of the pant of the appellant. All the necessary formalities were completed. The panchanama in respect of the tainted currency notes and about the events those took place at the time of trap came to be prepared. Copy thereof was given to the appellant.

12. Dy.S.P. Kulkarni then went to the office of ACB and drafted first information report (FIR). It was sent to Jawaharnagar Police Station. Crime No.II-44/1996 came to be registered against the appellant for the offences punishable under Sections 7 and 13 (2) read with Section 13(1)(d) of the Act.

13. The house of the appellant was searched by

Dy.S.P. Kulkarni in the presence of the panchas. Two applications in the names of the complainant and his wife, addressed to the Tahsildar, Khultabad, came to be seized therefrom under a panchanama. The school leaving certificate of Harshad, Nationality Certificate, a panchanama made by the Talathi showing that the complainant was the guardian of Harshad and birth certificate of Harshad were seized therefrom under the panchanama. Thereafter, the office of the appellant at village Golegaon was searched from where a photocopy of the sale deed of land block no.20, blank forms of Village Form No.4, containing signatures of the wife of the complainant, were seized under a panchanama.

14. The statement of witnesses were recorded. After completion of investigation, all the papers of investigation were sent to the Sanctioning Authority through the Superintendent of Police (ACB), Aurangabad for grant of sanction to prosecute the appellant. After receiving the sanction order, the appellant came to be chargesheeted for the above-mentioned offences.

15. The learned Special Judge framed charges against the appellant vide Exh-12 for the above-

mentioned offences and explained the contents thereof to him in vernacular. The appellant pleaded not guilty and claimed to be tried. His defence is that of total denial and false implication. He admitted receipt of the amount of Rs.1000/- from the complainant. He, however, explained that the complainant had given that amount to him for being paid to Maink Trimbak Jadhav.

16. The prosecution examined six witnesses to prove the charges levelled against the appellant. The appellant examined two witnesses in defence. After evaluating the evidence on record, the learned Special Judge held that the prosecution failed to establish that the appellant committed the offence of criminal misconduct by obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means, made punishable under Section 13(2) read with Section 13 (1)(d)(i) of the Act. However, the learned Special Judge found sufficient and dependable evidence to prove beyond doubt that the appellant committed the offences punishable under Sections 7 and 13 (2) read with Section 13 (1)(d)(i) and 13 (1)(a) of the Act and also under Section 465 of the IPC. The learned Special Judge, therefore, sentenced the

appellant for the offence under Section 7 of the Act - with rigorous imprisonment for six months and a fine of Rs.2000/-, for the offence punishable under Section 13(2) read with Section 13(1)(d)(ii) - with rigorous imprisonment for two years and a fine of Rs.5000/-, for the offence under Section 13(2) read with Section 13(1) (a) of the Act - with rigorous imprisonment for one year and a fine of Rs.2000/- and for the offence under Section 465 of the IPC and rigorous imprisonment with a fine of Rs.1000/-. The substantive sentences of imprisonment were ordered to run concurrently. The appellant deposited the fine amount of Rs.10,000/- in the Trial Court.

17. There is no dispute that the tainted currency notes of Rs.1000/- were accepted by the appellant from the complainant at the house of the complainant on 30<sup>th</sup> November, 1996. In view of this admitted fact, it is not necessary to re-appreciate the evidence in respect of the events recorded in pre-trap panchanama (Exh-38). It is further not necessary to re-appreciate the evidence in respect of the events which led to postponement of the trap on 27<sup>th</sup> September, 1996, 28<sup>th</sup> September, 1996 and 29<sup>th</sup> September, 1996. Once it is established that the

appellant accepted the money from the complainant other than legal remuneration, in view of Section 20 of the Act, it has to be presumed, unless the contrary is proved, that the appellant accepted that amount as a motive or reward, such as is mentioned in Section 7 i.e. forbearing or forgoing to do any official act, etc.

18. The complainant specifically deposes that the appellant demanded Rs.2000/- from him for recording his name as the guardian of his minor son Harshad in the record of rights of the land Block No.20, which amount was already paid by him to the appellant on the day on which it was demanded to the extent of Rs.500/- and on the next day to the extent of Rs.1500/-. He then deposes that prior to 15 to 20 days after the first demand, he again approached the appellant and asked for the corrected 7/12 extracts of the lands Block No.18, 20 and 22 for the last three years whereon the appellant demanded Rs.500/- and Rs.1000/- on these two counts respectively and ultimately agreed to receive Rs.1000/-. According to the prosecution this amount of Rs.1000/-, as demanded by the appellant was handed over by the complainant to the appellant on 30<sup>th</sup> September, 1996 which was accepted by the appellant and the fact of

acceptance of that amount has been admitted by the appellant. The only defence of the appellant is that the complainant had given that amount for being paid to one Mr.Manik Trimbak Jadhav.

19. The learned counsel for the appellant submits that mere recovery of money from the accused is not culpable in the absence of any evidence to show that there was demand of bribe from the side of the accused. In support of this contention, he relied on the judgment in the case of ***P.Satyanaraya Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another (2015) 10 SCC 152***. In that case the complainant could not be examined since he had expired prior to commencement of the trial. The prosecution had acquiesced the acquittal of the accused for the offence punishable under Section 7 of the Act. As such, there was no positive and dependable evidence in respect of the the demand of the bribe by the accused. Consequently, the benefit of doubt was given to the accused.

20. In the present case, the complainant has come with a specific case that the appellant demanded bribe

from him on two counts, firstly for recording his name as the guardian of his minor son Harshad in the record of rights of land Block No.20 and also for issuance of 7/12 extracts of the lands Block Nos.18, 20 and 22 for a period of three years. The documents seized from the possession of the complainant i.e. six 7/12 extracts of the lands Block Nos.18, 20 and 22 for the years 1989-90 to 1994-95, which according to him, were received by him from the appellant at the time of trap, the documents seized from the house of the appellant vide panchanama (Exh-44) i.e. the applications of the complainant and his wife addressed to the Tahsildar for recording their names as guardian of their minor son Harshad, a panchanama dated 30<sup>th</sup> September, 1996, the blank papers bearing signature of Harshad, a copy of school leaving certificate of Harshad and copy of the birth certificate of Harshad and the documents seized from the office of the appellant vide panchanama (Exh-45) i.e. copy of the sale deed dated 9<sup>th</sup> September, 1996 executed by the wife of the complainant in favour of one Vimalbai Karbhari Dale in respect of the land admeasuring 1 Hectore 1 Are out of Block No.20 and two blank Village Forms No.4, clearly show that the appellant being the Talathi of Sajja Golegaon was

dealing with the proposal of the complainant and his wife for recording their names as the guardians of their minor son Harshad in the record of rights of the land Block No.20 and that he had issued the 7/12 extracts of the lands block Nos.18, 20 and 22 as demanded by the complainant.

21. There is no independent corroboration to the evidence of the complainant in respect of the demand of Rs.2000/- and payment thereof to the appellant, and the subsequent demands and payments of Rs.100/- each on 26<sup>th</sup>, 27<sup>th</sup> and 29<sup>th</sup> September, 1996. The prosecution has not examined any witness before whom those demands were made and fulfilled. Now it will have to be seen whether the amount of Rs.100/- accepted by the appellant at the time of the trap was preceded by any demand.

22. The complainant deposes at Exh-20 that on 30<sup>th</sup> September, 1996, at about 5.30 p.m. to 6.00 p.m., one Uttam Rambhaji Jadhav and Shankar Anna Jadhav came to his house and Shankar Jadhav informed that the appellant also had come. Then the appellant and Patekar (DW1), who was then working as Talathi of Sajja Bhatji, entered into the house of the complainant. Since the appellant

was keeping fast, the complainant gave Rs.50/- to Shankar Jadhav and asked him to bring eatables for the appellant. Then Shankar Jadhav and Uttam Jadhav went away for bringing eatables. The panch Tangade (PW4) was with the complainant in the living room of the house. The appellant enquired about Tangade (PW4) whereon the complainant told that he was the maternal uncle of his son Harshad. The complainant deposes that the appellant asked him to produce the birth certificate of his son Harshad on the say that it was required to be shown to his superior officer. Accordingly, the complainant brought the birth certificate and handed it over to the appellant, which was kept by the appellant in his bag. The appellant then told the complainant that he had brought 7/12 extracts of the lands block Nos.18, 20 and 22 and took out the same from his bag. The complainant received those 7/12 extracts and kept them in the left side pocket of his pant. Then the appellant gave signal so as to make the complainant to go out of the house with the appellant. The complainant as well as Tangade (PW4) went out of the house alongwith the appellant. After having talks about the agricultural lands of the complainant, which according to the appellant were shown as Gairan lands, they came back into the living room.

The appellant then demanded money by making sign with his right thumb and index finger. The complainant told him that he had kept ready the amount of Rs.1000/-. Then the complainant and the appellant went towards bedroom at the instance of the appellant. Tangade (PW4) followed them. The appellant demanded money by making sign with his right thumb and index finger. The appellant then took out the tainted currency notes from his shirt pocket and held them before the appellant. The appellant took those tainted currency notes and kept them in the right side pocket of his pant.

23. Tangade (PW4) (Exh-37) supports the version of the complainant in respect of the above mentioned demand of Rs.1000/- made by the appellant and acceptance of that amount in response to that demand in all material particulars. The evidence of the complainant and Tangade (PW4) is quite consistent in respect of the demand of bribe and acceptance thereof by the appellant. It is further consistent in respect of the further demand of the appellant of Rs.700/- to Rs.800/- in the name of his staff members. Both these witnesses state that the appellant told the complainant that the amount of Rs.1000/- that was received by him from the

complainant, was his amount and that the amount of Rs.700/- to Rs.800/- would be required to be paid to the staff members of the circle office. Both of them state that the appellant asked the complainant to pay that amount and when the complainant expressed his inability to pay that amount, the appellant suggested the complainant to get that amount either from his wife or from Tangade (PW4), who was introduced to the appellant as his relative. This further conversion fortifies the earlier demand of bribe of Rs.1000/- made by the appellant.

24. Nothing has been elicited in the cross-examination of the complainant and Tangade (PW4) which would create any doubt about the versions of these witnesses in respect of demand of bribe made by the appellant prior to acceptance of the bribe amount of Rs.1000/- from the complainant. The prosecution has proved beyond doubt the said demand of bribe by the appellant as a reward for issuing corrected 7/12 extract and the 7/12 extracts in respect of the lands block Nos. 18, 20 and 22 for three years, in the capacity of the Talathi, a public servant, who was obliged in the discharge of his official act to provide such documents.

It was not a legal remuneration to which the appellant was entitled to receive from the complainant. In view of these facts of the present case, the judgment in the case of **P. Satyanarayana Murthy** (supra), wherein the demand of bribe itself could not be proved for want of evidence of the complainant and the acquittal of the accused for the offence punishable under Section 7 of the Act was not under challenge, would not be helpful to the appellant to brush aside the case of the prosecution.

25. Though independent evidence has not been produced by the prosecution to corroborate the evidence of the complainant in respect of the initial demand made by the appellant, the contents of the complaint (Exh-21) and subsequent conduct of the appellant fully corroborate the version of the complainant in respect of the initial demands. The demand of bribe of Rs.1000/- at the time of trap made by the appellant certainly finds genesis into those initial demands.

26. The learned counsel for the appellant submits that though it has come in the evidence of the complainant that the demand of bribe was made by the

appellant in the presence of one Prabhakar Gore, Abbas Habib, Karbhari Shamrao Dale and Karbhari Manikrao Jadhav, none of them has been examined by the prosecution. According to him, non-examination of these material witnesses would create strong doubt about the case of the prosecution in respect of demand of bribe made by the appellant. Therefore, mere recovery of the tainted currency notes from the appellant would not be sufficient to hold him guilty. In support of his contention, he relied on the judgments in the cases of ***Trimbak Lilaji Binnar Vs. State of Maharashtra 2002 (2) Mh.L.J.293*** and ***State of Maharashtra Vs. Gunwant patiram Dhumbhare 2013 (1) Bom.C.R.(Cri.) 27.*** He further submits that Patekar (DW1) (Exh-61), who was present in the living room of the house of the complainant at the time of the trap, does not state that the appellant had demanded money from the complainant on any count. He then submits that the evidence of Gorakhnath (PW2) (Exh-32), who allegedly visited the house of the complainant alongwith the appellant on 29<sup>th</sup> September, 1996, also does not state about any demand allegedly made by the appellant for money from the complainant. According to him, the evidence of the complainant about the so called demand of bribe of the appellant is thus suspicious and

unbelievable.

27. Here reference may conveniently be made to the case of **M.O. Shamsudhin Vs. State of Kerala (1995) 3 SCC 351** wherein the Hon'ble the Apex Court has explained the position of the complainant in a bribery case and the extent and nature of corroboration that may be needed to his evidence, in the following paragraphs:-

"12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous test which are generally applied to a case of an approver. Though bribe givers are generally treated to be in the nature of accomplices but among them there are various types and gradation. In cases under the *Prevention of Corruption Act* the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be -a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a

giving the trap cannot succeed. When there is such a demand by the public servant from person who is unwilling and if to do public good approaches the authorities and lodges complaint then in order that the trap succeeds he has to give the money. There could be another type of bribe giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is a *particeps criminis* in respect of the crime committed and thus is an accomplice. Thus there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of "accomplices" by reason of their being bribe givers, in the first instance the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances.

23. Now coming to the nature of corroborating evidence that is required, it is well settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The court should weigh the evidence and then see whether corroboration is necessary. Therefore as a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case. In a case of bribe, the person who pays the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about the bribe and it is not possible to get absolutely independent evidence about the payment of bribe. However, it is cautioned that the evidence of a bribe-giver has to be scrutinised very carefully and

*it is for the court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon or not in those given circumstances."*

28. As stated above, there is independent corroboration to the evidence of the complainant in respect of the demand and acceptance of bribe amount of Rs.1000/- on the day on which the trap was laid. Tangade (PW4) is an independent witness. He had no axe to grind against the appellant. There was no reason for him to speak false against the appellant. He had no malice prompting him to falsely implicate the appellant in the offence of demanding and accepting bribe. The evidence of Tangade (PW4) fully corroborates the evidence of the complainant about the demand of bribe of Rs.1000/- made by the appellant and acceptance of that amount by him, it creates great confidence.

29. The evidence of the complainant supported by the evidence of Tangade (PW4) clearly proves that the appellant accepted Rs.1000/- as illegal gratification other than legal remuneration. Therefore the presumption laid down in Section 20 of the Act would come into play and the appellant shall be presumed, unless the contrary

is proved that he accepted that gratification as motive or reward such as mentioned in Section 7 of the Act.

30. The appellant has come with a case that the complainant had paid him the amount of Rs.1000/- at the time of the trap for being paid to Manik Trymbak Jadhav. In support of his defence, he examined Patekar (DW1), who was working as Talathi of Sajja Bhatji at the relevant time. He deposes that he was suffering from chest pains and wanted to go to Aurangabad to consult Dr. Pargaonkar. He went to the appellant at about 3.00 p.m. to 3.30 p.m. and requested him to accompany him to Aurangabad for going to Dr. Pargaonkar. Then the appellant and himself left Golegaon on a motorcycle. On the way, they halted at the house of the complainant. The appellant asked the owner of that house to produce the original documents. The owner gave those documents. Then he went inside the house and gave some amount to the appellant saying that it should be paid to some other person. The appellant accepted it and kept it in the pocket of his pant. All that happened in the living room of that house. Thereafter, ACB personnel caught hold of the appellant. In his cross-examination, he admits that he is in friendly terms with the appellant.

He states that the appellant was not carrying any bag with him on that day.

31. If the evidence of the complainant and Tangade (PW4), coupled with the contents of pre-trap panchanama (Exh-43) is considered, it would be clear that Patekar (DW1) is trying to state something which is far from the factual position. A handbag was found with the appellant in which two registers of 7/12 in respect of block Nos.1 to 28 of village Shankarpurwadi were found. The said articles were seized at the time of the trap. Patekar (DW1) does not state the name of the person to whom the amount was to be paid, though he claims to be the eye witness to the transaction of handing over the currency notes by the complainant to the appellant. Indisputably, Karbhari Manik Jadhav is the son of Manik Trimbak Jadhav. The said Karbhari Manik Jadhav was very much in contact with the complainant as well as the appellant as seen from the evidence of the complainant. If the complainant wanted to pay any amount to Manik Trimbak Jadhav, he would have handed over that amount to Karbhari Manik Jadhav and not to any third person much less to the appellant who was working as a Talathi and not as a postman. There was absolutely no reason for

the complainant to handover the amount of Rs.1000/- for being paid to Manik Trimbak Jadhav, resident of village Golegaon, more particularly when the appellant was going to Aurangabad with Patekar (DW1). The evidence shows that the appellant kept the amount received from the complainant in the pocket of his pant without counting the notes. Patekar (DW1) states that the appellant did not ask the complainant as to quantum of the amount, nor the complainant told him as to how-much amount that was. This fact also rules out the possibility of receiving the amount by the appellant from the complainant for being paid to Manik Trimbak Jadhav. In the natural course, the complainant would have informed the appellant that it was a particular amount and the appellant certainly would have counted it prior to keeping it in the pocket of his pant, if the said amount was to be paid to some other person. Nothing of that sort had happened. On the contrary, there is consistent evidence of the complainant and that of Tangade (PW4) that the appellant claimed that it was his amount and demanded Rs.700/- to Rs.800/- more for being paid to the staff members of Circle Office. The defence, thus, is not at all probable. The learned Special Judge has rightly disbelieved the said defence by giving

appropriate reasons. I subscribe to those reasons.

32. The appellant has examined the then Circle Inspector Sathe (DW2) (Exh-73) to show that the complainant had cut down 62 fruit bearing trees from his agricultural lands without permission from the land block No. 22 of Shankarpurwadi. The appellant had prepared the panchanama of those trees and made a report to the Tahsildar for taking necessary action and seeking permission to sell out the wood of the trees by public auction. Therefore, according to the appellant, the complainant had grudge against him and consequently, he was falsely implicated by the complainant. This defence also has been rightly disbelieved by the learned Trial Judge giving quite acceptable reasons.

33. There is a letter (Exh-76) dated 16<sup>th</sup> January, 2002 addressed by the Sub-Divisional Officer, Vaijapur to the Public Prosecutor attached to the District and Sessions Court, Aurangabad, whereby it was informed that no file was sent by the Tahsildar, Khultabad to him in respect of cutting of trees without permission from the land block No.22 of village Shankarpurwadi. This fact itself creates doubt about genuineness of the

proceedings initiated in respect of unauthorised cutting of trees from the land of the complainant. At the instance of the appellant, the photocopy of the file in respect of cutting of trees illegally from the land block No.22 of Shankarpurwadi was produced by the Tahsildar with letter dated 18<sup>th</sup> January, 2002. Sathe (DW2) admits that the fruit bearing trees are invariably mentioned in the other rights column of the 7/12 extract. He was shown the 7/12 extract of the land block No.22. He admits that there is no mention of the trees in other rights column thereof. One Yashodabai is the co-owner of the said land. Two mango trees are shown to be standing in that land. Therefore, it was not clear as to whether 62 trees were actually standing in that land and the said trees were belonging to the complainant. Sathe (DW2) admits that he did not issue notice either to the complainant or Yashodabai prior to the drawing the panchanama of the trees which were cut without permission. It is further clear from his evidence that no action has been taken against the complainant till the date his evidence was recorded before the Trial Court. He states that usually within one month, an action has to be taken against the person who cuts the trees unauthorisedly. All these facts and

circumstances show that there was no reason for taking action against the complainant for the alleged cutting of trees. In the circumstances, the defence that because the appellant made a report against the complainant in respect of the alleged illicit cutting of trees, he lodged false complaint to ACB, does not stand to reason. Moreover, had there been a room for the complainant for having grudge against the appellant just prior to the day of the trap, the appellant himself would not have gone to the house of the complainant and the complainant also would not have entertained him. In such circumstances, there was absolutely no possibility of handing over the amount of Rs.1000/- by the complainant to the appellant for being paid to a third person.

34. As stated above, the prosecution has proved beyond doubt that the appellant demanded Rs.1000/- for issuing fresh 7/12 extract in respect of the land standing in the name of the minor son of the complainant namely Harshad and for issuing 7/12 extracts in respect of the lands block nos.18, 20 and 22 for three years prior to 30<sup>th</sup> September, 1996 and also on 30<sup>th</sup> September, 1996 when the trap was laid. He accepted an amount of

Rs.1000/- from the complainant as illegal gratification for discharging his duty as a Talathi in respect of issuing the documents demanded by the complainant. As such, the prosecution proved the guilt of the appellant for the offences punishable under Sections 7 and 13 (1) (d) (ii) of the Act. However, for want of corroboration to the evidence of the complainant, in respect of the earlier acceptance of bribe of Rs.2000/- and Rs.100/- for three times by the appellant prior to the day of the trap being not corroborated by any evidence, benefit of doubt will have to be given to the appellant. The prosecution has failed to prove the guilt of the appellant for the offence of habitually accepting bribe, made punishable under Section 13 (2) read with Section 13 (1) (a) of the Act.

35. The appellant has been convicted for the offence punishable under Section 465 of the IPC on the allegation that he made false entry in the 7/12 extract of the land block No.20 showing the name of the complainant as the guardian of his minor son Harshad. As per Section 463 of the IPC, whoever makes any false documents or false electronic record of part of a document or electronic record, with intent to cause

damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. In the present case, it is not even the case of the complainant that the appellant prepared any false document with the above mentioned intentions. There is no original 7/12 extract on record, allegedly prepared by the appellant. There is nothing on record to show that the appellant made any false entry with intent to cause damage or commit fraud. There is absolutely no evidence coming from the complainant to prove the ingredients of the offence of forgery defined in Section 463 of the IPC. The appellant has been wrongly convicted by the learned Special judge for the said offence. The conviction and sentence of the appellant for the said offence is not at all sustainable.

36. The learned counsel for the appellant has challenged conviction and sentence of the appellant on the ground that the sanction for prosecution of the appellant was not valid. He submits that Shinde (PW3) (Exh-33), who was working as the Sub-Divisional Officer

at Vaijapur, was not a competent authority to accord sanction for prosecution of the appellant. He further submits that the evidence of Shinde (PW3) does not show that he applied mind to the facts of the case and then accorded sanction for prosecution of the appellant. According to the learned counsel of the appellant, the prosecution has failed to prove as to what material was produced before Shinde (PW3) while seeking sanction for prosecution of the appellant. He submits that the challenge as to validity of the sanction order can be raised before the Appellate Court. According to him, there is no valid sanction accorded by the competent authority. The appellant has suffered substantial injustice. In support of his challenge as to validity of sanction, he cited certain judgments which would be referred to a little later.

37. On the other hand, the learned A.P.P. submits that Shinde (PW3) was the appointing authority of the appellant being the Sub-Divisional Officer, Vaijapur. He was empowered to remove the appellant from service. The competency of Shinde (PW3) was never challenged by the appellant. He submits that the sanction order (Exh-36) and the evidence of Shinde (PW3) clearly show that

sanction was accorded by Shinde (PW3) after perusing all the papers of investigation and after being satisfied that sanction for prosecution of the appellant was required to be given. Relying on the judgment in the case of ***State of Madhya Pradesh Vs. Virendra Kumar Tripathi 2009 (15) SCC 533***, he submits that in the absence of any plea that the appellant suffered prejudice for want of valid sanction, the challenge as to validity of the sanction order cannot be entertained by the Appellate Court in view of sub-section (3) of Section 19 of the Prevention of Corruption Act.

38. Dy.S.P. Kulkarni (PW6) deposes that after completion of the investigation, he collected the required documents regarding the appointment of the appellant. He then sent the file and papers of investigation to the Superintendent of Police (ACB), Aurangabad with a request to obtain necessary sanction for prosecution of the appellant. He then received sanction for prosecution of the appellant on 15<sup>th</sup> April, 1997. This evidence has not been challenged in the cross-examination of Dy.S.P. Kulkarni (PW6).

39. Shinde (PW3) deposes that he received a letter

dated 20<sup>th</sup> January, 1997 from the office of ACB, Aurangabad which was accompanied by a sealed envelope and a file containing papers regarding the trap laid on the appellant. The said file was containing panchanama, etc. He perused all the papers and after being satisfied that sanction for prosecution of the appellant was required to be given, accorded sanction (Exh-36).

40. The sanction order (Exh-36) shows that the record of investigation in Crime No.II-44/1996 of Jawaharnagar Police Station, Aurangabad was read by Shinde (PW3). The detailed allegations made against the appellant are reproduced in the sanction order alongwith the Sections of the Prevention of Corruption Act, 1988 in respect of the offences allegedly committed by the appellant. It would be necessary to reproduce here paragraph Nos.6 and 7 of the sanction order to indicate that after considering the record produced before Shinde (PW3), he was satisfied and then opined that it was necessary to grant sanction for prosecution of the appellant.

"6. AND WHEREAS, upon reading the papers of investigation in Jawaharnagar Police Station,

Aurangabad C.R.No.II-44/96 under Section 7, 13 (2) read with 13(1)(d), prevention of Corruption Act, 1988 (49 of 1988) I am satisfied and is of the opinion that the said Shri Raosaheb Shrimantrao Gite should be prosecuted for the offences constituted by the acts and punishable as stated hereinabove.

7. NOW, THEREFORE, I, D.M. Shinde, Sub-Divisional Officer, Vaijapur, Dist. Aurangabad, being the appointing authority and competent to remove the said Shri Raosaheb Shrimantrao Gite from his post, do hereby, for the purposes of and as required by Section 19(1) (c), Prevention of Corruption Act, 1988 (49 of 1988) accord sanction to the prosecution of the said Shri Raosaheb Shrimantrao Gite for the offences constituted by the acts and punishable as stated hereinabove."

41. From the contents of the sanction order as well as that of paragraph No.6 thereof, it is clear that all the material connected with the case of the appellant was produced before Shinde (PW3) and after going through that record, he accorded sanction. It has come in his cross-examination that he required two months to verify the documents and take a decision to accord sanction for prosecution. This positive statement brought on record

in the cross-examination of Shinde (PW3) also indicates that he applied mind to the facts of the case and then accorded sanction. Only because he deposes that a draft sanction order was sent and he prepared the sanction order as per the draft, it can not be said that there was no application of mind to the facts of the case on the part of Shinde (PW3). It is, thus, clear that the sanction order (Exh-36) was passed by Shinde (PW3) after considering all the material placed before him, after applying his mind thereto and after being satisfied that sanction was required to be granted.

42. The learned counsel for the appellant cited the judgment in the case of **P.L. Tatwal Vs. State of M.P. 2014 CRI.L.J.1880 (SC)** wherein the sanction order was reproduced in paragraph No.10 of the judgment and it was observed in paragraph No. 11 that only the second paragraph of the resolution was speaking about the sanction and that was following the recommendation of the Municipal Commissioner. It was not clear whether that formed the part of the Government letter and even the contents of the Government letter also were not clear. In the circumstances, it was held that there was no application of mind while according sanction for

prosecution of the accused – public servant.

43. In the case of ***State of Maharashtra through C.B.I. Vs. Mahesh G. Jain 2013 AIR SCW 3174 (SC)***, cited by the learned counsel for the appellant, it was held that it is incumbent on the part of the prosecution to prove that valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.

44. In the case of ***State of Karnataka Vs. Ameer Jan 2008 CRI.L.J.347 (SC)***, from the perusal of the record, it was found that except the report made by I.G.P., no other record was made available before the sanctioning authority. Therefore, it was held that the sanction accorded merely on the basis of report made by the I.G.P., was invalid.

45. In the present case, as stated above, all the papers of investigation were placed before Shinde (PW3).

He states that he perused the papers of investigation and after being satisfied, accorded sanction for prosecution of the appellant. In view of these distinguishing facts of the present case, the above cited three rulings would not be applicable thereto.

46. Paragraph No.7 of the sanction order (Exh-36) clearly indicates that Shinde (PW3) made a positive statement that he being the appointing authority and competent to remove the appellant from service, accorded sanction for prosecution of the appellant under Section 19 (1) (c) of the Prevention of Corruption Act. The competency of Shinde (PW3) to accord sanction for prosecution of the appellant has not at all been challenged in his cross-examination. It is not even challenged on behalf of the appellant that Shinde (PW3) was not the appointing authority of the appellant and was not competent to remove the appellant from service. The impugned judgment also does not disclose that even at the time of final arguments, the learned counsel for the appellant challenged validity of sanction on any ground much less on the ground that Shinde (PW3) was not the competent authority to accord sanction for prosecution of the appellant. Thus, the evidence of

Shinde (PW3) in respect of the contents of paragraph No.7 of the sanction order (Exh-36) has remained totally unchallenged.

47. The appellant could have produced his appointment order to establish contrary to what Shinde (PW3) claimed. The appellant did not produce such order. As per Illustration (e) under Section 114 of the Indian Evidence Act, 1872, the Court may presume that judicial and official acts have been regularly performed. This presumption is rebuttable. When Shinde (PW3) claims himself to be the appointing authority of the appellant as well as the authority competent to accord sanction for his prosecution, this presumption would come into play and it would be for the appellant to rebut that presumption. The appellant has totally failed to rebut that presumption.

48. It may be noted that the validity of sanction order (Exh-36) as well as the competency of Shinde (PW3) to accord sanction has not been challenged even in the appeal memo. It is not even the case of the appellant that he was appointed by some other authority, who was superior to Shinde (PW3) and therefore, Shinde (PW3) was

not competent to accord sanction for his prosecution. In the circumstances, the contention of the appellant that Shinde (PW3) was not his appointing authority and as such, was not competent to remove him from service and therefore, sanction order (Exh-36) passed by him is not valid, cannot be accepted. The contents of sanction order (Exh-36), coupled with the evidence of Shinde (PW3), make it clear that the said order has been passed by Shinde (PW3) after perusing all the papers of investigation and after applying his mind to the facts of the case. Thus, the sanction order (Exh-36) cannot be said to be invalid.

49. The learned counsel for the appellant submits that the question of validity of sanction can be raised even for the first time before the Appellate Court. In support of this contention, he relied on the judgment in the case of **Nanjappa Vs. State of Karnataka AIR 2015 SC 3060**. In that case, the accused was acquitted by the trial Court for want of valid sanction. The High Court reversed the judgment of acquittal and convicted the accused holding that since the validity of sanction order was not questioned at the appropriate stage, the appellant was not entitled to raise the same at the

conclusion of the trial. The Hon'ble the Supreme Court observed in paragraph No.20 of the judgment that the High Court has not correctly appreciated the legal position regarding the need for sanction or the effect of its invalidity. It has simply glossed over the subject by holding that the question should have been raised at an earlier stage. The High Court did not, it appears, realise that the issue was not being raised before it for the first time but had been successfully urged before the trial Court. In this context, the Hon'ble the Supreme Court held that the question about validity of any sanction order could be raised at the stage of final arguments at the trial or even at the appellate stage.

50. In the present case, the validity of sanction order was not at all challenged before the trial Court. No grievance has been made against the sanction order in the appeal memo as well. The learned counsel for the appellant for the first time raised the question of validity of sanction order at the time of arguments. Even if the said challenge is entertained at this stage, in view of the earlier findings recorded by me that Shinde (PW3) was competent to accord sanction for

prosecution of the appellant, the said challenge cannot be attached with any importance.

51. The learned counsel for the appellant then cited the judgment in the case of **State of Goa Vs. Babu Thomas AIR 2005 SC 3606** wherein the sanction order was not passed by the competent authority. The sanction order was challenged after framing of the charge. The evidence was not recorded. In the circumstances, it was held that the sanction order issued by the authority, which was not competent to issue the same, would be bad in law and it being a fundamental error would invalidate the cognizance as without jurisdiction. Consequently, the Hon'ble the Supreme Court permitted the competent authority to issue fresh sanction by an authority competent under the Rules and proceed afresh against the accused from the stage of taking cognizance of the offence and in accordance with law. In the present case, as stated above, the sanction order (Exh-36) has been issued by the competent authority. Therefore, this ruling would be of no help to the appellant.

52. The learned counsel for the appellant cited the judgments in the following four cases to show that

sanction order granted by the Sub-Divisional Officer for prosecution of Talathi is not valid.

- (i) ***Bhaurao Marotrao Manekar Vs.  
State of Maharashtra  
1980 BCI 57 = 1980 Mh.L.J.445***
- (ii) ***Suresh s/o Dasrao Bangale Vs.  
The State of Maharashtra  
(Criminal Appeal No.226 of 1998, decided  
by this Court on 14<sup>th</sup> December,2010)***
- (iii) ***Maruti Subrao Shinde Vs.  
State of Maharashtra  
2011 (2) Mh.L.J. (Cri.) 555***
- (iv) ***Sakharam Tryambak Patil Vs.  
State of Maharashtra  
1993(1) Bom.C.R.134 = 1993 (1)Mh.L.J.276***

53. In the first case, the accused Talathi was admittedly appointed by the Collector. In the second case, the accused, during the cross-examination of the sanctioning authority, all along tried to suggest that he was not the appointing authority and was not empowered to pass sanction order for prosecution. The tenor of the letters issued by the Collector clearly indicated that it was the Collector of Aurangabad who had appointed the accused Talathi as trainee Talathi. Thus, the Sub-Divisional Officer was not found to be the appointing authority of the accused Talathi. In the third case, the accused Talathi was appointed by the

Assistant Collector, while the sanction order was passed by the Sub-Divisional Officer. In the fourth case, the accused Talathi was actually appointed by the Collector while sanction for his prosecution was accorded by the Sub-Divisional officer. In the circumstances, in the above cited cases, it was held that the Sub-Divisional Officer was not competent to accord sanction for prosecution of the accused Talathi concerned. In the present case, as stated above, Shinde (PW3) was the appointing authority of the appellant and was competent to remove him from service. The appellant has not produced anything on record to show that the Sub-Divisional Officer was not his appointing authority or was not competent to remove him from service. In the circumstances, the above cited four cases would be of no assistance to the appellant.

54. It is well settled that sanction before initiation of prosecution of a public servant is a safeguard provided to him so as to save him from unnecessary harassment of unwarranted prosecution. If the merits of the case clearly indicate that the public servant was involved in demanding and accepting illegal gratification, he is not entitled to seek protection of

this safeguard before the Appellate Court in appeal against his conviction. In such a situation, the provisions of Sub-section (3) (a) of Section 19 of the Act certainly would be applicable, which read as under:-

19. Previous sanction necessary for prosecution -

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, -

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby."

55. In the case at hand, basically the sanction order (Exh-36) is quite valid. On merits also, the prosecution has established the offences alleged against the appellant. There is absolutely no plea raised by the appellant in the appeal memo that failure of justice has been caused to him for want of valid sanction or because of any error, omission or irregularity in the sanction. In the circumstances, the prosecution launched against the appellant would not suffer on the ground of any infirmity in the sanction.

56. Considering the above facts and circumstances of the case, I concur with the findings of the learned Special Judge to the extent holding the appellant guilty for the offences punishable under Sections 7 and 13 (2) read with Section 13 (1)(d) of the Act. The impugned judgment is supported by evidence on record and is quite legal, proper and correct to that extent. The said findings do not call for any interference. So far as the offences under Section 13(1)(a) of the Act and under Section 465 of the IPC are concerned, as stated above, the prosecution has failed to produce sufficient and dependable evidence to establish guilt of the appellant. The learned Special Judge did not appreciate the evidence properly and correctly in respect of these offences and wrongly convicted the appellant of the said offences. The conviction and sentence passed against the appellant in respect of these two offences are liable to be quashed and set aside. As such, the appeal is liable to be allowed partly. The conviction recorded against the appellant for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Act is liable to be maintained as it is. The maximum sentence of imprisonment inflicted against the appellant

by the learned Special Judge is rigorous imprisonment for two years. The learned Special Judge has already shown sufficient leniency to the appellant in the matter of inflicting punishment. The appellant does not deserve for any more leniency considering the serious nature of the offences established against him. In the result, I pass the following order:-

**O R D E R**

- (A) The Criminal Appeal is partly allowed.
- (B) The appellant is acquitted of the offences punishable under Section 465 of the Indian Penal Code and under Section 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act, 1988.
- (C ) The conviction and sentence of the appellant for the offences punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 are maintained as they are.
- (D) Fine amount of Rs. 3000/- be refunded to the appellant.

(E) Other directions given in the impugned order are maintained as they are.

(F) The appellant shall surrender to his bail bonds by appearing before the trial Court within a period of two weeks from today for suffering the sentence.

(G) In case the appellant fails to surrender before the trial Court within the period of two weeks from today, the trial Court shall issue coercive process against him for securing his presence.

(H) Inform the trial Court accordingly.

(I) The appeal is accordingly disposed of.

Sd/-  
[ **SANGITRAO S. PATIL** ]  
**JUDGE**

npj/criapl114-2002