

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

CRIMINAL APPEAL NO.814 of 2004

(1. Shrawan s/o Adhar Dhangar)

DIED through LRs as per Honourable
Court's order dated 1/8/2016 passed in
Criminal Application No.713/2016

1-A) Smt.Ushabai Shravan Dhangar
Age 50 yrs., Occ. Nil.

1-B) Sandip Shravan Savle (Dhangar)
Age 33 yrs., Occ. Nil.

1-C) Ajay Shravan Savle (Dhangar)
Age 31 yrs., Occ. Nil.

1-D) Ranjit Shravan Savle (Dhangar)
Age 29 yrs, Occ. Nil.

All R/o. Gat No.95/2, Plot No.45/1
Ahilyadevi, Tilak Nagar, Khote Nagar,
Jalgaon Tq. & Dist. Jalgaon.

2. Bharatsing s/o Vithal Patil,
Age 56 years, occ. Nil,
resident of Plot No.16
Shiv Colony, Jamner,
Taluka & District Jalgaon.

...APPELLANTS
(Original Accused)

VERSUS

The State of Maharashtra.

...RESPONDENTS
(Original complainant)

...
Mr. A.B.Kale, Advocate for appellants.
Mr. R.B.Bagul, APP for respondent State.

...

CORAM: P.R. BORA, J.

Date of reserving the judgment: 09/03/2018

Date of pronouncing the judgment: 23/03/2018

JUDGMENT:

1. The appellants have preferred the present appeal against the judgment and order dated 6th December, 2004, passed by the Special Judge, Jalgaon, in Special Case No.10/2003. In the aforesaid Special Case the appellants were prosecuted for the offenses punishable under Sections 7, 13(1) (d) read with Section 13(2) and Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as `the Act').

2. Vide the impugned judgment the learned Special Judge has convicted both the accused for the offense punishable under Section 7 of the Prevention of Corruption Act and sentenced each of them to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-; in default, to suffer rigorous imprisonment for three months. The appellants are also convicted for the offenses punishable under Section 13(1) (d) read with Section 13(2) of the Act and have been sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/- each; in default, to suffer rigorous imprisonment for

six months each. The appellant no.2 has also been convicted for the offense punishable under Section 12 of the Act and is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-; in default, to suffer rigorous imprisonment for three months. Substantive sentences are directed to run concurrently. The appellants are hereinafter referred to accused nos. 1 and 2.

3. Case of the prosecution was thus: a written complaint was filed by one Premchand Rupchand Surwade, resident of Khandale, taluka Bhusaval, district Jalgaon, to the Office of Anti Corruption Bureau at Jalgaon on 15th of May, 2003. As averred in the said complaint, appellant no.1, who is hereinafter referred to as accused no.1, and one other Police person, had been to the house of the complainant in the night of 4th of May, 2003, in Civil Dress and served a written order calling upon the parents of the complainant to remain present in Bhusaval Taluka Police Station on 5.5.2003 for the purposes of inquiry in Part V offense registered against them. Accordingly, the complainant on 5.5.2003 along with his parents visited Bhusaval Taluka Police Station and met accused no.1. Accused no.1 thereupon

told complainant Premchand that in an offense registered against his parents, they will have to be arrested, however, if the complainant pays him Rs.5,000/-, he will immediately produce them before the Court or else, he will arrest them, keep them in custody and will produce them before the Court on the next day. Complainant then negotiated with accused no.1 on the amount of bribe. The accused no.1, however, declined to reduce the amount of Rs.5,000/- and asked complainant Premchand to bring the said amount before 1 p.m. Complainant Premchand then left the Police Station for arranging the amount of Rs.5,000/-. Complainant, however, could not collect that much of the amount. He, therefore, did not go to the Police Station again. In the night when complainant Premchand reached to his home, his parents had returned to home by that time and they informed to the complainant that the Police waited for him for long time but then produced them before the Court and the brother-in-law of the complainant thereafter got them released on bail by engaging an Advocate for them. In the night on that day, accused no.1 along with one Police person again had been to the house of the complainant Premchand and demanded the money. Complainant told him that he could not arrange for the said amount but he will pay the amount as agreed by him

and sought some time to make the payment. Complainant, however, could not arrange for the said amount till 13th of May, 2003. On that day, accused no.1 sent a message to the complainant through one Rajendra Shankar Koli and called upon the complainant to Bhusaval Taluka Police Station along with his mother on 14th of May, 2003. On 14th of May, 2003, complainant Premchand alone went to the Police Station and met accused no.1. Complainant informed accused no.1 that despite his efforts, he could not arrange for the amount. Accused no.1 thereupon told complainant Premchand that an application was also received against him and, as such, he will arrest him also and would also file Chapter case against his mother. Complainant Premchand again requested accused no.1 not to take any such step and assured him that he will make the payment. Complainant told to accused no.1 that on 16th of May, 2003, he will pay a sum of Rs.2,000/- and within next 8/10 days thereafter, he will pay the remaining amount. Complainant, thereafter, approached the Office of the Anti Corruption Bureau and lodged the complaint against accused no.1. He informed the Anti Corruption Bureau that he will be visiting Bhusaval Taluka Police Station on 16th of May, 2003, in between 11 a.m. to 12 noon for the purpose of paying the amount of Rs.2,000/- as has been demanded by accused no.1

by way of bribe.

4. After such written complaint was filed by complainant Premchand in the office of the Anti Corruption Bureau, Jalgaon, further process was carried out by the said Office. Two independent Panch witnesses were selected; instructions were imparted to them and all preparations were done for laying trap on 16th of May, 2013 at the time when the amount of bribe was to be paid by complainant Premchand to accused no.1. On 16th of May, 2003, when complainant Premchand reached to Bhusaval taluka Police Station, accused no.1 was sitting in a room. He asked complainant Premchand whether he has brought the amount and his mother with him. Complainant told him that he has brought the amount and his mother is also with him. Accused no.1 then called one Constable by name Bhimrao and instructed him to take the papers and go to the Tehsil office along with the mother of the complainant to file a Chapter case. Accused no.1 then called accused no.2 and asked him to collect the amount from the complainant. Complainant, who was all the while accompanied by one Vijay Patil, Panch No.1 then along with the said Panch and accused no.2 came out of the Police Station for a cup of tea on a tea stall out of the Police Station at a distance of about

30/40 feet. Accused no.2, at the said tea stall, asked the complainant to pay the said amount. Complainant accordingly paid the tainted notes of Rs.2,000/- to accused no.1 and gave a pre-determined signal to the raiding party. On receiving such signal from the complainant, PSI Mahajan and the other members of the raiding party rushed to the spot and caught hold of accused no.2. Accused no.2 in the meanwhile dropped the currency notes of Rs.2,000/- on the floor. Thereafter, on instructions of PSI Mahajan, Panch No.2 Vijay Shingte picked up the said notes and handed over the same to him. Accused no.2 was then arrested and then taken to the Police Station. Thereafter, the further process was carried out of preparing post trap panchnama. Accused no.1 was also immediately arrested by PSI Mahajan. PSI Mahajan thereafter lodged a formal complaint under his signature and the further process was then carried out. After completing the investigation, chargesheet was filed against both the accused for the offenses punishable under Sections 7 and 13(1)(d) read with Section 13(2) of IPC. Accused no.2 was also alleged to have committed an offense under Section 12 of the Prevention of Corruption Act.

5. The Special Court framed charge against both the

accused on 05/07/2004. The accused did not plead guilty and claimed to be tried.

6. In order to bring home the guilt of the accused, the prosecution examined total five witnesses. The prosecution evidence commenced with the testimony of complainant Premchand Surwade and was concluded with the evidence of PI Mukund Mahajan, the investigating officer in the said case. Both the Panch witnesses and the sanctioning authority were also examined as the prosecution witnesses. The defense of the accused was of total denial. The accused also examined two witnesses in their defense.

7. Learned Special Judge, after assessing the oral and documentary evidence brought on record before him, convicted both the accused for the offenses punishable under Sections 7, 13(1)(d) read with Section 13(2) of the P.C.Act and also held accused no.2 guilty for the offense punishable under Section 12 of the Act and sentenced them to suffer the punishments as noted hereinbefore. Aggrieved thereby, the accused have preferred the present appeal.

8. Shri A.B.Kale, learned Counsel appearing for the

appellant, assailed the impugned judgment on various grounds. Learned Counsel submitted that despite there being any cogent and sufficient evidence against any of the accused, the learned trial Court has held both of them guilty for the offenses under the Prevention of Corruption Act. Learned Counsel submitted that for holding an accused guilty under Section 7 and 13 read with Section 13(2) of the Prevention of Corruption Act, the very first requirement is that the prosecution must prove the demand of illegal gratification by the concerned accused. Learned Counsel submitted that in the initial complaint filed by complainant Premchand Rupchand Surwade, accused no.2 was not even named by him and inspite of that the learned trial Court has held accused no.2 guilty for the alleged offenses. Learned Counsel further submitted that the trial Court has also failed in appreciating that the purpose for which accused no.1 was alleged to have demanded the amount of Rs.5,000/- was already served on 4th of May 2002/3 itself and, as such, there was no reason for making any such demand by accused no.1 from the complainant. Learned Counsel further submitted that the evidence of the complainant and the panch witnesses is notably inconsistent on the material aspects of the matter and hence no reliance could have been placed on such evidence by the trial Court. Learned Counsel further submitted that

accused no.2 is admittedly superior officer of accused no.1 and, as such, the trial Court must have appreciated that it was unconscionable that accused no.1 would dictate accused no.2 or give some directions to accused no.2. Learned Counsel further submitted that the evidence as about acceptance of the amount of Rs.2,000/- by the accused no.2 is shrouded with serious doubts and hence cannot be relied upon to base the conviction of the accused. Learned Counsel further submitted that though ample evidence was brought on record showing that the complainant was involved in the activities of blackmailing the Government officers and was facing certain criminal trials, the learned trial Judge has ignored the said aspect.

9. Learned Counsel further submitted that the trial Court has also failed in appreciating that sanction to prosecute the accused was mechanically granted by PW 2 Pravin Salunke and, as such, the entire prosecution was liable to be vitiated. Learned Counsel submitted that though the prosecution has utterly failed in bringing on record cogent and sufficient evidence to prove the demand made by the accused, to prove the acceptance of the bribe amount and to prove that there was a valid sanction to prosecute the accused, the trial Court has erroneously convicted the accused. Learned Counsel,

therefore, prayed for setting aside the impugned judgment and order and, consequently, to acquit both the accused of the charges levelled against them.

10. Shri R.B.Bagul, learned A.P.P. appearing for the State, however, supported the impugned judgment and order. Learned A.P.P. submitted that the learned Special Judge has recorded elaborate reasons for accepting the evidence of the prosecution and has rightly held both the accused guilty for the offenses charged against them. Learned A.P.P. submitted that the evidence of prosecution witnesses has remained unshattered even in the cross examination and the prosecution has successfully proved the motive of the accused as well as the demand and acceptance of the bribe amount by the accused. Learned A.P.P. submitted that though it was the contention of the accused that PW 2 Pravin Salunke merely put his signature on the draft sanction order which was forwarded to him, the contention is liable to be rejected in view of the candid statement of PW 2 that he did not even open the envelope containing the draft sanction order and has himself dictated the order of sanction,. Learned A.P.P. submitted that no interference is called for in the impugned judgment and order and prayed for dismissal of the appeal.

11. I have carefully considered the submissions advanced by the learned Counsel appearing for the appellants and the learned A.P.P. appearing for the State. I have also perused the impugned judgment and evidence on record. During pendency of the present appeal, appellant accused no.1 expired and his legal heirs are prosecuting the matter further. As noted hereinabove, the impugned judgment and order is challenged by the appellants on various grounds. As noted above, it is argued by Shri Kale, learned Counsel appearing for the appellants accused that, neither the demand has been proved by the prosecution nor the acceptance has been proved. It has also been argued that the motive as has been attempted to be shown for giving bribe by the complainant and its acceptance by the accused, was proved to be non-existent. The sanction order has also been seriously challenged.

12. It is not in dispute that complainant Premchand Surwade had filed a written complaint in the office of the Anti Corruption Bureau, Jalgaon, on 15th of May, 2003 only against accused no.1. The averments of the said written complaint also reveal that grievance was raised only against accused no.1. It was the complaint of complainant Premchand that

bribe of Rs.5,000/- was demanded from him by accused no.1 for not detaining his parents by arresting them on the earlier day and keeping them in custody of the Police and to produce them before the Court on the next day. In other words, it was allegedly suggested by accused no.1 to the complainant that if he pays Rs.5,000/- to accused no.1, he will show formal arrest to the parents of the accused and will immediately produce them before the Court whereupon they can be forthwith released on furnishing bail. In the written complaint there is nothing against accused No.2. Accused no.2 came in picture only on the day of trap. It is the case of the prosecution that accused no.1 directed accused no.2 to accept the amount from complainant Premchand.

13. As per the case of the prosecution, the bribe of Rs.5,000/- was demanded by accused no.1 on 5.5.2003 for the purpose as stated hereinabove. In fact, the prosecution case itself demonstrates that the very purpose for which the demand was made by accused no.1 towards complainant Premchand and complainant Premchand had agreed to pay the same to accused no.1 was served on that day itself without any payment of bribe by complainant Premchand. As per the complaint, bribe of Rs.5,000/- was demanded by accused no.1

for immediate production of the parents of the accused before the Court in the Criminal Case filed against them and to facilitate their release on the same day by the Court on furnishing bail. It was alleged by the complainant that accused no.1 had given him an ultimatum that if he fails to pay the amount of Rs.5,000/- his parents will be taken in custody and will be produced before the Court on the next day. The material on record, however, shows that despite giving assurance to pay the amount of Rs.5,000/- by 1 p.m., even though the complainant did not pay the said amount to accused no.1, the parents of the complainant were produced before the Court and were also forthwith released by the Court on bail. Thus, it appears that the purpose for which the demand was made, and consequently, willingness to pay the said amount was shown by the complainant was, in fact, served.

14. The complaint, however, seems to have been stretched further alleging that accused no.1 had sought compliance of his demand and reiterated the same on 5th of May by visiting the house of the complainant in the night hours. At that time also complainant sought some time to comply with the demand and it is the contention of the prosecution that thereafter an ultimatum was given by the accused to

complainant Premchand that if he fails to pay the agreed amount, the complainant will also be arrested along with his mother. According to the complainant, only thereafter he decided to prefer the complaint against accused no.1 and accordingly approached the Office of the Anti Corruption Bureau on 15th May, 2003. It is not in dispute that the trap was decided to be laid believing the allegations made by the complainant Premchand in his written complaint dated 15th of May, 2003 and no demand verification was in any way done before laying the trap.

15. In the above background the evidence of complainant Premchand requires to be closely scrutinized in so far as the aspect of demand is concerned. It was the contention of complainant Premchand in his complaint that though the bribe amount was fixed to be Rs.5,000/-, accused no.1 had agreed for accepting the amount of Rs.2,000/- on 16th of May, 2003 on an assurance that the complainant would pay the balance amount within next few days. Implicitly believing the statement of complainant, anthracene powder was applied to 20 notes of Rs.100/- denomination each; totaling to Rs.2,000/- and the said amount was kept in the pocket of the complainant to be paid on demand by accused no.1. I reiterate

that there was no pre-verification of the said demand. Thus, except the complaint of PW 1 Premchand, there was no other evidence with the Anti Corruption Officer that accused no.1 has made a demand and pursuant to it, an amount of Rs.2,000/- is to be paid on 16th of May, 2003.

16. In the aforesaid context, if the oral testimony of complainant Premchand before the Special Court is perused, nowhere it has come on record that the accused demanded the amount of Rs.2,000/- from the complainant. What has been deposed by the complainant is the fact that accused no.1 asked him whether he has brought his mother and the money as demanded by him. It appears that after realizing that in his testimony before the Court the complainant has not deposed any specific fact as to how much amount was demanded by accused no.1 from him and how much amount was agreed to be paid to accused no.1 on the day of trap, the prosecution has attempted to bring on record the following fact through the evidence of Vijay Ishwar Patil (PW 3) that, "*accused no.1 told accused no.2 that the complainant has brought Rs.2,000/- now, which is to be accepted and he will pay the remaining amount later on but do his work*". Serious doubts are hence raised whether, in fact, any such conversation had really occurred in between

accused no.1 and accused no.2.

17. The facts allegedly reproduced by PW 3 Vijay Patil before the second Panch and the complainant after the incident of trap, which are incorporated in the panchnama at Exh.31, if are perused, the aforesaid doubt gets accentuated. As is appearing from the contents of the panchnama at Exh.31, PW 2 Vijay Patil, while narrating the events chronologically, has stated an altogether different story. He is stated to have disclosed that accused no.1 asked the complainant whether he has brought the amount as was agreed and thereupon complainant explained to accused no.1 that as it was clarified by him few days earlier, he has brought Rs.2,000/- and the remaining amount he will pay later on. The information as above, which is stated to have been given by PW 2 Vijay Patil to the members of the raiding party after the trap, is not finding place in the substantive evidence of the said witness before the Court. As noted earlier, some different fact was deposed by PW 2 in his testimony before the Court.

18. It has to be further noted that the facts which were narrated by PW 2 and which are incorporated in the panchnama at Exh.31 as reproduced above were not stated by the

complainant in his testimony before the Court. Further, the fact which PW 2 Vijay Patil has deposed in his testimony before the Court that, accused no.1 told accused no.2 that the complainant has brought Rs.2,000/- now and he has to accept the same and that the complainant will pay remaining amount later on but his work has to be done, is not stated by PW Vijay Patil while narrating the facts before the members of the raiding party. Thus, the facts which were not stated by the complainant in his substantive evidence before the Court are tried to be brought on record through the evidence of PW 3 Vijay Patil. However, the facts stated by PW 2 and PW 3 in their respective testimonies before the Court and the facts as are appearing in the Panchnama at Exh.31 are inconsistent with each other and no implicit reliance can be placed on such evidence.

19. The prosecution has failed to bring on record any acceptable evidence to prove that accused no.1 had demanded the amount of Rs.5,000/- and had further agreed to accept the amount of Rs.2,000/- on the day of trap. Further, there is no evidence on record showing that accused no.2 was having any knowledge as to how much amount was to be accepted from complainant Premchand. One thing is certain that whatever

amount was alleged to have been demanded by accused no.1 was not actually accepted by him and according to the case of prosecution, the said amount was accepted by accused no.2 for accused no.1 on his instructions.

20. Accused no.2 is, admittedly, a superior officer of accused no.1. Accused no.1 was working as the Police Head Constable whereas accused no.2 was working as the Assistant Sub Inspector. Investigating Officer PI Mahajan has also admitted that accused no.2 was superior officer of accused no.1. In view of the undisputed fact as above, the case of the prosecution that accused no.1 asked accused no.2 to receive the amount for him from complainant Premchand appears quite improbable and difficult to be believed. It appears unconscionable that an inferior Police Officer would ask his superior officer to collect the amount of bribe for him from someone. There is no further explanation as to why accused no.1 himself did not accept the said amount.

21. As noted hereinabove, in his testimony before the Court PW 1 Premchand i.e. the complainant has not specifically deposed as to the amount of bribe to be paid to accused no.1. Even if it is accepted that there was some discussion between

accused no.1 and the complainant and the accused no.1 had agreed to accept from the complainant at the first instance Rs.2,000/-, there is no further evidence on record to show that accused no.2 was having knowledge of the said fact. What has come in the evidence of complainant Premchand is the fact that accused no.1 called accused no.2 and asked him to collect the amount from him. In his entire evidence complainant has not deposed any such fact that any discussion had occurred in between accused no.1 and 2 as about the case of the complainant and or the amount to be accepted from the complainant. That was the reason, as I mentioned earlier that, some facts are tried to be brought on record through the evidence of PW 3 Vijay Patil. From the evidence as has come on record it is difficult to draw any definite conclusion that accused no.2 was having any knowledge as about the amount of bribe to be accepted by complainant Premchand.

22. It is the case of the prosecution that on instructions by accused no.1, accused no.2 went outside the Police Station along with the complainant and the Panch witness to a tea stall and there demanded the amount from complainant Premchand and accepted the same and was trapped by the raiding party while accepting the said amount. Apparent doubts are raised

about the case of the prosecution for the reason that no acceptable evidence has been brought on record to show that accused no.2 was knowing about the quantum of bribe amount. The learned Special Judge has, however, believed the prosecution evidence on the point of acceptance of the bribe amount by accused no.2.

23. As has been observed by the learned trial Court, accused no.2 was, in fact, the main culprit who was behind the curtain of the entire episode. The learned trial Court has further observed that the conclusion so arrived at by him is supported by two instances; first that PW 1 has deposed that on 4th of May, 2003, accused nos. 1 and 2 have visited the house of the complainant and asked him to produce his parents in the Police Station on the next day and the second that on 16th of May, 2003, accused no.1 directed PW 1 to pay bribe money to accused no.2. The observation so made by the learned trial Judge and the finding arrived at by him are wholly illogical, contrary to the evidence on record and in no case can be sustained. It was not even the case of the prosecution that accused no.2 was the main culprit. As is revealing from the evidence on record, accused no.2 came in picture only on 16th of May, 2003.

24. The learned Special Judge has implicitly relied on the statement of PW 1 – Premchand in his examination-in-chief that on 4.5.2003, accused Nos.1 and 2 had visited his house and asked him to produce his parents in the police station on the next day. Relying on the said statement, the learned Special Judge has reached to the conclusion that the said instance goes to show that accused Nos.1 and 2, with common intention and knowledge, had been to the house of the complainant and asked him to produce his parents in the police station on the next day. The learned Special Judge, however, does not seem to have considered the cross-examination of PW 1 – Premchand wherein he has admitted that in the complaint filed by him in the office of Anti- Corruption Bureau, which is at Exh. 21, he had not stated that on 4.5.2003, accused No.2 had been to his house. It further appears that the learned Special Judge has not perused the written complaint filed by PW 1 in the office of Anti- Corruption Bureau on 15th May, 2003. In the said written complaint, PW 1 – Premchand has averred that on 4.5.2003, two police persons had been to his house and both were in civil dress. He has further specifically deposed that one of them was police Head Constable Dhangar i.e. accused no.1 however, he has not named the other police person. In the

subsequent paragraph of the said written complaint, it is averred that in the night of 5.5.2003, police Head Constable Dhangar along with one police person had again been to his house and demanded money from him. It is thus evident that even when PW 1 Premchand filed the written complaint in the office of Anti- Corruption Bureau on 15th May, 2003, he was not aware as to who was the other police person, who was accompanying police Head Constable Dhangar on 4th May, 2003 as well as on 5th May, 2003. In the entire further evidence nowhere it has come on record that PW 1 – Premchand has identified accused No.2 as the same police person, who had been to his house on 4th and 5th May, 2003 along with Police Head Constable Dhangar, i.e. accused No.1. In the circumstances, the conclusion arrived at by the learned Special Judge, that it was accused no.2 who had been to the house of the complainant along with accused No.1, is without any evidence and, therefore, cannot be sustained.

25. Had it been the fact that accused No.2 had also been to the house of complainant Premchand on 4th and 5th May, 2003 along with police Head constable Dhangar, in the written complaint lodged by complainant Premchand (PW 1) he would not have mentioned that accused no.1 was accompanied

by one other police person. He would have in such case definitely disclosed the name of accused No.2 also. For a moment, even if it is assumed that on 4th and 5th May, 2003 complainant Premchand was not knowing as to who was the another police person with police Head constable Dhangar, but in fact, the said person was accused No.2, in his evidence before the court P.W. 1 must have deposed that accused No.2 was the same person, who was accompanying police Head constable Dhangar when he had been to his house on 4th and 5th May, 2003.

26. In fact, the name of accused no.2 came into picture for the first time when accused no.1 allegedly called him on the day of trap. There is absolutely nothing against accused no.2 throughout in the Police papers till that point of time. Even the pre-trap panchnama does not refer to accused no.2 either by name or even by description. From the record it is quite evident that till 15th May, 2003, complainant Premchand was not knowing as to who was the other police person with police Head constable Dhangar, when he had been to his house on 4th and 5th May, 2003. In the circumstances, something must have come on record that complainant – Premchand identified accused No.2 to be the same person, who had been to his

house on 4th and 5th May, 2003 along with police Head constable Dhangar. Thus, there is absolutely no evidence on record, on the basis of which an inference can be drawn that the second police person, who was accompanying accused No.1 when he had been to the house of complainant Premchand on 4th and 5th May, 2003, was accused No.2. When nothing has come on record that accused No.2 was identified by complainant Premchand to be the same police person accompanying police Head constable Dhangar at the relevant time, it can be reasonably inferred that accused no.2 did never visit the house of the complainant along with accused No.1. In the circumstances, it is difficult to agree with the observation made and the conclusion recorded by the trial Court that accused no.2 was the main culprit in the alleged occurrence.

27. It was sought to be canvassed by the learned A.P.P. that presumption under Section 20 of the Act was raised against the accused persons since the bribe amount was recovered from accused no.2. I am unable to accept the submission so made by the learned A.P.P. It must be borne in mind that the presumption is attached to a conscious possession of money. In the instant matter, the amount of bribe was admittedly not found with accused no.2. Accused

no.2 is, however, sought to be connected with the tainted currency notes which were lying on the platform of the said tea stall where the accused was sitting for the purposes of taking tea. The case of the prosecution is that accused no.2 dropped the said currency notes after the raiding party members entered on the spot. Thus, before raising presumption under Section 20 of the Act against the accused, it has to be scrutinized whether the story of dropping the currency notes by accused no.2 itself can be believed or not. In respect of alleged acceptance of bribe by accused no.2 and the further allegation that he dropped the said amount after the raiding party members arrived on the spot, the version of the prosecution witnesses is materially inconsistent.

28. PW 1 complainant Premchand in his examination in chief has deposed that,

" Accused no.2 asked me to give the amount. Then I took currency notes of Rs.2,000/- from left pocket of my shirt with the help of right hand and gave it to accused no.2. Thereafter, I took out a handkerchief from my pocket of pant and gave a signal to PSI Mahajan by cleaning my face with the handkerchief by standing up. Thereafter, PSI Mahajan came there and arrested accused no.2. I again say that after giving signal to PSI Mahajan after cleaning my face with the handkerchief, in the meantime tea came up in glasses. As soon as we hold the glass of tea, PSI Mahajan raided accused no.2. Then PSI Mahajan arrested accused no.2. In the meantime,

accused no.2 left the currency notes and glass of tea from his hand. Then PSI Mahajan asked Panch no.2 Vijay Parbat Patil to lift up the currency notes which were lying on the ground. Panch no.2 collected those currency notes."

About the aforesaid episode, PW 3 Vijay Parbat Patil has testified thus:

"Complainant took out Rs.2,000/- from left pocket of his shirt and gave it in the in the hands of accused no.2. Before demanding that amount the tea was already served to us in the glasses and we were holding the glasses of tea in our hands. In the meantime, accused no.2 demanded the amount with the complainant and he gave it. At that time, PSI Mahajan who was watching all this incident from a nearby Pan stall, came immediately to the tea stall. He showed his identity card to accused no.2. Accused no.2 became frightened and put the currency notes on the ground. Accused no.2 was uttering that he has no concern with the amount as it belongs to accused no.1. Another Panch lift up the currency notes from the ground. Thereafter, PSI Mahajan and his staff took accused no.2 to the Taluka Police Station. "

29. Now, it would be useful to see what has come on record about the same incident in the evidence of PW 4 Vijay Parbat Shingte, the another Panch witness. He has deposed thus:

" After about 45 minutes, complainant Premchand, Panch Vijay Patil and accused no.2 Bharat Sing came out of the Police Station to a tea stall nearby with Police Station. I have seen that tea had been served to them and complainant Surwade gave amount to accused no.2

Bharat Sing. Thereafter, PSI Mahajan, his raiding party members and myself rushed towards the tea stall. Accused no.2 left the currency notes as well as the glass of tea from his hand from that platform. PSI Mahajan then asked me to lift the currency notes and accordingly I took the currency notes in my possession. "

PW 5 Mukunda Rajaram Mahajan, the investigating Officer, has narrated the said incident thus:

" At about 12.35 p.m. the complainant, Panch no.1 and one person wearing Safari came out of the Police Station. Then they went to a nearby tea stall and get seated on three chairs. At about 12.45 p.m., the complainant gave a signal of accepting the bribe. Immediately thereafter myself, Panch No.2 and Constable Bhagwat and Nikam went there. Then we asked Panch no.1 that who had accepted the bribe money whereupon he told us that the person wearing Safari had accepted the amount which is in his hand. Then I introduced the said person by showing my identity card as well as with my staff. Then that person left the glass of tea from his left hand and the currency notes from his right hand. I asked constable Bhagwat and Nikam to hold that person. Then I asked the name of that person but he told me that he has no concern with the matter and the offense of complainant is investigated by accused no.1 Shravan Dhangar. Thereafter, the said person told his name as Bharat Sing Vithal Patil, ASI, Taluka Police Station, Bhusaval. I asked Panch No.2 to collect the currency notes lying on the ground. "

In the cross examination of PW 1, the following facts have come on record pertaining to the alleged acceptance of the bribe amount by accused no.2:

" After I gave signal, PSI Mahajan came first on that platform. PSI Mahajan arrested accused no.2 by putting his hand under the arm pits. Accused no.2 left

the currency notes and glass of tea as soon as PSI Mahajan arrested him. PSI Mahajan did not make enquiry with any person on that platform or the owners of Hair Art or Watch Company in my presence."

It has also come on record in the cross examination of PW 1 Premchand that he gave the signal to PSI Mahajan after they reached to the tea stall within four minutes.

30. In the cross examination of PW 3 Vijay Parbat Patil, the facts which have come on record are thus:

" That myself and complainant were intending to give signal to PSI Mahajan by cleaning face with the help of handkerchief but in the meantime PSI came there. I do not remember whether in the left or right hand accused no.2 was holding the glass of tea. Accused no.2 demanded money with the complainant within few seconds after taking glass of tea. Accused no.2 was taking sip of tea when the complainant gave him currency notes of Rs.2000/-. I have not seen that accused no.2 exchanged the glass of tea from one hand to another. "

It has further come on record in his cross examination that,

" I have seen that the accused no.2 left the glass of tea on the ground after coming of PSI Mahajan. I do not remember if PSI Mahajan caught hold of accused no.2 by putting his hand below his arm pits. The currency notes which were lifted up by Panch No.2 had not scattered after leaving by accused no.2 on the platform but they were intact. I do not remember if any rubber band was used for tying the currency notes. "

PW 3 Vijay Shingte in his cross examination has deposed the following facts:

" Complainant or the Panch Vijay Patil did not give any kind of signal to us within two to three minutes of serving the tea glass, the incident of giving and taking the currency notes occurred. Initially, accused no.2 was holding glass of tea in his right hand, however, while taking the currency notes, he shifted the glass from right hand to left hand and accepted the amount in his right hand. PSI Mahajan was the first person amongst us to go to the platform. The currency notes were left by accused no.2 on that platform before I reached there. The currency notes were not in scattered condition but they were intact. When I reached to the platform accused no.2 was sitting in the chair. The currency notes were lying on the platform."

31. The evidence as above of the prosecution witnesses clearly demonstrate that as about the most material fact as to when did accused No.2 demand and accept the bribe amount, materially different versions have come on record. As deposed by the complainant, he first paid the amount to accused No.1 and thereafter tea was served. As against it, PW 3 – Vijay Parbat Patil, who is the shadow panch and who all the while was accompanying the complainant, has deposed that tea was served first and thereafter accused No.1 demanded the amount from the complainant. Whereas, P.I. – Mukund Mahajan (PW 5) has deposed that he was unable to tell whether tea was served

or not before he received the signal from the complainant.

32. Further, it is the contention of complainant – Premchand as well as PW 3 – Vijay Patil that accused No.2 was holding the bribe amount of Rs. 2,000/- clenched in his hand when the trap was laid and he was caught red-handed by the raiding party headed by PW 5 – Mukund Mahajan. As is revealing from the testimony of complainant – Premchand and PW 3 – Vijay Patil, as also from the testimonies of PW 4 – Vijay Shingate and PW 5 – Mukund Mahajan, at the time of raid the bribe amount was clenched by accused No.2 in his one hand and he was holding the glass of tea in his other hand. It appears quite improbable that accused No.2, who is alleged to have accepted the bribe amount continue to hold the said amount in his fist and did not keep the said amount in the pocket of his pant or shirt. It appears more improbable that even after the tea was served, accused no.2 continued to keep the said amount clenched in his hand instead of keeping the same in the pocket of his pant or shirt.

33. After having considered the evidence as aforesaid, the case put forth of dropping the tainted currency notes by accused no.2 appears unnatural and improbable. As per the

investigating officer, the money was dropped by accused no.2 after PI Mahajan introduced him and made enquiry with Panch no.1 as to who accepted the bribe amount. Same chronology of events is mentioned in trap panchnama at Exh.31. It cannot be believed that a person; that too a Police officer, will hold the bribe money in his hands during all this period. On the other hand, the explanation offered by the accused that the said amount was surreptitiously dropped by the complainant near the chair of the accused without his knowledge appears to be more probable. In so far existence of anthracene powder on the fingers of accused no.2 is concerned, he has offered an explanation that, he was called upon by the investigating officer to lift the said notes and hand them over to him. The explanation so given does not appear improbable.

34. The question is also raised whether it was pre-decided that the amount of bribe shall be paid to the accused at the tea stall. PW 1 Premchand in his evidence before the Court has specifically deposed that, *"It was previously determined between us and PSI Mahajan to come to the tea stall for a cup of tea."* Whereas, the shadow Panch Vijay Patil (PW 3) in his cross examination has unambiguously stated that *it was not pre-determined of the trap to go for tea.*

Investigating Officer PI Mahajan (PW 5) has also stated in his cross examination that *it was not pre-determined to have raid on the accused in any tea stall before starting for the raid.* From the evidence as above, the possibility that, since none of the accused demanded any amount in the Police Station, the complainant at his own followed accused no.2 to the tea stall and surreptitiously placed the currency notes below his chair so that the complaint made by him shall not be proved to be a false complaint, is difficult to be ruled out.

35. The further fact, as has been deposed by the prosecution witnesses, that even if the currency notes of Rs.2,000/- were dropped on the floor by accused No.2 after he was trapped, all the currency notes were intact and did not get scattered. The witnesses have admitted that the currency notes were not bound by any rubber band or the like means. As is revealing from the facts deposed by the prosecution witnesses, after the raiding party entered at the tea stall and caught hold of accused No.2, he got frightened and dropped the currency notes as well as the glass of tea in his hand on the floor. It has also come on record that the glass of tea was broken into pieces after it was dropped by accused No.2. In the background of aforesaid fact, it appears quite unnatural and

improbable that the 20 currency notes of denomination of Rs. 100/- each and which were not bound by any rubber band or like means, would remain intact as a wad and would not get scattered. Considering the facts as aforesaid, the defence raised by accused No.2 that somebody, without his knowledge, had kept the wad of 20 currency notes of denomination of Rs.100/- near the chair is difficult to be ruled out.

36. Though the charge framed against the accused reveals that there was an initial demand of Rs.5,000/- and accused no.1 asked the complainant to give Rs.2,000/- after two days and the remaining Rs.3,000/- subsequently, no such evidence is brought on record to substantiate the said charge. What has been stated by PW 1 in his testimony before the Court is the fact that accused no.1 demanded Rs.5,000/- but he could arrange for Rs.2,000/- only and he approached the Anti Corruption Bureau with that money. Thus, in the evidence of PW 1 there is no reference of any talks for reduction of the amount or making part payment.

37. The bribe is said to be demanded admittedly as a motive for not arresting the parents of the complainant and for producing them in the Court. According to the case of the

prosecution, when PW 1 went to Taluka Police Station, Bhusaval, on 5th of May, 2003, along with his parents, accused no.1 had demanded from him Rs.5,000/- for producing the parents of PW 1 before the Court immediately. It was the further case of the prosecution that accused no.1 had threatened PW 1 that if he does not pay the amount of Rs.5,000/- his parents would be put in jail and they will be produced in the Court on the next day. It was also the case of the prosecution that PW 1 thereupon requested accused no.1 to produce his parents before the Court on that day itself and assured that he will pay the amount as demanded by accused no.1 before 1 p.m. It is the matter of record that PW 1 did not pay the amount of Rs.5,000/- to accused no.1 on 5th of May, 2003. It is also the matter of record that parents of PW 1 were produced before the Court on the same day and were also forthwith released by the Court on a surety of Prabhakar Totaram Nikalje, the brother-in-law of PW 1. The evidence on record as above has raised serious doubts about the allegation made by PW 1 that the bribe of Rs.5,000/- was demanded by accused no.1 from him for producing his parents before the Court on the same day. Had accused no.1 really demanded the bribe amount, he would certainly had not produced the parents of PW 1 before the Court when the amount allegedly

demand by him was not received to him. In the circumstances, accused no.1 could have shown the parents of PW 1 arrested late in the evening and would have produced them on the next day before the Court. When, without receiving any amount from PW 1 accused no.1 produced the parents of PW 1 before the Court, the only inference which emerges is that no demand was made by accused no.1 for producing the parents of the complainant before the Court on the same day and the allegation made against accused no.1 by PW 1 was thus false.

38. The evidence on record further shows that PW 1 has then attempted to develop a new story that on 5th of May, 2003, accused no.1 with one Police person again had been to his house and demanded bribe of Rs.5,000/- and threatened PW 1 that if he fails to pay the said amount, he will put him behind the bars since one complaint has also been received against him. However, it has come on record through the evidence of investigating officer PI Mahajan that accused no.1 on 5th of May, 2003 itself had forwarded his report on the complaint received against PW 1 contending therein that there was no substance in the allegations made against PW 1 and that no case was made out against PW 1 to

proceed against him. Similar was the case in regard to submission of the Chapter Case against the mother of PW 1. Nothing had remained to be done in the said case so as to demand any illegal gratification. It is, thus, explicit that on 16th of May, 2003, when accused no.2 is alleged to have accepted the bribe of Rs.2,000/- for and on behalf of accused no.1, there was no work pending in relation to PW 1 for which he was required to pay any bribe to accused no.1 or accused no.2. The motive has, therefore, not been established by the prosecution.

39. The next question, therefore, arises as to what was the reason that PW 1 filed a complaint against accused no.1. Perusal of the evidence on record shows that probable reasons are appropriately brought on record through the cross examination of the prosecution witnesses. It has come on record that one Shevantabai had lodged complaint against parents of PW 1. As was contended by the learned Counsel for the appellants, PW 1 got annoyed because of registration of a criminal case as well as Chapter Case against his parents on complaint of said Shevantabai. From the evidence on record, it further appears that PW 1 was expecting that he being an editor of one weekly newspaper by name 'Himalaya Putra',

accused no.1 ought not have made his parents accused in the criminal case initiated on the complaint of Shevantabai and since his request was not conceded to by accused no.1, possibly, he got annoyed and hence lodged the complaint against the accused.

40. It has also to be stated that PW 1 was not carrying good reputation and was himself an accused in some cases of extortion. PW 1 in his cross examination has admitted that Police Inspector Jamdade had lodged complaint against him alleging that he had demanded Rs.20,000/- from him. PW 1 has further admitted that on such complaint a criminal case bearing No.114/1999 was registered against him and one Anil Sapkale. PW 1 has further admitted that in the aforesaid criminal case he was kept in Police custody for five days and the said case was pending in the Court at Bhusaval. PW 1 further admitted in his cross examination that one Sukhdeo Amrut Patil, who happens to be Sarpanch of his village, had also instituted a criminal case against him in the Court at Bhusaval making allegations of forgery and cheating against him. Though it is true that merely because certain cases are pending against him, PW 1 was not precluded from lodging the complaint against present appellants, the antecedents of PW 1

as above certainly raise serious doubt about his credibility.

41. Now, as about the order of sanction. Though the trial Court has held the sanction to be valid and proper, on perusal of the testimony of PW 2 Pravin Salunke and on perusal of the alleged order of sanction, it is difficult to agree with the conclusion recorded by the learned Special Judge that the sanction was accorded by PW 2 to prosecute the present appellants with application of mind. The application submitted by Shevantabai for making PW 1 Premchand as an accused was a material document. It was the allegation of PW 1 that bribe amount was demanded by accused no.1 for sending a favourable report on the said application to the effect that there was no case for making PW 1 as an accused in the said case. As has come on record, accused no.1, on 5.5.2003 itself had forwarded his report contending therein that there was no case made out against PW 1 Premchand. PW 2 Pravin Salunke in his cross examination, however, admitted that he did not go through the application of Shevantabai for making PW 1 as an accused in her case. PW 2 has further stated in his cross examination that he was not remembering whether any such record was placed before him for instituting a Chapter Case against the mother of PW 1 under the signature of PI Pardeshi.

PW 2 Salunke has also admitted that he did not peruse the statement of PI Pardeshi. In fact, the statement of PI Pardeshi was having significant relevance. Considering the admissions as above given by PW 2, it is difficult to rule out the objection raised by the appellants that the sanction was accorded by PW 2 Pravin Salunke mechanically and without application of mind.

42. After having considered the entire evidence on record, it is revealed that the prosecution has failed in bringing on record any unimpeachable evidence to prove the alleged demand allegedly made by accused no.1 and alleged acceptance of the said amount by accused no.2. The prosecution has also failed in bringing on record any cogent and sufficient evidence so as to prove the motive for PW 1 in paying the bribe amount to accused no.1 as well as its acceptance by accused no.2. In absence of any concrete evidence, the trial Court ought not have based the conviction of the accused for the offenses with which they were charged. I have no hesitation in holding that the evidence which has been brought on record by the prosecution against the appellants is not free from doubt the benefit of which would definitely go in favour of the appellants.

43. For the reasons stated above, the order passed by the Court below deserves to be set aside and quashed. In the result, the following order is passed:

ORDER

1. The judgment and order dated 6th of December, passed by the Special Judge, Jalgaon, in Special Case No.10/2003, is quashed and set aside. The appellants (1) Shrawan s/o Adhar Dhangar (deceased), and (2) Bharatsing s/o Vithal Patil are acquitted of the charges levelled against them. Their bail bonds stand cancelled. Fine amount, if any paid by the appellants, be refunded to them. Criminal Appeal (No.814 of 2004), thus, stands allowed.

(P.R.BORA)
JUDGE

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