

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

CRIMINAL APPEAL NO.395 OF 2002

1. Raju S/o Haribhau Zagade,
Age : 40 years, Occu : Service (Range Forest Officer)
Chalisgaon (Wildlife),
R/o Chalisgaon, Dist. Jalgaon.
2. Bahadur s/o. Dildar Tadvi
Age : 51 years, Occu : Service (Forest Guard),
R/o Pal, Tal. Raver, Dist. Jalgaon .. **Appellants**

Versus

The State of Maharashtra,
Through Deputy Superintendent of Police,
Anti Corruption Bureau, Jalgaon .. **Respondent**

Mr. P.P. Mandlik, Advocate for Appellants;
Mr. A.A. Jagatkar, APP for Respondent - State;

CORAM : P.R.BORA, J.

DATE : 06.04.2018

ORAL JUDGMENT :

1. The appellants have filed the present appeal against the Judgment and order passed by Additional Sessions Judge, Jalgaon in Special Case No.1 of 2000 decided on 09.07.2002. The appellants were prosecuted in the aforesaid special case for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) and Section 12 read with Section 7 of the Prevention of Corruption Act (hereinafter referred to as the 'P.C. Act'). Vide the impugned Judgment, the learned Additional Sessions Judge has convicted the appellant no.1 Raju Haribhau

Zagade for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the P.C. Act and sentenced him to suffer Rigorous Imprisonment for 2 years and to pay fine of Rs.2,000/-, in default to suffer Simple Imprisonment for one month. Appellant No.2 Bahadur Tadvī has been convicted for the offence punishable under Section 12 read with Section 7 of the P.C. Act and is sentenced to suffer Rigorous Imprisonment for 6 months and to pay fine of Rs.500/-, in default to suffer Simple Imprisonment for 15 days.

2. Prosecution case, in brief, was thus :

. One Pandu Mansaram Pawara, resident of village Garkheda, Tal. Raver, District Jalgaon approached the office of the Anti Corruption Bureau at Jalgaon on 11.08.1997 and lodged the complaint against accused no.1 Raju Haribhau Zagade. It was his complain that, for allowing his cattle to graze in the forest of Pal, accused no.1 had demanded the bribe of Rs.10,000/- from him. It was his further contention that, as per the talk, which he had with accused no.1, he had agreed for accepting Rs.8,000/- as the first installment and had asked the complainant to pay the said amount at his house on 12.08.1997. It was further contended that the complainant was not inclined to give any such amount by way of bribe and hence, the complaint is being lodged.

3. After lodging of such complaint by said Pandu Pawara, the further process was initiated by the Anti Corruption Bureau, Jalgaon. Two government employees were called to act as the panch witnesses and it was decided to lay a trap against the accused. The Officers of the Anti Corruption Bureau then completed all the usual formalities i.e. complaint was taken in writing, the complainant was asked to deposit the amount of Rs.8,000/-, anthracene powder was smeared over the currency notes deposited by the complainant and the pre-trap panchanama was drawn. All necessary instructions were also given by the Officers of the Anti Corruption Bureau to the complainant as well as the panch witnesses.

4. Accordingly, the complainant, the panch witnesses and the raiding party members reached at Raver. The complainant and panch no.1 entered into the house of accused no.1. Complainant told accused no.1 that, he has brought the amount of Rs.8,000/- and handed over the said amount to him and also asked him, whether he will receive any receipt of that amount. Accused no.1 accepted the said amount and counted the said amount. While counting the said amount, a doubt was raised in the mind of accused no.1 that, the notes were powdered and the body language of the complainant was also

found by him somewhat doubtful. Accused no.1, therefore, returned the amount of Rs.8,000/- to the complainant and asked him to pay it to accused no.2. Accused no.1 then left the house on his motorcycle with one person stating that, he is going to the hospital. The complainant and panch no.1 then went to the house of accused no.2 and told him that, accused no.1 has called him at his house. Complainant, panch no.1 and accused no.2 then reached to the house of accused no.1. After sometime accused no.1 returned to his house. Complainant then paid the amount of Rs.8,000/- to accused no.2 and thereafter gave a predetermined signal by coming out of the house of accused no.1. After receiving the signal from the complainant, the raiding party members rushed into the house and caught hold of accused nos.1 and 2. It was informed to them that, the bribe amount was paid to accused no.2 on instruction of accused no.1. The bribe amount of Rs.8,000/- was recovered from the pant pocket of accused no.2. The currency notes recovered from the custody of accused no.2 were seen in the light of the ultraviolet lamp. The glittering was noticed on the said currency notes. The number of currency notes were tallied with the notes handed over by the complainant to the Anti Corruption Bureau, numbers of which were recorded in the pre-trap panchanama. Accused nos.1 and 2 thereafter were taken to the police station and further process was carried out of preparing the post-trap

panchanama. Both the accused were arrested. The necessary further investigation was carried out and after completing the investigation, the charge-sheet was filed against both the accused for the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) as well as under Section 12 read with Section 7 of the PC Act.

5. The learned Special Judge framed the charge against the accused on 14.06.2001. The accused did not plead guilty and claimed to be tried. The prosecution, in order to prove the guilt of the accused, examined four witnesses before the Special Court. The prosecution evidence commenced with the testimony of the complainant. The second witness examined by the prosecution was the sanctioning authority namely Shri Abhay Tripathi, the Deputy Secretary, Revenue and Forest Maharashtra State. Panch no.1 namely Babusing Ramchandra Chaure deposed as the third witness of the prosecution and the prosecution evidence was concluded with the testimony of Investigating Officer Shri Kalidas Shankarrao Suryawanshi. The defence of the accused was of total denial and false implication. The accused examined Dr Shabbir Ahmed and Nadeem Gulam Pinjari as the defence witnesses. The learned Special Judge after having assessed the oral and documentary evidence on record, held both the accused guilty for the offences with which they were

charged and sentenced them to suffer the imprisonment as noted above. Aggrieved by, the accused have preferred the present appeal.

6. Shri P.V. Mandlik, the learned Senior Counsel appearing for the accused submitted that, while deciding the special case against the accused persons, the learned Special Court has lost sight of the basic principles of law. The learned Counsel submitted that, in the cases of Anti Corruption, the foremost important aspect is to prove demand by the accused of some illegal gratification for the purpose of doing some favour to the complainant. The learned Counsel submitted that, in the instant case, the aforesaid basic requirement itself has not been complied with. Learned Counsel submitted that, it was mandatory on part of the Anti Corruption Officers to get verified the demand allegedly made by the accused. Learned Counsel submitted that, admittedly, there is no demand verification in the present matter.

7. The learned Counsel further submitted that, the Officers of the Anti Corruption did not bother to verify whether the amount allegedly demanded by accused no.1 was towards any legal remuneration or was by way of bribe. The learned Counsel submitted that, implicitly relying upon the say of the

complainant, the process of laying trap was carried out by the Officers of the Anti Corruption. The learned Counsel further submitted that, from the evidence which has come on record, no such conclusion was liable to be drawn that, the amount of Rs.8,000/- as was paid by the complainant, was towards illegal gratification. The learned Counsel submitted that, sufficient evidence was brought on record by the accused showing that, the cattle of the complainant were seized by the forest officials as they had entered in the prohibited area and for release of the said cattle, the complainant was liable to pay fine. The learned Counsel submitted that, the amount paid by the complainant was towards the fine as aforesaid and not by way of bribe or any illegal gratification.

8. The learned Counsel submitted that, there are several other discrepancies in the evidence of prosecution, considering which, the allegations against the accused could not have been said to have proved, but the trial Court has implicitly relied upon the said evidence and held the accused persons guilty for the offences charged against them. The learned Counsel submitted that, the trial Court has also failed in appreciating the evidence of the defence witnesses. For all aforesaid circumstances, the learned Senior Counsel prayed for setting aside the order of conviction and to acquit both the

accused of all the charges levelled against them.

9. Shri A.A. Jagatkar, the learned APP supported the impugned Judgment. The learned APP submitted that, the prosecution has beyond reasonable doubt proved the demand as well as the acceptance of the bribe amount by the accused persons and hence no interference is required in the impugned Judgment and order.

10. I have given due consideration to the arguments advanced by the learned Senior Counsel for the accused and the learned APP for the State. I have perused the impugned Judgment as well as the entire evidence on record.

11. It was the specific defence of accused no.1 that, there was no demand from him of any illegal gratification and the amount of Rs.8,000/- as was sought paid by the complainant was towards the fine, which he was liable to pay since his cattle were found to have entered in the prohibited area of forest on 04.08.1997. It was also specifically deposed by accused no.1 in his statement under Section 313 of Code of Criminal Procedure that, the complainant was annoyed against him because he had refused to accept the illegal request made by the complainant to waive the amount of fine of Rs.10,000/- and that was the reason

that, he filed a total false complaint against him. Though it was vehemently argued by the learned APP that, the prosecution has duly proved the acceptance of the amount by accused no.1, the primary condition for acting on the legal presumption under Section 20(1) of the PC Act was that, the prosecution must have proved that, amount allegedly received by the accused was illegal gratification. Unless the prosecution proves that, the money paid was not towards any lawful consideration or legal remuneration, the Court cannot take recourse to the presumption of law contemplated in Section 20(1) of the PC Act though the Court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at any stage.

12. In the instant matter, the moot question, in light of the defence raised by the accused is, Whether the amount of Rs.8,000/- paid by the complainant Pandu Pawara (PW -1) to accused no.2 was for personal satisfaction or pleasure of accused no.1 or otherwise? The conviction of the accused can be maintained only if it is found that, sufficient evidence has been brought on record by the prosecution to prove that, the amount of Rs.8,000/- was not the legal or lawful charges recovered by the accused. Vice versa, if there is reason to doubt Whether the money was received for lawful collection, the benefit of it cannot

be denied to the accused. The evidence, which has come on record, has to be therefore analyzed keeping in view the aforesaid aspect.

13. It has come on record through the evidence of DW -2 Nadeem Gulam Pinjari, the then Assistant Conservator of Forests, Yawal that, at the relevant time, accused no.1 Raju Zagade was working as the Regional Forest Officer (Wild Life). It has also come on record through his evidence that, permission for grazing the cattle used to be granted only in the territorial forest and not in the Wild Life Sanctuary. It has also come on record that, cattle entering in the wild life sanctuary used to be impounded and for release of the cattle so impounded, penalty used to be charged at the rate of Rs.100/- per cattle. As deposed by DW-2 Nadeem Pinjari, the report dated 04.08.1997 at Exh.31 was duly received to him. Perusal of the report at Exh.31 reveals that, total 110 cattle were impounded on that day, of which, 10 were belonging to Shri Shabbir Ahmed Kabruddin and 100 were belonging to Pandu Pawara i.e. the complainant. The report also reveals that, by giving warning to the accused for payment of penalty, the cattle were given in their possession. Exh.32 is the panchanama prepared on 04.08.1997, which shows that, Shri K.V. Mistri, Forest Guard has impounded 110 cattle, which had entered into the prohibited area of forest.

The panchanama also reveals that, 10 cattle out of the total 110 were belonging to one Shabbir Kabruddin and 100 were belonging to Pandu Pawara. The panchanama further reveals that, the son of Pandu Pawara namely Gathu Pandu Pawara gave an undertaking in writing for payment of fine amount and on such undertaking obtained the custody of the 100 cattle belonging to his father. At Exh.33 there is a statement of Shabbir Ahmed and at Exh.34 is the statement of Gathu Pandu Pawara. After having perused the documents as aforesaid, there had remained no doubt that, on 04.08.1997, 100 cattle belonging to complainant - Pandu Pawara were impounded by the Forest Officials since they entering into the Reserved Forest and subsequently they were given in custody of the son of Pandu Pawara namely Gathu Pawara on submitting an undertaking by him that, his father will pay the amount of fine.

14. The learned APP, though, sought to contend that, the aforesaid record was subsequently prepared by the accused persons with the help of their colleague and the learned Special Judge has to somewhat extent relied upon the said argument, there appears no substance in the said argument. The record shows that, the documents at Exhs.30 to 35 were admitted by the prosecution and hence were exhibited. In the circumstances, the learned APP cannot allege that, the said documents were

concocted by the accused. Even otherwise, it does not appear to me that, the evidence so produced on record by the defence was concocted or false. The aforesaid documents apparently reveal that, all those documents were prepared in the official discharge of the duty by the concerned forest officials. It is further significant to note that, the accused also did examine DW-1 Dr Shabbir and in his evidence, the said witness has admitted that, on 04.08.1997 total 110 cattle were seized by the officials of Wildlife Sanctuary and out of the said cattle 10 were belonging to him and 100 were belonging to Pandu Pawara.

15. In the cross examination of DW 2 Nadeem Pinjari, a suggestion was given to him that, the documents at Exhs.30 & 31 were later on prepared to protect the accused persons, of course, the said suggestion was flatly denied by DW No.2 Nadeem Pinjari. However, it is significant to note that, in respect of the documents at Exhs.32 to 35, no such suggestion also was given to the said witness. I need not to repeat that, Exh.34 is the statement-cum-undertaking given by Gathu Pawara, the son of complainant Pandu Pawara. In background of the aforesaid documentary evidence, which has come on record, if the cross examination of PW-1 is perused, it reveals that, he has flatly denied that, any such incident of seizure of his 100 cattle on 04.08.1997 had ever occurred. The complainant in his cross

examination has flatly denied that, (i) his 100 cattle were seized on 04.08.1997, that (ii) a report in that regard was forwarded by Shri K.B. Mistri, the Forest Guard, and (iii) that his son gave an undertaking and obtained the possession of the cattle on *supurtnama* and asked for time to pay the amount of fine. The question arises to what extent such a witness can be believed. In light of the documentary evidence brought on record by the defence, it is quite evident that, PW-1 falsely denied the suggestions given to him. The learned APP could not justify or give any satisfactory explanation as to what was the reason for the complainant to falsely deny the facts, for which, the convincing documentary evidence was placed on record by the defence.

16. From the evidence, which has come on record, there appears substance in the defence raised by the accused that, the amount which was paid by complainant Pandu Pawara to accused no.2 was towards the amount of fine and not by way of any illegal gratification or bribe. There further appears reason to believe that, since the accused no.1 did not concede to the illegal demand made by the complainant that, his cattle be permitted even in the Reserved Forest, he has tried to implicate accused no.1 by making false allegation against him that, he demanded illegal gratification from him.

17. Even otherwise after having considered the entire evidence on record, it is difficult to accept the story of the prosecution. Firstly, there is absolutely no evidence for verification of the demand allegedly made by accused no.1. Unless the demand is proved, though there may be the evidence as about the acceptance of the amount, a doubt always remains whether the amount was accepted by way of any illegal gratification or for any legal charges. In the instant matter, in background of the evidence brought on record by the defence, it is difficult to reach to any conclusion whether the amount of Rs.8000/- as was paid by complainant to accused no.2 whether was towards any illegal gratification or towards the amount of fine, which was imposed upon him on 04.08.1997 for intruding his cattle into the restricted area of Wild Life Sanctuary.

18. There are some other circumstances, which had also created serious doubts about the truthfulness in the case of the prosecution. It is the case of the prosecution that, on 12.08.1997 PW No.1 Pandu Pawara along with panch no.1 went to the house of the accused no.1 and handed over the tainted currency notes of Rs.8000/- to him. But, feeling some doubt, accused no.1 returned the said amount to the complainant and asked the complainant to bring accused no.2 and to hand over the said

amount to accused no.2 and accordingly, accused no.2 was brought by the complainant at the house of the accused no.1 and then PW No.1 handed over the amount to accused no.2, who was then trapped red handed by the ACB Officers.

19. The entire aforesaid evidence is unbelievable. PW-1 in his cross examination has admitted that, the ACB Officers had instructed him to give the agreed signal no sooner the amount is paid to accused no.1. PW -1 has further admitted that, he gave the predetermined signal to the ACB Officers, when he handed over the tainted currency notes to accused no.1. However, it is the matter of record that, at that time no raiding party members rushed to the spot or entered into the house of accused no.1. As further admitted by PW-1 he was there with accused no.1 for five minutes after he paid the amount of Rs.8000/- to him. It appears unconscionable that, when a predetermined signal was given by PW-1 as was instructed to him by the ACB Officers, none of the ACB Officers entered into the house of accused no.1.

20. The further facts, which have come on record are more unconscionable and unnatural. It has come on record that, the complainant and panch no.1 (PW-3) then came out of the house of accused no.1 and proceeded towards the house of accused no.2. Admittedly, at that time, the raiding party

members were all around the house of accused no.1 keeping their predetermined positions. As I noted herein above, firstly it is unconscionable and unbelievable that, even though PW-1 Pandu Pawara gave a predetermined signal after he paid the amount of Rs.8,000/- to accused no.1, no one from raiding party rushed to the spot. For a moment, even if it is accepted that, signal given by PW-1 was not within the vision of the raiding party members, it appears unnatural and unbelievable that, even after PW-1 came out of the house of the accused no.1 along with panch no.1 and proceeded towards some other direction, no inquiry was made with him by the raiding party members. As is revealing from the evidence on record, the raiding party members did not have any talk with PW-1 or panch no.1. The evidence on record further shows that, after about 20 minutes, PW-1 and panch no.1 accompanied by accused no.2 returned to the house of accused no.1. Even at that time, no inquiry was made by ACB officers with PW-1 or panch no.1. It is further significant to note that, after PW-1 with panch no.1 left the house of accused no.1 and proceeded towards the house of accused no.2, accused no.1 also left his house along with one person on his motorcycle.

21. In the cases of trap, giving signal by the complainant indicating that, the person concerned has accepted the amount of bribe assumes vital importance. It's a crucial stage to nab the

culprit. That is the reason that, the specific instructions are given to the complainant as to when and in what manner he has to give signal to the raiding party members, so that, they can rush to the spot and catch the accused. In the instructions so imparted, it is implied that, the signal which is to be given by the complainant or the panch, as the case may be, must be visible to the raiding party members.

22. Thus, the version of the complainant in his testimony before the Court that, he paid the amount of Rs.8,000/- to accused no.1 and then gave a predetermined signal to the raiding party members is fully shrouded with doubts. As has come on record in the evidence of the complainant, he was visible to the raiding party members. In the circumstances, it is difficult to accept that, though complainant gave a predetermined signal, the raiding party members did not rush into the house of accused no.1. No such story can be believed. Further it is pertinent to note that, the panch no.1 - Babusing Chaure (PW-3) did not support the facts so stated by the complainant. In his cross-examination, panch no.1 (PW-3) has candidly answered that, the complainant did not give signal to the ACB Officers when he and the complainant were in the house of the accused Zagade for first 10 to 15 minutes. Thus, the fact stated by the complainant that, after he paid the amount of

Rs.8,000/- to accused no.1, he gave predetermined signal to the ACB Officers has not been corroborated by panch no.1 (PW-3). For this reason also, the fact so stated by the complainant appears doubtful and therefore cannot be believed.

23. In fact, after having scrutinized the entire evidence, the fact that, the complainant paid the amount of Rs.8,000/- to accused no.1 and he counted the said amount by both his hands, itself appears doubtful. It was sought to be contended by the learned APP that, the aforesaid fact was clearly stated by the complainant in his testimony before the Court and panch no.1 (PW-3) fully corroborated the said fact and hence the said fact to the extent that, accused no.1 accepted the amount of Rs.8,000/- from the complainant and counted the same, has to be held to have been proved. My attention was invited by the learned APP to the fact deposed by panch no.1 (PW-3) in his examination-in-chief to the effect that, 'the complainant took out that amount from his pocket and paid to the accused Zagade, Zagade accepted that amount and counted that notes by his both hands'. If the contention of the learned APP is to be accepted, then the question arises why the complainant did not give the predetermined signal after the amount was accepted by accused no.1. If the contention of the complainant is to be believed that, he gave a predetermined signal, the questions remain then why

the ACB Officers did not rush to the spot and nab accused no.1 and why panch no.1 (PW-3) stated in his cross-examination that, the complainant did not give any signal after the amount was accepted by accused no.1. Thus, scrutinized from any angle the story as has been canvassed by the prosecution that accused no.1 demanded and accepted an amount of Rs.8,000/- from the complainant, and the evidence adduced by the prosecution in that regard appears fully shrouded with doubts and hence cannot be relied upon.

24. It further appears unconscionable that, though according to the predetermined plan, the complainant and the panch no.1 (PW-3) entered into the house of accused no.1 and were there in the house for about 20 minutes, but no signal was received to the raiding party members indicating that the amount of bribe has been paid and accepted by the accused and without any such progress the complainant and the panch no.1 were seen by the raiding party members coming out of the house of accused no.1 and proceeding towards some other direction, no attempt was made by any of the raiding party members to know as to what has happened inside within the said 20 minutes and why the complainant and panch no.1 had come out of the house, nor the complainant did make any attempt to communicate to the raiding party members even by gestures as

to what happened inside the house and where he was proceeding.

25. As has come on record, within few minutes of the complainant and panch no.1 left his house, accused no.1 also came out of his house and proceeded to the hospital on his motorcycle accompanied by one person. By that time nothing was indicated to the raiding party members by the complainant that, the bribe amount was paid and accepted by the accused. The complainant was already noticed by the raiding party members proceeding somewhere along with panch no.1. In the circumstances when accused no.1 was seen by the raiding party members leaving his house and proceeding on motorcycle somewhere, it had almost become clear that the trap had not succeeded. It is, however, not understood as to why even thereafter the raiding party members continued to maintain their positions and why did not bother to know as to what had actually happened. The entire conduct of the raiding party members as well as of the complainant and panch no.1 appears unnatural and improbable.

26. As has further come on record, the complainant and panch no.1 returned to the house of accused no.1 after sometime and at that time they were accompanied by one more person. Admittedly, at that time accused no.1 was not at his

home and had gone out somewhere on motorcycle. It appears quite improbable and unbelievable that, even in such situation, neither any attempt was made by the raiding party members to know from the complainant as to what had happened in the meantime nor the complainant at his own equipped the raiding party members with the said information. As I noted herein above, the entire scenario as above appears unnatural and unbelievable.

27. Further, as has been deposed by the complainant the moment accused no.2 saw accused no.1 entering into the house, he accepted the amount of Rs.8,000/- from the complainant. In the entire evidence, the prosecution has not brought on record that any talk had occurred in between accused nos.1 and 2 at the time of the alleged incident or even prior to that as about the case of the complainant. In such circumstances, it is not understood as to on the the basis of which evidence the learned trial Court drew an inference that, accused no.2 accepted the said amount of Rs.8,000/- by way of bribe on instructions of and for the benefit of accused no.1.

28. As per the case of the prosecution, after the amount was accepted by accused no.2, the complainant gave the predetermined signal and the raiding party members, therefore,

rushed to the spot and caught hold of both the accused. It is also the case of the prosecution that, the amount of Rs.8,000/- was recovered from the pocket of accused no.2. It is also the case of the prosecution that, thereafter when the hands of accused no.1 were tested under the ultraviolet lamp, blue shining was noticed on the tips of his fingers. From the circumstances, which have come on record, the facts so deposed by the prosecution witnesses appears difficult to be accepted. As has come on record through the testimony of the complainant, accused no.1 accepted an amount of Rs.8,000/- from him and also counted the same. The complainant had also deposed that, while counting the notes accused no.1 felt some doubt that, the notes were powdered and he also expressed his doubt to the complainant and then returned the said amount to the complainant and asked him to pay the same to accused no.2. As contended by the learned APP, that was the reason that, blue shining was noticed at the tips of fingers of accused no.1.

29. The story of the prosecution as aforesaid cannot be believed for many reasons. Had there been any ring of truth in the fact deposed by the complainant that, accused no.1 accepted the amount of Rs.8,000/- from him and while counting the said notes doubted that the notes were powdered, he would have first made attempt to destroy the said notes and would not have

preferred to return the said notes to the complainant. Even if it is assumed that, accused no.1 returned the said amount to the complainant doubting that, the said currency notes were powdered, accused no.1 would not have ever asked the complainant to give the said amount to accused no.2. Further, in no case, it can be believed that, even after having suspected that the currency notes which he counted with his hands were powdered, accused no.1 would not wash his hands and would allow to remain traces of the said powder on his hands or fingers. Doubt also remains whether the traces of powder had remained even though accused no.1 thereafter had a motorcycle ride and returned to his house after the period of about 40 minutes.

30. Further, after a doubt was raised in the mind of accused no.1 that, the currency notes handed over by the complainant were powdered, accused no.1 would have definitely kept him away from the complainant and would not have probably returned to his house once he had left his house.

31. The evidence of the prosecution as above, does not inspire any confidence and does not appear to be free from doubt. It, therefore, appears to me that no conviction could have been based on the basis of such doubtful evidence.

32. After having perused the impugned Judgment, it is apparently revealed that, the learned trial Court has failed in properly appreciating the evidence on record. Some of the observations made and the conclusions recorded by the trial Court are wholly erroneous. The reference Court has rejected the defence version and the evidence of the defence witnesses on the ground that, it was relating to the incident happened on 04.08.1997 and was not having nexus with the incident happened on 12.08.1997. The finding recorded by the trial Court that, the incident of 04.08.1997 had no nexus with the incident dated 12.08.1997 for which the accused were charged is grossly erroneous and unsustainable. On the contrary if the case of the prosecution is considered as a whole, it is transpired that, the impounding of cattle belonging to complainant on 04.08.1997 had given rise for the further incident. The defence has brought on record sufficient evidence showing that, son of complainant namely Gathu Pandu Pawara has given an undertaking to deposit the amount of fine and had obtained the custody of his cattle on *supertnama*. Though the complainant has flatly denied that, any such incident of impounding of his cattle happened on 04.08.1997, from the evidence which has been brought on record by the defence the said fact has been undoubtedly established. As I noted herein above, all the

documents pertaining to the said incident were admitted by the prosecution. The said documents are at Exhs.31 to 35. The said documents include the undertaking given by the son of the complainant while obtaining the custody of the cattle on *supurtnama*. Moreover, in the evidence of DW-1 he has categorically deposed about the impounding of his cattle as well as the cattle of the complainant Pandu Pawara on 04.08.1997. DW-1 has also deposed about amount of fine imposed for trespass of the cattle in the prohibited area of the forest. From the evidence, which has brought on record by the defence, it has been sufficiently proved that, the amount which was sought to be paid by the complainant was certainly having nexus with the incident happened on 04.08.1997.

33. According to the defence, it was an amount of fine, which the complainant was under an obligation to deposit. Though the complainant might have denied all these facts, truth came out from the mouth of complainant himself. The complainant in his examination-in-chief itself has deposed that, he asked for the receipt after he handed over the amount of Rs.8,000/- to the complainant on 12.08.1997 at his house. Asking of the receipt by the complainant, undoubtedly leads to an inference that, the amount which he had handed over to accused no.1 was towards such an item or under such a head

that, a receipt was liable to be issued for that. No one will ask for the receipt for the amount of bribe. The aforesaid is an additional weighty circumstances creating doubt about the case of the prosecution that, the amount accepted by the accused from the complainant was toward illegal gratification.

34. From the evidence, which has come on record it is difficult to discard the case of the defence that, the amount as was handed over to accused no.2 by the complainant was towards the amount of fine and not by way of bribe. The prosecution has utterly failed in proving the allegations against both the accused. The prosecution has also failed in proving that, accused no.2 had accepted the amount by way of bribe for the benefit of accused no.1 and has thus abated the said offence. The entire prosecution evidence is shrouded with several doubts. It would be very unsafe to base the conviction of the accused on the basis of such evidence.

35. Sanction for prosecuting the accused was granted by Shri Abhay Narayan Tripathi, the then Dy. Secretary, Revenue Forest, Maharashtra State. Said Shri Tripathi was examined as the witness by the prosecution. In his evidence the order of sanction dated 06.01.2001 came to be proved and was marked at Exh.15. The sanction accorded by PW-2 Abhay Tripathi is

alleged to be invalid by the accused persons. It is the contention of the accused that, without considering the record and the relevant documents, PW-2 has mechanically granted sanction to prosecute the accused persons. Accused have filed Criminal Application No.5634 of 2016 praying for permitting them to file on record the additional documentary evidence. The documents which are sought to be filed as an additional evidence pertain to the inquiry conducted against the accused on departmental level and the other correspondence, which had occurred between the office of the accused and their higher Officers as well as the Anti Corruption Bureau. In the cross-examination of PW-2 Abhay Tripathi, it was specifically asked to him whether he was aware about the fact that, the departmental inquiry was conducted against the accused persons and he answered that, he was not aware of the said fact. From the cross-examination of PW-2, it is also revealed that, the copies of the said departmental inquiry as well as the other correspondence in respect of the said incident were not provided to him. PW No.2 Shri Abhay Tripathi has stated in his cross examination that, he was unable to tell whether departmental inquiry report dated 29.08.1997 was forming part of the documents forwarded for his perusal while seeking sanction for prosecution of the accused persons. Along with the Criminal Application No.5634 of 2016 the accused have appended the said report dated 29.08.1997, wherein the Inquiry

Officer has recorded a clear finding that, the complaint filed by complainant Pandu Pawara was false and it was an attempt of the said complainant to falsely implicate the accused since accused no.1 had refused to concede to his request to allow his cattle to graze even in the prohibited area of forest. From the evidence of sanctioning authority i.e. PW-2 Abhay Tripathi it is quite clear that, the concerned documents either were not provided to him or were not perused by him before according sanction to prosecute the accused. In the circumstances, I am afraid whether such a sanction accorded by PW-2 Abhay Tripathi can be said to be a valid sanction.

36. Leave apart the validity of sanction, as I have elaborated herein above, the prosecution has utterly failed in bringing on record any unimpeachable evidence proving the complicity of the accused in commission of the alleged crime. The entire story of the prosecution appears improbable and unconscionable. The complainant does not appear to be a reliable witness. He has falsely denied the documentary evidence, which has nexus with the charges alleged against the accused in the present matter. From the evidence on record, there appears reason to believe that, the amount of Rs.8,000/- paid by the complainant to accused no.2 allegedly towards illegal gratification was, in fact, towards the amount of fine, which the

complainant was liable to pay. Conviction of the accused cannot be based on such evidence, which is not free from doubt and benefit of it would obviously go to the accused. For the reasons stated above, the order of conviction recorded by the trial Court cannot be sustained. In the result, the following order is passed.

ORDER

- i) The Judgment and order dated 09.07.2002 passed by Additional Sessions Judge, Jalgaon in Special Case No.1 of 2000 is quashed and set aside.
- ii) The appellants namely Raju Haribhau Zagade and Bahadur Dildar Tadvi are acquitted of all the charges levelled against them. Their bail bonds stand cancelled.
- iii) The fine amount, if any, paid by the appellants – accused be refunded to them.
- iv) The Criminal Appeal thus stands allowed.
- v) Pending Criminal Application, if any, stands disposed of.

(P.R. Bora, J.)