

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.823 OF 2015

1) GULABDASTAGIR RAMZAN INAMDAR)
)
2) SUNIL PANDHARINATH POKALE)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Pawan Mali, Advocate for the Appellants.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th JUNE 2018

JUDGMENT :

1 This appeal is taken up for final hearing in view of the
order dated 7th May 2018 of the Honourable Supreme Court in
Petition for Special Leave to Appeal (Crl.) No.3758 of 2018 filed
by appellants/ accused.

2 Two appellants/convicted accused, by this appeal, are challenging the judgment and order dated 24th July 2015 passed by the learned Special Judge, Anti Corruption Bureau, Pune, in Special Case No.32 of 2014. By the said judgment and order, appellant/accused no.1 Gulabdagir R. Inamdar came to be convicted of offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as P.C.Act, 1988, for the sake of brevity). For the offence punishable under Section 7 of the said Act, he is sentenced to suffer rigorous imprisonment for 1 year, apart from imposition of fine of Rs.3,000/- and default sentence of rigorous imprisonment for 3 months. For the offence punishable under Section 13(1)(d) read with 13(2) of the P.C.Act, 1988, he is sentenced to suffer rigorous imprisonment for 2 years, apart from imposition of fine of Rs.5,000/- and default sentence of rigorous imprisonment for 3 months. Appellant/accused no.2 Sunil P. Pokale came to be convicted of the offence punishable under Section 12 of the P.C.Act, 1988, and he is sentenced to suffer

rigorous imprisonment for 1 year, apart from payment of fine of Rs.3,000/- and default sentence of rigorous imprisonment for 3 months. Appellant/accused no.1 G.R.Inamdar, at the relevant time, was working as Assistant Police Inspector, whereas appellant /accused no.2 S.P.Pokale was working as Police Naik with the Alankar Police Outpost falling under jurisdiction of Police Station Kothrud.

3 Facts leading to the prosecution of appellants/accused persons can be summarized thus :

(a) Complainant/PW1 Santosh Bhelke approached the Anti Corruption Bureau, Pune, on 22nd August 2013 and lodged the complaint Exhibit 7 against appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector. Complainant/PW1 Santosh Bhelke in his complaint Exhibit 7 made the following allegations :-

(i) In November 2011, he (Santosh Bhelke) married Samiksha Borile, who was resident of the same Housing society, located at Survey No.87, Azad Nagar, Kothrud, Pune.

On 23rd May 2013 there was dispute between the couple over domestic issue. Two policemen then came to their house and called them to Alankar Police Outpost. Therefore, complainant/ PW1 Santosh Bhelke and his mother, so also Samiksha and her parents attended Alankar Police Outpost and met appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector and his staff. They were served with notice under Section 149 of the Code of Criminal Procedure. Two or three days thereafter, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, contacted complainant/PW1 Santosh Bhelke from his cell phone and told him to come to Alankar Police Outpost. When complainant/PW1 Santosh Bhelke attended Alankar Police Outpost, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, demanded Rs.50,000/- from him by threatening that he (G.R.Inamdar) had not obtained the First Information Report (FIR) from Samiksha, but now also he can obtain the FIR. Under this threat, complainant/PW1 Santosh Bhelke paid an amount of Rs.40,000/- to

appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector.

(ii) It is further averred in the complaint Exhibit 7 by complainant/PW1 Santosh Bhelke that 2¼ months thereafter, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, called him and informed him that Samiksha had lodged complaint and what is to be done in the matter. When complainant/PW1 Santosh Bhelke showed his willingness to cohabit with Samiksha, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, said that he will conciliate and settle the matrimonial dispute and accordingly made efforts on two or three occasions to settle the matrimonial dispute. Complainant/PW1 Santosh Bhelke further averred that in second week of August 2013, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, again called him and demanded an amount of Rs.25,000/- on account of the work done by him, but complainant/PW1 Santosh Bhelke refused. Thereafter,

appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, asked complainant/PW1 Santosh Bhelke to pay an amount of Rs.10,000/- immediately and granted time to pay rest of the amount after compromise in the matter. On this insistence by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, complainant/PW1 Santosh Bhelke paid an amount of Rs.10,000/- to him.

(iii) According to complainant/PW1 Santosh Bhelke, on 19th August 2013, his wife Samiksha lodged FIR against him as well as his mother and three sisters, which resulted in registration of the offence punishable under Section 498A of the Indian Penal Code. It is further averred in the complaint Exhibit 7 that on that day, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, had arrested him at 11.00 p.m. and produced him in the court on 20th August 2013. Then he was released on bail. Complainant/PW1 Santosh Bhelke further averred in the complaint Exhibit 7 that, thereafter, the court granted ad-interim anticipatory

bail to his mother and three sisters on 21st August 2013, with a direction that they should attend Kothrud Police Station from 22nd August 2013 to 26th August 2013. When he accompanied his mother and three sisters to Kothrud Police Station, the staff working there directed him to meet appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, at Alankar Police Outpost, he being the Investigating Officer of the said offence.

(iv) It is averred in the complaint Exhibit 7 by complainant/PW1 Santosh Bhelke that, therefore on 22nd August 2013, he met appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, at Alankar Police Outpost and showed him the order granting ad-interim anticipatory bail to his mother and sisters. Thereupon, as per contention of complainant/PW1 Santosh Bhelke, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, demanded an amount of Rs.50,000/- from him by stating that he is to investigate the crime in question and he would investigate

the crime in a manner that the offence would not be proved and the charge-sheet favouring the accused persons would be sent to the court. It is categorically averred in the complaint by complainant/PW1 Santosh Bhelke that appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, told him that he has already conveyed his demand of Rs.50,000/- to the friend of complainant/PW1 Santosh Bhelke. Complainant/PW1 Santosh Bhelke further alleged in his complaint Exhibit 7 that he informed appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, that his financial position is not sound. Thereupon, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, scaled down the demand to Rs.25,000/-. Complainant/PW1 Santosh Bhelke, further, reported to Anti Corruption Bureau, Pune, that he is not desirous of giving bribe to appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector and requested the Anti Corruption Bureau to take necessary action.

(b) PW3 Vinod Satav, Police Inspector of Anti Corruption Bureau, Pune, who is the Investigating Officer, recorded the complaint Exhibit 7 lodged by complainant/PW1 Santosh Bhelke on 22nd August 2013 itself. Thereafter, two panch witnesses were requisitioned from the office of the Additional Director General of Police (Prison), Pune on 22/08/2013 itself. Accordingly, P.W.No.2 Rahul Bodade (Panch Witness No.1) and Vijay Hile (Panch No.2) attended the office of the Anti Corruption Bureau (hereinafter referred to as 'ACB' for the sake of brevity), Pune. Their consent was obtained. Then they were introduced to complainant/PW.No.1 Santosh Bhelke. They verified the complaint (Exhibit 7) and thereafter put their signatures thereon. Panch witnesses as well as the complainant were then asked to come to the office of the ACB on 23/08/2013 for the purpose of verification of demand as well as for laying the trap.

- (c) On 23/08/2013, both panch witnesses and the complainant came to the office of the ACB, Pune in the morning. Complainant/PW.No.1 Santosh Bhelke produced government currency notes to be paid as bribe to appellant/accused No.1 G.D.Inamdar, Assistant Police Inspector. In pre-trap panchanama (Exhibit 10), this fact is noted by stating that complainant/PW.No.1 Santosh Bhelke produced one currency note of Rs.500/-, two currency notes of Rs.100/- each and one currency note of Rs.500/- (though the demand was for an amount of Rs.25,000/-). Numbers of those currency notes were recorded in the pre-trap panchanama (Exhibit 10). The government currency notes produced by complainant/PW.No.1 Santosh Bhelke were smeared with the anthracene powder by Police Head Constable Palande and they were checked under the ultra violet lamp. Then currency notes emitted bluish tinge. Police Head Constable Palande then folded those currency notes and kept in the left shirt pocket of the

complainant/P.W.No.1 Santosh Bhelke. All these events were being recorded in pre-trap panchanama (Exhibit 10). Necessary instructions were imparted to the complainant/P.W.No.1 Santosh Bhelke and panch witnesses. Complainant /P.W.No.1 Santosh Bhelke was asked to meet appellant/accused No.1 G.D.Inamdar and to speak him in respect of work. P.W.No.2 Rahul Bodade (Panch Witness No.1) was asked to hear their conversation carefully. It was further instructed to the complainant that after confirmation of the demand of bribe by appellant/accused No.1 G.D.Inamdar, then only he should hand over the tainted currency notes kept in his left shirt pocket by right hand to appellant/accused No.1 G.D.Inamdar and then he should give a pre-determined signal to the squad of the ACB. P.W.No.2 Rahul Bodade (Panch Witness No.1) was asked to keep vigil and observe minutely as to whether bribe money is then kept by the accused. He was, thus, to act as a shadow panch. After completion of these formalities and finishing of the recording of pre-trap panchanama (Exhibit 10), the team of

ACB lead by Assistant Police Commissioner Galande left the office of the ACB at about 10.45 a.m. of 23/08/2013.

- (d) Around 11.30 a.m. of 23/08/2013, raiding squad of the ACB accompanied by complainant/PW.No.1 Santosh Bhelke and both panch witnesses reached near Alankar Police Outpost, where PW.No.3 Vinod Satav, Police Inspector again reiterated the instructions and tagged the Digital Voice Recorder to the banian of complainant/PW.No.1 Santosh Bhelke. Then complainant/PW.No.1 Santosh Bhelke along with PW.No.2 Rahul Bodade (Panch Witness No.1/shadow panch) were sent to the Alankar Police Outpost for meeting for meeting to appellant/accused No.1 G.D.Inamdar, Assistant Police Inspector for verification of demand at about 11.45 a.m. They both returned to the raiding squad of the ACB at about 12.50 p.m. of 23/08/2013. PW.No.2 Rahul Bodade (Panch Witness No.1/shadow panch) then informed PW.No.3 Vinod Satav, Police Inspector of the ACB that complainant/PW.No.1 Santosh Bhelke had introduced him

to appellant/accused No.1 G.D.Inamdar as surety and there was talk between both of them in respect of the work. P.W.No.2 Rahul Bodade (Panch Witness No.1/shadow panch) further informed that complainant/P.W.No.1 Santosh Bhelke requested appellant/accused No.1 G.D.Inamdar to get the surety bond executed from P.W.No.2 Rahul Bodade (Panch Witness No.1/shadow panch) but the appellant/accused No.1 G.D.Inamdar told him that this work will be done after 31/08/2013. Thereafter, P.W.No.2 Rahul Bodade (Panch Witness No.1/shadow panch) further informed P.W.No.3 Vinod Satav, Police Inspector and other staff of the ACB that complainant/P.W.No.1 Santosh Bhelke informed appellant/accused No.1 G.D.Inamdar that he has an amount of Rs.20000/- with him and he will give the remaining amount in next two days. Upon that, as per recitals of P.W.No.2 Rahul Bodade (Panch Witness No.1/shadow panch), appellant/accused No.1 G.D.Inamdar told complainant/P.W.No.1 Santosh Bhelke that the entire amount be given immediately. Complainant/P.W.No.1 Santosh Bhelke then

told the appellant/accused No.1 G.D.Inamdar that he will come back in half an hour with the full amount. With these recitals of P.W.No.2 Rahul Bodade (Panch Witness No.1), P.W.No.3 Vinod Satav, Police Inspector and staff of the ACB came to the conclusion that there was demand of illegal gratification amounting to Rs.25000/- by appellant/accused No.1 G.D.Inamdar from complainant/ P.W.No.1 Santosh Bhelke and, therefore, it was decided to lay a trap.

- (e) Then again the Digital Voice Recorder was tagged inside the shirt of complainant/P.W.No.1 Santosh Bhelke and he along with P.W.No.2 Rahul Bodade (Panch Witness No.1/shadow panch) were sent to the Alankar Police Outpost at about 1.10 p.m. of 23/08/2013. Members of the raiding team of the ACB as well as Panch No.2 Vijay Hile took their position nearby Alankar Police Outpost. Seven to eight minutes thereafter, appellant/accused No.1 G.D.Inamdar came out of the Police Outpost and went towards Kothrud. Thereafter, at about 1.20 p.m. of 23/08/2013, complainant/P.W.No.1

Santosh Bhelke came out of the Police Outpost and gave pre-arranged signal. Reading squad of the ACB accompanied by Panch No.2 Vijay Hile then immediately rushed inside the Alankar Police Outpost. P.W.No.2 Rahul Bodade (Panch Witness No.1/shadow panch) was asked as to who has received the amount of illegal gratification. He pointed out appellant/accused No.2 S.P.Pokale, Police Naik as a person, who received the tainted currency notes. Thereafter, the Digital Voice Recorder was put off and taken in custody of the ACB. Upon checking hands and clothes of appellant/accused No.2 S.P.Pokale in ultra violet light, those were found emitting bluish tinge showing presence of anthracene powder thereof. Tainted currency notes were recovered from right pant pocket of appellant/accused No.2 S.P.Pokale. Their serial numbers matched with the government currency notes produced by complainant/P.W.No.1 Santosh Bhelke. Those were also found to be smeared with an anthracene powder.

- (f) At about 1.50 p.m. of 23/08/2013, there was a phone call of appellant/accused No.1 G.D.Inamdar on the cell phone of appellant/accused No.2 S.PPokale. P.W.No.3 Vinod Satav, Police Inspector of ACB then asked appellant/accused No.2 S.PPokale to speak by putting on the speaker of his cellphone. Conversation between the appellant/accused No.1 G.D.Inamdar and appellant/accused No.2 S.PPokale was then recorded on the Digital Voice Recorder which was with P.W.No.3 Vinod Satav, Police Inspector of the ACB.
- (g) Appellant/accused No.1 G.D.Inamdar was then brought back to the Alankar Police Outpost and thereafter case papers of the FIR lodged by Samiksha against complainant/P.W.No.1 Santosh Bhelke were taken in custody by the ACB. Search of cupboard of appellant/ accused No.1 G.D.Inamdar was taken. Thereafter, the staff of the ACB along with panch witnesses and both appellants/accused went to the Police Station, Kothrud where further proceedings in respect of post-trap formalities were undertaken. Conversation

recorded in the Digital Voice Recorder right from verification of demand till conclusion of the trap was then heard. It was transferred on the laptop of the ACB. Transcript of the recorded conversation was prepared and incorporated in the Verification-cum-Trap panchanama (Exhibit 11). From the laptop, then recorded conversation between complainant/P.W.No.1 Santosh Bhelke and appellant/accused No.1 G.D.Inamdar as well as the conversation with appellant/accused No.2 S.P.Pokale and recorded telephonic conversation between both the accused came to be transferred to the Audio Cassette and that Cassette came to be seized. All these events including the transcript of recorded conversation during the verification of demand till end of the trap panchanama found in the Digital Voice Recorder were incorporated in the Verification-cum-Trap panchanama (Exhibit 11).

- (h) On completion of post-trap formalities, along with covering letter (Exhibit 19), FIR (Exhibit 20) came to be lodged with

the Police Station, Kothrud by P.W.No.3 Vinod Satav, Police Inspector of the ACB. Accordingly, Crime No.3152 of 2013 for offences punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 came to be registered against the appellants/accused persons.

- (i) During the course of investigation, on 28/08/2013, both appellants/accused persons were given the Verification-cum-Trip panchanama and they were asked to read the portion conversation written against their names. That is how samples of voice of both appellants/accused persons came to be taken by recording recitals of the appellant/accused and preparing the audio cassette thereof. This event was recorded by preparing panchanama (Exhibit 15) of taking voice samples of both appellants/accused persons. That panchanama was also prepared in presence of P.W.No.2 Rahul Bodade (Panch Witness No.1) and Vijay Hile. Call Detail Records of the appellants/accused persons and that of

complainant/PW.No.1 Santosh Bhelke were collected. Vide letter (Exhibit 24) dated 19/09/2013 audio cassette of voice samples of both the appellants/accused so also the audio cassette of voice recording during the start of demand verification till the end of trap were sent to the Regional Forensic Laboratory, Mumbai, for report. On conclusion of investigation, the appellants/accused persons were charge-sheeted.

- (j) The learned Special Judge (ACB), Pune framed and explained charge for offences punishable under Section 7, 13(1)(d) read with Section 13(2) and under Section 12 of the Prevention of Corruption Act, 1988 to appellants/accused persons. They pleaded not guilty and claimed trial.
- (k) In order to bring home the guilt to the appellants/accused persons, prosecution has examined in all three witnesses. Complainant Santosh Narayan Bhelke is examined as PW.No.1. Complaint lodged by him with the ACB on 22/08/2013 is at Exhibit 7. Rahul Ramesh Bodade (Panch

Witness No.1) is examined as P.W.No.2. Pre-trap panchanama recorded on 23/08/2013 is at Exhibit 10. Verification-cum-Trap panchanama is at Exhibit 11. Exhibit Nos.12 and 13 are arrest panchanamas and Exhibit 15 is the panchanama of taking voice samples of appellants/accused persons. Investigating Officer, Vinod Satav, Police Inspector of the ACB is examined as P.W.No.3. FIR lodged by him is at Exhibit 20. Exhibit 23 is the letter addressed to the ACB by the Deputy Commissioner of Police, Pune giving details of service record of the appellants/accused persons. Exhibit 24 is the request letter for report by the ACB addressed to the Forensic Laboratory, Mumbai forwarding seized audio cassettes. Exhibits 25 to 27 are communications with and by Cellular Company.

- (1) Defence of the accused persons was that of total denial. According to appellant/accused No.1 G.D.Inamdar, API, he registered the offence against complainant/P.W.No.1 Santosh Bhelke on the basis of report lodged by wife Samiksha on

18/08/2013 and had arrested said Santosh. He produced complainant in the Court and demanded police custody. Thereafter, on 23/08/2013, complainant/PW.No.1 Santosh Bhelke came to him along with one surety and insisted him to accept the surety in pursuant to the ad-interim anticipatory bail granted to his mother and sisters. According to the defence, appellant/accused No.1 G.D.Inamdar informed him that interim bail cannot be accepted and he should bring two witness daily and also produce some documents. Thereafter, in the afternoon, complainant/PW.No.1 Santosh Bhelke came alone and asked him whether he should give to Pokale saheb. Thereupon he said "yes" presuming that complainant/PW.No.1 Santosh Bhelke must be asking about submission of documents. Thereafter, he left for offering *namaj*. So far as appellant/accused No.2 S.P.Pokale is concerned, his defence is to the effect that no work of complainant/PW.No.1 Santosh Bhelke was pending with him and he had neither demanded nor accepted bribe.

4 After hearing the parties, by the impugned Judgment and Order the learned trial Court was pleased to convict appellant/accused No.1 G.D.Inamdar for the offences punishable under Sections 7, 13(2)read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, whereas appellant/accused No.2 S.P.Pokale is convicted only for the offence punishable under Section 12 of the said Act. It is apposite to note the reasonings of the learned trial Court for recording this conviction and resultant sentence. The learned trial Court gave a finding that complainant/P.W.No.1 Santosh Bhelke has not supported the prosecution case on the point of acceptance of the amount in presence of P.W.No.2 Rahul Bodade (Panch Witness No.1) and has changed his stand during the cross-examination. The learned trial Court further observed that the prosecution did not cross-examine complainant/P.W.No.1 Santosh Bhelke though it ought to have cross-examined the said witness because of his changed stand in the cross-examination. The learned trial Court further recorded that complainant/P.W.No.1 Santosh Bhelke has stuck up to the prosecution case in respect of the initial demand and there is

evidence of independent panch witness i.e. PW.No.2 Rahul Bodade (Panch Witness No.1). It is further observed that this shadow witness is a government servant working as 'Junior Clerk' with the Director General of Police (Prison), he is dutiful citizen of India, who came forward to assist the investigating agency and if his evidence is disbelieved, then it will add insult to his pride. With this reasoning, the learned trial Court concluded that the prosecution has proved recovery of tainted currency notes from possession of the accused enabling it to raise presumption under Section 20 of the Prevention of Corruption ct, 1988. The accused did not offer any plausible explanation as to how the accused No.2 came into possession of tainted currency notes. Call Detail Record shows that there was a phone call made by appellant/accused No.1 G.D.Inamdar to appellant/accused No.2 S.P.Pokale. With these reasonings, the learned trial Court concluded that the prosecution has proved beyond all reasonable doubts that appellant/accused No.1 G.D.Inamdar demanded an amount of Rs.25,000/- on 22/08/2013 and 23/08/2013 and accepted the same through appellant/accused No.2 S.P.Pokale in order to

favour complainant/PW1 Santosh Bhelke in an official act. The learned trial Court further recorded a finding that both the appellants/accused misused their official position and by corrupt and illegal means obtained pecuniary advantage and thereby committed criminal misconduct. At this juncture, it is apposite to note that though this finding is recorded even in respect of appellant/accused No.2 S.P.Pokale, the learned trial Court had not taken any steps which would have enabled him to convict the appellant/accused No.2 S.P.Pokale for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Thus, the learned trial Court itself found testimony of complainant/PW.No.1 Santosh Bhelke unworthy of credit and had relied on part of his testimony. The appellants /accused were then convicted and sentenced on the basis of evidence of shadow panch i.e. PW2 Rahul Bodade.

5 I have heard Shri.Mali, the learned Advocate appearing for both appellants/accused persons at sufficient length of time. By taking me through evidence of complainant/PW.No.1

Santosh Bhelke and by comparing it with evidence of PW.No.2 Rahul Bodade (Panch Witness No.1/shadow panch), the learned Advocate vehemently argued that entire evidence of prosecution regarding initial demand allegedly made by appellant/accused No.1 G.D.Inamdar is by way of omission. The learned Advocate further argued that evidence regarding the demand at the time of trap is also of no use to the prosecution as the same is in the nature of vague and sweeping statement. There is variance in evidence of complainant/PW.No.1 Santosh Bhelke and PW.No.2 Rahul Bodade – shadow panch in respect of place as well as alleged demand of illegal gratification. Their versions are totally contradictory to versions of each other and it is not possible to record a finding that who amongst the two is speaking the truth. Therefore, the entire prosecution evidence needs to be discarded and as there is no evidence of demand of illegal gratification, the appellants/accused persons are entitled for acquittal. The learned advocate has placed reliance on various reported judgments, which I propose to deal with at the appropriate place. The learned APP on the other hand supported the impugned judgment

and order by contending that the purpose of recording evidence is not to test the memory of witnesses and in the case in hand, the prosecution has proved the demand as well as acceptance of illegal gratification.

6 I have carefully considered the rival submissions and also perused the Record and Proceedings including oral as well as documentary evidence. The defence has not disputed the fact that the prosecution was preceded by a valid sanction by the authority in terms of Section 19 of the P.C.Act, 1988. The sanction order is not disputed by the defence.

7 Considering the charges leveled against appellants/accused persons, in the case in hand, the prosecution will have to prove that the appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector had demanded and accepted through appellant/accused no.2 S.PPokale, Police Naik, gratification other than legal remuneration amounting to Rs.25,000/- as a motive or reward for showing favour in the official act. It will have to be

established that by corrupt or illegal means and by abusing his position, the appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, had obtained for himself pecuniary advantage. It will have to be proved by the prosecution by cogent evidence that -

- (a) at the time of the alleged offence, appellants/accused persons and more particularly appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, was a public servant;
- (b) Appellant no.1 / accused no.1 G.R.Inamdar, Assistant Police Inspector demanded and accepted or obtained for himself gratification other than legal remuneration;
- (c) such gratification was accepted as a motive or reward for official act i.e. investigating the crime in a manner favourable to complainant/PW1 Santosh Bhelke and the presentation of the charge-sheet in a manner that the complainant/PW1 Santosh Bhelke and his relatives would not be convicted.
- (d) Appellant/accused no.2 S.P.Pokale abetted the offence punishable under Section 12 of the Prevention of Corruption Act by accepting an amount of Rs.25,000/- for and on behalf of appellant no.1/accused no.1 G.R.Inamdar.

If these ingredients are established by the prosecution, then the

Charge leveled can be held to be proved. The third requirement in respect of motive or reward for doing official act is generally difficult to prove against the public servant. Therefore, the legislature has enacted Section 20 which prescribes rule of presumption. The presumption specified therein will arise only upon proof that accused has accepted any gratification other than legal remuneration. This mandatory presumption of law is required to be understood in *terrorum* i.e. in tone of command (see **M. Narsinga Rao vs. State of Andhra Pradesh**¹). Prior to appreciating, evaluating and analyzing evidence of the prosecution, let us put on record the position of law on the subject matter.

8 At this juncture, it is also apposite to note the burden of proof expected from the appellant/accused for rebutting the presumption as envisaged by Section 20 of the Prevention of Corruption Act. In the matter of **Trilok Chand Jain vs. State of Delhi**² the Hon'ble Apex Court has held thus :

1 (2001) 1 SCC 691

2 AIR 1977 SC 666

“If at such a trial, the prosecution proves that the accused has accepted or obtained gratification other than legal remuneration, the court has to presume the existence of the further fact in support of the prosecution case, viz., that the gratification was accepted or obtained by the accused as a motive or reward such as mentioned in Section 161, Penal Code. The presumption however, is not absolute. It is rebuttable. The accused can prove the contrary. The quantum and the nature of proof required to displace this presumption may vary according to the circumstances of each case. Such proof may partake the shape of defence evidence led by the accused, or it may consist of circumstances appearing in the prosecution evidence itself, as a result of cross-examination or otherwise. But the degree and the character of the burden of proof which Section 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under Section 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under Section 342, Cr.P.C. may not be enough, the burden on him to negate the presumption may stand discharged, if the

effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable.”

9 The learned advocate for appellants/accused persons placed reliance on judgment of the Hon'ble Apex Court in the matter of **P. Satyanarayana Murthy vs. The District Inspector of Police and Another**³ to demonstrate that mere possession and recovery of currency notes from the appellant/accused without proof of demand is not sufficient for establishing the alleged offence. Reliance is further placed on judgment of this court in the matter of **Shri Balkrishna Bhau Desai vs. The State of Maharashtra**⁴ to demonstrate that for seeking conviction for alleged offences, satisfactory evidence regarding demand is necessary. The learned advocate for appellants/accused persons further relied on judgment of the Honourable Supreme Court in **State of Punjab vs. Madan Mohan Lal Verma**⁵ to demonstrate that demand of illegal gratification is sine-qua-non for constituting an offence under the P.C.Act, 1988. Paragraph 11 thereof needs

3 2015(4) RCR (Cri) Page 305

4 2016 ALL MR (Cri) 1913

5 (2013) 14 Supreme Court Cases 153

reproduction which reads thus :

“11 The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to

explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide: [Ram Prakash Arora v. State of Punjab AIR 1973 SC 498](#); [T. Subramanian v. The State of T.N. 2006\(1\) SCC 401](#); [State of Kerala & Anr. v. C.P. Rao \(2011\) 6 SCC 450](#); and [Mukut Bihari & Anr. v. State of Rajasthan \(2012\) 11 SCC 642](#)).”

Reliance is also placed on the judgment in [Krishna Chander vs. State of Delhi](#)⁶ to buttress the same proposition.

10 Law regarding appreciation of evidence of trap witnesses as well as the complainant can be found in catena of judgments delivered by the Hon'ble Apex Court as well as by this court. The learned advocate for the appellants/accused persons

⁶ (2016) 3 SCC 108

has rightly placed reliance on judgment in **M.O.Shamsudhin vs. State of Kerala**⁷. On this aspect, paragraphs 22 and 23 thereof needs reproduction and those read thus :-

“22 Now coming to the witnesses in trap cases, as held in **State of Bihar vs. Basawan Singh (AIR 1958 SC 500)** by a Bench of Five Judges, if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charge, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices in that sense but are only partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested which may vary from case to case and the corroboration in the case of such interested witnesses can be in a general way and not as one required in material particulars as in the case of an approver. Therefore in seeking corroboration for the evidence of trap witnesses a distinction has to be drawn where participation of an individual in a crime is not voluntary but is the result of pressure. In such a case the element of mens rea to commit the crime is not apparent and (*sic*) cannot strictly be classified as an accomplice

⁷ (1995) 3 Supreme Court Cases 351

and at any rate be treated as being on the same footing. Where bribe has already been demanded from a man and if without giving the bribe he goes to the police or magistrate and brings them to witness the payment it will be a legitimate trap and in such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the court depending upon the facts and circumstances of each case. However as a rule of prudence, the court has to scrutinise the evidence of such interested witnesses carefully.”

“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.”

In the matter of **Sudhakar Jadhao vs. State of Maharashtra**⁸ it is held thus :

“After all, P.W.1. is himself the complainant and therefore, interested in the success of the prosecution of his complaint. The evidence of an

⁸ 2004 ALL MR (Cri.) 648

interested witness cannot be accepted by itself. It is unsafe to accept the evidence of interested witness unless corroborated by independent witnesses.”

Similarly, the Hon'ble Apex Court in the matter of **Jaswant Sing vs. State of Punjab**⁹ has held thus :

“As P.W.1. is the complainant, his evidence will have to be considered with great caution and it will not be ordinarily safe to accept his interested testimony unless there is material corroboration found in the other evidence adduced by the prosecution.”

In the matter of **Ramprakash Arora vs. State of Punjab**¹⁰ the Hon'ble Apex Court has given guidelines guide-lines regarding appreciation of evidence of trap witnesses and has held that they are concerned with the success of the trap and their evidence must be tested in the same way as that of other interested witnesses and in a proper case, the court may look for independent corroboration.

9 AIR 1973 SC 707

10 AIR 1973 SC 498

11 The learned advocate for the appellants/accused persons has rightly relied on the judgment in the matter of **P. Satyanarayana Murthy (supra)** and paragraphs 19, 20 and 21 of the said judgment needs reproduction. They read thus :

“19 In **State of Kerala and another vs. C.P.Rao (2011) 6 SCC 450**, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.”

“20 In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in **B. Jayaraj (supra)** in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal

means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Section 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.”

“21 The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery

thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.”

12 Recently, in the matter of N.Sunkanna vs. State of Andhra Pradesh¹¹ law on the point is restated in the following words in paragraph 6 :-

“.....It is well settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since the demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive in so far as the offence under Section 13(1)(d) is concerned, as in absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.....”

Keeping in mind this position of law, let us examine evidence adduced by the prosecution in order to establish its case. This

¹¹ 2015 ALL MR(Cri) 4551 (S.C.)

being an appeal challenging conviction of both accused, there is no embargo on reviewing the entire evidence or rather it becomes duty of this court to re-appreciate the entire evidence, this court being the last fact finding court in the subject matter.

13 Considering the nature of charge leveled against both appellants/accused persons, the prosecution case mainly rests on version of complainant/PW1 Santosh Bhelke and PW2 Rahul Bodade (Panch Witness No.1/shadow panch). As I have set out the prosecution case in detail as reflected in the charge-sheet, it is not necessary to repeat and reproduce the entire evidence adduced by the prosecution witnesses. What is material is to consider the evidence regarding demand of illegal gratification as well as acceptance thereof and material brought on record by the defence to dislodge the presumption envisaged by Section 20 of the P.C.Act, 1988. Let us, therefore, consider evidence of complainant/PW1 Santosh Bhelke on this aspect. However, prior to adverting to his evidence, it is apposite to put on record the spot of the incident where the initial demand as well as the

demand at the time of the trap and the events leading to tainted currency notes changing hands took place. This incident, according to the case of prosecution, took place at Alankar Police Outpost of Kothrud Police Station, Pune. Evidence of PW2 Rahul Bodade (Panch Witness No.1/shadow panch), so also material elicited from cross-examination of complainant/PW1 Santosh Bhelke shows that there is one hall after entering in the Alankar Police Outpost. Then, resting on backside wall of that hall, there are two cabins. Appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, used to sit in one of the cabins, whereas in another cabin, his Writer i.e. appellant/accused no.2 S.PPokale, Police Naik, used to sit. On the cabin of appellant/accused no.2 S.PPokale, Police Naik board stating that it is cabin of “Daftari” or “Lekhnik” was hanging. Evidence of PW3 Vinod Satav, Investigating Officer of the Anti Corruption Bureau as well as Verification cum Trap Panchnama, Exhibit 11, reflects that at the time of trap, it was at this cabin of appellant/accused no.2 S.PPokale, Police Naik, he was found along with PW2 Rahul Bodade (Panch Witness No.1/shadow panch). It is case of the

prosecution that it is in this cabin of appellant/accused no.2 S.P.Pokale, Police Naik, he was found with tainted government currency notes amounting to Rs.25,000/- and the incident of tainted currency notes changing hands took place inside the cabin of appellant/accused no.2 S.P.Pokale, Police Naik. Subsequent discussion will reveal that this situation on the spot of the incident is relevant for determining the points involved in the instant case.

14 Complainant/PW1 Santosh Bhelke as well as his wife Samiksha were holding Masters Degree in Business Administration. The learned trial court in its judgment has observed that this complainant/PW1 Santosh Bhelke changed his stand in chief-examination itself and has not supported the prosecution case on the point of acceptance of illegal gratification. Instead of presence of PW2 Rahul Bodade (Panch Witness No.1/shadow panch) this complainant/PW1 Santosh Bhelke has stated in his evidence that at the time of the trap and at the time of happening of the incident of tainted currency notes changing hands, it was Panch No.2 Vijay Hile (not examined as witness by

the prosecution) who was present with him as a shadow panch and PW2 Rahul Bodade (Panch Witness No.1/shadow panch) was not present during the course of the trap. Meticulous analysis of evidence of this complainant/PW1 Santosh Bhelke will show that he has changed his category from the category of the forced bribe giver to the category of *particeps criminis* and rather than requirement of careful scrutiny of his evidence requiring general corroboration, his evidence may require corroboration in material particulars as that of evidence of accomplice, as per standard of evaluating evidence of complainant in the bribe case enunciated in the matter of M.O.Shamsudhin (supra). Careful scrutiny of evidence of complainant/PW1 Santosh Bhelke and meticulous analysis thereof by comparing with other evidence adduced by the prosecution reflects that, without demand being emanated from appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, complainant/PW1 Santosh Bhelke himself was offering money to him. This complainant/PW1 Santosh Bhelke was, undisputedly, arrested by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, in the crime registered on the basis of report lodged by

Samiksha. His mother, as well as three sisters, were also accused in that offence, which was under investigation by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector. Mother and sisters of complainant/PW1 Santosh Bhelke were required to apply for anticipatory bail and they were protected till 31st August 2013. All these happened prior to lodging of the complaint Exhibit 7 to the Anti Corruption Bureau by complainant/PW1 Santosh Bhelke. At that time, he was under legal advise of Advocate M.D.Pawar, as seen from his cross-examination. At the time of demand verification on 23rd August 2013, complainant/PW1 Santosh Bhelke had introduced PW2 Rahul Bodade (Panch Witness No.1/shadow panch) as surety for his mother and sisters and insisted appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, to get his surety bond executed. Appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, refused to do so by saying that it will be done after 31st August 2013, as the interim protection was till that date. This position is clearly reflected from the prosecution case as well as evidence of complainant/PW1 Santosh Bhelke.

15 With this, let us examine what the complainant says about payment of bribe in pursuant to initial demands of appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector. In his complaint Exhibit 7, complainant/PW1 Santosh Bhelke has claimed to have paid an amount of Rs.40,000/- to appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, two or three days after 25th August 2013. He also claims to have paid an amount of Rs.10,000/- to appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, in second week of August 2013, as per recitals in his complaint Exhibit 7. His cross-examination reveals that, for the first time, his wife Samiksha lodged complaint on 30th May 2013 and he received call from the police on 31st July 2013 for remaining present. On that day, his wife sought time and on 8th August 2013, they both were advised by police to approach the Women Complaint Redressal Forum as there was no amicable settlement. It is, thus clear that, till lodging the FIR by Samiksha on 19th August 2013, there was no reason for complainant/PW1 Santosh Bhelke to pay the amount

totaling Rs.50,000/- to appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector. Still, he claimed in his complaint to have paid such hefty amount to appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector.

16 Complainant/PW1 Santosh Bhelke has made bald allegations in his complaint Exhibit 7 in respect of earlier demand made by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector on 22nd August 2013. The complaint Exhibit 7 makes an allegation that complainant/PW1 Santosh Bhelke was directed by the staff of Kothrud Police Station to meet appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, and therefore, he went and met appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, at Alankar Police Outpost, on 22nd August 2013, when further demand of Rs.50,000/- was made to him. The complaint Exhibit 7 contains utterances of appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, made to complainant/PW1 Santosh Bhelke. Those are to the effect that he conveyed this demand of Rs.50,000/- to friend of complainant/PW1 Santosh

Bhelke. The complaint Exhibit 7 contains further averment that appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, scaled down his subsequent demand to Rs.25,000/-. However, when evidence of complainant/PW1 Santosh Bhelke is compared with this averment in the complaint Exhibit 7, then it is seen that before the court, complainant/PW1 Santosh Bhelke is not speaking about further demand of Rs.50,000/- allegedly made on 22nd August 2013 by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector. He has not spoken about utterances of appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, that this further demand of Rs.50,000/- is conveyed to the friend of complainant/PW1 Santosh Bhelke. Though not stated in complaint Exhibit 7, in his evidence complainant/PW1 Santosh Bhelke claims that he had attended Alankar Police Outpost on 22nd August 2013 in pursuant to the phone call by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, asking him to come and meet him. Thus, evidence regarding initial demands and payments, so also that of further demand of Rs.50,000/- made on 22nd August 2013, which was scaled down to Rs.25,000/-, is

totally unsatisfactory and highly doubtful. Evidence on that aspect adduced by complainant/PW1 Santosh Bhelke is totally omnibus, vague, sweeping and inconsistent. Allegations to that effect are bald. It is hard to digest that even without there being any cause, complainant/PW1 Santosh Bhelke would pay an hefty amount of Rs.50,000/- prior to lodging his complaint to the Anti Corruption Bureau.

17 Now let us examine evidence of complainant/PW1 Santosh Bhelke in respect of verification of demand dated 22nd August 2013 as well as the actual trap – both conducted on 23rd August 2013. It is worthwhile to note that even as per prosecution case as well as evidence of all three prosecution witnesses, right from the beginning, digital voice recorder was hidden on person of complainant/PW1 Santosh Bhelke and entire conversation held by him with appellants/accused persons as well as with others during the course of demand verification and trap, was being recorded therein. According to the prosecution case, the same was subsequently transferred in the audio cassette apart

from making transcript thereof which was incorporated in the panchnama.

18 As per version of complainant/PW1 Santosh Bhelke, at the time of verification of demand, he met appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, while being accompanied by PW2 Rahul Bodade (Panch Witness No.1/shadow panch). It is reflected from Verification cum Trap Panchnama Exhibit 11 that they were in company of appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector from 11.45 a.m. to 12.50 p.m. of 23rd August 2013. What happened at the time of demand verification is deposed in following words by complainant/PW1 Santosh Bhelke :-

“.....I opened the discussion with the accused no.1 and told him that, I was short by Rs.5,000/-. Accused no.1 was insisting for entire amount of Rs.25,000/-. I assured him to pay the entire amount, provided that, there shall not be any trouble to me in future. Accused no.2 Mr.Pokale was present there. He had also participated in the discussion. Accused no.1 told

me to bring the amount immediately. I told him that I will withdraw the amount from ATM and come back. I left the police outpost....”

This evidence of complainant/PW1 Santosh Bhelke makes it clear that appellant/accused no.2 S.PPokale, Police Naik, had participated in the conversation and demand of illegal gratification was not emanated from appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector. It was complainant/PW1 Santosh Bhelke, who offered money to appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector in present of appellant/accused no.2 S.PPokale, Police Naik. Verification cum Trap Panchnama Exhibit 11, evidence of PW3 Vinod Satav, Investigating Officer, as well as cross-examination of complainant/PW1 Santosh Bhelke goes to show that he was strictly instructed not to open discussion on the subject of demand or payment of bribe, but he should talk only about his work. However, substantive evidence of complainant/PW1 Santosh Bhelke shows that he straightaway opened the discussion by offering money and stating that he was short of money by Rs.5,000/-.

19 PW2 Rahul Bodade (Panch Witness No.1/shadow panch) has deposed about the very same incident of verification of demand in the following manner. As per his version, conversation between appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector and complainant/PW1 Santosh Bhelke started by introducing this witness as a friend, who came to act as surety. They talked in respect of acceptance of surety bond but appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, told that he cannot accept the surety till 31st August 2013. PW2 Rahul Bodade (Panch Witness No.1/shadow panch) further stated that then three to four citizens came and appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, had conversation with them for five to ten minutes. Thereafter, complainant/PW1 Santosh Bhelke told appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, that he had brought the amount of Rs.20,000/- and would pay the balance amount in two to three days. Appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, told to pay the entire amount in lump sum and complainant/PW1 Santosh Bhelke assured him that he would

come with entire amount within half an hour. Then, they left. In cross-examination, PW2 Rahul Bodade (Panch Witness No.1/shadow panch) has stated that all these events took place inside the cabin of appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, and in his presence appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector had not demanded bribe amount of his own from complainant/PW1 Santosh Bhelke. PW2 Rahul Bodade (Panch Witness No.1/shadow panch) has not stated about presence of appellant/accused no.2 S.P.Pokale, Police Naik, at the time of this discussion, though complainant/PW1 Santosh Bhelke had not only stated about presence of appellant/accused no.2 S.P.Pokale, Police Naik, but participation of appellant/accused no.2 S.P.Pokale, Police Naik, in the discussion. Complainant/PW1 Santosh Bhelke has not spoken about any discussion regarding his request to accept PW2 Rahul Bodade (Panch Witness No.1/shadow panch) as surety or interruption of talks due to arrival of three to four citizens during the conversation, at the time of verification of demand. Both these witnesses are, however, congruous about the fact that appellant/accused no.1

G.R.Inamdar, Assistant Police Inspector, never made demand of illegal gratification of his own, but money was offered to him by complainant/PW1 Santosh Bhelke. Moreover, rest of their evidence in respect of demand verification is totally inconsistent.

20 Now let us examine evidence of complainant/PW1 Santosh Bhelke and that of PW2 Rahul Bodade (Panch Witness No.1/shadow panch) in respect of the events occurred at the time of the actual trap.

21 As per version of complainant/PW1 Santosh Bhelke, after fifteen to twenty minutes of returning from Alankar Police Outpost, he and Panch No.2 Vijay Hile(not examined by prosecution) were sent by the Anti Corruption Bureau to meet appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, for payment of illegal gratification in order to trap him. At the conclusion of his chief-examination, complainant/PW1 Santosh Bhelke stated that PW2 Rahul Bodade (Panch Witness No.1/shadow panch) was with him at the time of the trap but

again in cross-examination complainant/PW1 Santosh Bhelke has stated that he is cocksure that at the time of the trap only one person i.e. Panch No.2 Vijay Hile(not examined by prosecution) was accompanying him and he had introduced Panch No.2 Vijay Hile(not examined by prosecution) as his tenant to appellants/accused persons. Thus, version of complainant/PW1 Santosh Bhelke is to the effect that, infact, Panch No.2 Vijay Hile(not examined by prosecution) acted as a shadow panch to observe demand and acceptance of illegal gratification. Complainant/PW1 Santosh Bhelke, thus, has spoken that PW2 Rahul Bodade (Panch Witness No.1/shadow panch) was not present and had not witnessed the incident of demand and acceptance at the time of the trap. Complainant/PW1 Santosh Bhelke has stated about the actual incident leading to acceptance of illegal gratification by the appellants/accused persons in the following manner, in paragraph 8 of his chief-examination :-

“.....Myself and Panch Witness No.2 entered the police outpost. There was discussion between myself and accused no.1 and 2. Accused no.1 inquired me whether I had brought the amount

and told me to give it to the accused no.2. Before handing over the amount I again requested both the accused to extend the help while filing the charge-sheet and both of them assured me. I took out the amount from shirt pocket and hold it in front of the accused no.1. Accused no.1 did not touch the amount and told me to hand over it to the accused no.2. Then I handed over tainted money to the accused no.2. Accused no.2 accepted the amount and kept it in his pant pocket. I came out of the police outpost and gave pre-arranged signal. Before arrival of the A.C.B. Officials accused no.1 started his motorbike and went to offer *namaz*. A.C.B. Officials asked me, who had accepted the amount, I told them that accused no.2 Mr.Pokale had accepted the amount.”

This evidence of complainant/PW1 Santosh Bhelke shows that at the time of the trap, it was appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, who demanded bribe in presence of Panch No.2 Vijay Hile(not examined by prosecution) and had directed complainant/PW1 Santosh Bhelke to pay the amount of

bribe to appellant/accused no.2 S.PPokale, Police Naik. Accordingly, in presence of appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, complainant/PW1 Santosh Bhelke paid the amount of bribe to appellant/accused no.2 S.PPokale, Police Naik. Then, after giving pre-arranged signal to the Anti Corruption Bureau by complainant/PW1 Santosh Bhelke and before arrival of the raiding team of the Anti Corruption Bureau, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, left the police outpost for offering *namaz*.

22 If we go to the cross-examination of complainant/PW1 Santosh Bhelke, and particularly to paragraph 16 thereof read with paragraph 12 of the evidence of Investigating Officer PW3 Vinod Satav, then it becomes clear that entire evidence in chief-examination of complainant/PW1 Santosh Bhelke in respect of demand of bribe by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, at the time of the trap, has come on record by way of omission. PW3 Vinod Satav, Investigating Officer, has categorically stated that complainant/PW1 Santosh

Bhelke has not stated to him that as soon as he entered the police outpost, there was discussion between himself and both appellants/accused persons and then appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, inquired him as to whether he had brought the amount and when complainant/PW1 Santosh Bhelke said "Yes", appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, had asked complainant/PW1 Santosh Bhelke to hand over the same to appellant/accused no.2 S.P.Pokale, Police Naik. It needs to be reiterated here that evidence regarding demand at the time of the trap and acceptance of illegal gratification is of great importance for concluding commission of such offence. If really appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, demanded the amount of illegal gratification from complainant/PW1 Santosh Bhelke, at the time of the trap and accepted the same through appellant/accused no.2 S.P.Pokale, Police Naik, then there was no reason for complainant/PW1 Santosh Bhelke, for not disclosing the same to Investigating Officer, PW3 Vinod Satav. This important fact was omitted by complainant/PW1 Santosh Bhelke while giving his

statement to the Investigator in the anti corruption matter. True it is that minor variation in the statement of witness cannot be considered as improvement but omission which goes to the root of the case and materially affects the core of prosecution case renders the testimony of such witness suspect. In such case, such improved version of the witness is required to be kept out of consideration by the court. (See Sunil Kumar Sambhudayal Gupta (Dr.) and Others vs. State of Maharashtra)¹². If this material improvement in the version of complainant/PW1 Santosh Bhelke is kept out of consideration, then his evidence reflects that even at the time of the trap, there was no demand of illegal gratification by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, with a further direction to pay the amount of illegal gratification to appellant/accused no.2 S.P.Pokale, Police Naik.

23 Cross-examination of complainant/PW1 Santosh Bhelke, in respect of how actual incident of demand and acceptance of illegal gratification at the time of raid by the Anti

¹² (2010) 13 Supreme Court Cases 657

Corruption Bureau happened, is also interesting. In cross-examination, complainant/PW1 Santosh Bhelke, has deposed about it in the following manner :-

“.....It is true that as soon as I met accused no.1, I asked him whether I shall “give” and accused no.1 told “give it”. I again said whether to Mr.Pokale, accused no.1 said “give it”.”

This is how, according to evidence in cross-examination of complainant/PW1 Santosh Bhelke, the episode of demand and acceptance of the bribe took place, and that too, in the hall of Alankar Police Outpost. This admission of complainant/PW1 Santosh Bhelke, in cross-examination makes it clear that even at the time of the trap, the demand was not emanated from appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector. Moreover, this admission in cross-examination probabalise the defence of appellants/accused persons that appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector had asked complainant/PW1 Santosh Bhelke to produce certain documents and thinking that those documents are being given, he replied to question of complainant/PW1 Santosh Bhelke, by answering “give

it". Evidence on record shows that appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, had informed complainant/PW1 Santosh Bhelke to produce two witnesses daily and also supply some documents for the purpose of investigation in the matter of the offence registered at the instance of Samiksha. That apart, evidence of complainant/PW1 Santosh Bhelke in respect of the demand and acceptance at the time of the trap is also inconsistent and in the cross-examination this witness has virtually given up the story given in the chief-examination regarding demand of illegal gratification by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector.

24 From further cross-examination of complainant/PW1 Santosh Bhelke, it is brought on record by the defence that entire episode of demand and acceptance of illegal gratification and handing over and accepting the tainted currency notes, took place at the hall of Alankar Police Outpost and not in cabin. Complainant/PW1 Santosh Bhelke was firm in stating that it did not happen that bribe was paid in cabin to appellant/accused no.1

G.R.Inamdar, Assistant Police Inspector. He categorically stated that he did not even enter in the cabin of appellant/accused no.2 S.PPokale, Police Naik, for this purpose.

25 To test the veracity of version of complainant/PW1 Santosh Bhelke, let us compare it with that of shadow panch. According to the prosecution case, PW2 Rahul Bodade, Panch Witness No.1, acted as shadow panch, but complainant/PW1 Santosh Bhelke dislodged the prosecution case on this aspect and was firm in stating that it was Panch No.2 Vijay Hile(not examined by prosecution) who acted as shadow panch, whom he has introduced as tenant. Be that as it may, let us see what PW2 Rahul Bodade (Panch Witness No.1/shadow panch according to the prosecution) says about the events which took place at the time of the trap. He deposed that, at about 1.10 p.m. of 23rd August 2013, he, accompanied by complainant/PW1 Santosh Bhelke, entered in the Alankar Police Outpost where both appellants/accused persons were present. Complainant/PW1 Santosh Bhelke, then, told appellant/accused no.1 G.R.Inamdar,

Assistant Police Inspector, that he had brought the amount and whether he should hand over the same to him (G.R.Inamdar). Upon that, as per version of PW2 Rahul Bodade (Panch Witness No.1/shadow panch), appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, said "Yes". Complainant/PW1 Santosh Bhelke then asked appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, as to whether he shall hand over the amount to appellant/accused no.2 S.P.Pokale, Police Naik. Appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, said "Yes". Then, as per evidence of PW2 Rahul Bodade (Panch Witness No.1/shadow panch), appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, said that he wanted to go for offering *namaz* and left Alankar Police Outpost. PW2 Rahul Bodade (Panch Witness No.1/shadow panch) further testified that then complainant/PW1 Santosh Bhelke and he himself went to the cabin of appellant/accused no.2 S.P.Pokale, Police Naik and appellant/accused no.2 S.P.Pokale, Police Naik, was found present in the cabin. PW2 Rahul Bodade (Panch Witness No.1/shadow panch) categorically deposed that, then complainant/PW1 Santosh Bhelke

paid the amount of bribe to appellant/accused no.2 S.PPokale, Police Naik, which was counted by the said accused by both hands.

26 What is stated by this shadow panch PW2 Rahul Bodade is made further clear by him in his cross-examination. He stated that at the time of the trap, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, did not demand bribe amount of his own. He further stated that the incident of giving and taking bribe did not happen in cabin of appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector. As per version of this shadow panch PW2 Rahul Bodade, it was for the first time he saw appellant/accused no.2 S.PPokale, Police Naik. This, in other words, implies that at the time of discussion at the time of the trap between complainant/PW1 Santosh Bhelke and appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, appellant/accused no.2 S.PPokale, Police Naik was not present. The version of the shadow panch PW2 Rahul Bodade further shows that complainant/PW1 Santosh Bhelke and this shadow panch visited

cabin of appellant/accused no.2 S.PPokale, Police Naik, after appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector left the police outpost for offering *namaz*. As against this version of shadow panch PW2 Rahul Bodade, complainant/PW1 Santosh Bhelke is stating that at the time of the trap when he and Panch No.2 Vijay Hile(not examined by prosecution) visited Alankar Police Outpost, there was joint discussion between him, appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, and appellant/accused no.2 S.PPokale, Police Naik. Not only that, even as per version of complainant/PW1 Santosh Bhelke, at the time of demand verification also, appellant/accused no.2 S.PPokale, Police Naik, was present and had participated in discussion. Thus, not only versions of both these witnesses are divergent, even their versions in chief-examination and cross-examination are not matching. With this inconsistent and divergent evidence of the complainant and shadow panch, it is very difficult to ascertain whether PW2 Rahul Bodade (Panch Witness No.1/shadow panch) was the shadow panch, who accompanied complainant/PW1 Santosh Bhelke at the time of the

trap or whether, as claimed by complainant/PW1 Santosh Bhelke, it was Panch No.2 Vijay Hile(not examined by prosecution) who accompanied him at the time of the trap. Even version of both these witnesses is not matching in respect of place of incident of transfer of tainted currency notes and manner of happenings of the incidents. Incident of demand verification and happenings thereof are stated differently by both these witnesses. Complainant/PW1 Santosh Bhelke is very specific in stating that the entire episode of handing and taking over the bribe took place in the hall of Alankar Police Outpost, whereas PW2 Rahul Bodade - shadow panch (according to the case of prosecution), is stating that at the time of the trap, they met appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, at his cabin and then after he left the police outpost, they entered in the cabin of appellant/accused no.2 S.P.Pokale, Police Naik, and handed over the tainted currency notes to appellant/accused no.2 S.P.Pokale, Police Naik. This inconsistent evidence of two important witnesses casts serious shadow of doubt on the entire case of prosecution. Their evidence lacks assurance of trustworthiness

required in the criminal trial. With such discrepant evidence, it is difficult to hold that the prosecution has established demand of illegal gratification by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector or that he has obtained the same through appellant/accused no.2 S.P.Pokale, Police Naik. Critical analysis of evidence of both these witnesses reflects that their versions about the incidents of demand as well as acceptance of illegal gratification are suffering from serious infirmities. They do not seem to be witnesses of the truth. These two alleged eye witnesses to the offence are coming up with a version which is even significantly different from the prosecution case. They have contradicted each other on material particulars by their inconsistent versions about the incidents. Their evidence does not show that the incidents happened in the manner alleged by the prosecution. Let us, therefore, examine whether there is any corroboration to the evidence of these two witnesses in order to cull out nuggets of truth from the version of these two witnesses and whether anything can be said, from such evidence, in favour of the prosecution.

27 As stated in opening paragraph of this judgment, right from the beginning of the process of verification of the demand till actual raid resulting in apprehending appellant/accused no.2 S.P.Pokale, Police Naik, with tainted currency notes, entire conversation of complainant/PW1 Santosh Bhelke with all persons who came in his contact on 23rd August 2013, was being recorded in the digital voice recorder, which was kept concealed in his body. Evidence adduced by the prosecution on this aspect is certainly acceptable and the same is gaining corroboration from the contemporaneous documentary evidence in the form of Pre-Trap panchnama Exhibit 10 and Verification cum Trap Panchnama Exhibit 11 as well as panchnama of taking voice of appellants/accused persons Exhibit 15. Even, as seen from evidence of PW2 Rahul Bodade (Panch Witness No.1/shadow panch) and PW3 Vinod Satav, Investigating Officer, subsequent to successful trap, there was phone call by appellant/accused no.1 G.R.Inamdar, Assistant Police Inspector, to appellant/accused no.2 S.P.Pokale, Police Naik, who at that time, was in custody of the

Anti Corruption Bureau and that conversation was also recorded in the digital voice recorder. Evidence of PW2 Rahul Bodade (Panch Witness No.1/shadow panch) and that of Investigating Officer PW3 Vinod Satav, makes it clear that during post trap formalities at Kothrud Police Station, the digital voice recorder was played and conversation recorded therein was heard by them. Its transcript came to be included in the Verification cum Trap Panchnama Exhibit 11. It has also come on record from evidence of these two witnesses as well as from the recitals in contemporaneous document Verification cum Trap Panchnama Exhibit 11 that the data from the digital voice recorder then came to be transferred to the laptop and audio cassette of recorded conversation came to be prepared and then it was seized. Panchnama at Exhibit 11 is clear on this aspect.

28 It has come on record through evidence of PW3 Vinod Satav, Investigating Officer, that on 28th August 2013, in presence of both panch witnesses, he took sample of voice of both appellants/accused persons. The manner in which that voice

sample came to be taken is reflected in panchnama of taking voice samples Exhibit 15, which came to be proved by the prosecution, through evidence of PW2 Rahul Bodade (Panch Witness No.1/shadow panch) and PW3 Vinod Satav, Investigating Officer. Recitals in this panchnama Exhibit 15 unerringly points out that recorded version was reflected in the Verification cum Trap Panchnama Exhibit 11, as the same after transcription was also included therein. This fact is also deposed by Investigating Officer PW3 Vinod Satav. For taking their voice sample, this Verification cum Trap Panchnama Exhibit 11 came to be handed over to both appellants/accused persons, as seen from recitals in Panchnama Exhibit 15. Both appellants/accused persons were made to recite and read their part of conversation reflected in Verification cum Trap Panchnama Exhibit 11 and recitals of appellants/accused persons were then came to be recorded in the audio cassette. That is how, sample of voice of both appellants/accused persons came to be taken by the Investigating Officer PW3 Vinod Satav vide Panchnama Exhibit 15 for comparing it with the recording made at the time of verification of demand and actual trap. Then,

audio cassette of recorded voice of both appellants/accused persons was played and after confirmation of recording, the same came to be seized vide Panchnama Exhibit 15.

29 Evidence of PW3 Vinod Satav, Investigating Officer, goes to show that during the course of investigation, along with Request Letter dated 19th September 2013 at Exhibit 24, both audio cassettes were sent for forensic examination and for supplying the necessary report as to whether the voice in the questioned recording matches with that of accused persons. However, the prosecution has not produced on record the said report. Investigating Officer PW3 Vinod Satav has not even deposed the reason for non-production of such report, though he had specifically requested the Forensic Laboratory to report as to whether the voice recorded during the Verification cum Trap Panchnama is that of both appellants/accused persons. It is not the case of the prosecution that no such report was received by the prosecution. This action on the part of the prosecution in withholding the available evidence requires me to draw adverse

inference against the prosecution in terms of Illustration “g” to Section 114 of the Evidence Act.

30 The prosecution has not produced and proved electronic evidence in the form of recorded conversation though it was available with it. According to the prosecution case, entire recorded conversation between complainant/PW1 Santosh Bhelke and both appellants/accused persons since inception till concluding of the proceedings of the trap, came to be recorded in the digital voice recorder and ultimately, it was transferred in the audio cassette, which was seized during the course of investigation vide Verification cum Trap Panchnama Exhibit 11. Production and proof of this electronic evidence in the form of recorded conversation was very relevant to establish guilt of both appellants/accused persons as ocular evidence adduced by the prosecution by examining complainant/PW1 Santosh Bhelke and PW2 Rahul Bodade (Panch Witness No.1/shadow panch) is found to be highly unsatisfactory as well as totally untrustworthy. In this view of the matter, for establishing guilt of the accused, it was

incumbent on the part of the prosecution to prove the audio cassettes containing tape recorded conversation amongst the complainant/PW1 Santosh Bhelke and accused persons by following the due process of law. For the reasons best known to the prosecution, this evidence is not adduced by it creating further doubt in its case. The necessary inference which follows is that such evidence was not favourable and supporting the prosecution case. The Honourable Supreme Court has considered importance of electronic evidence in criminal trial in the matter of **Tomaso Bruno and Another vs. State of Uttar Pradesh**¹³. The learned advocate for appellants/accused persons rightly relied on the same. It is apposite to quote observations of the Honourable Supreme Court found in paragraphs 24 to 27 of the said judgment. Those read thus :

“24 With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has

¹³ (2015) 7 Supreme Court Cases 178

become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents strictu sensu are admitted as material evidence. With the amendment to the [Indian Evidence Act](#) in 2000, [Sections 65A](#) and [65B](#) were introduced into Chapter V relating to documentary evidence. [Section 65A](#) provides that contents of electronic records may be admitted as evidence if the criteria provided in [Section 65B](#) is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by [Section 65B](#) of the Evidence Act. Sub-section (1) of [Section 65B](#) makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfillment of the conditions specified in sub-section (2) of [Section 65B](#). Secondary evidence of contents of document can also be led under [Section 65](#) of the Evidence Act. PW 13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.”

“25 The production of scientific and electronic evidence in court as contemplated under [Section 65B](#) of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of [Mohd. Ajmal Amir Kasab vs. State of Maharashtra, \(2012\) 9 SCC 1](#), wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in the case of [State \(NCT of Delhi\) vs. Navjot Sandhu, \(2005\) 11 SCC 600](#), the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers.”

“26 The trial court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non-production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to

be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made.”

“27 As per [Section 114](#) Illustration (g) of the [Evidence Act](#), if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him.....”

31 As stated earlier, conversation of complainant/PW1 Santosh Bhelke with appellants/accused persons during the course of verification of demand since inception and till conclusion of the trap, so also telephonic conversation between both appellants/accused persons after the trap came to be recorded in the digital voice recorder. The transcript of this recorded conversation was prepared as seen from evidence of PW2 Rahul Bodade (Panch Witness No.1/shadow panch) and PW3 Vinod Satav, Investigating Officer, as well as from the recitals of the Verification cum Trap Panchnama. It was made part of this Verification cum Trap

Panchnama Exhibit 11, as seen from evidence of Investigating Officer PW3 Vinod Satav, so also from recitals in the Panchnama Exhibit 15, by which voice samples of appellants/accused persons came to be seized. This Panchnama Exhibit 15 shows that both appellants/accused persons were given Verification cum Trap Panchnama and were asked to read the conversation of complainant/PW1 Santosh Bhelke with appellants/accused persons during the process of verification and conduct of the trap, transcribed thereat. However, perusal of Verification cum Trap Panchnama Exhibit 11 shows that no such conversation is transcribed therein. Probably the transcript of the recorded conversation in the digital video recorder was prepared by the prosecution and the same might have been annexed with the Verification cum Trap Panchnama Exhibit 11. However, the recorded conversation is not found in the body of Verification cum Trap Panchnama Exhibit 11. Separately prepared transcript was not proved by the prosecution by adducing necessary evidence in that regard and the same has not been exhibited before the learned trial court, after its due proof. This again gives an

indication that the transcribed conversation between complainant/PW1 Santosh Bhelke and appellants/accused persons may not be in favour of the prosecution case, and therefore, the transcript was not proved by the prosecution. Moreover, the prosecution has not explained during the course of evidence as to why such transcribed conversation between complainant/PW1 Santosh Bhelke and appellants/accused persons is not finding its place in the Verification cum Trap Panchnama. This position of evidence gives a clear indication that material evidence is suppressed and substituted by the prosecution and whole and unvarnished truth has not been brought before the court. This flawed approach of the prosecution does not allow me to hold that the prosecution has duly proved the demand and acceptance of illegal gratification by appellants/accused persons. As the demand itself is not established by clear and cogent evidence by the prosecution, even though the tainted currency notes were allegedly recovered from appellant/accused no.2 S.P.Pokale, Police Naik, it cannot be said that the prosecution has been able to bring home the guilt to appellants/accused persons for offences with

which they were charged. For invoking the provisions of Section 20 of the P.C.Act, 1988, the court is required to consider explanation offered by the accused and in the case in hand, such burden has been discharged by appellants/accused persons by preponderance of probabilities. Demand of illegal gratification precedes acceptance of illegal gratification and when the demand itself is not proved, then the offence of criminal misconduct cannot be held to be proved.

32 In the light of the foregoing discussion, I am unable to endorse the view taken by the learned trial court and reasons recorded by it for convicting both appellants/accused persons. The findings given and conviction of appellants/accused persons recorded by the learned trial court cannot be sustained in the wake of evidence adduced by the prosecution. The prosecution has utterly failed to prove guilt of appellants/accused persons in respect of the charge leveled against them.

33 In the result, I proceed to pass the following order :

ORDER

- 1 The appeal is allowed.
- 2 The impugned judgment and order of conviction and the resultant sentence imposed on the appellants/accused vide judgment and order dated 24th July 2015 passed by the learned Special Judge (Anti Corruption Bureau), Pune, in Special Case No.32 of 2014 is quashed and set aside.
- 3 Appellants/accused nos.1 and 2 are acquitted of the offences punishable under Sections 7, 13(1)(d) read with 13(2) as well as under Section 12 of the Prevention of Corruption Act, 1988.
- 4 Their bail bonds stand cancelled.
- 5 Fine amount, if any, paid by them be refunded to them.

(A. M. BADAR)