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

CRIMINAL APPEAL NO.17 OF 2012

The State of Maharashtra,
through Dy.S.P. Anti Corruption Bureau
Jalgaon.

**...APPELLANT
(Ori. Complainant)**

VERSUS

Anandrao Rajaram Patil,
Age: 53 years, Occu.: Service,
R/o. Erandol, Tq. Erandol, Dist. Jalgaon

**...RESPONDENT
(Ori. Accused)**

Mr.S.N. Morampalle, APP for the appellant/State
Mr.P.B. Patil, Advocate for the respondent

**CORAM : S.M.GAVHANE,J.
DATE : 09/04/2019**

J U D G M E N T :-

. This appeal is directed against the acquittal of the respondent (hereinafter referred to as 'accused') for the offences punishable under Sections 7,13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') as per the judgment and order dated 13/06/2011 in Special Case No.01/2008 passed by the Ad-hoc District Judge-1 and Assistant Sessions Judge, Jalgaon.

2. Facts leading to the institution of the present appeal, in short, are as under;

(a) The accused was working as a Section Engineer in Zila Parishad, Jalgaon, Sub Division Erandol during 12/03/1979 to 19/06/2007 and as such he was a public servant within the meaning of Section 2(c) of the Act. Certain houses were to be constructed under the "Indira Awas Yojana" (hereinafter referred to as 'the Scheme') at Kasoda by the Zilla Parishad, Jalgaon.

(b) The complainant Shamrao Bhimrao Chaudhari (PW-1) had purchased plot No.64 from Gat No.19 situated at Kasoda. He wanted to construct one house on the said plot under the Scheme during the financial year 2006-07. As such the complainant was one of the claimants of one house under the scheme.

(c) It is the case of the prosecution that an amount of Rs.30,000/- was sanctioned to the complainant from the Government for the house under the scheme. In fact he was to receive Rs.28,500/- towards the reimbursement from the Government and he was supposed to contribute remaining amount of Rs. 1,500/-. Initially he received Rs.7,000/- from the Panchayat Samiti, Erandol to start the construction of the house. He completed the work of the plinth and showed the photographs of the same to the accused and requested accused to sanction the remaining amount. It is alleged that at that time the accused demanded Rs.1,500/- to the complainant as a bribe. The complainant told accused that he would think about the same (bribe) at the time of last installment. Thereafter, on 28/03/2007 the complainant received cheque for Rs.18,000/- from the Panchayat Samiti. Thereafter, he completed the work of construction of the wall of his house.

(d) It is further case of the prosecution that on 10/06/2007 the accused came to the house of complainant at Kasoda and inspected the site where the complainant was constructing the house and made demand of Rs.1,500/- as a bribe. The complainant told him that he will pay the said amount to him after coming Tuesday after he would receive the amount. However, he could not meet the accused due to illness of his wife and his daughter. On 16/06/2007, the accused once again met the complainant and once again demanded Rs.1500/- towards the bribe. Accused told him to come to his office on 19/06/2007 at Erandol and to pay the said amount to him there. Complainant was not willing to pay the amount of Rs.1500/- to the accused as a bribe, hence, on 18/06/2007, he lodged complaint as above with Anti Corruption Bureau (for short ACB office) Jalgaon.

(e) Thereafter, Dy.S.P. Sonar (PW-4) called two panchas, namely, Laxman Vasudeo Kakade (PW-2) and Nilkanth Bhadu Rane on 18/06/2007 at 5.30 p.m. in the

ACB office, Jalgaon to act as a panch and they were again called on the next day in the ACB office, Jalgaon in the morning. On 19/06/2007 the complainant as well as panchas had come in the ACB office, Jalgaon. The complainant had given an amount of Rs.1500/- and that amount was two currency notes of Rs.500/- denomination and five currency notes of Rs.100/- denomination. Anthracene powder was applied to said notes and they were kept in the pocket of shirt of the complainant. Dy.S.P. Sonar had given instructions to the complainant and panchas and it was decided to lay trap on 19/06/2007 at 11.45 a.m. in the office of the accused at Erondol. Accordingly to the pre-trap panchnama (Exh.26) was prepared. Thereafter, the complainant, panchas and the raiding party proceeded towards Erondol for laying the trap. The complainant and PW-2 (panch No.1) went in the office of the accused and accused demanded the amount. The complainant handed over bribe amount to the accused. The complainant gave pre-arranged signal to the raiding party and raiding party came. The accused was caught red handed. The bribe amount was recovered from the accused and then post trap panchnama/ panchnama of spot of incident (Exh.27) was prepared by Dy.S.P. Sonar. So also, Dy.S.P. Sonar lodged complaint on behalf of the State in Police Station Erandol. Then crime came to be registered under Sections 7,13(1)(d) read with Section 13(2) of the Act against the accused vide crime No.3017/2004. Accused was arrested and released on bail. After completion of the investigation charge-sheet was submitted in the Special Court at Jalgaon against the accused for the aforesaid offences.

(f) Charge was framed against the accused under Sections 7,13(1)(d) read with Section 13(2) of Act. Accused pleaded not guilty to the charge and claimed to be tried.

(g) For proving charge against the accused prosecution has examined four witnesses, namely, the complainant Shamrao Bhimrao Chaudhari (PW-1), panch

No.1 Laxman Vasudeo Kakade (PW-2), Dr.Ramaswami (PW-3) who accorded sanction to prosecute accused, Dy.S.P. sonar (PW-4) the Investigating Officer and besides the oral evidence the prosecution has relied upon pre-trap and post-trap panchnamas referred above and sanction order (Exh.D-1).

(h) Statement of accused under Section 313 of the Code of Criminal Procedure was recorded. His defence was denial. He examined witness Rajendra Bhalchandra Bhalerao (DW-1) at Exh.44 and produced certain documents in support of his defence. His defence was that out of Rs.30,000/- complainant was to receive Rs.28,500/- and complainant has to spend Rs.1,500/- i.e. labour charges, for constructing the house. The complainant was expecting that he would get said amount Rs.1,500/- also and therefore he filed false case against the accused.

(i) Considering the evidence adduced by the prosecution and defence of the accused the learned

Assistant Sessions Judge held that the prosecution has failed to prove the offences under Sections 7,13(1)(d) read with Section 13(2) of the Act against the accused and accordingly acquitted the accused of the said offences by impugned judgment. Therefore this appeal against acquittal by the appellant/State.

3. I have heard Mr. Morampalle, learned APP appearing for the appellant/State and Mr. Patil, learned counsel for the respondent/accused.

4. Mr.Morampalle, learned APP submitted that the accused was working as a Section Engineer in Zilla Prishad, Jalgaon, Sub Division Erondol and as such he was a public servant at the relevant time of incident. The complainant was one of the beneficiaries of house under the Scheme i.e. Indira Awas Yojna and as such an amount of Rs.30,000/- was sanctioned to the complainant. Out of said amount complainant was entitled to get reimbursement of Rs. 28,500/- and he was supposed to bear Rs.1,500/-. The

complainant received first installment of Rs.7,000/- after he completed construction up to plinth level.

5. Learned APP submitted that when second installment was payable to the complainant accused demanded Rs.1,500/- as a bribe from the complainant and the complainant told him that he would pay said amount at the time of last installment. On 28/03/2007 the complainant received cheque of Rs.18,000/- of second installment and the complainant made further construction.

6. Learned APP further submitted that on 10/06/2007 the accused came to the house of complainant and made demand of Rs.1,500/-. So also, on 16/06/2007 accused met complainant and once again made demand of Rs.1,500/- to the complainant and accused told complainant to come to his office on 19/06/2007 and pay said amount, but complainant was not willing and hence on 18/06/2007 complainant lodged complaint with ACB office, Jalgaon. Therefore,

trap was laid on 19/06/2007 at 11.45 a.m. Learned APP submitted that the prosecution has proved demand of bribe by the accused from the complainant and acceptance of bribe amount of Rs.1,500/- by the accused as per the prosecution case on the basis of evidence of PW-2 (panch No.1), even though the complainant (PW-1) has turned hostile and as such the prosecution has proved the offences against the accused with which he was charged. Therefore, impugned judgment and order of acquittal deserves to be set aside and the respondent/accused be convicted for the offences with which he was charged, by allowing the appeal.

7. Mr.Patil, learned counsel for the respondent/accused, on the other hand, submitted that the complainant received entire amount under the scheme to which he was entitled to get and accordingly certificate Exh.D-3 was issued by the B.D.O. of Panchayat Samiti regarding completion of work. The complainant was to receive only Rs.28,500/-

towards the reimbursement from the Government and he was supposed to contribute remaining amount of Rs. 1500/-. Though the complainant received Rs.28,500/- he was insisting that he would get Rs.1500/- i.e. labour charges also and therefore he filed false complaint with misconception. The complainant admitted the said fact in the cross-examination and further he admitted that he received the entire amount. Thus, according to learned counsel for the accused if the evidence of complainant who has not supported the prosecution case is considered, the prosecution has failed to prove offences alleged against the accused. It is submitted that this is an appeal against acquittal of the accused and the view taken by the trial Court is a possible view and therefore there is no reason to interfere with the impugned judgment of acquittal of the accused. It is submitted that the trial Court has properly appreciated evidence and rightly acquitted the accused and therefore appeal be dismissed.

8. To support his submissions the learned counsel for the accused has relied upon the following decisions:

(A) In the case of Punjabrao Vs. State of Maharashtra, AIR 2002 SC 486, the appellant was acquitted by the Special Judge of the offence under Section 5 of the Prevention of Corruption Act. The State had filed appeal against acquittal in the High Court at Nagpur Bench of this court and the High Court had set aside the acquittal and appellant was convicted under Section 161 of the Indian Penal Code and under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. Aggrieved by the said conviction recorded by the High Court against the appellant, the appellant had filed appeal before the Apex Court. In the said appeal the Hon'ble Apex

Court observed that reversal of acquittal without focusing on reasoning given by lower Court and on misreading of relevant evidence is not proper. The explanation given by accused for receipt of amount need not be proved by him beyond reasonable doubt and he can establish his defence by preponderance of probability.

(B) In the case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede, 2010(1) Bom.C.R.(Cri.)247, respondent/accused was acquitted by the High Court of the offence under Section 7(1) of the Prevention of Corruption Act. In the appeal against acquittal of the accused the Hon'ble Supreme Court has held that demand of illegal gratification is sine qua non for constitution of an offence under provisions of Act. For arriving at conclusion as to whether all ingredients of illegal gratification, viz. demand, acceptance and recovery have been satisfied or not, facts and circumstances brought on record must be considered in their entirety. Presumptive evidence as laid down under section 20 must also be considered, but, in respect thereof, it is trite law that, standard of burden of proof on accused vis-a-vis standard of burden of proof on prosecution would differ. Even in a case where burden is on accused, prosecution must prove foundational facts. Before calling an accused to explain as to how amount in question was found in his possession, foundational facts must be established. While invoking provisions of section 20, explanation offered by accused, if any, is required to be considered only on touchstone of preponderance of probability, not on proof beyond all reasonable doubt. On scrutiny of evidence, version of complainant found highly doubtful. Evidence of D.W. 1 considered in this back-ground. Even otherwise, as noted, prosecution failed to prove its case. No case, where High Court has failed to consider legal implication of section 20 and/or placed too much reliance on minor inconsistencies in statements of prosecution witnesses. Further it was held that it is well settled that, in event two views are possible, Supreme Court shall not interfere with a judgment of acquittal. In event, having regard to materials on record, court comes to conclusion on basis thereof that only one view is possible, a judgment of acquittal may be interfered with. Also that, where two views are possible, one favouring accused must be preferred.

(C) In the case of Arjun Bajirao Kale Vs. State of Maharashtra, 2009(2) Bom.C.r.(Cri.)202, in the appeal against conviction of the appellant for the offences punishable under Sections 7 and 13(1)(d) and 13(2) of the Prevention of Corruption Act, it was the case of the prosecution that appellant/accused demanded amount from complainant who was involved in counterfeit currency case. Complainant filed complaint with Anti Corruption Bureau, who raided and caught red-handed while accepting bribe from complainant. Complainant turned hostile, not supported prosecution.

PW-5 panch witness supported prosecution. Appellant submitted that demand was foundation of case under Act, unless demand established by prosecution acceptance of money, not sufficient to convict. It was held that the trial Court erred in accepting version given by P.W.4, it was not open for the trial Court to have relied on part of examination-in-chief which demolished in cross-examination. PW-4 and 6 are historysheceers and good reason for implicating appellant who was Senior Police Inspector benefit of doubt was given to the appellant. It was held that on sole uncorroborated testimony of PW-5 it cannot be held that demand was established by the prosecution. Appeal was allowed and order of trial Court was set aside.

(D) In the case of State of Karnataka Vs. Ameer Jan, 2007(2)CACC 334, in the appeal against acquittal of the respondent/accused of the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act it was held that if the order of sanction is full of irregularities then judgment of conviction could not be sustained. It was observed that application of mind on the part of the sanctioning authority is imperative. Order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. If the order of sanction does not indicate application of mind as the materials placed before the said authority before the order of sanction was passed the same may be produced before the Court to show that such materials had in fact been produced.

9. I have carefully considered the submissions made by the learned APP and the learned counsel for the accused and with their assistance I have gone through the evidence adduced by the prosecution, the accused and the impugned judgment and order.

10. There is no dispute that the complainant (PW-1) was having plot No.64 at village Kasoda and he had to construct house on the said plot under the scheme during the financial year 2006-2007. An amount of Rs.30,000/- was sanctioned to the complainant from Government for house under the scheme. The complainant was to receive Rs.28,500/- towards the reimbursement from the Government and he was supposed to contribute remaining amount of Rs.1500/-. As per prosecution case complainant received initial installment of Rs.7,000/- from Panchayat Samiti,

Erandol to start the construction of house and the complainant completed the work of plinth.

11. It is alleged that when the complainant requested accused to sanction remaining amount accused demanded bribe of Rs.1500/- to the complainant and thereafter on 28/03/2007 complainant received cheque of Rs.18,000/- from the Panchayat Samiti.

12. It is further alleged against the accused that on 10/06/2007 accused came to the house of complainant and made demand of Rs.1500/- as a bribe. Thereafter also on 16/06/2007 accused made demand of Rs.1500/- as a bribe and thereafter accused made demand of bribe amount of Rs.1500/- on the date of trap i.e. on 19/06/2007. To prove initial three demands i.e. of prior to 28/03/2007, of 10/06/2007 and 16/06/2007 the prosecution has relied upon the evidence of the complainant (PW-1). On perusal of the evidence of the complainant it is seen that he has

not stated about any demand of bribe made by the accused and more particularly he has not stated that the accused made demand of bribe of Rs.1500/- to him prior to 28/03/2007, or on 10/06/2007 or 16/06/2007 as per prosecution case. So also, he has not stated that the accused made demand of bribe of Rs.1500/- on 19/06/2007. In paragraph no.3 of his deposition the complainant has stated as under:-

> "3. I had gone in the office of ACB. One of my friend Mahesh Santosh Chaudhary told me that, the accused was demanding amount of Rs.1500/- hence, I went to the office of ACB. I have not lodged any report in the office of ACB. The complaint now shown to me bears my signature. I do not know the contents of the same. The signature is marked Exh.22."

13. The complainant did not support the prosecution case and therefore learned APP cross-examined him and in paragraph No.4 of his deposition the complainant has stated as under:-

> "4. It is true that, I went to the ACB office on 18/06/2007. It is not true to say that, I told the A.C. Officer that, the accused was demanding me money. It is not true to say that, my report was taken as per my say. It was read over to me and

> thereafter I signed it. It is not true to say that, I told A.C. Officer that in order to release the amount of last installment of Rs.3500/- the accused is asking me to pay Rs.1500/- by way of bribe. It is not true to say that, I told A.C. Officer that, there was no any transaction between myself and accused and I was not having any grudge against him. It is not true to say that, I had gone through my complaint and thereafter put my signature thereon. The witness volunteers that, he is unable to read but, when learned APP asked him about his educational qualification, he told that, he has studied up to 8^{th} standard."

14. So also, the complainant has denied suggestions put to him on behalf of the learned APP that on the next day i.e. on 19/06/2007 he was called in the ACB office, Jalgaon in the morning and on that day at 7.30 a.m. he went in the ACB office, Jalgaon and Dy.S.P. Sonar gave him instructions as alleged by the prosecution and that two currency notes of Rs.500/- and five currency notes of Rs.100/-, and thus total amount of Rs.1500/- was kept in his pocket after applying the anthracene powder. So also, he has denied that they all went to Erandol by Government vehicle, said vehicle was stopped near bus stand and

thereafter after necessary instructions by Dy.S.P. Sonar he and Panch No.1 (PW-2) went to the house of accused alongwith the accused and at about 11.30 a.m. in the compound of the office he paid an amount of Rs.1500/- to the accused and that the accused accepted said amount by right hand and kept the same in the left pocket of his shirt. He also denied that said amount was found with the accused. Thus, nothing is found in favour of the prosecution in the cross-examination of the complainant on behalf of the learned APP.

15. The complainant in paragraph No.7 of his deposition gave certain admissions in the cross-examination on behalf of the accused and said admissions in paragraph No.7 are thus:-

> "7. It is true that, the BDO office Erandol gave me one work order, completion certificate and certificate regarding completion of work and payment. I am now shown those documents. These are the same. They are collectively marked Exh.D-1. It is true that, after 30/03/2007 no work was pending of mine in the office of BDO and accused. It is true that, there was nothing

for the accused to show favour to me. It is true that, I received the amount of Rs. 28,500/- and that too also by cheque. It is true that, it was the duty of the accused to make measurement at the construction site. It is true that, it was the duty of Dy. Engineer and BDO to prepare the bill and sanctioned the amount. It is true that, the BDO used to sign those cheques. It is true that, I felt that, I should also get Rs. 1500/- towards the labour charges. It is true that, the BDO and accused were not ready to give Rs.1500/- to me. It is true that, Mahesh Santosh Chaudhary told me that, we should go to the police and he will see that I will get Rs.1500/-. It is true that, he took me to the office of ACB in June 2007. It is true that, he went inside the office and called me after some time to sign on one complaint. It is true that, the A.C. Officer told me that, I will receive Rs. 1500/- and I should sign on that complaint. It is true that, hence, I signed on that complaint. It is true that, Mahesh Chaudhary was with me through out. It is true that, I have not given Rs.1500/- to accused. It is true that, the accused never asked me to pay Rs.1500/- by way of bribe. It is true that, I have not paid any amount by way of bribe. It is true that, my father had borrowed Rs. 1500/- from the accused at the time of construction of the house. It is true that, accused was demanding that Rs.1500/- to me. Whatever amount I have paid that, was towards the refund of borrowed amount of Rs. 1500/-. It is true that, myself and my father was to live in joint family. It is true that, after the measurement by the accused the BDO and Dy. Engineer used to visit the site. It is true that, after the cheques were given to me my signature was

> obtained by way of acknowledgment. It is true that, those cheques were account payee cheques. It is true that, panchas were not present when the trap was carried out and panchanamas were prepared. It is true that, they were standing at some distance. It is true that, the A.C. Officer by joining hands with Mahesh Chaudhary concocted this story. It is true that, I do not know what had happen at that time."

16. From the above evidence of the complainant it cannot be said that the accused made demand of bribe of Rs.1500/- to the complainant prior to 28/03/2007, on 10/06/2007 or 16/06/2007 or on the date of trap i.e. on 19/06/2007 as per the case of the prosecution. On the contrary from the above referred admissions given by the complainant it is seen that the complainant received Rs.28500/- out of Rs.30000/- sanctioned to him and he was to spend Rs.1500/- and that he was entitled to get only Rs.28500/-, but he felt that he should also get Rs.1500/- towards the labour charges and that the BDO and accused were not ready to give him said amount of Rs.1500/- and therefore one Mahesh Chaudary told him to go to the Police and he would see that he

(complainant) would get said amount of Rs.1500/- and therefore as said Chaudhary took him to the ACB office, Jalgaon in June, 2007. Thus, it is clear that the accused never demanded bribe of Rs.1500/- to the complainant and the complainant never paid said amount to the accused and the complaint was lodged at the instance of one Mahesh Chaudhary.

17. Another aspect to be noted is that as referred earlier from the admissions of the complainant it is seen that father of the complainant had borrowed Rs.1500/- from the accused at the time of construction of the house. Accused was demanding that Rs.1500/- to him and whatever amount the complainant had paid was towards the refund of said borrowed amount of Rs.1500/-. He also admitted that he and his father were living in joint family. Therefore, it can be said that the amount which was paid by the complainant to the accused was towards the refund of the amount which was borrowed from the accused by the father of the complainant and it

cannot be said that it was bribe amount. Thus, the evidence of complainant is of no help to the prosecution to prove pre-trap demands i.e. allegedly made prior to 28/03/2007, made on 10/06/2007 or on 16/06/2007 by the accused or the demand made at the time of trap on 19/06/2007 by the accused to the complainant. There is no other evidence to prove pre-trap demands made prior to 28/03/2007, on 10/06/2007 and on 16/06/2007.

18. The prosecution has relied upon the evidence of panch No.1 Laxman Kakade (PW-2) to prove demand of bribe made by the accused on the date of trap i.e. on 19/06/2007. His evidence is that on 18/06/2007 he and one Nilkanth Bhadu Rane were called in the ACB Office, Jalgaon at 5.30 p.m. and they were called on the next day morning again in the said office. According to him on the next day morning i.e. on 19/06/2007 he and Rane went to the ACB Office, Jalgaon at 7.30 a.m. There he was introduced with the complainant (PW-1). The complainant told his

complaint orally and his oral complaint and written complaint (Exh.22) were identical. Thereafter he and Rane put their signatures on the said complaint (Exh. 22). He has stated about the procedure followed in the ACB Office, Jalgaon regarding taking amount of Rs.1500/- i.e. two currency notes of Rs.500/- each and five currency notes of Rs.100/- each from the complainant and applying anthracene powder to said notes and keeping said notes in the pocket of the complainant and giving instructions to all of them by Dy.S.P. Sonar.

19. The evidence of panch No.1 (PW-2) in respect of demand of bribe made by the accused to the complainant on the date of trap i.e. on 19/06/2007 is that after the pre trap panchanama (Exh.26) all of them proceeded towards Erandol by Government vehicle. They stopped their vehicle near Erandol bus stand. All of them got down. Thereafter he and the complainant went towards the office of Panchayat Samiti which was situated behind the Erandol bus

stand. The raiding party followed them. They reached in the office of Panchayat Samiti at about 11.15 a.m. They made inquiry about accused. He was not there. Thereafter he and the complainant started coming out of office of Panchayat Samiti. At that time they noticed that said person was coming to his office. He was wearing a cap. The complainant made a gesture and told him that, he is the same person Anandrao Rajaram Patil i.e. accused. Thereafter, he, complainant and the said person went to his office. In the office the accused asked complainant whether he has brought the said amount. Accused also made inquiry with the complainant about him. The complainant told him that he is his relative. Thereafter, he, complainant and the accused came out of said office. There was open premises. The accused made demand of money to the complainant there. The complainant removed the cash from his left shirt pocket with right hand and handed over the same to the accused. The accused took the said cash with his right hand and kept the same in left shirt pocket. The complainant then gave pre arranged signal to the raiding party. The Officer and other members of the raiding party rushed to the spot. Dy.S.P. Sonar asked Panch No.2 to take out cash of Rs.1500/- from the shirt pocket of accused. He took cash amount from the left shirt pocket of the accused. Said amount was examined under the ultra violet light. The numbers of said currency notes of Rs.1500/- were tallied with the numbers mentioned in pre-trap panchanama. Thereafter, post-trap panchnama/spot panchnama Exh.27 was prepared.

20. In the cross-examination on behalf of the accused PW-2 has denied that the accused did not make demand of bribe amount in his presence, the complainant did not pay bribe amount to the accused in his presence and that he is deposing false. Thus, nothing is found in favour of accused in the cross-examination of PW-2. From the evidence of PW-2 as regards alleged demand made by the accused on the date of trap i.e. on 19/06/2007 PW-2 has only stated that the accused said complainant whether complainant

has brought amount and further he has stated that accused made demand of money to the complaint. He has not at all stated that the complainant asked the accused about his work pending with the accused and thereupon, the accused made demand of bribe of Rs.1500/- as per the prosecution case. Therefore, the evidence of PW-2 regarding demand of money to the complainant by the accused is vague and it is not specific. As referred earlier the complainant has stated that the accused never made demand of bribe of Rs.1500/- to him and he never gave bribe to the accused. So also, as referred earlier it has come in the evidence of the complainant that he was under the impression that he would get an amount of Rs.1500/- towards the labour charges and therefore at the instance of one Mahesh Chaudhary the complaint was lodged in the ACB Office, Jalgaon. Therefore, when the complainant has not supported the prosecution case and his evidence is not believable as regards the demands of bribe made by the accused to the complainant the vague evidence of PW-2 regarding demand of bribe made by the accused on the date of trap is not believable and sufficient to establish that the prosecution has proved demand of bribe made by the accused on the date of trap on 19/06/2007 in view of the decision of this Court in the case of ***Arjun Bajirao Kale*** ***(Supra).*** Therefore, in view of the said decision sole uncorroborated testimony of PW-2 is not sufficient to state that accused made demand of bribe to the complainant on the date of trap on 19/06/2007.

21. Now coming to the defence of the accused, his defence is as stated in paragraph No.2(h) (supra). At the cost of repetition his defence is that out of Rs.30000/- the complainant was to receive Rs.28500/- and the complainant has to spend Rs.1500/- for constructing the house. The complainant was expecting that he would get said amount of Rs.1500/- also and therefore he filed false case against the accused. As referred earlier the complainant has stated that he was to construct the house under the

Scheme and the Government sanctioned Rs.30000/- to him for the construction of the house. In fact he was to receive Rs.28500/- and his contribution was Rs.1500/-. In his cross-examination on behalf of the accused as referred earlier the complainant stated that he felt that he should also get Rs.1500/- towards the labour charges, the BDO and accused were not ready to give Rs.1500 to him, Mahesh Chaudhary told him that they should go to Police and he would see that he would get Rs.1500/- and he took him to the ACB Office, Jalgaon in June 2007. So also, as referred earlier the complainant admitted that he received amount of Rs.28500/- and that too by cheque shows that the complainant received entire amount. Certificate Exh.D-3 at page No.147 issued by Block Development Officer, Panchayat Samiti, Erandol dated 28/07/2009 shows that an amount of Rs.28500/- was sanctioned under the scheme for construction of house and the complainant beneficiary had started construction of house on 08/02/2007 and construction was completed on 26/03/2007. This certificate also shows that said entire amount of Rs.28500/- was paid to the complainant by the end of 30/03/2007, details of said amount received by the complainant are also given in the said certificate. First and final bill at page No.206 shows the details of amount paid to the complainant from time to time and on the said date an amount of Rs.3171/- was payable to the complainant. The said first and final bill is dated 30/03/2007. Cash book at page No.217 to 219 shows that the complainant was paid amounts of Rs.7000/- and Rs.18000/- and lastly he was paid an amount of Rs.3171/- on 30/03/2007. Thus, it is seen that by the end of 30/03/2007 the complainant received Rs.28171/-. Thus it can be said that by the end of 30/03/2007 almost entire amount which was sanctioned to the complainant was paid to him for construction of house under the scheme. The complainant had lodged complaint (Exh.22) on 18/06/2007. Thus, it can be said that after about three months of receiving almost entire amount sanctioned to him the complainant has filed false complaint with misconception that he would get Rs.1500/- i.e. labour charges also. As mentioned earlier the complainant has stated so. Thus, there is substance in the defence of the accused.

22. On the basis of evidence of the complainant (PW-1) and Panch No.1 (PW-2) it can be said that an amount of Rs.1500/- was recovered from the accused. But when as referred earlier the complainant has stated that on the date of trap he repaid amount of Rs.1500/- to the accused which was borrowed from the accused by the father of the complainant for construction of house, mere recovery of amount of Rs.1500/- from accused, in the absence of demand of bribe by the accused, no presumption can be drawn in favour of the prosecution and against the accused in the light of provision under Section 20 of the Act that the accused has committed offence under Section 7 of the Act. Thus, there is substance in the defence of the accused that he never demanded bribe to the complainant and that the complainant filed false

complaint against him as he thought that he would get labour charges of Rs.1500/- also from the government.

23. For the reasons discussed above the evidence of the complainant and PW-2 (Panch No.1) is not sufficient to infer that the accused demanded bribe of Rs.1500/- from the complainant for paying last installment of construction of house to the complainant as alleged by the prosecution. As such the prosecution has failed to prove the ingredients of offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Act against the accused. The trial Court has properly appreciated the evidence and rightly held that the prosecution has failed to prove aforesaid offences against the accused.

24. As regards sanction to prosecute the accused there is no dispute that at the relevant time of the incident the accused was working as a Section Engineer in Zilla Parishad, Jalgaon, Sub Divisional Erandol and as such he was public servant. The

prosecution has examined PW-3 Dr.Ramaswami Chief Executive Officer, Zilla Parishad, Jalgaon who was appointing and removing authority of a Section Engineer. It has come in his evidence that he received the relevant documents in the present case on 19/12/2007 for according sanction to prosecute the accused. He stated that he had gone through all the documents, applied his mind and being satisfied that this a fit case to accord sanction, he gave sanction to prosecute the accused as per the sanction order (Exh.33). Though he has been cross-examined at length nothing is found in favour of the accused in the cross-examination of PW-3. On perusal of sanction order (Exh.33) it is seen that PW-3 on going through the documents received by him accorded sanction to prosecute the accused. Thus, the evidence of PW-3 and sanction order (Exh.33) show that PW-3 on application of mind accorded sanction to prosecute the accused and therefore it can be said that sanction accorded to prosecute the accused as per Exh.33 was valid.

25. On perusal of the impugned judgment and order it is seen that the trial Court has after referring the evidence of all the four witnesses and on considering the defence of the accused concluded that complainant received entire amount by the end of March, 2007 i.e. prior to the complaint on 19/06/2007 and which creates doubt, whether in fact the accused really made demand of Rs.1500/- to the complainant and accepted the said amount and further the trial Court has rightly held that the prosecution has failed to prove the offences against the accused with which he was charged beyond all reasonable doubt. The trial Court has thus rightly acquitted the accused of both the offences under Sections 7 and 13(1)(d) read with Section 13(2) of Act by the impugned judgment and order. The view taken by the trial Court is reasonable and possible view. No other view is possible on considering the evidence adduced by the prosecution. Thus, there is no reason to interfere with the impugned judgment and order. As such the appeal being devoid of merits the same is liable to

be dismissed. Accordingly, it is dismissed. Bail bonds of the accused if furnished are cancelled.

[S.M.GAVHANE,J.]