IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.160 OF 2016

The State of Maharashtra,
Through Dy.Superintendent of
Police,Anti Corruption Bureau,
Ahmednagar. ... **Appellant**
[Ori. Complainant]

VERSUS

1) Baburao Dipaji Pawar,
Age 57 years, Occu. service,
as Asst.Commissioner, Fisheries
Department, Class-II, Ahmednagar,
R/o. Sarang Housing Society,
Plot No.25-A, Garkheda Road,
Ahmednagar.

2) Sayyad Irfan Umar,
Age 50 years, Occu. Service,
as Asst.Fisheries Development
Officer, Class-III,Ahmednagar,
R/o. J-123, Krishna Enclave,
Near Natraj Hotel, Ahmednagar.

3) Shaikh Abdul Kadir Mohammad,
Age 20 years, Occu. Pan Stall,
R/o. Baba Bangali, House No.716,
Ahmednagar. ... **Respondents**
[Ori. Accused]

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Mr. P.N. Kutti, learned APP for the appellant-State
Mr. R.S.Deshmukh, learned counsel for respondent No.1
Mr. S.V.Sudrik, learned counsel for respondent Nos.2 and 3

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CORAM : S.M.GAVHANE,J.
RESERVED ON : 26.04.2019
PRONOUNCED ON : 14.08.2019

J U D G M E N T :

. The appellant-State has filed this appeal against the acquittal of the respondents (hereinafter referred to as the "accused Nos.1 to 3") of the offences punishable under Sections 7, 12 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") and under Section 109 of the Indian Penal Code (hereinafter referred to as "the IPC") by the Judge, Special Court (ACB), Ahmednagar as per the judgment and order dated 31.07.2015 in Special Case No.11 of 2012.

2. The facts giving rise to this appeal in short, are as under:

a) At the relevant time of incident, complainant-Sandip Vishnupant Dalavi (PW-1) was residing in Vikrant Chowk, Chaupati Karanja, Ahmednagar and he was a painting contractor. Accused No.1 Baburao Dipaji Pawar was working as Assistant Commissioner, Class-II in Fisheries Department at

Ahmednagar, accused No.2 Sayyad Irfan Umar was working as Assistant Fisheries Officer, Class-III at Ahmednagar and accused No.3 Shaikh Abdul Kadir Fakir Mohammad, who is a private person was running a *pan* stall in the premises of the Office of accused Nos.1 and 2, at the relevant time of incident.

b) The complainant lodged complaint (Exh.41) with Anti Corruption Bureau, Ahmednagar (hereinafter referred to as the “ACB Office”) on 17.01.2011 contending that he was allotted the tender of work of epoxy cementing to the tanks of Chinese Hatcheries and hatching eggs at Mulanagar, in the month of May, 2009 @ Rs.465/- per sq.mtr.through the Office of the Fisheries Department at Ahmednagar. He completed said work in July, 2009 and accordingly, he obtained certificate from Fisheries Officer, Mulanagar. Thereafter, he received payment of Rs.20,000/- by cheque from Deputy Commissioner, Fisheries Department, Shri.Dangare. In the meanwhile, Shri. Dangare was transferred. Thereafter, in the month of August, accused No.1 was posted as a Deputy Commissioner, Fisheries Department at Ahmednagar. On

16.11.2010, he prepared the bill of his remaining work and submitted with Fisheries Department, Ahmednagar. He met accused No.1, Deputy Commissioner and inquired about his bill of Rs.1,00,000/-. At that time, accused No.1 asked him, how much amount will he give to him to make the payment.

c) It is alleged that thereafter, on 20.12.2012, he received his bill by post. He visited Building and Construction Department at Rahuri and met to Site Engineer, Shri.Mahadik. Thereafter, on 24.12.2012, he visited Fisheries Department Office, Ahmednagar and met accused No.1. At that time, accused No.1 told him that he will clear his bill and to talk with accused No.2. He met accused No.2. At that time, accused No.2 told him to give 25% of the amount of the bill of Rs.1,00,000/-, i.e. Rs.25,000/-. Therefore, he lodged complaint with ACB Office.

d) After receiving the complaint as above, investigating officer, Shri.Dhopavkar issued a letter to the Chief Executive Officer of Zilla Parishad, Ahmednagar and called two panch witnesses, namely, Shri.D.S. Patel (PW-3) and Shri.S.S. Kadus, on 17.01.2011. They were introduced with the complainant. The complainant told his grievance to them, made in the complaint and as a mark of endorsement, they had signed on the complaint, lodged by the complainant. Thereafter, for conducting verification, panch No.1 Patel (PW-3) along with the complainant proceeded towards the office of Fisheries Department, Ahmednagar. They met accused No.2 and initiated talk about the bill of the complainant. At that time, accused No.2 said that, accused No.1 requires 25% of bill amount of Rs.1,00,000/- i.e. Rs.25,000/- and called the complainant on the next day. Thereafter, they came back to the ACB Office. Accordingly, verification panchanama Exh.54 was prepared.

e) On 18.01.2011, the complainant produced an amount of Rs.10,000/-, consisting 20 currency notes of Rs.500/- denomination in the ACB Office. Anthracene powder was applied to all the said currency notes and the demonstration was given.

Necessary instructions were given to the panchas, complainant and others. Accordingly, pre-trp panchanama Exh.55 was prepared. Thereafter, panch No.1 along with the complainant visited the office of the accused and trap was arranged. But accused No.1 was not preset in the office. Therefore, trap was withdrawn and trap stop panchanama to that effect was prepared as per Exh.56.

f) Thereafter, again on 20.01.2011, it was decided to lay a trap, as accused No.1 was to come in the office till afternoon. Again, pre-trap procedure as above, was carried out and panchanama to that effect was prepared as per Exh.58. Thereafter, the complainant along with panch No.1 reached near the Office of the accused at Parag Building, Collector Office premises and waited there. At about 4.45 pm, accused No.1 came. Complainant and panch No.1 met accused No.2. Thereafter, they visited accused No.1 in his cabin with accused No.2. As per instructions of accused No.1, accused No.2 issued letter to the complainant and asked him to keep ready an amount of Rs.25,000/-. Thereafter, they returned to ACB

Office. Panchanama to that effect was prepared as per Exh.59. They were again relieved.

g) On 27.01.2011, again trap was arranged and withdrawn due to strike and panchanama to that effect was prepared as per Exh.61.

h) Thereafter, on 08.02.2011, the complainant produced 30 currency notes of Rs.500/- denomination i.e. total amount of Rs.15,000/-. All the procedure for laying a trap was conducted and pre-trap panchanama to that effect was prepared as per Exh.65. Thereafter, the complainant, panchas and members of the raiding party of ACB Office proceeded towards the office of the accused. In the office, the complainant and panch No.1 met accused No.2 and informed him that the complainant has brought Rs.15,000/-. Then they met accused No.1 in his cabin. Complainant requested accused No.1 to do his work. At that time, accused No.1 instructed the complainant to keep the amount in an envelope, which accused No.2 will provide him and to hand over the said envelope in a *pan tapari*, adjacent to the same premises run by the son of his retired driver. Then accused No.2 handed over one white envelope to the complainant. Complainant removed tainted currency notes of Rs.15,000/- by his right hand, and held the envelope by his left hand and then put the tainted currency notes in the said envelope. Thereafter, accused No.2, the complainant and panch No.1 reached near *pan tapari* and as per the instructions of accused No.2, the complainant handed over said envelope to the owner of *pan tapari* i.e. accused No.3. Said accused accepted said envelope by his right hand and kept it on one shelf on his left side. Thereafter, as per the instructions of accused No.2, the complainant informed accused No.1 about handing over the envelope containing tainted currency notes. Again, the complainant and panch No.1 reached near *pan tapari* and the complainant gave pre-determined signal to the raiding party. Thereupon, members of the raiding party reached near *pan tapari* and Dy.S.P., Shri.Dhopavkar had taken possession of the envelope. They had apprehended accused No.2 and then accused No.1.

i) Tainted currency notes were examined under ultraviolet lamp by creating artificial darkness and bluish shining i.e. effect of anthracene powder was seen on all currency notes. So also, light of bluish shining was noticed inside the white envelope. The number of currency notes were tallied with the numbers of said notes mentioned in pre-trap panchanama. The clothes and both the hands of the complainant were also examined under ultraviolet lamp and similar effect was seen. The complainant and panch No.1 narrated about the actual happening to Dy.S.P., Shri.Dhopavkar. Accordingly, post trap panchanama of entire procedure was prepared as per Exh.66. The accused offered their explanations.

j) Thereafter, on the same day i.e. on 08.02.2011, Dy.S.P., Shri.Dhopavkar lodged complaint in Kotwali Police Station, Ahmednagar. Crime No.II 16 of 2011 was registered in Kotwali Police Station, Ahmednagar against the accused for the offences said earlier. Accused were arrested and subsequently released on bail. Shri.Dhopavkar recorded statements of some witnesses in the course of investigation. He also obtained sanction order, to prosecute accused

No.2. By that time, accused No.1 was retired and hence, no sanction to prosecute him was required. After completion of the investigation, charge-sheet was filed in the Special Court (ACB), Ahmednagar.

3. The learned Special Judge framed charge against accused Nos.1 and 2 for the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the Act and accused No.3 for the offence punishable under Section 12 of the Act and under Section 109 of the IPC. The Accused pleaded not guilty and claimed to be tried.

4. To prove charge against the accused, the prosecution has examined complainant Sandip Vishnupant Dalavi (PW-1), Parag Jain (PW-2)-Sanctioning Authority and panch No.1 Deepak Sakharam Patel (PW-3) and it has relied upon the panchanamas, complaint lodged by the complainant referred to above and sanction order Exh.48 to prosecute accused No.2.

5. Statements of the accused under Section 313 of the CrPC were recorded. They have denied to have committed the offences alleged against them. On

behalf of accused No.2 in defence witness Sudhir Padmakar Mande is examined at Exh.81. Accused No.1 has relied upon his explanations Exh.68 and 69 given immediately after the trap on 08.02.2011 in presence of the panchas. So also, in his written statement Exh.87 filed at the time of his statement under Section 313 of the CrPC, he has stated, as under:

> "The accused most respectfully submits that, Shri.Rajendra Bhanudas Dangare, a dismissed officer with Fisheries department at Ahmednagar was caught red-handed while accepting Rs.500/- as a bribe on 8/9/2000 while working on the post of District Fisheries Officer at Nashik. Therefore, the court of law at Nashik awarded him a sentence of simple imprisonment for 2 years and fine of Rs.2000/- in Special Case No.11/2001. I was present in the trial as a presentation officer on behalf of the government in the case against Shri.Dangare while working on the post of Asst.Commissioner of Fisheries at Nashik. Shri.Dangare was held guilty in the departmental inquiry by the department and sent on compulsory

retirement. Shri.Ravindra Dangare was working on the post of Assistant Commissioner, Fishery Development at Ahmednagar in the year 2008-09.

Shri. Sandip Vishnupant Dalavi, painter at Ahmednagar being a relative of Shri. Rajendra Dangare was given the work of painting and repairs of the water tank and hatching tanks at Mulanagar Matsya Beej Utpadan Kendra at Rahuri, Dist. Ahmednagar. Actually, an estimation is required to be made from the Public Works Department for the works like construction, repairs, fencing, painting of tanks etc. by the Fishery Development Officer in the Hatching Center. Thereafter,the proposal is required to be given technical and financial approval by the Honourable Commissioner Fisheries, Maharashtra State, Mumbai, and after availing the funds and transferring the same to PWD under the head of Minor Construction of account and getting completed the proposed work and obtaining the Fund Utilization certificate and is required to inform the government accordingly. In this respect several government resolutions have been issued and out of that, the government resolution of October 7, 2010 is attached herewith for information.

Notwithstanding the fact that, Shri. Rajendra Bhanudas Dangare, without obtaining technical and financial approval from the superiors and the Government and without having any authority, called 3 quotations from his relative Shri. Dalavi and allotted him the work vide letter dated 16/6/2009, by showing his quotation on lower side. Said tender was allotted without publishing tender notice in the local newspapers. While inspecting the DSR for the year 2008-2009, it appears on the page no.109 that, the rate for painting per square meter is Rs.41.40 paise and labour charges Rs.9.45 paise have been shown. In this way, the work of 162 square meters has been done amounting to Rs.8802.50/- as per the DSR. However, Shri.Rajendra Dangare had paid Rs.20,000/- to Shri. Dalavi under the Minor Construction head. In fact, Shri.Dangare has made payment of Rs.11,797.50/- paise in excess to Shri. Dalavi. Therefore, Honourable Commissioner, Fisheries, Maharashtra

State has been informed in writing to recover Rs.11,797.50 from M/s.Balaji Painting Contractor, Shri.Sandip Dalavi. Copy of the letter is submitted herewith.

The paragraph no. 3, third line of the complaint made by Shri.Sandip Vishnupant Dalavi against me on 17/1/2011 on the instigation of Shri. Rajendra Dangare, mentions that, the rate of Rs.465/- per square meter has been mentioned in tender in May – 2009, but no such mention is made there in the letter dated 16.6.2009. Copy of the letter is annexed herewith. Upon perusal of the page Nos.61 and 86 of the charge-sheet it reveals that, Shri. Sayyad has submitted in the hand-written note of his own that, the work allotted to Shri. Dalavi was completed in May-2009 itself. This means that, the work was completed even before the receipt of the work order. Thus, it shows that, the orders and work given by Shri. Rajendra Dangare all totally bogus. Shri.Sandip Dalavi submits in his complaint that Shri. Pawar joined at Ahmednagar in August-2010, that is false. Shri.Pawar had joined at Ahmednagar on 16.09.2010.

Shri Dalavi has submitted in his complaint, that a bill of Rs.1,00,000/- is pending with office However, the total amount of his bill comes to Rs.75,669/- as noted by Shri.Sayyad. Shri.Sandip Dalavi had presented the bogus bills by increasing the amount to 116 times of the original quoting Rs.465/ sq.meters on the back date and false posing of the (epoxy) painting work. When Shri.Dalavi asked me about his bills, I had told him that, the work allotted to you is not as per government rules and only to help you, Shri. Rajendra Dangare has allotted you without any authority. Therefore, question of demanding 25% amount to Shri.Sandip Dalavi to pass the bill of rupees One Lakh does not arise.

It is learnt only after reading the report of successful trap that, Shri. Dhopavkar, Dy.Superintendent, Anti Corruption Bureau, Ahmednagar after unsuccessful traps on 17.01.2011, 20.01.2011, 21.01.2011, 02.01.2011 and 07.02.2011, he again attempted to trap me red-handed on 08.02.2011. Because Sandip Dalavi himself kept the money envelope with the pan-shop and after the signal, the havildar with Dhopavkar brought the same and handed over to Shri.Dhopavkar and bringing the Paan-Shop owner and Shri.Sayyad in my cabin, Shri.Dhopavkar himself was counting the currency notes opening the envelope on his own. He said to me that the envelope has been seized from the pan-shop owner as told by you and Rs.15,000/- found in the envelope as demanded by you. Therefore, you are guilty. You have accepted the amount of bribe through the Pan tapri wala (Paan Shop Owner). This he had written in the unsuccessful trap. This is absolutely false. Because, without my knowledge about who was paan wallah, where was the stall, the action was taken against me, upon the instigation of Shri.Dangare in collusion with Sandip Dalavi and to revenge me, is arbitrary in nature. In fact, I was kept in the office unnecessarily until 6 pm while I was in the office from 2 to 2.30 on 08.02.2011 and taken to the office of Anti Corruption Bureau at 6.30 in the evening and he (Shri.Dhopavkar) has made his publicity by calling the media and newspaper persons and published the same in newspapers. Thus, Rajendra

> Bhanudas Dangare, Sandip Dalavi and Dhopavkar had involved the prosecution witnesses in their conspiracy and made them to depose false.
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> Thus, the action taken against me has been done without verifying the truth and to revenge me."

6. Considering the evidence adduced by the prosecution and the evidence of the defence witness examined on behalf of accused No.2, the trial Court held that the prosecution has failed to prove the offences against the accused, with which they were charged and acquitted all the accused of the said offences by the judgment and order dated 31.07.2015. Aggrieved thereby, the State has filed this appeal.

7. Mr.P.N. Kutti, learned APP appearing for the appellant-State submitted that the complainant PW-1 lodged complaint Exh.41 with the ACB Office, Ahmednagar, alleging that through accused No.2, accused No.1 demanded bribe of 25% of the bill amount of rupees one lakh, which was due to the complainant from the Office of accused Nos.1 and 2, as the complainant had completed the work of epoxy cementing

to the tanks of Chinese Hatcheries and hatching eggs at Mulanagar. It is submitted that on the basis of the evidence of PW-1 and panch No.1 (PW-3), the prosecution has proved the demands of bribe made by accused Nos.1 and 2 from time to time. So also, on the basis of said evidence, the prosecution has proved acceptance of bribe amount by accused No.3 for accused Nos.1 and 2. It is further submitted that the trial court had answered point No.1 in the affirmative regarding sanction to prosecute accused No.2. But the trial court has answered point Nos.2 to 4 in the negative. It is submitted that, when the prosecution has proved on the basis of the evidence of PWs 1 and 3, demand and acceptance of bribe by accused Nos.1 and 2, the trial court should have answered point Nos.2 to 4 in the affirmative. Thus, according to the learned APP, the prosecution has proved all the offences alleged against the accused. It is submitted that even if there are contradictions in the evidence of above said witnesses, said contradictions are minor. It is submitted that the prosecution could not examine the investigating officer due to his ill-health. Thus, it is prayed that the impugned judgment and order be set aside and the accused be convicted by allowing the appeal. Alternatively, it is submitted that the matter may be remanded to the trial court to record evidence of the investigating officer and to decide the same afresh.

8. Mr.S.U. Sudrik, learned counsel for accused Nos.2 and 3 submitted that as per complaint Exh.41 lodged by the complainant, on 24.12.2010 when the complainant had gone in the office of accused no.1 to meet him, accused No.1 said him that he (complainant) would not get letter and asked him to come later. However, he stayed there and afterwords, he was called in the office and when he went in his cabin, accused No.1 said him to have a talk with accused No.2 Sayyad and that he would clear his bill. It is submitted that as per the evidence of defence witness No.1 Sudhir Mande, accused No.2 had submitted an application for casual leave on 22, 23 and 24 December, 2010. There is an entry at Sr.No.1420 dated 14.12.2010 in inward register in respect of said leave application of accused No.2. It is

submitted that leave application Exh.82 also shows that accused No.2 was on leave on 24.12.2010. It is further submitted that wife of accused No.2 had to go to Patna for training and accused No.2 had to accompany her and therefore, accused No.2 had reserved two railway tickets. So also, after attending the said training, the wife of accused No.2 was given attendance certificate. Said certificate shows that she was relived from Patna on 02.01.2011. Referring the above circumstances, Mr.Sudrik, learned counsel submitted that the allegation of the complainant in the complaint Exh.41 that he met accused No.1 on 24.12.2010 and accused No.1 asked him to meet accused No.2, is false. Therefore, case of the prosecution that on 24.12.2010, the complainant met to accused No.1 and accused No.1 asked him to have a talk with accused No.2 in respect of bill of the complainant, is false.

9. Mr.Sudrik, learned counsel further submitted that complainant (PW-1) has deposed that he was out of station from 3rd February, 2011 onwards and he made call from Mumbai to accused No.2 and during

conversation, accused No.2-Sayyad informed him that accused No.1-Pawar instructed him to give Rs.15,000/- initially and to give remaining amount of Rs.10,000/- after passing the bill. Thereupon, the complainant said him OK. Thereafter, the complainant immediately returned to Ahmednagar and on 08.02.2011, the complainant visited ACB Office, Ahmednagar. It is submitted that the investigating officer has not collected record of call details of the mobile of the complainant of the relevant period to show that really, he called accused No.2 and then accused No.2 asked him that accused No.1 told him to give Rs.15,000/- initially and to give remaining amount of Rs.10,000/- after passing the bill. Therefore, according to the learned counsel, the evidence of the complainant regarding call to accused No.2 is imaginary.

10. Mr.Sudrik, learned counsel further submitted that it has come in the evidence of complainant that accused No.1 informed him to get certification on his bill from PWD, Rahuri. Admittedly, the complainant has not produced certificate from PWD. So also, the

prosecution has not produced the bill to show that the complainant has made all the compliances, which were required to get his bill sanctioned. It was also submitted that as per letter dated 16.06.2009 Exh.42, complainant was informed to start the work allotted to him immediately and to complete the same before 25.06.2009 and to submit the bill along with necessary certificate of Assistant Fisheries Development Officer, Mulanagar and the amount of his bill will be paid after the tender is certified by the Executive Engineer of PWD, Ahmednagar. It is submitted that the complainant has not made a compliance of certification by PWD as mentioned in this letter. So also, this fact is clear from Exh.41, complaint of the complainant. Moreover, in the cross-examination, the complainant has stated that he has no complaint against accused No.2. It is submitted that complainant has admitted that whenever, he visited the office of the accused, at any point of time, accused No.2 never instructed him to hand over the amount possessed by him, to him. So also, he has stated that he is not aware that accused

No.2 is not having any authority to sanction the bill. Moreover, the complainant admitted that when he received the bill amount of Rs.20,000/-, there was no demand of any amount by anybody. Thus, according to the learned counsel, the prosecution has failed to prove the demand of 25% of the bill amount of rupees one lakh of the complainant made by accused No.1 through accused No.2 and so also, the prosecution has failed to prove acceptance of said amount by accused No.3 for accused Nos.1 and 2, as alleged because the evidence of the complainant and panch No.1 in this respect is inconsistent and it is doubtful, whether the envelope containing tainted currency notes was really kept on shelf on the *Pan Tapari* of accused No.3 or not.

11. Mr.Sudrik, learned counsel further submitted that the investigating officer despite sufficient opportunities, avoided to attend the court to give evidence. In paragraphs 23 and 24 of the judgment, the trial court has made comments on the conduct of the investigating officer. It is submitted that this is an appeal against the acquittal of the accused and

therefore, when the view taken by the trial court is possible view, interference with the impugned judgment and order is not justified. To support his said submission, the learned counsel has relied upon the decision of Division Bench of this Court in the case of **State of Maharashtra V/s.Lilabai Sopan Pawar and others** in **Criminal Appeal No.310 of 2003** decided on 15th March, 2018, in which in paragraph 16, decision of the Apex Court in respect of approach of the Appellate Court in appeal against acquittal was referred. Said paragraph 16, is as under:

> "16. The law is well settled that, if the possible view has been taken by the trial Court, in that case, the order of acquittal deserves no interference. The Supreme Court in the case of **Murlidhar alias Gidda and another Vs. State of Karnataka** in para 12 held thus:-
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> 12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu[3], Madan Mohan Singh[4], Atley[5] , Aher Raja Khima[6], Balbir Singh[7], M.G.

Agarwal[8], Noor Khan[9], Khedu Mohton [10], Shivaji Sahabrao Bobade[11], Lekha Yadav[12], Khem Karan[13], Bishan Singh[14], Umedbhai Jadavbhai[15], K. Gopal Reddy[16], Tota Singh[17], Ram Kumar[18], Madan Lal[19], Sambasivan[20], Bhagwan Singh[21], Harijana Thirupala [22],C. Antony[23], K. Gopalakrishna[24], Sanjay Thakran[25] and Chandrappa[26]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial

> court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

According to the learned counsel, the trial court has properly appreciated the evidence. The view taken by the trial court is possible view and therefore, there is no reason to interfere with the impugned judgment and order of acquittal of the accused. It is submitted that the appeal sans merit and it is liable to be dismissed. Thus, he has prayed to dismiss the appeal.

12. Mr.Deshmukh, learned counsel for accused No.1 submitted that in written statement Exh.87 submitted at the time of statement under Section 313 of the CrPC, which is referred earlier in detail in para 5, accused No.1 has specifically stated that he has been falsely implicated in the case. He has adopted the arguments advanced by the learned counsel for accused Nos.1 and 2 and the decision relied upon by the said learned counsel. He submitted that the trial court has properly considered the evidence in paragraphs 35 to 42 and 44. So also, he invited my attention to paragraphs 23 and 24 of the judgment of the trial court about the opportunities given to the investigating officer to attend the court and to adduce evidence, but how the investigating officer failed to attend the court and to depose. According to the learned counsel, the view taken by the trial

Court is possible view and therefore, there is no reason to interfere with the judgment and order of acquittal of the accused. It is submitted that the appeal sans merit and it is liable to be dismissed.

13. Considering the offences alleged against the accused and the submissions made on behalf of both sides, following points arise for my determination:

i) Whether the prosecution has proved that accused Nos.1 and 2, public servant demanded bribe of Rs.15,000/- on 16.12.2010, 24.12.2010, 17.01.2011 and 08.02.2011 in the District Fisheries Department at Ahmednagar from the complainant and accepted the said amount through accused No.3 for the purpose of sanctioning the bill of work done by the complainant-contractor, to perform their official duty as a gratification other than legal remuneration and thus committed an offence punishable under Section 7 of the Act?

ii) Whether the prosecution has proved that on 08.02.2011, accused Nos.1 and 2 accepted Rs.15,000/- through accused No.3 as a pecuniary advantage by using corrupt and illegal means and thereby committed criminal misconduct by abusing their position as a public servant and committed offence punishable under Section 13(1) (d) read with Section 13(2) of the Act?

iii) Whether the prosecution has proved that on 08.02.2011, accused No.3 at his *Pan Tapari* accepted bribe amount of Rs.15,000/- on behalf of accused Nos.1 and 2 and thus abetted accused Nos.1 and 2 in the commission of offence under Section 7 and thus committed an offence punishable under Section 12 of the Act?

My findings to the above points No.1 to 3 are in the negative for the reasons to follow :-

14. The facts in respect of which, there is no dispute are that during the years 2010-2011, the complainant was painting contractor and in May, 2009, he was given tender of work of epoxy cementing to the tanks of Chinese hatcheries and hatching eggs at Mulanagar by the Fisheries Department, Ahmednagar. At that time, one Rajendra Bhanudas Dangare was the Assistant Commissioner in Fisheries Department at Ahmednagar and he was relative of the complainant. After transfer of Rajendra Bhanudas Dangare at Nashik, accused No.1 was the Assistant Commissioner, Class-II Fisheries Department at Ahmednagar, at the relevant time of incident and accused No.2 was the Assistant Fisheries Officer, Class-III in the said office. The complainant completed the work of tender

allotted to him in the month of July, 2009. He received payment of Rs.20,000/- by cheque from Shri.Dangare before his transfer and charge of Shri.Dangare was taken by accused No.1 in the month of August, 2010. On 16.11.2010, the complainant prepared the bill of remaining work of rupees one lakh and submitted the same with Fisheries Department, Ahmednagar.

15. Case of the prosecution is that on 16.12.2010, 24.12.2010, 17.01.2011 and 08.02.2011, accused No.1 made a demand of bribe. So far as the first demand is concerned, it was made by accused No.1 on 16.12.2010. As regards the second demand is concerned, it was made by accused No.1 through accused No.2 that the complainant will have to give Rs.25,000/- i.e. 25% of rupees one lakh bill amount and as regards the third demand is concerned, it was made on 08.02.2011 i.e. on the date of trap, by accused No.1 through accused No.2 and amount demanded was Rs.15,000/-. To prove these demands, the prosecution has relied upon the evidence of the complainant (PW-1), panch No.1 (PW-3), pre-trap

panchanama Exh.65 and post trap panchanama Exh.66.

16. As regards the first demand, it is the case of the prosecution that on 16.11.2010, the complainant submitted his bill of rupees one lakh in the office of accused Nos.1 and 2 and on 16.12.2010, he went in the said office to inquire about the said bill and at that time, when he met accused No.1 and inquired about his bill of rupees one lakh, accused No.1 said him, as to how much amount he will give and thereupon, the complainant said him, why he should be given money. Thereupon, accused No.1 said him that he should take back his bill and bring the certification of Public Works Department and that his work would be done till the March end. On oath, the complainant has stated that after submitting said bill, he visited the office of Fisheries on or about 20.12.2009. On that day, he met one Shri.Sayyad and again said that he met Shri.Pawar, Assistant Commissioner, Fisheries Department. He inquired with him about payment of his bill. At that time, he inquired with him (witness) as to how much, he will

give him for making payment of bill (तुझे बील काढण्यासाठी, तु मला किती देणार.). On that, he asked him for what he should give, on which accused No.1 said the bill will not be given now and they will see later on and then he left. In the cross-examination on behalf of the accused, the complainant has stated that while lodging the complaint, he has mentioned correct dates. His evidence about above incident dated 20.12.2009 in the office of accused No.1 has not been specifically challenged in the course of cross-examination. However, when he has not stated in accordance with the allegations made in the complaint Exh.41 that he went to the office of accused No.1 on 16.12.2010 and at that time, accused No.1 made demand as above and when he has stated that he has mentioned correct dates in the complaint, his evidence is not sufficient to infer that on 16.12.2010, accused No.1 made demand as above to clear his bill. Another reason to arrive at this conclusion is that when he had submitted his bill in the Fisheries Department, Ahmednagar on 16.11.2010, there was no question of making demand of money from him by accused No.1 on

20.12.2009, as deposed by him. Thus, the evidence of the complainant is not sufficient to hold that accused No.1 made demand of bribe to the complainant on 16.12.2010. Thus, the prosecution has failed to prove said demand.

17. As regards the second demand allegedly made by accused No.1 on 24.12.2010 to the complainant is concerned, on oath the complainant has not stated anything in respect of said demand in accordance with the allegations made in the complaint. On the contrary, the complainant states that on or about 20.12.2009, after submitting the bill, he visited the office of Fisheries and met accused No.2 and again said, he met accused No.1 and when he inquired with accused No.1 about payment of his bill, accused No.1 inquired with him as to how much, he will give him for making payment of bill. This evidence of the complainant is not sufficient to infer that on 24.12.2010, when he met accused No.1, accused No.1 said him that he would not get letter and thereafter, accused No.1 called him in his cabin and said him to have a talk with accused No.2 and that he would clear

his bill, as alleged in the complaint. If accused No.1 would have asked the complainant as above, on 24.12.2010, the complainant would have definitely deposed in accordance with the said allegation in the complaint. There is no other evidence on record that on 24.12.2010, accused No.1 made demand of bribe to the complainant. Thus, I hold that the prosecution has failed to prove the second demand as above, made by accused No.1 to the complainant.

18. As regards the third demand allegedly made by accused No.1 to the complainant on 17.01.2011 through accused No.2 is concerned, the evidence of the complainant (PW-1) in paragraph Nos.4 and 7 is as under:

> "4] Then I again visited office at Ahmednagar, on 17th January, 2010, at that time, Shri. Sayyad was not present in the office. I then met Shri. Pawar. He instructed me to meet with Shri. Sayyad. Therefore, on the same day, I met Shri. Sayyad. At that time, Sayyad inquired with me as to whether I have talked with 'Saheb' i.e. Mr. Pawar.

Then Shri. Sayyad took me near Tea stall situated in the said building on backside. He inquired with me as to whether I have discussion with Mr. Pawar. I informed Mr. Sayyad that, Mr. Pawar had demanded from me. Mr. Sayyad informed me that, Mr.Pawar have demanded 25% of total amount of my bill for clearing my bills. I inquired with him, as to which bill they are going to sanction. Then he called me on 17th January, 2011. I was not ready to give amount. Now I say that, this demand was made on 20th, December, 2010 and he called me on 17.01.2011 and demand of 25% was made on that day. Therefore, I visited office of Anti Corruption Bureau on the same day i.e. on 17.01.2011.

7] Thereafter, on the same day, I along with Panch Shri. Patel proceeded to meet Mr. Sayyad at his office. We both proceeded on my motorcycle. After reaching in the office of Mr. Sayyad, we both entered in his cabin. At that time, other persons were present in his cabin, therefore, he asked us to wait for some time. Then he called us in cabin after about 5 minutes. I along with panch Patel entered in the cabin of Sayyad. I inquired with him as to how much amount I will have to give for clearing the bill and bill of how much amount they are going to sanction and I will pay accordingly. He then inquired about panch No.1 Patel. I informed him that, he is my brother. He then informed me that, Pawar had instructed him to inform me that, no work will be done without giving 25%. He also informed me that, I will have to obtain sanction from the higher authorities. Then we both returned back to ACB. In the Office of ACB, panch Patel informed entire incidence to Dy.S.P. Dhopavkar."

19. In the cross-examination on behalf of accused No.1, the complainant in paragraph 21 deposed as under:

> “21. While lodging complaint I have mentioned correct dates. The letter now shown to me was issued on 16.12.2010 mentioning that I should submit the bills with certification of P.W.D. The letter is marked as **Exh.43.** It is true that on 16.12.2010 I came to know that without certification from P.W.D. I cannot get my bills. It is true that

till lodging of the complaint on 17.01.2011 said procedure of certification from P.W.D. was not carried out by me. Portion mark 'B' now read over to me from my complaint at **Exh.41** is correct. While lodging complaint Dy.S.P. Dhopavkar had not inquired with me as to whether I have certified my bills from P.W.D. It is true that till 17.01.2011 I had not met Mr.Mahadik of P.W.D.Rahuri. It is true that on 17.01.2011 I lodge complaint mentioning that accused No.1 demanded money. It is true that after lodging of complaint it was decided to verify the complaint and the demand made by accused no.1. It is true that on 17.01.2011 during verification I had not met Mr. Pawar accused no.1. It is true that the verification was conducted with accused no.2 Mr.Sayyed, but my complaint was not against him. It is true that though I had not met Mr.Pawar on 17.01.2011 but still on 18.01.2011 I produce trap amount of Rs.10,000/- and entire procedure of the trap was carried out. It is true that on 18.01.2011 when I visited office of accused no.1 with team of anti corruption bureau accused no.1

> was not present in the office. It is true that therefore on that day trap was withdrawn. It is true that after withdrawal of that trap it was decided to lay trap on 19.01.2011. It is true that therefore both panchas and myself had attended A.C.B. on 19.01.2011."

20. The complainant stated that portion marked “B” in the complaint Exh.41 lodged by him that, "’तेव्हा ते मला म्हणाले, तुमचे बीलाचे नंतर बघु, मार्च एन्ड पर्यंत करून टाकु, बील तुम्ही परत घेवुन जा आणि बांधकाम खात्याकडून प्रमाणीत करून आणा, तेव्हा मी बील न घेता निघुन आलो." is correct.

21. From the above evidence of the complainant, it is clear that till 17.01.2011 i.e., till lodging the complaint Exh.41 with the ACB Office, he did not obtain certification of his bill from PWD, Rahuri, as instructed by accused No.1 as per afore mentioned portion marked “B” in the complaint. So also, on 17.01.2011, he did not meet accused No.1 and he met only accused No.2 on that day to verify the demand. Moreover, it is clear that his complaint was not against accused No.2. If he had no complaint against

accused No.2, his evidence is not sufficient to state beyond doubt that accused No.2 made demand of 25% for accused No.1. Thus, no inference can be drawn on the basis of evidence of complainant that on 17.01.2011, accused No.1 himself made demand of bribe to the complainant or he made said demand through accused No.2.

22. The evidence of panch No.1 Deepak Patel (PW-3) on the third demand made on 17.01.2011 in paragraph Nos.1, 2 and 3 of his deposition is, as under:

> "1] In the year 2011, I was attached to Zilha Parishad, Ahmednagar as District Agriculture Office. On 17.01.2011 letter was received to Chief Executive Officer, Zilla Parishad, Ahmednagar for deputing employees as panch witness. Therefore, I along with one Shri.S.S.Kadus, from the Health Department of the Zilha Parishad were deputed as panch witness. Letter to that effect was issued. The letter now shown to me is the same. My name is mentioned in the said letter. It is marked as **Exh.53.**

2] I along with Sanjay Kadus attended Anti Corruption Bureau on the same day at about 2.00 p.m. In the ACB, we were introduced with complainant namely Sandip Dalvi by Dy.S.P. Dhopavkar. We orally discussed with complainant. He narrated his grievance that, there is demand of bribe amount by the public servant namely Shri.B.D. Pawar, Dy. Commissioner, Fisheries Department. We had also gone through the complaint lodged by said Dalvi. Already marked Exh.41 now shown to me is the same complaint. After going through the complaint I had signed the same.

3] Dy.S.P. Dhopavkar informed all of us that, verification panchanama needs to be conducted. Therefore, I along with complainant proceeded on his motorcycle towards Parag Building, in the premises of Collector office. We reached on the first floor in the office of Fisheries Department at about 3.15 p.m. Then I along with complainant entered in one cabin. In the aid cabin one person was sitting. His name was Sayyad. Said Sayyad informed us to wait for some time, as three persons were sitting in his cabin. After about 10 minutes, we were called in the cabin. Then complainant initiated talk about his bill. At that time, Sayyad said that, Pawar saheb required 25% (पवार साहेबांना २५% लागतात.). Then complainant said 25% of one Lac is 25,000/- (एक लाखाचे २५% २५,०००/- होतील.) He also instructed complainant to meet Mr.Pawar and also to give one application for obtaining permission for B & C department. Accordingly, immediately complainant forwarded one letter to Fisheries Department for issuing him letter addressed to B & C Department. Complainant handed over his application to one Mr.Gadekar working in same office. He also informed us that, Pawar will be available tomorrow and called us tomorrow by saying that, till tomorrow he will complete the process. Thereafter, I along with complainant returned back to Anti Corruption Bureau."

23. In the cross-examination on behalf of accused No.2, PW-3 has admitted that during verification on 17.01.2011, when he along with the complainant met accused No.2, he said that he does not want to involve him in that issue. He admitted

that, whenever, during verification, he along with the complainant met accused No.2, he never said to hand over the amount to him or to give amount for him. He denied that he deposed false against accused No.2. His evidence that on 17.01.2011, he along with the complainant reached in the Office of Fisheries Department at 3.15 pm, they entered in the cabin of accused No.2, accused No.2 said that accused No.1 requires 25% and the complainant said that 25% of one lakh is Rs.25,000/- has not been specifically challenged on behalf of the accused. The complainant in his evidence in paragraph 7 reproduced earlier in this respect, particularly in respect of demand made on 17.01.2011 has not specifically stated that on 17.01.2011, when he along with panch No.1 entered in the cabin of accused No.2 on 17.01.2011, accused No.2 said that accused No.1 requires 25% and thereupon the complainant said that 25% of rupees one lakh is Rs.25,000/-, as deposed by panch No.1. So also, panch No.1 has not stated that accused No.2 informed the complainant that accused No.1 instructed him (accused No.2) to inform him (complainant) that no work will be done without giving 25% and that he (accused No.1) will have to obtain sanction from the higher authorities. Thus, there is no consistency in the evidence of the complainant and Panch No.1 regarding the talk which took place between accused No.2 and the complainant in presence of panch No.1, on 17.01.2011 in respect of demand of bribe allegedly made by the accused. Another aspect to be noted is that as referred earlier the complainant has stated that he has no complaint against accused No.2. Considering the same, the fact that there is no consistency in the evidence of the complainant and panch No.1 and that till 17.01.2011, the complainant did not obtain certification from PWD, Rahuri and produce the same to clear his bill, the evidence of panch No.1 is not sufficient to infer that either accused No.1 himself made demand of bribe to the complainant or through accused No.2 on 17.01.2011, as alleged.

24. As regards the fourth demand allegedly made by accused Nos.1 and 2 on 08.02.2011 is concerned, the evidence of the complainant is that on that day,

in the morning time, he visited the ACB Office. He met Mr.Dhopavkar and informed him about the telephonic conversation with accused No.2. Mr.Dhopavkar called panchas. He then produced Rs.15,000/-, consisting of 30 currency notes of Rs.500/- denomination. Thereafter, anthracene powder was applied to said notes. Said notes were kept in his left chest pocket. Necessary instructions were given to all of them. Then, he made a phone call on the mobile of accused No.2, from his mobile and accused No.2 informed him that accused No.1 has not yet reached in the office from Nashik. Therefore, they were waiting in ACB Office. Again after one hour, he made phone call to accused No.2 on his mobile from his mobile and accused No.2 informed that accused No.1 will come within a short time and that he would inform him accordingly. After waiting for some time, he again made a call to accused No.2 and he informed him that accused No.1 is present and accused No.2 called him (complainant). As regards the actual demand, trap, acceptance and recovery of bribe amount on 08.02.2011 in paragraph 13 of his deposition, the complainant has deposed as under:

> "13] Therefore, I along with Mr. Patel proceeded towards Fisheries office on my motorcycle and other team members were following us in Government vehicle. We reached in the office and parked the motorcycle. I along with panch Shri. Patel visited the cabin of Mr. Sayyad. He was present in the cabin. Again he took out one file and informed us that, he will returned after meeting Mr. Pawar. Prior to that, he inquired with me as to whether I am ready with money. I said yes. We were waiting in the cabin of Sayyad. Then one lady peon informed us that, I have been called by Mr. Pawar. Therefore, I along with Mr. Patel panch No.1 visited cabin of Mr. Pawar. I informed Mr. Pawar that, I have brought money as per agreement. Mr. Pawar informed me that, Sayyad will provide envelope to me, I should keep the amount in the said envelope and handover as per his instruction. We then came out of the cabin including Mr. Sayyad and entered in the cabin of Mr. Sayyad. Mr. Sayyad handed over me one white colour envelope and inquired

whether I had brought correct amount. Then I removed tainted currency notes from my left chest pocket and asked Mr. Sayyad to count the same. But, he said O.K. I was holding white colour envelope in my left hand and kept the tainted currency notes in the said envelope. He also provided me one pin. I sealed the envelope with that pin. Now I say that, Mr. Pawar had instructed me to hand over the envelope to one driver who is having stall (tapari) situated at the entrance near compound wall of the building. He informed me this in front of Mr. Sayyad when I along with Panch visited him. Then Mr.Sayyad instructed me to handover said envelope to the owner of stall (tapari). I asked him that, I am not aware about the location of stall, therefore, he should come with me. Therefore, I along with panch and Mr. Sayyad arrived in the ground floor of office and reached near stall (tapari). Then in our presence, Sayyad talked with owner of stall (Tapari) that, Pawar saheb instructed to handover the envelope to the owner of stall (tapari). I therefore, offered said envelope to the owner of stall (tapari). The owner of stall (Tapari) instructed me to keep the same on one shelf. I therefore, kept the same on the shelf. Then Mr.Sayyad instructed me to give intimation to Mr. Pawar that, envelope has been handed over to the owner of stall (Tapari). I therefore, by raising my right hand instructed team of Anti Corruption Bureau to stop. Thereafter,I along with panch proceeded in the cabin of Mr. Pawar and informed him that, I have kept the envelope with stall owner as per his instructions. Then Mr.Pawar signed papers of sanction and informed me that, my work will be done and I should visit 5.30 p.m. I along with panch immediately came out and reached near stall, and I gave pre determined signal by raising my left hand. Dy.S.P.Dhopavkar with his team immediately arrived and inquired with the owner of stall by showing his identity card. I then showed him the envelope lying in the shelf. The owner of stall was apprehended. Then team of Anti Corruption Bureau apprehended Mr. Sayyad and then entered in the cabin of Mr. Pawar. Then they returned back after some time and informed me that, my work has been done. Then I was called in the

> cabin of Mr. Pawar. My personal search was conducted. My hands and shirt was examined under ultraviolet lamp. At that time, effect of anthracene powder was noted on finger tips of my right hand and inside and on opening portion of my left chest pocket. The person sitting on the last bench are the same accused namely Mr. Sayyad, Mr.Pawar, and owner of stall. Later on I came to know the name of stall owner as Mr. Shaikh. "

25. In the cross-examination, the complainant has denied that on 08.02.2011, he never entered in the cabin of accused No.1. He has also denied that accused No.1 informed him that accused No.2 will provide him envelope, he should keep amount in the envelope and hand over the same as per the instructions of accused No.2 and that accused No.1 had instructed him to hand over said envelope to one driver, who is having paan stall at the entrance near compound wall of the building. The complainant has not specifically stated that accused No.2 demanded 25% of the bill amount of rupees one lakh as a bribe on 08.02.2011 or that said amount was demanded

through accused No.2 by accused No.1. So also, his evidence that he along with panch No.1 visited cabin of accused No.1 and informed accused No.1 that he has brought money as per agreement and accused No.1 informed him that accused No.2 will provide him envelope and he should keep said amount in envelope and hand over the same as per the instruction of accused No.2, which has not been specifically challenged in the course of cross-examination of the complainant is not sufficient to infer that accused No.1 made demand of bribe to the complainant to clear his bill on the aforesaid date. The complainant has not deposed that on 08.02.2011, he asked either accused No.1 or accused No.2 about clearing his bill and then either accused No.1 or accused No.2 demanded bribe to him. Therefore, above said evidence of the complainant is not sufficient to infer that on 08.02.2011, there was demand of bribe, either by accused No.2 or accused No.1.

26. As far as evidence of panch No.1 (PW-3) in respect of fourth demand made on 08.02.2011 by the accused and acceptance of said amount on the said

date by accused No.3 is concerned, in paragraph 13, PW-3 has deposed, as under:

> "13] Thereafter, I along with complainant proceeded towards Parag Building on the motorcycle of complainant. Other team members with panch No.2 were following us in Government vehicle. After reaching in the office, I along with complainant met accused No.2. At that time complainant informed him that, as per discussion between them took place on earlier day, he brought amount of Rs.15,000/-. Complainant also insisted to do the work of his bill today itself. Thereafter, accused No.2 said that, Pawar is present today. He will meet him. Then accused No.2 alone proceeded to meet with accused No.1 with file. After about 5 to 7 minutes, we received message through one lady peon that, complainant is calling in the cabin of accused No.1. Therefore, I along with complainant entered in the cabin of accused No.1. In the cabin of accused No.1 again complainant repeated the same sentence that, as per discussion between him and accused No.2 took place yesterday, he

brought the amount. He insisted accused No.1 to perform his work today itself. At that time, Pawar, accused No.1 instructed complainant to keep the amount in envelope which will be provided to him by accused No.2 and to hand over the said envelope in a 'Paan Tapari' situated adjacent to same premises run by son of his retired driver (सय्यद हे तुला पाकिट देतील त्यात पैसे टाक आणि इमारतीचे बाहेर सेवानिवृत्त ड्रायव्हरच्या मुलाची पानटपरी आहे तिथे दे.). He assured that, work of complainant will be done on same day till evening. Then we came out of cabin of the accused No.1 with Sayyad. Then we proceeded towards cabin of Sayyad. In the cabin of Sayyad, he handed over one white envelope to the complainant and instructed him to keep the amount in the said envelope. Therefore, complainant removed tainted currency notes by his right hand and he hold the envelope by his left hand and inserted the tainted currency notes in the said envelope. Prior to that, accused No.2 inquired with the complainant 'how much' (किती आहेत.). Complainant said 15000 (पंधरा हजार.), and also asked the accused No.2 to count the currency notes (वाटल्यास मोजुन घ्या.). Then accused No.2 said O.K. (ठिक आहे.). He provided one pin to the complainant. Complainant sealed the envelope with said pin. Then accused No.2 instructed complainant to handover said envelope in the 'Paan Tapari'. At that time, complainant said he is not acquainted with the said Paan Tapari and accused No.2 shall accompany with him (कोणता पान टपरीवाला आहे मला माहित नाही, तुम्ही चला.). Thereafter, we three reached on the ground floor of the building. We reached on the Paan Tapari situated on the left hand side of the gate. Discussion took place between accused No.2 and the owner of Paan Tapari. At that time, I along with complainant was standing at some distance. Then accused No.2 arrived near us and instructed complainant to hand over said envelope to the owner of Paan Tapari. Then I along with complainant reached near Paan Tapari. Complainant handed over envelope to the person sitting at Paan Tapari. Complainant handed over envelope to the person sitting at Paan stall. Said person accepted the envelope by his right hand and kept on one shelf situated on the left side. Complainant immediately gave pre determined signal. I can identify the owner of Paan Tapari to whom the envelope was handed over. The accused sitting on the last bench is the same person. (On inquiry accused disclosed his name as Shaikh Abdul). Mean time, again accused No.2 arrived near us and instructed complainant to meet accused No.1. Therefore, complainant by making gesture by his right hand stop the team of Anti Corruption Bureau. Thereafter, we both arrived on first floor with accused No.2. Accused No.2 instructed us to meet. We therefore, entered in the cabin of accused No.1. At that time, complainant informed to accused No.1 that, envelope has been handed over to the Paan stall owner. At that time, accused No.1 said not to worry and to confirm about his bill at about 5.30 p.m. (काळजी करू नको ५.३० वाजता येवुन बीलाच पाहुन घे.). Then he made some remarks on the file of complainant. Then I along with complainant came out of his cabin. He again reached near paan tapari, and again complainant gave pre determined signal. Immediately, team of Anti Corruption Bureau reached near paan tapari. Then Dy.S.P. Dhopavkar inquired with me about the incidence. I informed him that, where the amount is kept. Then panch No.2 on the instruction of Dy.S.P. Dhopavkar taken into possession said envelope. Then Dy.S.P. Dhopavkar introduced himself to accused No.3. Then we all i.e. we both panchas, complainant and team of ACB, with accused No.3 proceeded towards cabin of Sayyad. I then informed Dy.S.P. Dhopavkar that, said person is namely Sayyad. Then Dy.S.P. Dhopavkar inquired accused No.2 about file concerning the work of complainant. Then accused No.2 produced the file which was lying on his table. The xerox copies of the said file was taken. I along with another panch signed on each page of the said file. Accused No.2 was arrested. Then we all proceeded towards cabin of accused No.1. At that time, complainant was not with us. He was instructed not to touch anywhere by his right hand. After entering into the cabin of accused No.1,Dy.S.P.Dhopavkar introduced himself to accused No.1. Then all necessary articles were called required for post trap procedure. We entire team members had undergone test of ultraviolet lamp. But, nothing was noted. Then artificial darkness was created in the said room. The hands of all three accused were examined under light of ultraviolet lamp. But, effect of anthracene powder was not noted on the anyone's hand. Panch No.2 then removed the pin of envelope and then took out the currency notes from the said envelope. The currency notes were examined under ultra violet lamp, at that time, effect of anthracene powder was noted in light bluish shining on all currency notes. This test was conducted by creating artificial darkness. The numbers on the currency notes were compared with the numbers already noted in pre trap panchanama. The numbers were tallied. The said currency note were kept in one brown colour envelope. The currency notes were seized and sealed bearing signature of we both panchas and DySP Dhopavkar. Again artificial darkness was created. The white colour envelope was checked from inside under ultraviolet lamp at that time, light bluish shining of anthracene powder was noted inside the said envelope. Said white colour

> envelope was also folded and kept in one brown colour envelope. It was sealed bearing label of signatures of we both panchas and Investigating officer."

27. In the cross-examination, PW-3 has denied that he is deposing false that on 08.02.2011 in his presence, the complainant informed accused No.2 that he has brought amount of Rs.15,000/- as decided yesterday. He has denied that he is deposing false that when he entered in cabin of accused No.1 with the complainant, the complainant informed him that he has brought Rs.15,000/- as per the instruction of accused no.2. He has also denied that he is deposing false that accused No.1 instructed the complainant to keep the amount in one envelope which will be given to him by accused No.2 and to hand over the said envelope to the owner of paan tapari, who is son of retired driver. He has also denied that, he is deposing false that accused No.1 assured complainant that his work will be done today itself till evening. So also, he has denied all other suggestions, denying the fact of putting Rs.15,000/- in the envelope and keeping said envelope at Paan Tapari. The above

referred evidence of PW-3 that on 08.02.2011, he informed accused No.2 that he has brought Rs.15,000/- as decided yesterday and further his evidence that when he entered in cabin of accused no.1 with the complainant, the complainant informed that he has brought Rs.15,000/- as per the instructions of accused No.2, is not sufficient to infer that on the above said date, either accused No.1 or accused No.2 made demand of bribe of Rs.15,000/- to clear the bill of the complainant. Because said evidence only suggests that the complainant only informed accused Nos.1 and 2 regarding bringing amount of Rs.15,000/- and said evidence is not sufficient to state that either accused no. 2 or accused No.1 made demand of bribe of Rs.15,000/- on 08.02.2011 to the complainant.

28. The fact of fourth demand allegedly made on 08.02.2011 on the date of trap as deposed by the complainant and panch No.1, as referred earlier, is not specifically mentioned in the post trap panchanama Exh.66.

29. As referred earlier, in their evidence, both complainant and panch No.1 have stated that they along with accused No.2 reached on the ground floor of the building/office and reached near stall (tapari). The complainant stated that in their presence, accused No.2 talked with owner of stall (tapari) that accused instructed to hand over envelope to said owner. The complainant stated that, he therefore, offered said envelope to owner of stall and owner of the stall instructed him to keep the same on one shelf and he therefore, kept the same on the shelf. He stated that accused No.2 instructed him to give intimation in this respect to accused No.1 that he handed over envelope to owner of the stall (tapari). Panch No.1 has stated that at that time, he along with complainant were standing at some distance. Accused No.2 then came near them and instructed complainant to hand over said envelope to owner of paan tapari. Then, he along with complainant reached near paan tapari. Complainant handed over envelope to person sitting on paan tapari. Said person accepted the envelope by his

right hand and kept the same on shelf, situated on the left side. Complainant then gave pre-determined signal. He stated that he identified accused No.3 as a owner of tapari. There is no consistency in the above referred evidence of the complainant and panch No.1 regarding acceptance of envelope of tainted currency notes by owner of stall/paan tapari because as per the evidence of the complainant, he had kept the envelope on shelf of paan tapari as per the instruction of owner of paan stall, wheres, as per the evidence of panch no.1, owner of paan stall had accepted the said envelope by his right hand and then kept the same on shelf, situated on the left side. Therefore, it is doubtful, whether really accused No.3 owner of stall/paan tapari accepted envelope, containing tainted currency notes as deposed by panch No.1 or said envelope was kept on the shelf of Stall/Paan Tapari as deposed by complainant.

30. The evidence of the complainant shows that after he has given pre-determined signal by raising his left hand, DySP Dhopavkar with his team immediately arrived there and inquired with the owner

of the paan stall/tapari by showing his identity card. Then, he showed the envelope lying on the shelf. The owner of paan stall/tapari was apprehended. He has stated about examining his hands and shirt under the light of ultra violet lamp. He has not specifically stated that the envelope containing tainted currency notes of Rs.15,000/- was seized from paan stall/tapari. Panch No.1 (PW-3) has sated that after the complainant has given pre-determined signal, Dy.S.P.Dhopavkar inquired with him about the incident and he informed him that where the amount is kept. Panch No.2 on the instructions of Dy.S.P.Dhopavkar had taken into possession said envelope He stated that the hands of accused were examined under the ultraviolet lamp but effect of anthracene powder was not noted on anyone's hand. Panch No.2 then removed the pin of envelope and then took all the currency notes from the said envelope. Then currency notes were examined under the ultraviolet lamp. At that time, effect of anthracene powder was noted in the light, bluish shining was noted on all the currency notes in the light. This was conducted by creating artificial darkness. This evidence of panch no.1 has not been specifically challenged, on behalf of the accused. Therefore, at the most, it can be said that on 08.02.2011 i.e. on the date of trap envelope, containing currency notes of Rs.15,000/- was seized by the investigating officer in presence of the panchas as per panchanama Exh.66. But the said fact is not sufficient to state that either envelope, containing tainted currency notes of Rs.15,000/- or an amount of Rs.15,000/- was accepted by accused No.3 for accused Nos.1 and 2. Another reason to arrive at this occasion is that, no anthracene powder was noted on the hands of any of the accused, when their hands were examined under the light of ultraviolet lamp.

31. Defecne of accused No.2 is that, he was on leave on 22.12.2010 to 24.12.2010, as he had to go to Patna with his wife and therefore, he filed leave application Exh.82 and therefore, the case of the prosecution that on 24.12.2010, when the complainant went to meet accused no.1, accused No.1 told him that he would not get letter and thereafter, accused No.1

called him in his cabin and asked him to have a talk with accused No.2 and that he would clear his bill and accordingly, he met accused No.2, who asked him to come on 17th on Monday is not believable. Sudhir Mande DW-1 for accused No.2 deposed about leave of accused No.2 as above and also stated that accused No.2 had taken permission to leave head quarter on 25 and 26th December, 2010. The said evidence of defence witness has not been shattered in his cross-examination on behalf of the prosecution. It is also seen from application Exh.82 that accused No.2 had applied for leave of three days as mentioned earlier with permission to leave head quarter on 25th and 26th December, 2010. So also, entry of said leave application is taken at Sr.No.1420 in the copy of register at page No.195 along with Exh.82. It appears that the wife of accused No.2 was relieved on 21.12.2010, for taking part in In-service Course of TGT (Science) at Kendriya Vidyalaya Sangathan, Patna Region, Patna and she attended said course as per attendance certificate at Page No.195. It also appears that two railway tickets of two adults' journey from Ahmednagar to Patna on 21.12.2010 were taken. Thus, there is substance in the defence of accused No.2 that he was on leave for three days, as stated earlier and particularly, on 24.12.2010. Therefore, also it cannot be said that on 24.12.2010, either accused No.1 or accused No.2 made a demand of bribe to the complainant, as alleged by the prosecution.

32. For all the reasons discussed above, I hold that the prosecution has failed to prove all the four demands made by accused Nos.1 and 2 on 16.12.2010, 24.12.2010, 17.01.2011 and 08.02.2011 and acceptance of bribe amount of Rs.15,000/- by accused No.3 and what is proved by the prosecution is only that investigating officer has seized envelope, containing tainted currency notes of Rs.15,000/-. When the prosecution has failed to prove demands and acceptance of bribe as above, no presumption under Section 20 of the Act, can be raised in favour of the prosecution and against the accused Nos.1 and 2 that they have committed an offence punishable under Section 7 of the Act.

33. There is no dispute that at the relevant time of incident both accused Nos.1 and 2 were serving in Fisheries Department, Ahmednagar as said earlier. There is no dispute that accused No.1 has retired from service, when the charge-sheet was filed against him. Therefore, no sanction was required to prosecute him. Therefore, sanction was required only to prosecute accused No.2. Parag Jain (PW-2), who was Commissioner, Fisheries Department, Mumabi in 2012, has deposed that accused No.2 was working as Assistant Fisheries Development Officer at Ahmednagar and he being Commissioner was competent to remove Assistant Fisheries Development Officer from the post. Therefore, after he received all the papers of investigation and after going through all the said papers was satisfied and accordingly, he accorded sanction to prosecute accused No.2 on 09.10.2010 as per sanction order Exh.48. In the cross-examination, he admitted that accused No.2 was not having power to distribute the amount and if the bill amount is more than rupees one lakh, then the Commissioner is having authority to sanction the said bill amount. He has

denied that he has mechanically granted sanction without application of mind. Thus, his evidence is not shattered in the cross-examination. Exhibit 48 sanction order also shows that after going through the investigation papers submitted to him, PW-2 accorded sanction to prosecute accused No.2. This shows that on application of mind, PW-2 had accorded sanction to prosecute accused No.2. Therefore, I hold that the prosecution has proved that there was valid sanction to prosecute accused No.2. It appears from the evidence of PW-2 that accused No.2 was not having power to distribute the amount and in case, the bill amount is more than rupees one lakh, then Commissioner was the authority to sanction the bill amount. This shows that the accused No.2 had no reason to demand bribe to the complainant to clear his bill as the work of sanctioning bill was not within his power.

34. Defence of the accused is that they have been falsely implicated and defence of accused No.2 is as referred earlier in detail in paragraph No.5. At the cost of repetition in short his defence is

that one Dangare was Assistant Commissioner, Fisheries Department at Ahmednagar prior to accused No.1 and during the period of Shri.Dangare, contract was given to the complainant, though, the complainant was not eligible to take such contract. While, Shri.Dangare was working as a District Fisheries Officer at Nashik was caught red-handed while accepting bribe and he was convicted in the said Special Case No.11 of 2001 and in the said case, accused No.1 was present as a presentation officer on behalf of the Government in the said case against Shri.Dangare, while accused No.1 was working on the post of Assistant Commissioner, Fisheries Department at Nashik. Therefore, according to accused No.1, he has been falsely implicated by the complainant at the instance of Shri.Dangare, who is relative of complainant. Considering the circumstances present in the case and in the manner in which the complaint was filed by the complainant in the ACB Office and ACB Officer in turn from time to time made attempts to trap accused No.1, there is some substance in the defence of accused No.1. Another aspect to arrive at this conclusion is that immediately after the trap on 08.02.2011, accused No.1 gave statements Exh.68 and 69 before the investigating officer that accused No.2 has to defame him and he has not accepted the money and in Exh.69, he stated that Rajendra Dangare was compulsorily retired from service. There was case of accepting bribe of Rs.500/- against him. The complainant is the relative of said Rajendra Dangare. He never demanded bribe from the complainant. Accused No.2 at his own, falsely involved him.

35. It appears that despite sufficient opportunities given to the prosecution to produce Dy.S.P.Dhopavkar, investigating officer, he was not examined by the prosecution. The trial Court in paragraphs 23 and 24 of the judgment and order observed about the conduct of the investigating officer for not attending the Court. Therefore, it cannot be said that the trial Court has not given sufficient opportunities to the prosecution to examine the investigating officer. In such circumstances, when on the basis of the evidence of the complainant and panch No.1, the prosecution has

failed to prove the demands of the bribe made by accused Nos.1 and 2 from the complainant on different dates, referred earlier and when it is not the case that accused Nos.1 and 2 accepted bribe amount and it was recovered from them and when it cannot be said that the prosecution has proved beyond doubt the acceptance of bribe by accused No.3 and recovery of it from him, for accused Nos.1 and 2, the offences alleged against all the accused are not attracted, there is no need to remand the matter to the trial court as per alternative submission made by the learned APP appearing for the appellant-State to record evidence of the investigating officer. The trial Court has rightly appreciated the evidence adduced by the prosecution. The view taken by the trial Court is a possible view.

36. For the foregoing reasons, I hold that the prosecution has failed to prove the offences punishable under Sections 7, 13(1) (d) read with Section 12(2) of the Act against accused Nos.1 and 2 and offences punishable under Sections 12 of the Act and under Section 109 of the IPC against accused

No.3. The trial Court has rightly held so. This being the position, there is no ground to interfere with the impugned judgment and order of acquittal of the accused of the offences with which, they were charged. Thus, there is no merit in the appeal and it is liable to be dismissed. Hence, the appeal is dismissed.

[S.M. GAVHANE, J.]

sarowar