

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

CRIMINAL APPEAL NO.483 OF 2009

- 1) Santosh S/o. Ragho Ajalsonde,
Age.42 years,
R/o Belaswadi, Tal. Muktainagar,
District Jalgaon
- 2) Rajjakshah S/o. Isamailshah,
Age. 54 years,
R/o. Pimpari Nandu, Tal. Muktainagar,
District Jalgaon

...APPELLANTS

(Ori.Accused Nos.1&2)

VERSUS

The State of Maharashtra

...RESPONDENT

Mr.S.B.Bhapkar, Advocate for the appellants
Mr.K.B.Jadhavar, APP for the respondent/State.

CORAM : S.M.GAVHANE, J.

RESERVED ON : 01/11/2018

PRONOUNCED ON : 24/01/2019

J U D G M E N T :-

. The appellants, hereinafter referred to as
accused Nos.1 and 2, have challenged the judgment and
order dated 02/09/2009 passed by the Ad-hoc
Additional Sessions Judge and Special Judge, Jalgaon

in Special Case No.06 of 2007 thereby convicting accused No.1 for the offence punishable under Sections 7 of the Prevention of Corruption Act (hereinafter referred to as 'the Act') and 13(1)(d) read with Section 13(2) of the Act and sentencing him to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- (Rs. Five Hundred only) and in default, to undergo further rigorous imprisonment for a month for the offence under Section 7 of the Act and to undergo rigorous imprisonment for a year and to pay a fine of Rs.1000/- (Rs. One Thousand only) and in default, to undergo further rigorous imprisonment for two months for the offence punishable under Section 13(1)(d) r/w Section 13(2) of the Act and convicting the accused No.2 for the offence punishable under Section 12 of the Act and sentencing him to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/- (Rs. Five Hundred only) and in default, to undergo further rigorous imprisonment for a month for the said offence. Substantive sentence of imprisonment

recorded against the accused No.1 was directed to run concurrently. Accused were also given benefit of set-off under Section 428 of the Code of Criminal Procedure as they were in custody for two days. Muddemal property i.e. cash of Rs.1000/- was ordered to return to complainant Ravindra S/o Wamanrao Sonar (Vitnare) and if the amount was already returned to him by A.C.B., Jalgaon, it be confiscated and one pajama being worthless was ordered to be destroyed after the period of appeal is over.

2. The facts leading to the institution of this appeal are as under:-

(A) The complainant-Ravindra Wamanrao Sonar (Vitnare) (PW-1) is originally resident of Pimpri Nandu, Tal. Muktainagar, Dist. Jalgaon. At the relevant time of incident he was serving as a clerk in Life Insurance Corporation Limited at Lonavala, District Pune and was residing at Pimpri Chinchwad, Pune. His father had ancestral Bagayat land Gat

No.214, 1H 51R at village Pimpri Nandu. His father and uncle Vishnu Gangaram Sonar had recently got mutated the said land in their names. The complainant's father died on 29/10/2006. The complainant, his mother Smt.Pushpabai Wamanrao Sonar, his married sister Sau.Minakshi Arun Umbarkar and his uncle Vishnu Gangaram Sonar are heirs of his father to the said land. After the post funeral rites of his father the complainant obtained heirs certificate from police Patil of Pimpri Nandu and death certificate from the Grampanchayat.

(B) On 09/11/2006 the complainant went to the office of Talathi Sajja Belaswadi, Tal. Muktainagar alongwith an application for recording names of three legal heirs of his deceased father to the land Gat No.214. He had attached death certificate of his father, heirs certificate issued by police Patil and the notice form under Section 150(2) of the Maharashtra Land Revenue Code signed by all the three heirs, with the application.

(C) Accused No.1 Mr.Ajalsonde was Talathi of village Pimpri Nandu which comes under Talathi Sajja Belaswadi. He was not present in the office on 09/11/2006 at Belaswadi and hence the complainant gave aforesaid application alongwith documents to the accused No.2 Rajjakshah who was Kotwal of Pimpri Nandu was present in the office at Belaswadi. The complainant demanded acknowledgment of the said application to the accused No.2 on the copy of application, but accused No.2 did not give the same.

(D) It is the case of the prosecution that, on 11/11/2006 accused No.1 met complainant on the bridge of river near village Pimpri Nandu. The complainant had a talk with him about his application to take entry of heirs. Thereupon accused No.1 told complainant that, "he received his application and he would do his work, but he had to pay him Rs.1000/-, if he pays him money, he would record the names of legal heirs and immediately after taking an entry of

heirs he would give him extract, else he would do the work as per his convenience". The complainant told him that he has been residing at Pune, it would not be possible for him to come repeatedly for such a small work and requested to do his work at the earliest and that he would pay some money to him lateron as he had no money at that time. Thereupon the accused No.1 asked the complainant to give him Rs.1,000/- on Monday and that on the same day he would give him extract. Thereupon the complainant told his difficulty to meet him on Monday. Then accused No.1 said him to give him money in his office at Belaswadi on Tuesday on 14/11/2006 in the morning at 9.00 hrs. and in case he does not meet him there money should be given in the office at Karki and that he would keep his work of extract after taking entry of heirs ready and immediately he would get extract. Thereupon accused No.1 went towards Belaswadi. Since the complainant had no desire to pay illegal gratification to the accused No.1, he went to the office of Anti-Corruption Bureau (hereinafter

referred to as "ACB") at Jalgaon on 13/11/2006 and lodged the complaint (Exh.12), which was recorded by PW-4 Police Inspector Dattatraya Ghuge the Investigating Officer.

(E) On the same day i.e. on 13/11/2006 in the evening PI Ghuge solicited services of two government employees i.e. Pramod Narkhede (PW-2) and one Sunil Khedkar from the office of PWD, Jalgaon to act as Panchas. PI Ghuge instructed them to remain present in ACB office, Jalgaon on 14/11/2006 at 6.00 a.m. Accordingly on 14.11.2006 they went to ACB office, Jalgaon. They were introduced to the complainant. Complainant narrated his complaint to them. They had also gone through the complaint (Exh.12). They found similarity in oral and written complaint of the complainant. Complainant was asked to keep all his belongings on the table. He put all the articles including cash on the table. Out of the cash amount, Rs.1,000/- were kept aside and all other articles and cash were returned to complainant. Significance and

effect of anthracene powder and ultraviolet lamp were explained to the complainant and panchas. Cash of Rs.1000/- consisting of one currency note of Rs.500/- and five currency notes of Rs.100/- denomination were smeared with anthracene powder. Demonstration of anthracene powder before and after applying anthracene powder to the currency notes was given to panchas and complainant. Then those tainted currency notes were kept in the left side pocket of shirt of complainant with instructions not to touch the notes till the time the demand is made by the accused. Certain instructions were given to the complainant, panchas and other members of raiding party. Detailed pre-trap panchanam (Exh.43) was prepared between 6.00 a.m. to 7.45 a.m. on 14.11.2006.

F) Thereafter, on 14/11/2006 raiding party proceeded towards village Belaswadi by a Government vehicle. While they were on the way and came near Muktainagar the complainant received call of his nephew on his mobile, who informed him that Talathi

of Sajja Belaswadi has come to Pimpri Nandu village and that he had enquired about him (Complainant). On receiving this message PI Ghuge decided to proceed towards village Pimpri Nandu for carrying raid instead of going to village Belaswadi. Therefore at about 9.20 a.m. vehicle was stopped prior to village Pimpri Nandu and all were alighted. PI Ghuge again gave brief instructions to the complainant and panch No.1 (PW-2). Thereupon the Complainant Ravindra (PW-1) alongwith panch no.1 Pramod Narkhede (PW-2) proceeded ahead by walk to meet accused No.1 at the bus stand. They were followed by the team of raiding party and panch No.2 Shri. Khedkar.

(G) The complainant and PW-2 (Panch No.1) Pramod Narkhede went to bus stand and stood near the Pan stall. They were followed by the team of raiding party. On seeing the complainant accused No.2 Kotwal came to him and told him that Talathi Appa-accused No.1 is waiting for him, he is sitting in the house of Shri. Chaudhari and that he would call him.

Accused No.2 went to the nearby house and brought accused No.1 there. Complainant offered 'Namaskar' to accused No.1 and asked him whether the names of legal heirs are recorded as per his application, whereupon accused No.1 asked complainant whether he has brought amount of Rs.1000/- and complainant replied in the affirmative. Then accused No.1 asked to give the amount to him. Complainant therefore, took out tainted currency notes from his pocket by right hand and gave it to accused No.1 in his right hand. Accused No.1 then handed over said amount to accused No.2, who received it by his left hand and put it in the left pocket of his pajama. Accused No.1 then told complainant that, "तुझे काम होवून जाईल, 'डी' पत्रकात नोंद घेवून मी तुला उतारा देईन".

(H) Thereafter the complainant went aside and gave pre-arranged signal to the members of raiding party by removing his cap and itching head by left hand as instructed. On receiving the signal the

members of raiding party came there. PW-4 PI Ghuge enquired with panch No.1 as to where the tainted currency notes were. Panch No.1 Narkhede (PW-2) pointed fingers at accused No.1 and stated that he had demanded and accepted bribe of Rs.1000/- from complainant by right hand and handed over the same to the accused No.2. Immediately thereafter PI Ghuge, Police Constables Vishwas Patil and Ravindra Pawar catch hold of both accused. PI Ghuge disclosed his identity to both the accused. As the spot of incident was public place, PI Ghuge took both the accused to the office of Grampanchayat Pimpri Nandu, where dark was made by closing the door and windows. Hands and clothes of both accused were examined under ultraviolet lamp. Greenish shining of anthracene powder was found on the right finger of accused No.1, but no such shining was detected on his clothes. Shining was also detected on the left palm and finger tips as well as on left pocket of pajama of accused No.2. Panch No.2 Sunil Khedkar was directed to take personal search of accused No.2. Cash amount of

Rs.1000/- i.e. one currency note of Rs.500/- and five currency notes of Rs.100/- denomination i.e. tainted currency notes were found in the pocket of pajama of accused No.2. Those currency notes were examined under ultraviolet lamp. Greenish shining was seen on those currency notes. The numbers of said currency notes were tallied with the numbers of the notes mentioned in pre-trap panchnama. Those currency notes and the pajama of accused No.2 were seized. Shining was also seen to the palms and fingers of both the hands of panch No.2 Khedkar. Complainant was called inside Grampanchayat office. His hands and clothes were examined under ultraviolet lamp. Greenish shining was found on the right finger tips and on the upper portion of left pocket of his shirt and inside the pocket. Tainted currency notes were not found with him.

In the search of accused No.1 an amount of Rs.6450/- was found and accused No.1 explained that it was an amount of Government. Said amount was

returned to him. No shining was seen to the notes of said amount. Thereafter an inquiry was made with the accused No.1 about the proposal of taking entry of heirs as per application of the complainant and accused no.1 told that said proposal and entire record were in the office at Belaswadi. Thereupon accused No.1, staff and panchas were sent to Belaswadi by the Government vehicle and original proposal of the complainant with record as detailed in the spot panchnama was brought. Thereupon detailed spot panchnama (Exh.44) of post-trap events was prepared.

(I) Thereafter PI Ghuge went to Police Station, Muktainagar alongwith accused and panchas and lodged the report (Exh.61) on behalf of the government. Thereupon crime No.3078 of 2006 under Section 7,12,13(1)(d) read with Section 13(2) of the Act and Section 109 of the Indian Penal Code was registered against the accused. PI Ghuge carried the investigation. He arrested both the accused and then

came back to ACB office, Jalgaon. Accused were released on bail. He recorded the statements of the witnesses. He also obtained sanction to prosecute the accused. After completion of the investigation charge-sheet was submitted in the Sessions Court, Jalgaon.

(J) The learned Special Judge initially framed charge (Exh.6) under Section 13(1)(d) read with Section 13(2) of the Act against the accused No.1 and under Section 12 of the Act against the accused No.2.

Subsequently, above charge was altered and added charge was framed at Exh.70 under Section 7 and 13(1)(d) read with Section 13(2) of the Act against the accused No.1 and under Section 12 of the Act against the accused No.2. Both the accused pleaded not guilty to the charge and they had claimed to be tried.

(K) Defence of the accused as it appears from

the trend of cross examination of the prosecution witnesses and their statements under Section 313 of the Code of Criminal Procedure and their written statements is total denial and that they have been false implicated. In his written statement (Exh.63) the accused No.1 has stated that, the legal heirs certificate submitted by complainant was doubtful and it was not sufficient to record the names of legal heirs to the property. It was necessary to issue notices to the co-owners and all the legal heirs inviting their objection, if any. But the complainant was insisting to record the names of legal heirs at once. In fact, it was for the Revenue Inspector to approve such entry in mutation register. It is stated that Government dues around Rs.3000/- to 5000/- were outstanding against the complainant towards cess, Nala banding, measurement etc. and unless such amount was paid by the complainant entry in mutation register could not be taken. He told the same to the complainant. By suppressing certain facts complainant wanted to obtain 7x12 extract of the land and as he

(accused No.1) told him that his work would be done as per the rules, complainant was annoyed and lodged complaint against him to take revenge. He did not demand illegal gratification to complainant. He had not accepted any amount from him as bribe. Said amount was not of bribe. Complainant had deliberately given the amount at Pimpri Nandu because the office of accused No.1 was not there and he was unable to issue receipt to him of the amount.

Defence of accused No.2 is that he had neither demanded the amount nor accepted it. Complainant had no work with him. He did not know for what the amount was given. According to him, there were Government dues against complainant. In his written statement (Exh.64) also accused No.2 stated that he had not demanded and accepted money from complainant. The accused have not examined witness in defence. They have relied upon certain documents.

(L) To prove guilt of the accused the

prosecution has examined following four witnesses; PW-1 the complainant Ravindra Sonar (Vitnare), PW-2 Pramod Tukaram Narkhede, Panch No.1/Shadow panch, PW-3 Dhananjay Sukhdeo Nikam, Sub Divisional Officer, Bhusawal, Division who accorded sanction Exh.52 to prosecute accused, PW-4 API then PI Dattatraya Karbhari Ghuge the Investigating Officer.

Besides, the prosecution has relied upon the complaint (Exh.12), the pre-trap panchnama (Exh.43), spot/post-trap panchnama (Exh.44) and sanction order (Exh.52). On considering the evidence adduced by the prosecution the trial Court held that the prosecution has proved the offences with which the accused were charged and convicted and sentenced them as mentioned in the opening paragraph of this judgment by the impugned judgment and order. Therefore this appeal by the appellants-accused on several grounds mentioned in the appeal.

3. By order dated 29.09.2009 appeal was

admitted and accused were ordered to be released on bail by this Court.

4. Mr. Bhapkar, learned Advocate for the appellants/accused made following submissions:

(a) There is no dispute that at the material time of the incident accused No.1 was Talathi and accused no.2 was Kotwal of Pimpri Nandu which comes under Talathi Sajja at Belaswadi, Tq. Muktainagar. The complainant (PW-1) is from village Pimpri Nandu. He is permanently residing at Pimpri Chinchwad, Pune and working in Life Insurance Corporation office at Lonavala, District Pune. The father of complainant died on 29.10.2006. Therefore, the complainant had come to Pimpri Nandu for funeral and post funeral rites of his father. The land gat no.214 was in the names of father

and uncle of the complainant. On 09.11.2006 complainant made application to the Talathi of Pimpri Nandu, Tal. Muktainagar informing that his father died on 29.10.2006 and he (complainant), his mother Smt.Pushpabai Wamanrao Sonar and his sister Sau.Minakshi Arun Umbarkar are the heirs of his father and requested to record the names of said heirs in the record. Alongwith this application death extract of his father and heirship certificate issued by police Patil were attached by complainant. Said application was handed over to accused No.2 Kotwal in the office of Talathi Sajja at Belaswadi as village Pimpri Nandu comes under said Talathi Sajja, as accused No.1 was not present in the office on 09.11.2006. Said application was given by the

complainant to record land gat no.214 in the names of above said heirs of his father.

(b) As per prosecution case on 11.11.2006 accused No.1 met the complainant near village Pimpri Nandu on the bridge of river and at that time when the complainant enquired with the accused No.1 about recording the names of heirs of his father in the record of land gat No.214 as per his aforesaid application dated 09.11.2006 the accused No.1 demanded bribe of Rs.1,000/- from the complainant. According to learned Advocate when on 09.11.2006 the accused No.1 was not in the office when the complainant handed over application to the accused No.2 and as the complainant is permanently residing at Pimpri Chinchwad, Pune

there was no reason for the complainant to know the accused No.1 the case of the prosecution that the complainant met accused No.1 on 11.11.2006 near the village on the bridge of river and accused No.1 made demand of bribe of Rs.1,000/- is not acceptable.

(c) The complainant had made an application on 09.11.2006 to record the names of heirs of his father to the land gat no.214 and on the same day entry No.330 as per Exh.17 in the register of Namuna No.6 was taken by the accused No.1. Said entry was sanctioned by the Circle Inspector on 24.11.2006 as per mutation entry No.1753. Therefore, according to learned Advocate for the accused it was not possible for the accused No.1 to issue 7/12 extract showing the names of

heirs of complainant, to the complainant immediately unless the entry was certified by the Circle Inspector. In the above circumstances on 11.11.2006 the work of taking entry of heirs of father of the complainant was not pending with the accused No.1 Talathi and therefore there was no question of demanding any amount as alleged by the prosecution by the accused No.1 from the complainant. Therefore case of the prosecution that the accused No.1 demanded bribe of Rs.1,000/- on 11.11.2006 from the complainant is not believable.

(d) As per prosecution case alleged amount of bribe was to be accepted on 14.11.2006 by the accused No.1 in the office at Belaswadi. But the trap was laid at Pimpri Nandu. It

is the case of the prosecution that on 14.11.2006 when the raiding party was proceeding towards Belaswadi on the way to Belaswadi the nephew of the complainant informed complainant on his cell phone that the accused No.1 was enquiring about the complainant at Pimpri Nandu and therefore instead of proceeding to Belaswadi raiding party went to Pimpri Nandu and trap was laid at Pimpri Nandu. As per the evidence of the complainant when the raiding party was proceeding towards Belaswadi brother of the complainant informed him on cell phone that the accused No.1 was enquiring about the complainant at Pimpri Nandu and therefore raiding party went to Pimpri Nandu and the trap was laid which is contrary to basic case of the prosecution. Thus according to learned Advocate for the accused

neither the raiding party proceeded towards Belaswadi for trap nor the raiding party went to Pimpri Nandu and laid trap as alleged by the prosecution. According to learned Advocate there was no reason to change place of trap from Belaswadi to Pimpri Nandu. This shows that the raiding party did not go to Belaswadi or Pimpri Nandu and without trap falls record in the nature of pre-trap and post trap panchnama has been prepared.

(e) The person either nephew or brother of the complainant who contacted the complainant on the day of trap i.e. on 14.11.2006 and informed him that the accused No.1 was enquiring about the complainant at Pimpri Nandu, has not been examined and therefore reason of changing the place of trap

from Belaswadi to Pimpri Nandu is not proved.

(f) There were certain Government dues against the land gat no.214. Therefore the complainant voluntarily said that he had brought the amount. Accused No.1 had given explanation at the time of statement under Section 313 of Code of Criminal Procedure that an amount of Rs.3000/- to 5000/- was due to the complainant as government dues and therefore said explanation is probable. It is mentioned in the charge that bribe was demanded to issue heirship certificate, but the accused were and are not competent to issue heirship certificate and therefore case of the prosecution is doubtful.

(g) The prosecution has not

examined one Chaudhari at whose house at Pimpri Nandu accused No.1 was allegedly sitting on the date of trap i.e. 14.11.2006. Though statements of other persons from Pimpri Nandu were recorded by the investigating officer they have not examined by the prosecution.

(h) The prosecution has not examined panch No.2. He was required to be examined to bring on record the fact from whom really amount was recovered and what made the raiding party to go to Pimpri Nandu when panch No.1 (PW-2) has not supported the prosecution case or when his evidence is not worthy to be accepted.

(i) The prosecution has not proved initial demand made by the accused No.1

on 11.11.2006 as well as demand before the trap on 14.11.2006. There was no conversation between the complainant and accused No.1 on the day of trap. There is no recovery of bribe amount from accused No.1 and said amount was recovered from accused No.2. The complainant admitted that he or accused No.1 did not utter word bribe in respect of Rs.1000/- and hence it can not be said that there was demand of bribe by accused No.1.

(j) Accused No.2 was not authorized to take entry of heirs of father of complainant and he never demanded bribe amount.

(k) During investigation statements of accused were recorded. But the Investigating Officer has not

produced the said statements. The Investigating Officer has no choice to place something on record and not to place statements of accused on record when they are part and parcel of the investigation. The investigation made by the Investigating Officer is not fair and the Investigating Officer is bias. He makes his own case doubtful. Therefore prosecution case is not believable.

(1) As regards sanction to prosecute the accused is concerned for accused No.1 Talathi Sub Divisional Officer is the appointing and removing authority and for accused No.2 Kotwal Tahasildar is appointing and removing authority. But for both the accused the Sub Divisional Officer, Bhusawal Division (PW-3) has accorded sanction

to prosecute them as per common sanction order (Exh.52). When appointing and removing authorities of both the accused are different and when permission of Tahasildar has not been sought in respect of accused No.2 Kotwal and Tahasildar has not been examined sanction order (Exh.52) is not proper. Moreover, this sanction order (Exh.52) has been issued without application of mind. Therefore, there is no proper sanction order to prosecute the accused. PW-3 was not competent to accord sanction to prosecute both the accused. No authority was given by the Collector to PW-3 to issue sanction order.

5. Mr.Bhapkar, learned Advocate for the accused has relied upon the following decisions:

(a) In the case of **Haridas s/o Bhagwan**

Jamunah Vs. State of Maharashtra,
2018(1) AIR Bom.R.(Cri.)637, it was held that mere recovery of amount from the person of accused is not sufficient to prove guilt under the Prevention of Corruption Act as what is required by the prosecution is to prove beyond reasonable doubt that accused voluntarily accepted amount after demanding it and knowing it to be bribe. In the absence of demand for illegal gratification or use of corrupt or illegal means or abuse of position as a public servant for obtaining any valuable thing or for gaining pecuniary advantage, the offence under the said Act cannot be said to be established. In the circumstances, mere possession and recovery of currency notes are not sufficient to constitute the offence as found in the instant case.

(b) In the case of **A.Subair Vs. State of Kerala 2009,(4) Mh.L.J.(Cri.)465**, the Hon'ble Supreme Court has held that proper proof of demand and acceptance of the illegal gratification is necessary to procure conviction for the offences under Section 7 and 13(1)(d) of the Prevention of Corruption Act. Primary requisite of an offence under section 13(1)(d) of the Prevention of Corruption Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. Pertinently, the complainant has not been tendered in evidence by the prosecution. In the absence of semblance of explanation by the investigating officer for the non-examination of the complainant, it was not open to the Courts below to find

out their own reason for not tendering the complainant in evidence. It has, therefore, to be held that the best evidence to prove the demand was not made available before the Court. The factum of demand, the vital ingredient necessary to be established to procure a conviction remained not proved in the case. Mere recovery of currency notes, in the facts of the present case, by itself cannot be held to be proper or sufficient proof of the demand and acceptance of the bribe. The evidence on record is not sufficient to bring home the guilt of the appellant. The appellant is entitled to the benefit of doubt. Moreover it was held that mere recovery of currency notes of Rs.20 and Rs.5 denomination from the appellant not proper or sufficient proof of the demand and acceptance of bribe. So also

it was held that when the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence.

(c) In the case of **Narendra Champaklal Trivedi Vs. State of Gujarat, 2012(4) Mh.L.J., (Cri.) 434**, the Hon'ble Supreme Court has held that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as a bribe-Demand and acceptance of the amount as illegal gratification is the sine qua non for constituting an offence under the Act. It was also held that it is obligatory on the part of the Court to consider the explanation offered by the accused on the anvil of

preponderance of probability. So also it was held that prosecution is bound to establish that there was an illegal offer of bribe and acceptance thereof. The said appeal against the conviction and sentence confirmed by the High Court in the Criminal Appeal challenging the conviction and sentence passed by the Additional Special Judge for offence punishable under Section 7 of the Prevention of Corruption Act against the appellant was dismissed.

(d) In the case of ***Manohar s/o Ravan Kamble Vs. State of Maharashtra, 2011(4) Mh.L.J.(Cri.)614***, the appellant was convicted and sentenced for demanding illegal gratification for deciding an application for laying water pipeline in favour of the complainant, under Section 7 of the

Act. At the relevant time the appellant was not assigned with the work. It was held that the conduct of the complainant and his contradictory statements made his evidence doubtful. There was no corroboration to the alleged demand of money by the appellant. The prosecution utterly failed to prove its case and on holding that appellant is entitled to the benefit of doubt conviction and sentence recorded against the appellant was quashed set aside. It was also held that mere acceptance of money, by itself, would not be sufficient for the purpose of convicting the accused who was charged with an offence punishable under Section 7,13(1)(d), 13(2) of the Act.

(e) In the case of **Chandrakant Kisan**

Pujari Vs. State of Maharashtra,
2011(2) Mh.L.J.(Cri.)710 in the appeal against conviction of the appellant for the offence punishable under Section 7,13(1)(d) and (2) of the Prevention of Corruption Act, it was held that evidence on record showed that there was possibility of the appellant being falsely implicated. Demand of money which is pre-requisite of payment of bribe not proved by the prosecution. Sanction to prosecute the appellant was granted by the authority without application of mind. Accordingly conviction and sentence of the appellant was set aside by allowing the appeal.

(f) In the case of **Ramrao s/o Satyanarayan Ramod Vs. State of Maharashtra, 2009(1) Mh.L.J. (Cri.)392,**

in the appeal against conviction of the appellant for the offence punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, it was held that evidence of witnesses neither supported the prosecution case regarding the initial demand nor the acceptance by the accused. Sanction was granted without applying the mind to the relevant material. Complainant refused to identify the accused and the panch witness has clearly stated that all panchnamas were written in the ACB office and he had signed them without reading it. It was held that conviction on the basis of such dubious evidence would not be sustainable in law. It was held that prosecution has utterly failed to discharge its burden. Order of conviction and sentence recorded

against the appellant was quashed and set aside by allowing the appeal.

(g) In the case of **Mahadeo s/o Narayan Kathane Vs. State of Maharashtra, 2010(4) Mh.L.J.(Cri.)188**, in the appeal against conviction and sentence recorded against the appellant for the offence punishable under Section 7,13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, it was alleged against the appellant Head Constable that he demanded and accepted illegal gratification for keeping loopholes in the case registered against complainant. It was found that money was required to be paid towards the petrol expenses and the appellant was simply to collect it. Appellant was not performing any official duty for which he could have demanded money by

way of illegal gratification. Demand of money by appellant was not proved. Conviction and sentence of the appellant could not be sustained and it was set aside by allowing the appeal.

(h) In the case of ***Lalaso Balu Shaikh Vs. State of Maharashtra, 2012(1) Mh.L.J., (Cri.)599***, in the appeal against conviction for the offence under Section 7,13(1)(d) read with Section 13(2) of the Prevention of Corruption Act it was held that appellant was not in a position to do or to prevent any action against the complainant. There were major discrepancies in the testimonies of PWs. Defence of the appellant was a probable defence. It was found that trial Court made general observations and it did not consider the evidence in

the right perspective. Holding that appellant is entitled to the benefit of doubt conviction and sentence recorded against appellant was set aside by allowing the appeal.

(i) In the case of **Raju s/o Somla Pawar Vs. State of Maharashtra, 2008(4) Mh.L.J. (Cri.)429**, in the appeal against the conviction for the offence under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act of the appellant, it was held that unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration, the Court cannot take recourse to the presumption of law contemplated in section 4(1) of the Prevention of Corruption Act. It was alleged that accused allegedly demanded bribe of

Rs.600/- stamping charges under the Weights and Measures Act. Defence of the accused was that he had received the amount towards legal charges fortified by the evidence of PW-2 who admitted that the stamping charges could be Rs.600/- or more. Several prosecutions were launched by the accused against the relatives of the complainant. It was held that false implication could not be ruled out. Further on holding that prosecution has failed to prove beyond reasonable doubt that the amount which was received by the accused was not towards any lawful collection or legal remuneration conviction and sentence of the appellant was set aside by allowing the appeal.

(j) In the case of **Pralhad s/o**

Sadashiv Badole Vs. State of

Maharashtra, 2012(4) Mh.L.J.(Cri.)551,

in the appeal against conviction of the appellant for the offence under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, it was held that grant of sanction suffered from non-application of mind. Draft sanction order was mechanically accepted. Prosecution has failed to produce documents as to approval by Deputy Chief Minister for prosecution of the appellant. It was held that prosecution has failed to prove its case beyond reasonable doubt. Accordingly, conviction and sentence of the appellant was set aside by allowing the appeal.

(k) In the case of **V.Venkata Subbarao Vs. State represented by Inspector of**

Police, A.P., 2007 Cri.L.J. 754, the Apex Court has held that demand of money not made by accused but by another officer. Complaint was filed 15 days after demand and even after cause for making demand had disappeared. Trap laid, galore with illegalities. Money allegedly, paid during trap alleged to be counted by accused with both hands, yet only one hand turning purple. Whereabouts of bribe money disclosed not by accused but persons who entered room during trap. Complainant was taken to spot by assistant of MLA who bore grudge against accused. It was held that conviction cannot be based on such evidence. Presumption under Section 20 of the Prevention of Corruption Act that money was accepted as motive or reward cannot be raised when demand by accused has not been proved. There was

complaint of demand of bribe against 4 persons. Documents showing involvement of person actually making demand was not produced before authority. It was held that sanction granted to prosecute accused was vitiated in law. The impugned judgment of convicting the appellant was set aside by allowing the appeal.

(1) In the case of ***V.Sejappa Vs. State By Police Inspector Lokayukta, Chitradurga, AIR 2016 Supreme Court, 2045***, the appellant was acquitted by the trial Court for the offence punishable under Sections 7,13(1)(d) read with 13(2) of Prevention of Corruption Act. In the appeal against acquittal he was convicted by the High Court of Karnataka at Bangalore for the said offences. Therefore there was

appeal against conviction before the Apex Court. In the said case it was alleged that the appellant demanded bribe for forwarding pension papers of the complainant. Prosecution witness, in cross-examination, denied suggestion that appellant demanded and accepted bribe amount for said purpose. Rather he stated that amount was in lieu of amount which appellant had borrowed from complainant. Said witness was declared hostile. It was held that it casts doubt about acceptance of illegal gratification and the prosecution case. It was held that mere recovery of tainted money not sufficient to draw presumption under Section 20 of the Act. Moreover plea of alibi taken by accused that he was on official tour at other place on the date he is alleged to have demanded illegal gratification

in his office and that at the relevant time he was attending seminar at different place was probable. Prosecution has failed to prove that appellant demanded bribe amount on relevant date. It was held that appellant is entitled to be acquitted and accordingly he was acquitted by allowing the appeal.

(m) In the case of ***M.R.Purushotham Vs. State of Karnataka, 2015 Cri.L.J.72 (Supreme Court)***, the appellant was acquitted by the trial Court for the offence under Section 7,13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. In the appeal against acquittal he was convicted for the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act by the High Court. In

the appeal against said conviction the Honb'ble Supreme Court on holding that complainant himself not supported prosecution case insofar as demand by accused is concerned and mere possession and recovery of the currency notes from accused without proof of demand would not attract offence under Section 13(1)(d), conviction of accused-appellant was set aside by allowing the appeal.

Mr.Bhaphkar, learned Advocate for the accused lastly submitted that the prosecution has failed to prove the offences against the accused for which they have been convicted and claimed to set aside the impugned judgment by allowing the appeal.

6. Mr.Jadhavar, learned APP for the respondent/State, on the other hand, submitted that the prosecution has proved demand and acceptance of

bribe amount by the accused on the basis of evidence of the complainant (PW-1), PW-2 (Panch No.1) and PW-4 the Investigating Officer. The work of the complainant was pending with the accused No.1 Talathi on the date of initial demand on 11.11.2006 and on the date of trap i.e. on 14.11.2006 on which day second demand of bribe was made by the accused No.1. Accused No.1 has taken entry of recording names of heirs of father of the complainant after the trap on 14.11.2006. Therefore it cannot be said that the work of taking of entry of heirs of father of the complainant was not pending with the accused No.1 on the date of initial demand on 11.11.2006, on the basis of Exh.17 entry No.330 as argued by the learned Advocate for the accused. The entire record was with the accused No.1 after the trap and therefore said entry No.330 was taken subsequently in the register by the accused No.1 showing that it was taken on 09.11.2006 on the date of application moved by the complainant to take entry of heirs of father of the complainant and as such no work was pending with the

accused No.1 either on the first demand of bribe on 11.11.2006 or on the second demand prior to trap on 14.11.2006. The learned APP further submitted that as per the defence alleged bribe amount of Rs.1,000/- was given to the accused towards government dues of the land gat No.214 of the complainant and it was not bribe amount given to the accused. It is submitted that on the date of trap i.e. on 14.11.2006 accused had issued certain receipts to the different land owners in respect of land revenue/government dues of their lands. Therefore, when the accused had issued said receipts to the other land owners in respect of government dues received by them it was possible for the accused to issue receipt on receipt of so called government dues of Rs.1,000/- of the land of the complainant to the complainant, but the accused did not issue such receipt on 14.11.2006 or even subsequently to the complainant. Therefore according to learned APP amount which was accepted by both the accused and recovered from accused No.2 was bribe amount. When the acceptance of bribe amount of

Rs.1,000/- by the accused is proved by the prosecution the presumption under Section 20 of the Act is attracted against the accused that they have committed the offences alleged against them and therefore the accused were required to rebut the said presumption. But the accused have not rebutted said presumption. It is submitted that accused No.2 accepted bribe amount as per directions of the accused No.1 and said amount was recovered from him. Lastly it is submitted by the learned APP that the prosecution has proved demand, acceptance and recovery of the bribe amount and therefore the prosecution has proved offences under Section 7 and 13(1)(d) read with Section 13(2) of the Act against the accused No.1 and under Section 12 of the Act against the accused No.2 beyond reasonable doubt and therefore the trial Court has rightly convicted and sentenced the accused for the said offences by the impugned judgment. Therefore there is no reason to interfere with the impugned judgment and as such he claimed to dismiss the appeal.

7. I have carefully considered the submissions made by the learned Advocate appearing for the accused and the learned APP appearing for the respondent/State. With their assistance I have perused the evidence on record and the impugned judgment and order.

8. Considering the ingredients of the offences under Section 7 and 13(1)(d) read with Section 13(2) and under Section 12 of the Act the prosecution has to establish that the accused No.1 demanded bribe amount of Rs.1,000/- from the complainant and accepted the said amount as gratification other than legal remuneration as a motive or reward for showing favour to the complainant in the exercise of his official functions and further committed criminal misconduct and accused No.2 abetted offence under Section 7 of the Act to the accused No.1. As per prosecution case accused No.1 made initial demand/first demand on 11.11.2006 and second demand

prior to trap on 14.11.2006 to the complainant. In presence of the panch No.1 (PW-2), accused No.1 accepted the said amount. To prove first demand the prosecution has mainly relied upon the evidence of the complainant (PW-1) and the complaint (Exh.12) lodged by him in the ACB office, Jalgaon on 13.11.2006.

9. Now coming to the evidence of the complainant (PW-1) on the initial demand made by accused No.1 on 11.11.2006 in paragraph No.2 of his deposition at Exh.11 he has stated as under:

"2. Thereafter on 11.11.2006 Talathi Ajalsonde meet me near the bridge of our village. That time I made enquiry with him about my work. He asked me to give him Rs.1,000/- then he will do my work to record the names of legal heirs and would give Utara accordingly. In case you did not pay money your work will not done immediately and I will do it as per my convenience. I told him that at present I have no money, hence I would pay you lateron. That time he told me to come in his office, alongwith money, on Monday. I told him that I can not come on Monday on account of post funeral ceremony of my father that time he told me that to come on next day so that Tuesday on 14.11.2006. However, I was not willing

to pay money to Talathi Appa. The person who has made demand of money to me so that Talathi Appa, is present before the court today as an accused. There was no enmity in between me and the accused No.1 and 2, previously, similarly I was not having any monetary transaction with them."

10. In the cross examination the complainant has stated that land gat No.214 was in joint possession and enjoyment of his father and uncle, there was no partition of said land between his father and uncle and there was no mentioned in 7/12 extract that which portion was in whose possession. He stated that it was not happened that after application to bring the legal heirs was moved, in order to call say of his uncle directly he has given his address to the concern. He stated that the native place of his father is village Pimpri Nandu. He used to go to village Pimpri Nandu on the occasion of some functions. His uncle is residing at village Pimpri Nandu. His uncle has a wife, sons and daughter. He denied that it was their contentions that after death of his father, they have no right to claim the above

said land as his heirs. He has denied that it was decided between his father, uncle and grandfather that because his uncle was mentally disorder person, therefore said land was to be acquired by his father till his life time and after his death, their share was to be given to the heirs of his uncle. He denied that with a view that the above said person may not raise severe dispute, on giving application he was insisting to record the said land immediately in their names. He admitted that it was his contention that he is residing at Pune, therefore it was not possible for him to come frequently for the said work and that he had told to Talathi to do his work at the earliest. He denied that it was the contention of accused No.1 that notice has to be served to the concerned, their objections are to be called and then on inquiry entires are made. He stated that after incident the above said field/land has been partitioned between him and his uncle. He has denied that he was insisting to the accused No.1 to take the illegal entry, however he was refusing for the same,

therefore by making false allegations he lodged the complaint against him in Anti Corruption Bureau. He denied that before making legal formalities to give Utara it was demanded by him, however accused No.1 was refusing for the same. He denied that he is deposing false.

11. The evidence of the complainant that after the complainant made application to the accused No.1 on 09.11.2006 to record the names of legal heirs of father of the complainant to the land gat No.214, on 11.11.2006 the accused No.1 met complainant near the bridge of their village and when he made enquiry with the accused No.1 about his work, the accused No.1 asked him to give him Rs.1,000/- and that then he would do his work to record the names of legal heirs has gone unchallenged during the course of his cross-examination on behalf of the accused. Therefore there is no reason to disbelieve evidence of the complainant regarding the initial/ first demand made by the accused No.1 to the complainant on 11.11.2006.

12. In the complaint (Exh.12) lodged by the complainant on 13.11.2006 also the complainant has stated that he had given application on 09.11.2006 to the Talati Sajja, Belaswadi, Tal. Muktainagar in the office and said application was handed over to accused No.2 Kotwal as the accused No.1 did not meet him in the office. Further it is stated that thereafter on 11.11.2006 the accused No.1 met him on the bridge of the river near village Pimpri Nandu and at that time he talked to him about their application to record the names of heirs. Thereupon he told him that, " तो अर्ज प्राप्त झाला आहे, तुमचे काम होवून जाईल परंतु त्यासाठी मला 1000/- रु. दयावे लागतील, तुम्ही पैसे दिले तर मी लागलीच वारस नोंदणी करून तुम्हाला उतारा देईल नाही तर माझ्या सवडीने खात्री करून नंतर करील". Moreover in the complaint the complainant has further stated about giving money to the accused No.1 on 14.11.2006 as deposed by him as referred earlier. Thus, the contents of complaint (Exh.12) lodged by the complainant have corroborated the evidence of the

complainant regarding initial demand of Rs.1,000/- made by accused No.1 on 11.11.2006 to the complainant.

13. To prove the second demand made by the accused No.1 to the complainant prior to the trap on 14.11.2006 and acceptance of bribe amount by the accused and recovery of the said amount from the accused No.2, the prosecution has mainly relied upon the evidence of the complainant (PW-1) and PW-2 (panch No.1). Moreover, the evidence of PI Ghuge (PW-4) the Investigating Officer and spot panchnama/post trap panchnama (Exh.44) are relied upon to prove recovery of bribe amount from the accused No.2.

14. The evidence of the complainant (PW-1) is that after he lodged complaint (Exh.12) in the ACB office on 13.11.2006, he was asked to come in the said office on the next day i.e. on 14.11.2006 at 6.00 a.m. by PI Ghuge. Accordingly he went to ACB office on 14.11.2006. PI Ghuge introduced him with

the staff of said office present there and with the two unknown persons i.e. the panchas present in the said office. Thereafter anthracene powder was applied to the currency notes of Rs.1000/- i.e. one currency note of Rs.500/- and five currency notes of Rs.100/- which were used as a tainted currency notes for the purpose of raid and after preparing pre-trap panchnama (Exh.43) they all proceeded towards Belaswadi by the Government vehicle at about 7.50 a.m. His evidence further shows that on the way to Belaswadi, after Muktainagar he received a call on his mobile from mobile from his brother, that accused No.1 Talathi Appa came to village Pimpri Nandu and is making enquiry about him. He told said fact to the officer of raiding party that accused No.1 is not available in the office of Belaswadi but he came to village Pimpri Nandu. He deposed that therefore instead of going to Belaswadi they turned their vehicle towards Pimpri Nandu and at Pimpri Nandu they stopped their vehicle ahead of bus stand of village Pimpri Nandu on road and they all got down from the

vehicle. He stated that he and punch No.1 Narkhede went ahead and stopped near one pantapari. That time Kotwal Rajjakshaha (accused No.2) came to him and told him that Talathi Appa is waiting for him in the house of one Chaudhari. Saying that he would call him he went away. Thereafter accused No.2 went to call Talathi Appa. He stated that he told panch No.1 that the person who went to call accused No.1 is a accused No.2.

15. As regards second demand made by the accused No.1 to the complainant on 14.11.2006 just prior to the trap and acceptance of bribe amount the complainant has deposed in paragraph Nos. 13 and 14 of his deposition as under:

"13. Thereafter Razaq Shaha and Ajalsonde wearing black pant, came out of the house of Chaudhari and that time I told to the pancha Narkhede, that person wearing black pant is Talathi Appa. Thereafter when I myself and pancha Narkhede have proceeded towards them, the members of raiding party and pancha No.2 were standing concealing themselves. Thereafter, I have saluted to Talathi Appa and asked him whether

the names of legal heirs are recorded as per application. That time Appa asked me whether I have brought an amount of Rs.1,000/- and I replied in the affirmative. That time Appa asked me to give money, hence I have taken away the amount by my right hand and gave it to Ajalsonde Appa in his right hand. Thereafter Talathi Appa gave that amount in the left hand of the Razaq Shaha, who kept it in the pocket of his Payjama. That time Talathi Appa told me that "Tuze Kam Houn Jail, D patrakat Nond Ghevun Mi Tula Utara Dein". I told him ok.

14. Thereafter I just went aside, removed the cap on my head and as decided, by itching head with left hand, gave signal to the raiding party. That time PSI Ghuge, members of raiding party and pancha No.2 who had concealed themselves all of sudden came there, and asked pancha No.1 Narkhede, who is having money. That time pancha No.1 Narkhede by pointing out stated that this is Ajalsonde, who has accepted the money and gave it to one Razaq Shaha, standing nearby him. Thereafter members of raiding party caught hold the hands of Ajalsonde and Razaq Shaha, hence they asked why their hands have been caught and that time they have introduced themselves."

16. In the cross-examination the complainant has denied that on 14.11.2006 he made demand of Utara to Talathi Appa. He stated that on 14.11.2006 there was

no talk between him and accused No.1 regarding Utara. He wants to say that, whatever demand was made to him by the accused No.1 it was in respect of the entry in the Utara. He stated that on the day of incident there was clearcut explanation about nature of money between him and accused No.1 in presence of panch No.1. He stated that he does not remember whether said fact was referred by him in his examination-in-chief. He denied that there was no talk about demand and giving money in respect of particular work in between him and accused No.1 in the presence of panch No.1. He admitted that the word bribe is not uttered by him or accused No.1. He denied that he did not see in which pocket of his pant accused No.2 had kept money. The evidence of complainant in paragraph No.13 of his deposition quoted earlier that he saluted Talathi Appa and asked him whether the names of legal heirs are recorded as per application and that, that time Appa asked him whether he has brought an amount of Rs.1,000/- and he replied in the affirmative and that Appa asked him to give money and hence he has

taken out the amount by right hand and gave it to the accused No.1 in his right hand has gone unchallenged in the course of cross-examination of the complainant. Thus, there is no reason to disbelieve above referred evidence of the complainant and on the basis of said evidence an inference can be drawn that on the day of trap i.e. on 14.11.2006 prior to the trap when the complainant met accused No.1 at Pimpri Nandu the complainant asked him about recording the names of legal heirs as per his application and the accused No.1 asked him whether he has brought an amount of Rs.1,000/- and thereupon accused No.1 accepted the said amount from the complainant. Said amount was given by the complainant by his right hand in the right hand of the accused No.1. It is true that the complainant admitted that neither he nor accused No.1 used word bribe in respect of aforesaid amount of Rs.1,000/- which was given by the complainant to the accused No.1, but when said amount of Rs.1,000/- is tallied with the agreed amount of Rs.1,000/- to be given to the accused No.1 by the

complainant as per the talk between the complainant and accused No.1 on 11.11.2006 for the work of taking entry of legal heirs of father of the complainant by the accused No.1 in respect of land gat No.214 which is clearly reflected in complaint (Exh.12) lodged by the complainant with the ACB office, Jalgaon, merely because the complainant or the accused No.1 did not utter word bribe in respect of said amount of Rs.1,000/-, it cannot be said that said amount was different than the amount which was agreed to be paid by the complainant to the accused No.1 in their meeting near the bridge of village Pimpri Nandu on 11.11.2006. Therefore, argument advanced by the learned Advocate for the accused referring to the admission of the complainant that the word bribe was not uttered by the complainant or accused No.1 in respect of Rs.1,000/- and hence there was no demand of bribe by the accused No.1 is not accepted.

17. Now coming to the evidence of PW-2 Narkhede (Panch No.1), he has deposed all about his going to

the ACB office on 13.11.2006 in the evening at 05.30 p.m. to act as a panch alongwith Sunil Khedkar (panch No.2), regarding going to the said office on 14.11.2006 at 6.00 a.m. and about instructions given to him, panch No.2 and the complainant by PI Ghuge the Investigating Officer and that thereafter they proceeded for raid in the office at Belaswadi of accused No.1 after completing pre-trap panchnama (Exh.43) as referred earlier in detail. Thereafter he has stated that on the way to Belaswadi there was ring on the mobile of complainant. The complainant received a call on the mobile from his nephew (Bhacha) that the accused No.1 had been to village Pimpri Nandu and that he is making enquiry about the complainant and thereafter PI Ghuge directed to take the vehicle towards Pimpri Nandu. He stated that accordingly they all went to Pimpri Nandu.

18. As regards the second demand made by the accused No.1 to the complainant on the date of trap i.e. on 14.11.2006 just prior to the trap and

acceptance of bribe amount in paragraph Nos.10 and 11 of his deposition PW-2 has deposed as under.

"10. Thereafter, Kotwal Rajjak Shaha came along with one person wearing blackish pant, to us. That time complainant told me that, the said person is Talathi Ajalsonde. That time, the panch No.2 and the other members of raiding party were standing nearby, counselling themselves. Thereafter, the complainant has offered Namskar to Talathi Appa. That time complainant has were made enquiry with the Talathi Appa what is about there entry of legal heirs. That time, Talathi Appa said to the complainant whether he has brought Rs.1,000/- as stated by him. The person who made a demand of Rs.1,000/- to the complainant is present today before the Court as a accused, and I know him. To which the complainant has stated yes. To which Talathi Appa has asked the complainant to pay the amount. Thereafter, the complainant has given Rs.1,000/- to Talathi Appa (accused no.1) from the pocket of his shirt, by right hand. Accused No.1 has accepted the said amount by right hand gave it to Rajjak Shaha, Kotwal (accused no.2) present alongwith him. Accused No.2 has accepted the said amount by left hand and kept in the left side pocket of his pajama. The person namely Santosh Ajalsonde, who has

accepted the amount as per the instructions of accused No.2, is today present before the Court, as a accused No.2.

11. Thereafter, accused No.1 has told to the complainant that, by taking mutation entry of legal heirs, he would prepare the extract and supply you. Thereafter, complainant just came by the side and gave a signal as a decided, by etching his head. Thereafter, the members of raiding party and panch No.2 came to us. And ask me where the amount of bribe is. That time I told them that, person standing in front of Talathi Appa Ajalsonde and person standing near him is Kotwal Rajjak Shaha. Accused No.1 has accepted the amount of Rs.1,000/- and gave it to accused No.2. Thereafter, two constables caught hold Talathi Appa and Kotwal. That time on asking by them why they are apprehended. PI Ghuge and members of raiding party have introduced themselves and identify. As the above said place was open site, therefore, it was not proper to make further proceedings, hence, all went to the G.Panchayat office and with the permission of Gramsevak and started further proceeding. That time complainant was instructed to wait outside without touching anywhere by right hand."

19. PW-2 (Panch No.1) has further stated that after they went to Grampanchayat office dark was made by closing door and windows. The cloths and hands of members of raiding party and panchas were examined, however, nothing was found. He deposed that however greenish glitterance was found upon the points of fingures of right hand of the accused No.1 as well as on point of left hand of the accused No.2. Greenish glitterance was found upon the upper portion of pocket of paijama of accused No.2. Panch No.2 Khedkar was instructed to take search of clothes of accused No.2. In the said search one handkerchief was found in right side pocket of paijama, ball pen, currency note of Rs.500/- and five currency notes of Rs.100/- each were found in the left side pocket of paijama. Said articles were examined in the ultraviolet rays. Greenish glitterance was found upon currency notes. The number of said currency notes were examined and those were tallied with the currency notes mentioned in the pre-trap panchnama (Exh.43). Said currency notes were seized. PW-2 has further stated that

thereafter the complainant was called inside the Grampanchayat office. On examination of his clothes and hands in the light of ultraviolet rays, greenish glitterance was found on the upper portion of the pocket of shirt and points of fingers of right hand. Besides it no glitterance was found anywhere. As panch No.2 had taken out currency notes from pocket of accused No.2, his hands were also examined in the ultraviolet rays and greenish glitterance was found upon the points of fingers of both hands.

20. The above evidence of the PW-2 has not been shattered in the course of his cross-examination on behalf of the accused. He has also denied that no talk at all has taken place between complainant and accused persons on the day of trap about the details of Rs.1,000/-. He admitted that in the complaint, the complainant has said that, accused has made a demand of Rs.1,000/- from him, therefore, he says that it is an amount of bribe. Thus, nothing is found in favour of the accused in the cross-examination of PW-2. From

the evidence of PW-2 in paragraph No.10 which is quoted earlier it can be said that he has corroborated the evidence of the complainant regarding second demand of bribe made by the accused No.1 to the complainant on the day of trap i.e. on 14.11.2006 and acceptance of said amount by both the accused. So also, it can be said on the basis of evidence of PW-2 that said bribe amount of Rs.1,000/- was recovered from the accused No.2.

21. PI Ghuge (PW-4) has also stated about recording complaint (Exh.12) of the complainant, preparing pre-trap panchnama (Exh.43) on 14.11.2006 and carrying raid at Pimpri Nandu and recovery of bribe amount of Rs.1,000/- from accused No.2 at the instance of panch No.2 and preparing post-trap/spot panchnama (Exh.44). Exh.44 also shows that bribe amount of Rs.1,000/- was found with the accused No.2. So also, it shows that on examination of the six currency notes of bribe amount of Rs.1,000/- in the light of ultraviolet lamp shining of anthracene

powder was noticed on said notes. Moreover, it shows that shining of anthracene powder was found to the left hand pocket of pajama of accused No.2, to both the hands and palms of the complainant. So also, shining of anthracene powder was found to the right hand fingers of the accused No.1 and to the left hand fingers and palm of accused No.2. Thus, this panchnama (Exh.44) corroborates evidence of the complainant regarding acceptance of bribe amount by both the accused and recovery of bribe amount of Rs.1,000/- from the accused No.2.

22. Now, I will deal with the submissions made by the learned Advocate for the accused. As mentioned earlier it was submitted by the learned Advocate for the accused that on the date of first demand on 11.11.2006 allegedly made by the accused No.1 to the complainant, no work was pending with the accused No.1, as on the date of application i.e. on 09.11.2006, of the complainant, to take entry of heirs of father of the complainant to the land gat

No.214, the accused No.1 had taken entry No.330 (Exh.17) in register of Namuna No.6, on 09.11.2006 and therefore there was no reason for the accused No.1 to make demand of bribe from the complainant on 11.11.2006. It appears that Exh. 17 extract of entry at Sr.No.330 in register of Namuna No.6 was produced on behalf of the accused in the course of cross-examination of the complainant and then it was exhibited. This extract shows that entry at Sr.No.330 regarding heirs of father of the complainant was taken in the said register of Namuna No.6 'K' on 09.11.2006 and after local enquiry said entry was sanctioned by the Circle Inspector on 24.11.2006. This extract Exh.17 was produced on 19.08.2008. As per case of the prosecution on the date of trap on 14.11.2006 certain documents in respect of application dated 09.11.2006 of the complainant to take entry of heirs of father of the complainant were seized from Belaswadi office of the accused No.1 and said documents were brought to Pimpri Nandu by sending the accused No.1, the panchas and staff by

the government vehicle to Belaswadi and then they were seized as per post-trap panchnama (Exh.44). Exh.44 panchnama shows that complainant's application dated 09.11.2006, 7x12 register and crop entry register for the year 1998-99, register of Namuna 8-B of village Pimpri Nandu, Pherphar entry register of Namuna No.6 of Pimpri Nandu and thus in all total 9 registers were seized and it was noticed on inspection of the said registers that there was no entry of heirs was taken in the said register in respect of the application dated 09.11.2006 of the complainant. In case the accused No.1 had taken entry at Sr.No.330 (Ex.17) in register of Namuna No.6 on 09.11.2006 of heirs of father of the complainant on 09.11.2006 i.e. on the date of application of the complainant it was possible for the accused No.1 to produce said register on the date of panchnama (Exh.44) on 14.11.2006 itself. But as said earlier Exh.17 was produced at the time of cross-examination of the complainant in 2008 and hence it cannot be said that entry at Sr.No.330 (Exh.17) was taken in

the register of Namuna No.6 by the accused No.1 on 09.11.2006 and hence no work was pending with the accused No.1 on 11.11.2006 when he made demand of bribe amount either on 11.11.2006 or on 14.11.2006. Therefore argument advanced on behalf of the accused in this respect is not accepted.

23. It appears that entry No.330 (Exh.17) was sanctioned on 24.11.2006. So also, it appears that mutation entry No.1753 (Exh.18) in respect of heirs of father of the complainant was taken on 15.12.2006. In such circumstances when entry Exh.17 and 18 were sanctioned respectively on 24.11.2006, 15.12.2006 subsequent to the trap on 14.11.2006 the possibility of taking entry (Ext.17) at Sr.No.330 in register of Namuna No.6 by the accused No.1 subsequently and showing date of taking that entry as 09.11.2006 as he was in custody of record after trap as argued by the learned APP cannot be ruled out.

24. As referred earlier the learned Advocate for

the accused submitted that in the charge framed against the accused it is stated that alleged demand of bribe was made to issue heirship certificate to the complainant and as the accused had no power to issue such certificate it cannot be said that the accused No.1 demanded bribe to the complainant and hence prosecution case is doubtful. It is true that in the charge Exh.6 it is stated that alleged bribe was demanded to issue heirs certificate by the accused No.1, but when in the final and subsequently altered charge at Exh.70 it is specifically stated that alleged bribe was demanded for recording names of legal heirs of father of the complainant, on which charge the case proceeded, it cannot be said that the prosecution case is doubtful as argued by the learned Advocate for the accused.

25. Referring the evidence of the complainant that while proceeding towards Belaswadi on the day of trap the brother of the complainant phoned on cell phone of the complainant that the accused No.1 is at

Pimpri Nandu and he was not at Belaswadi and the evidence of PW-2 (Panch No.1) that on that day on the way to Belaswadi the nephew of the complainant phoned on the cell phone of the complainant that the accused No.1 is at Pimpri Nandu and therefore the raiding party went to Pimpri Nandu instead of going to Belaswadi, the learned Advocate for the accused submitted that as there is inconsistency in the evidence of the complainant and PW-2 as to who phoned the complainant, the evidence of both these witnesses cannot be believed to hold that raid was carried at Pimpri Nandu as alleged by the prosecution. According to learned Advocate for the accused in the above circumstances it can be said that no raid was at all carried by the PW-4 on 14.11.2006 as alleged. True that there is inconsistency in the evidence of the complainant and PW-2 as to who phoned the complainant while the raiding party was proceeding towards Belaswadi, but said inconsistency is not sufficient to hold that no raid was at all carried as per the prosecution case, because there is no suggestion

either to the complainant, to the PW-2 or PW-4 PI Ghuge that no raid at all was carried on 14.11.2006. Moreover nothing is brought in the cross-examination of these witnesses that false record in the form of investigation papers was prepared by PI Ghuge (PW-4).

26. Learned Advocate for the accused submitted that as the investigating officer has not seized the shirt of the complainant in the left pocket of which tainted currency notes were kept as per pre trap panchnama (Exh.43) and which currency notes were given by the complainant to accused No.1 prior to the trap the prosecution has failed to prove demand of bribe by the accused No.1 and acceptance thereof by both the accused. Admittedly, the investigating officer PI Ghuge has not seized the shirt of the complainant. As discussed earlier, the numbers of the tainted currency notes in the pre-trap panchnama (Exh.43) tallied with the tainted currency notes accepted by accused Nos.1 and 2 and recovered from accused No.2 and seized as per spot panchnama

(Exh.44). Moreover, as observed earlier both complainant and PW-2 have stated about acceptance of tainted currency notes by accused Nos.1 and 2. In all these circumstances non seizure of shirt of the complainant is insignificant and the same is not sufficient to discard the evidence of the complainant, PW-2 and PI Ghuge and to say that the prosecution has not proved demand of bribe by accused No.1 and acceptance of bribe amount by both the accused. Therefore, argument as above advanced by the learned Advocate for the accused is not accepted.

27. For all the reasons discussed above, on the basis of evidence of the complainant and complaint (Exh.12) lodged by him, I hold that the prosecution has proved first/initial demand made by the accused No.1 to the complainant on 11.11.2006. Similarly on the basis of evidence of the complainant, PW-2 (Panch No.1) I hold that the prosecution has proved the second demand of bribe amount of Rs.1,000/- made by the accused No.1 to the complainant on 14.11.2006

prior to the trap on that day. So also on the basis of evidence of the complainant, PW-2, PI Ghuge (PW-4) and post trap/spot panchnama (Exh.44) I hold that the prosecution has proved acceptance of bribe amount of Rs.1,000/- both by accused Nos.1 and 2 and recovery of said amount from the accused No.2. Therefore the decisions in the case of **Haridas s/o Bhagwan Jamunah (Supra)**, **A.Subair (Supra)**, **Manohar s/o Ravan Kamble (Supra)**, **Chandrakant Kisan Pujari (Supra)**, **Ramrao s/o Satyanarayan Ramod (Supra)**, **Mahadeo s/o Narayan Kathane (Supra)** and **M.R.Purushotham (Supra)** relied upon by the learned Advocate for the accused to support his submissions that the prosecution has not proved demand of bribe amount by the accused No.1 from the complainant and mere acceptance of amount is not sufficient are not applicable to the present case as the facts of these decisions are different from the facts of the present case.

28. When the prosecution has proved demand and acceptance of bribe amount as above by the accused

No.1 the presumption under Section 20 of the Act is attracted against the accused No.1. Section 20 of the Act (prior to amendment) reads as under:

"20. Presumption where public servant accepts gratification other than legal remuneration-(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section(1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be

inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."

In the present case as observed earlier the prosecution has proved that the accused No.1 against whom charge under Section 7 of the Act is framed has accepted an amount of Rs.1,000/- from the complainant, therefore it is presumed, unless the contrary is proved that he accepted said amount as a motive or reward under Section 7 for performing a public duty of taking entry of heirs of father of the complainant as per application of the complainant, which act is punishable under Section 7 of the Act. Therefore the accused No.1 has to rebut the above said presumption in favour of the prosecution by offering explanation as to how amount received by him is not bribe amount.

29. To see whether the accused No.1 has rebutted presumption as above it is necessary to consider the pleas in defence of the accused No.1. It is the defence of the accused No.1 as referred earlier in detail in paragraph no.2(K) *supra* that government dues around Rs.3,000/- to 5,000/- were outstanding against the complainant towards cess, Nala banding, measurement etc. and unless said amount was paid by the complainant entry in mutation register could not be taken. He told the same to the complainant. The complainant wanted to obtain 7x12 extract of land. By suppressing certain facts as he (Accused No.1) told him that his work would be done as per the rules, the complainant was annoyed and lodged complaint against him to take revenge. The accused have produced Exh. 19 and 20 copies of register. Exh.19 shows that an amount of Rs.43.65 towards land revenue for the year 2006-2007 was due from the complainant's uncle. So also, Exh.20 shows that an amount of Rs.194 towards the arrears of Education cess and employment guarantee scheme were shown in the register against

the name of uncle of the complainant. Thus from these two documents it can be said that total amount of Rs.237.65 was due to the complainant's uncle in the year 2006-2007. The complainant has denied that at the time of incident an amount of Rs.2000/- towards government dues was outstanding against him. In the above circumstances it can not be said that at the time of incident government dues of Rs.3000/- to 5000/- were due to the complainant as per the defence of the accused No.1. Therefore the explanation offered by the accused No.1 in respect of an amount of Rs.1,000/- as a government dues which was demanded and accepted by the accused No.1, is not proper explanation.

30. Moreover it was argued by the learned Advocate for the accused that the complainant had deliberately given an amount at Pimpri Nandu because the office of accused No.1 was not there and accused No.1 was unable to issue receipt of the amount to him and therefore it cannot be said that amount given by

the complainant to accused No.1 was a bribe amount. The accused have produced Exhibits 21 to 38 receipts of land revenue paid by the different land owners. These receipts are dated 14.11.2006. These receipts are in respect of the lands from village Pimpri Nandu i.e. the village of the complainant. When it was possible for the accused No.1 to issue aforesaid receipts on 14.11.2006 to the different land owners from the village of the complainant, it was also possible for the accused No.1 to issue receipt to the complainant on the same day i.e. on 14.11.2006 when the trap was laid, if really accused No.1 had received an amount of Rs.1,000/- from the complainant towards government dues against his land gat No.214. But admittedly the accused No.1 did not issue receipt either on the date of trap i.e. on 14.11.2006 or subsequently. Therefore there is no substance in the argument advanced on behalf of the accused that the amount allegedly received by the accused No.1 on 14.11.2006 was towards the government dues, but as the office of the accused No.1 was at Belaswadi and

an amount was given at Pimpri Nandu the accused No.1 could not issue receipt on that day to the complainant, is not acceptable. Therefore above referred explanation offered by the accused No.1 in respect of acceptance of amount of Rs.1,000/- from the complainant is not probable explanation. Thus I hold that the accused No.1 has not rebutted the presumption under Section 20 of the Act against him. Therefore the decisions in the case of **Raju s/o Somla Pawar (Supra)**, **V.Venkata Subbarao (Supra)** and **V.Sejappa (Supra)**, relied upon by the learned Advocate for the accused to support his submissions that presumption under Section 20 of the Act cannot be raised against the accused are not applicable to the present case as the facts of these decisions are different from the facts of the present case.

31. It is not the case of the prosecution that the accused No.2 demanded bribe amount to the complainant. As observed earlier the bribe amount was accepted by the accused No.2 from accused No.1 and

said amount was recovered from the accused No.2 as stated in the post trap panchnama (Exh.44). No explanation is given by the accused No.2 as to how bribe amount was found in his possession. The work of taking entry of heirs of complainant's father was not pending with the accused No.2 and he had no power to take such entry. But when it is proved that he was present at Pimpri Nandu on the date of trap on 14.11.2006 and he accepted the bribe amount from the accused No.1 and kept the same in the pocket of his pajama it can be said that he abated the accused No.1 in committing offence under Section 7 of the Act. Thus defence of accused No.2 that he did not know for what the amount was given to him by the accused No.1 and that he did not accept the said amount is not acceptable. For the reasons discussed above defence of the accused is not probable and acceptable. In this view of the matter, decision in the case of **Lalaso Balu Shaikh (Supra)** relied upon by accused to state that their defence is probable is not acceptable.

32. The learned Advocate for the accused referring the evidence of PI Ghuge (PW-4) the investigating officer in paragraph No.8 of his deposition that PI Ghuge obtained the statements of both the accused in their own handwriting, but did not include said statements in the case papers, submitted that the investigation is not fair and therefore charge-sheet submitted and case registered against the accused on the basis of such investigation cannot be accepted. It is seen from the evidence of PI Ghuge that after the trap complainant narrated incident to him and panch No.2 which is consistent with the incident as narrated by panch No.1. Thereafter he obtained statements of both the accused in their own handwriting and after taking notes of all these events he completed panchnama (Exh.44). The statements as above of both the accused are not included in the case papers. In fact, the investigating officer should have included said statements in the case papers if they were recorded

by the investigating officer. There is nothing on record to show as to what was stated by both the accused in their aforesaid statements. In their statements under Section 313 of the Code of Criminal Procedure also the accused have not stated that they had made aforesaid statements in their own handwriting. If really both the accused would have given statements in their own handwriting they would have definitely stated in respect of said statements at the time of statement under Section 313 of the Code of Criminal Procedure. But when they have not stated specifically in that respect and there is no material to show as to what kind of statements were made by the accused merely because the investigating officer has stated that he obtained statements of both the accused in their own handwriting and non production of said statements by the investigating officer is not sufficient to state that case of the prosecution is falls when as observed earlier the prosecution has proved demand of bribe by the accused No.1 from the complainant, acceptance of bribe amount

by both the accused and recovery of said amount from the accused No.2 and the defence of the accused is not probable. In the above circumstances, at the most it can be said that there was some fault in the investigation, but it is not sufficient to discard the prosecution case.

33. When the evidence of the prosecution particularly the evidence of the complainant, PW-2 (Panch No.1), the investigating officer and post trap panchnama (Exh.44) is sufficient to prove demand of bribe by accused No.1 and acceptance by both the accused as discussed earlier, it cannot be said that non examination of one Chaudhari from Pimpri Nandu at whose house the accused No.1 was sitting on 14.11.2006 on the day of trap, and panch No.2 is fatal to the prosecution as argued by the learned Advocate for the accused.

34. Now coming to the aspect whether sanction order (Exh.52) to prosecute both the accused issued

by PW-3 is valid or otherwise, there is no dispute that at the material time of the incident the accused No.1 was Talathi of Belaswadi Sajja under which village Pimpri Nandu of the complainant where the gat No.214 of the complainant is situated comes and the accused No.2 was Kotwal of village Pimpri Nandu. There is no dispute that PW-3 Sub Divisional Officer was appointing and removing authority of accused No.1 Talathi. Therefore Exh.52 sanction order issued by PW-3 can not be said to be invalid on the ground that PW-3 had no authority to issue said sanction order.

35. The learned Advocate for the accused inviting my attention to the evidence of PW-3 that letter dated 30.06.2007 was sent to him by ACB office and in the said letter it was mentioned that draft of sanction order was sent as per the directions of the High Court in Writ Petition No. 538 of 2003 and that he has not produced the envelope of the draft of sanction order before the Court, submitted that PW-3 has deliberately suppressed the draft sanction order

and thus without application of mind issued sanction order (Exh.52). On perusal of evidence of PW-3 it is seen that case papers of crime No.3078 of 2006 of police Station, Muktainagar were sent to him on 30.06.2007 and he perused all the case papers and applied his mind and that on perusal of case papers he found that accused No.1 Talathi has made demand of bribe to the complainant and accepted it and gave it to accused No.2 Kotwal. He has denied suggestion on behalf of the accused that he had issued sanction order as per draft and did not apply his own mind. Thus nothing is found in favour of the accused in the cross examination of PW-3. So also, on perusal of Exh.52 sanction order it is seen that PW-3 had perused the investigation papers in the aforementioned crime against the accused and on his satisfaction he accorded sanction to file charge-sheet against the accused. Thus, on the basis of above evidence it can be said that on perusal of the relevant papers of the investigation in the crime against the accused and on application of mind PW-3

had issued sanction to prosecute accused as per sanction order Exh.52. Therefore it cannot be said that sanction order is invalid for want of application of mind as argued by the learned Advocate for the accused.

36. Sub Section 1 of Section 19 of the Act which is in respect of a previous sanction necessary for prosecution, which is relevant in this case, is as under:

"(1) No Court shall take cognizance of an offence punishable under sections 7,10,11,13 and 15 alleged to have been committed by a public servant, except with the previous sanction-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

It is clear from the above provision that previous sanction is necessary for prosecution in respect of offence punishable under Sections 7,10,11,13 and 15 of the Act. The offence alleged against the accused No.2 is under Section 12 of the Act. Charge was also framed against the accused No.2 for offence under Section 12 and after trial he has been convicted for said offence. Considering offence under Section 12 of the Act against the accused No.2 I hold that previous sanction to prosecute accused No.2 was not necessary in the light of provision under Section 19(1) of the Act. It was argued by the learned Advocate for the accused that appointing and removing authority of the accused No.2 Kotwal was Tahasildar, Muktainagar and PW-3 Sub Divisional Officer, Bhusawal Division was not the appointing and removing authority of accused No.2 and therefore having no authority PW-3 had issued sanction order (Exh.52) to prosecute the accused No.2 and therefore said order is invalid in the eyes of law and

therefore benefit of the same must be given to the accused No.2. As observed above when it was not necessary to obtain previous sanction to prosecute accused No.2 as per Section 19(1) of the Act for offence under Section 12 of the Act even if PW-3 had issued sanction order Exh.52 even to prosecute accused No.2 it would not affect on the case of the prosecution. Therefore the argument advanced by the learned Advocate for the accused is not accepted. In this view of the matter the decisions in the case of *Chandrakant Kisan Pujari (Supra)*, *Ramrao s/o Satyanarayan Ramod (Supra)*, *Pralhad s/o Sadashiv Badole (Supra)* and *V.Venkata Subbarao (Supra)* relied upon by the learned Advocate for the accused, referred earlier in detail, on the point of granting sanction by the authority without application of mind and that sanction accorded to prosecute accused was vitiated in law, are not applicable to the present case to extend any benefit to the accused since facts of the present case are different from the facts of the said decisions.

37. For the foregoing reasons, I hold that the prosecution has proved that the accused No.1 had demanded an amount of Rs.1,000/- to the complainant for recording names of legal heirs of father of the complainant in the record of land gat No.214 and he accepted said amount as gratification other than legal remuneration as a motive or reward for doing the official act for showing favour in the exercise of his duty as a public servant and so also it is proved that the accused No.1 obtained Rs.1,000/- as gratification other than legal remuneration from the complainant by abusing position of a public servant which act amounts to criminal misconduct. Moreover the prosecution has proved that the accused No.2 knowing that the complainant had made application on 09.11.2006 to record the names of legal heirs of his father took initiative to call accused No.1 from the house of Chaudhari at Pimpri Nandu. So also, he had accepted bribe amount when accused No.1 handed over said amount to him, without asking accused No.1 why

he was giving said amount to him. This conduct of accused No.2 shows that he knowingly assisted accused No.1 in accepting bribe amount of Rs.1,000/- and thus abated him to commit offence under Section 7 of the Act. Thus I hold that the prosecution has proved beyond reasonable doubt the offence under Section 7,13(1)(d) read with Section 13(2) of the Act against accused No.1 and under Section 12 of the Act against the accused No.2. The trial Court has properly appreciated and considered the evidence adduced by the prosecution and rightly held that the prosecution has proved aforesaid offences against the accused beyond reasonable doubt. The trial Court has rightly convicted and sentenced accused No.1 for under Section 7 and 13(1)(d) read with Section 13(2) of the Act and accused No.2 for offence under Section 12 of the Act. The trial Court has awarded minimum sentence provided for the offences proved against the accused as referred in the opening paragraph of this judgment. Therefore there is no ground to interfere with the impugned judgment and order convicting and

sentencing the accused/appellants. Therefore, as there is no merit in the appeal the same deserves to be dismissed. In the result following order is passed.

ORDER

(i) The appeal is dismissed.

(ii) The appellants/accused Nos.1 and 2 to surrender to their bail bonds. They shall surrender before the trial Court/the Special Judge, Jalgaon dealing with the cases under the Prevention of Corruption Act forthwith to undergo the remaining sentence recorded against them as per the impugned judgment and order

(iii) The Record and Proceedings in Special Case No. 6 of 2007 be sent to the trial Court immediately for necessary compliance as above.

[S.M.GAVHANE, J.]

. After the judgment is pronounced the learned Advocate for appellants/accused Nos.1 and 2 requested to grant two months time to the appellants/accused Nos.1 and 2 to surrender, to which the learned APP

has opposed.

2. Considering the fact that this Court has dismissed the appeal against the conviction, confirmed the conviction and sentence recorded against the appellants, merely because appellants were on bail, no time can be granted to the appellants to surrender as requested. The request made by the Advocate for appellants/accused Nos. 1 and 2 in this respect is rejected.

[S . M . GAVHANE , J .]