

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

CRIMINAL APPEAL NO. 515 OF 2014

MAHESH RAMESH JADHAV,
Age : 26 years, Occupation: Service,
R/o : Wadi Chowk, Amalner,
Tq.: Amalner, District : Jalgaon

... APPELLANT
(Original Accused)

V E R S U S

The State of Maharashtra

... RESPONDENT

...
Mr. Joydeep Chatterjee, Advocate for appellant
Smt. V.S. Choudhary, APP for respondent No. 1
...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 7th MARCH, 2019

PRONOUNCED ON : 12th JULY, 2019

JUDGMENT :-

The instant appeal calls in question the impugned judgment and order rendered by the Special Judge, Amalner, District Jalgaon, in Special (ACB) Case No. 3 of 2012 dated 30-07-2014, thereby convicting the appellant/accused for the offence punishable under Sections 7, 13(1) (d) of the Prevention of Corruption Act, 1988 (for short "Act of 1988"). The accused was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 10,000/- in default of fine to suffer simple imprisonment of one month as well as to suffer rigorous imprisonment for three years and to pay fine of Rs. 5,000/- in default of fine to suffer simple imprisonment of one month on both counts respectively. Being dis-satisfied with the impugned judgment

and order of conviction and resultant sentence, the accused-appellant taking recourse of remedy under section 374 of the Code of Criminal Procedure (for short "Cr.P.C.) preferred the present appeal to redress his grievances.

2. The factual matrix sans unnecessary details in brief is that the complainant Shri Nivrutti s/o Pralhad Khairnar resident of Deogaon, Taluka Chopda, District Jalgaon, on 03-01-2012, approached to the ACB sleuth, Jalgaon and ventilated the grievances that the proposals to get Nomadic tribes Caste Certificate of his younger brother Sandeep Khairnar, cousin brother and sister, namely, Swpanil Khairnar and Ku. Swati Khairnar were submitted on 23-09-2011 in '*Seth Suvida Kendra, Tahsil Office, Chopda, District Jalgaon.*' After due compliance of procedural formalities, the proposals were forwarded to concern Sub-Divisional Magistrate's office Amalner for further process. The complainant Shri Nivrutti Khairnar prior to 10/12 days of the complaint visited to the office of S.D.M. Amalner for enquiry about the proposal of caste certificate of his brothers and sister. He came to know that the proposals are pending on the table of appellant-accused Mahesh Jadhav. Therefore, he met with the accused/appellant and made enquiry. The accused disclosed to the complainant that, he will prepare and issue caste certificate of his brothers and sister, but he has to pay Rs.15,000/- for his proposal of three caste certificate. After negotiation, the accused/appellant agreed to accept Rs.10,000/- as bribe for issuance of three caste certificates of brothers and sister of complainant. It has been alleged that on 02-01-2017 in the morning hours, the appellant/ accused contacted with the complainant on his

cell phone and asked him to bring Rs. 10,000/- as decided and take the caste certificate of his brother and sister. The complainant was not ready and willing to pay bribe to the appellant-accused. Therefore, he consulted with the ACB personnel, Jalgaon and filed the complaint. The Investigating Officer, P.I. Shri Garud procured presence of two panchas. They were appraised about the demand of bribe by the accused. The panchnama of verification of demand of bribe was drawn after visiting to the accused by complainant in presence of shadow panch. The recorded conversation of demand of bribe was transcribed in the panchnama. The IO proceeded to lay trap after arrival of accused in the office as he was not available in the office for 2/3 days. It has been contended that on 09-01-2012, the complainant once again visited to the office of ACB Jalgaon and informed that he has received the phone call of accused and he called him in the office. Accordingly, IO completed the formalities of pre-trap panchnama. Thereafter the trap was laid and appellant/accused was caught raid handed while accepting the bribe amount from the complainant. The detail post trap panchnama was drawn. IO recorded statement of appellant/accused. Thereafter, he filed the report to the concern Police Station for penal action against the accused.

3. Pursuant to FIR, Police of Amalner Police Station, District Jalgaon registered the crime No. 3003 of 2012 for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Act of 1988 and set the penal law in motion. IO recorded statements of witnesses acquainted with the facts of the case. He has collected relevant documents as well as sanction order for prosecution of the accused

from concerned Collector, Jalgaon. After compliance of procedural formalities, IO filed the charge sheet against appellant-accused vide Special Case (ACB) No. 3 of 2012. The learned Special Judge, framed the charge (Exhibit-12) against appellant-accused. He pleaded not guilty and claimed for trial. In order to bring home guilt of the accused, prosecution examined in all four witnesses in this case comprising PW 1- Shri Nivrutti Khairnar, complainant, PW2- Shekhar Babu Tadavi, Shadow Pancha, PW 3-Dnyaneshwar Sadashivrao Rajurkar, sanctioning authority for prosecution and PW 4- Shri Garud, Investigating Officer. The learned Special Judge also recorded statement of accused under Section 313 of Cr.P.C. to afford him an opportunity to explain incriminating circumstances brought on record. The appellant-accused denied the incriminating circumstances and claimed his innocence. According to accused, the complainant taking umbrage of reluctantness of accused to deliver the documents of cast certificate to complainant in person instead of presence of original applicant and that too without compliance of deficiencies raised in the proposal, embroiled him in this false case by forcibly thrusting the tainted currency notes in his backside pant pocket. The learned Special Judge appreciated the oral and circumstantial evidence adduced on record after hearing both sides and held the accused guilty for the offence punishable under sections 7, 13(1)(d) of the Act of 1988. Accordingly, the learned Special Judge, Amalner, rendered the impugned judgment and order of conviction and resultant sentence which is the subject-matter of present appeal.

4. The learned counsel Shri Chatterji appearing for appellant /accused vehemently submits that the impugned Judgment and order

of conviction and resultant sentence is erroneous, illegal and contrary to provisions of Law. The learned trial Court did not appreciate the evidence adduced on record in its proper perspective and committed error in convicting the accused in this case. There are material discrepancies in the evidence of prosecution witnesses. The learned counsel contended that the evidence of prosecution witnesses is not sufficient to prove the factum of demand of bribe by the appellant-accused. The conversation recorded in the devise for verification of demand does not disclose the demand of bribe by the accused. There were deficiencies in the caste proposal of complainant and accused asked him to bring the required documents for compliance. But, the conversation was considered as demand of bribe. He drawn the attention that there was no whisper about money transaction in the conversation recorded during course of verification of demand. The learned counsel Shri Chatterji harped on the suspicion conduct and demeanour of complainant since beginning in this case. He submits that there are material contradictions in the evidence of complainant and panch witnesses PW 2-Shri Tadavi, in regard to the vital circumstances of demand and acceptance of bribe by the appellant/accused. He explained the circumstances occurred in the office of SDM at Amalner since visit of complainant and panch witnesses to the accused for caste certificate of brothers and sister of complainant. According to learned counsel, the dialogue in between PW-1 complainant and accused as well as the gesture of appellant-accused at the relevant time, if considered minutely would goes to show that appellant-accused was dealing with the complainant in

routine and causal manner without any malafide intention to extract money from the complainant. The learned counsel pointed out the events occurred during relevant period in the Office of SDM and described in detail the infirmities in the evidence of complainant and shadow panch adduced on record. The learned counsel fervidly contends that there was no demand or acceptance of bribe amount by the accused, but the complainant forcibly thrust the tainted notes in the pant pocket of accused. The defence propounded on behalf of accused since beginning was not considered by the learned trial Court properly. He also criticized the findings expressed by the learned trial Court for conviction of the accused in this case. He raised objection for appreciation of document of call detail record (CDR) by the learned trial Court without its proof and certificate under Section 65-B of the Evidence Act. According to learned counsel, evidence of the prosecution witnesses is suspicious, incredulous and not inspire confidence. The prosecution failed to prove the charges against accused beyond all reasonable doubt. In support of argument, the learned counsel for appellant relied upon the citations in the cases of ***State Inspector of Police Vishakhapatnam Versus Surya Sankaram Karri*** reported in ***2007 All MR (Cri) 555 (SC)***, ***Dr. Smt. Usha W/o Dhondiram Sarwade Versus State of Maharashtra***, reported in ***2011 All MR(Cri) 851***, ***State of Maharashtra Versus Shivram s/o Bhikaji Pawar and another*** reported in ***2011 All MR(Cri) 1173***, ***the State of Maharashtra Versus Ashok Tukaram Gavai and another reported*** reported in ***2012 All MR (Cri) 2894*** and ***G.V. Nanjundiah Versus State (Delhi Administration)***

5. The learned APP raised the objection to the contentions propounded on behalf of appellant / accused and supported the findings of conviction of appellant / accused expressed by the learned trial Court for the charges of bribery in this case. The learned APP produced the copy of order dated 19-04-1989 issued by Government of Maharashtra authorizing the Inspector of Police in ACB to investigate the crime under the Act. The learned prosecutor in support of contentions about power of Investigating Officer under Section 17 of the Act of 1988 relied upon the citation of ***Karnataka High Court in Criminal Petition No. 2525 of 2010 [N. Ashok kumar Vs. CBI (ACB)]***.

6. The intense scrutiny of entire oral and circumstantial evidence adduced on record as well as factual score of the matter, reflects that the argument advanced on behalf of appellant / accused appears much more considerable and sustainable one, except the objection raised about the authority of Investigating Officer (PW4) for investigation of the crime being not a Police Officer of the rank specified under Section 17 of the Act of 1988. The learned APP produced the copy of order dated 19-04-1989 issued by the Government of Maharashtra for authorizing all the Inspector of Police in the ACB to investigate any offence punishable under the Act of 1988. Therefore, the objection raised on behalf of appellant-accused loses its significance. Now, in regard to another spectrum of the matter pertains to demand and acceptance of bribe, there are some legal issues for appreciation in this case.

7. Admittedly, the proposals, three in numbers, to get caste certificates of Nomadic Tribes of brothers and cousin sister of complainant were pending for process in the Office of SDM, Amalner. The appellant / accused was the Junior Clerk in the Office and he was asked to deal with the procedural aspect of the proposal of caste certificate of complainant. It was not denied that the SDM was the sole authority to issue caste certificate into the matter. There was one Senior Clerk Shri. Dhamke looking after the work of issuance of caste certificate in the Office of SDM Amalner. It has been alleged that the appellant / accused demanded bribe of Rs.10,000/- for issuance of such certificates. Undisputedly, the demand of illegal gratification is a *sine-qua-non* for offence under Sections 7 and 13(1)(d) of Act of 1988.

8. PW-1 Nivrutti Khairnar testified that accused demanded the illegal gratification of Rs. 15000/- for his three caste proposals. But, after negotiation, accused agreed to accept Rs.10,000/-. The complainant was not ready and willing to pay bribe therefore, he rushed to the Office of ACB Jalgaon and lodged the report. There was endeavour to verify the demand of illegal gratification by the ACB Slueth. The complainant accompanied with shadow Panch Shri. Tadavi were asked to see accused in the Office and record the conversation of demand of bribe in the device of voice recorder. According to complainant PW1-Nivrutti, on 03-01-2012 he accompanied with Panch Tadavi met the accused in the Office and asked whether his work was completed. The accused disclosed that he completed the work but there are some deficiencies in the documents. Thereafter, accused by gesture

asked him whether he brought it and in reply the complainant PW 1-Nivrutti told him that he has not brought it as there was short. The P.W. 1 Nivrutti stated that the entire conversation occurred was recorded in the device of voice recorder.

9. The PW 2-Shri Tadavi, Shadow panch described the episode more in detail in para No. 4 of his evidence as below :

"Complainant asked that person whether he did his work. That person replied in affirmative. He got up from the chair and brought some papers from cupboard and showed those papers to complainant. There were three caste certificates. Those papers were in file. After showing those papers that person kept that file again in cupboard. Complainant told that person that he wait there to verify whether his work is done by him. That person said "आणले आहे का ? काही देता काय ?" That person also asked about amount by making gestures by moving index finger and thumb of right hand. Complainant replied that "मी आज आणलेले नाही", to that Mahesh Jadhav replied "मी साहेबाबरोबर बाहेरगावी जात आहे, दोन तीन दिवसांनी फोन करतो". Thereafter, complainant replied that "मी दोन तीन दिवसांनी येतो". Thereafter, accused went away from the office in a vehicle. After coming out of the office of SDM, Amalner, we put the voice recorder off and then went near Government vehicle of the trap team"

10. It is to be noted that in the document of demand of bribe verification panchanama (Exhibit-34), there was reference of transcription of conversation occurred in between complainant PW-1 Nivrutti and the accused which came to be recorded in voice recorder device.

11. The factual situation referred above pertains to dialogue between PW1- complainant and the accused on the issue of demand of bribe, if considered carefully reveals that there was no direct demand of bribe amount on the part of accused. But, the inference is required to be drawn from the circumstances prevailed over at the relevant time in the office. According to prosecution, the accused demanded bribe by making gesture of rubbing right hand thumb and index finger against each other pointing towards "money". This sort of contentions on the part of prosecution appears to be unacceptable and not satisfactory one. In the aforesaid conversation, there was no reference about quantum of bribe amount. The transcription made in panchnama (Exhibit-34) shows that accused uttered the words "आणले का ? देताय का ?" (Whether he brought it and he would give it?) This kind of conversation is essential to be taken into consideration in the light of cross-examination of PW1- Nivrutti as well as shadow panch PW-2 Shri Tadavi.

12. In the cross examination it has brought on record that the PW1 – Nivrutti – complainant since 5/6 years was the press reporter of Daily news paper "Daily Deshdoot". He was aware about some documentary compliance (deficiency) in the caste proposal filed by him. The accused had informed him that he has to submit copies of validity certificates of relatives for eligibility of caste certificate. The complainant further admitted in cross examination that accused told him to prepare three copies of the documents. The PW-complainant admitted that on 3/1/2012, he had not carried any documents with him for compliance in the office of SDM, Amalner. The shadow panch PW2

- Shri Tadavi in his cross examination conceded in para No. 23 of his deposition as below :

"23. It happen that on 3/1/2012 during the conversation accused had told to the complainant "जेवढे झाले आहे तेवढे करून ठेवले आहे". I had noticed that there were some deficiencies or objections which were to be complied by the complainant and those were not complied by the complainant till that time. I had also notice that accused had asked complainant to comply the short comings. I had also notice that complainant had told to the accused that he would come later for making compliance of short comings. I had also noticed that accused had asked the complainant whether he had brought documents. It is true that at that time complainant had replied to the accused that he had not brought those documents with him. Neither myself nor the complainant had taken the certificates from accused when he took out those from the cupboard. We did not verify the contents of those documents. It is correct that therefore we did not verify whether those certificates were signed by the appropriate authority. It did not happened in my presence that accused gave his mobile number to the complainant or vice-versa."

13. The aforesaid circumstances demonstrate that on 3/1/2012, when the complainant and shadow panch visited to the accused at the behest of ACB personnel, for verification of demand of bribe panchanama that time the caste proposal of complainant was under process. There were deficiencies in the proposal and complainant had to comply the same. Moreover, the complainant did not carry any

documents with him for compliance of deficiencies. In such circumstances, when the work assigned to the accused was incomplete, how it is expected that accused would make demand of money on that day by uttering words "आणले का?", "देणार का?", etc. The attending circumstances reflects that the words uttered by the accused referred above might be in regard to documents which the complainant had to bring for compliance. It was not the case that the complainant was not aware about the deficiencies of lack of validity certificates of relatives, in his proposal. In cross-examination PW-1 Nivrutti deposed that *"It is correct that in case of issuing certificates of Swapanali, Swati and Sandip accused had pointed some deficiencies to be complied. It is correct that accused had informed me that Shri Chikhale, the then S.D.O. had passed remark on the file not to supply copies till compliance of the deficiencies."* In view of aforesaid statement of PW-1 Nivrutti the possibility cannot be ruled out that accused might have stated about the documents for compliance on that day by saying that "whether he brought it and he would have to give it." This is also an possible view, which could be perceived from the conversation occurred on 03-01-2012 in between complainant and accused in the office. There was no direct demand of bribe nor the accused made any reference of quantum of bribe in the alleged conversation. The PW-2 Shri Tadavi Panch in cross-examination admitted that on 03-01-2012, there was no reference to the figure of amount during entire conversation. In such peculiar circumstances, when two inferences are possible from the set of evidence, the inference favouring the accused has to be accepted and in such case, it is hazardous to keep reliance

on the evidence of complainant on the question of demand of bribe allegedly made by the accused. In the result, the factum of demand of bribe by the accused appears to be suspicious dubious and incredulous one.

14. The conduct and demeanour of the accused at the time of trap also found relevant and significant for appreciation in this case. According to PW-1 complainant on 08-01-2012 at about 2.45 p.m. he accompanied with shadow panch Shri Tadavi went to see the accused in the office of SDM. The accused was present in the office. He told the complainant that they would go out side the office. Accordingly, the trio came out of the office. The accused went towards Urinal located in the premises of Panchayat Samittee, at a distance of 3000 to 4000 feet from the premises of office of SDM. While returning from Urinal, he made demand of bribe. The PW-1 complainant delivered the tainted currency notes to him. The accused accepted and kept it in his left side pocket. Thereafter, he was caught raid handed by ACB Sleuth.

15. However, the shadow panch, PW2 – Shri Tadavi some what in elaborate manner unfurled the episode of demand and acceptance of bribe by the accused at the relevant time of trap. The PW1 – complainant did not disclose anything about the dialogue between himself and the accused in regard to negotiation pertains to quantum of amount and the accused rebuked him on that count and asked him to wait for Shri. Dhamke, Senior Clerk in the office. The PW-2 Shri Tadavi in his evidence in paragraph No. 11 divulged as under :

"Thereafter, I along with complainant went in the office of S.D.M. and stood besides the table of Mahesh Jadhav. Panch No.2 and other members of the trap team were standing in the premises of S.D.M. Office, Amalner. Complainant asked Mahesh Jadhav to hand over the caste certificates of his brother, cousin brother and cousin sister to him. Mahesh Jadhav told complainant that he was not in office for 2 to 3 days and he requested him to wait for 10 minutes. Complainant said to accused that amount of Rs.10,000/- was excessive and he should reduce it. Thereafter accused Mahesh Jadhav said "इतके सांगितल्यावर पण तु दहा हजार रुपये देत नाही. ठिक आहे. धमके येईत त्यावेळेस घेऊन ये. दहा मिनिटे बसा". Complainant asked the accused how much time it will take. Accused replied that it will take 10 to 15 minutes. Thereafter Mahesh Jadhav went out of office on motorcycle and he left the premises of office. Thereafter I along with complainant was waiting in Varanda in S.D.M. Office. Accused returned within 10 to 15 minutes. He requested us to accompany him out of office. He started walking and we were following him. One person met him on the way. Accused Jadhav asked complainant about me and asked him not to take me with him. Complainant replied that I was accompanying him and then we followed accused till the premises of Panchayat Saamiti, Amalner. Complainant asked the accused there he demanded amount of Rs.15,000/- and whether he has to pay that much amount. To that accused replied that he had quoted amount of Rs.12,000/-, but he was ready to accept amount of Rs.10,000/- and the things are not going well from 8 to 10 days. Thereafter after urinating in public toilet we all three returned. Accused asked complainant

not to pay amount there, but to hand over at some distance. Thereafter complainant said whether it was the bazar day. At that time accused Jadhav said looking around that amount be paid at that place. Complainant took out the bribe amount by his right hand from left front side pocket of his shirt and he was holding that amount before the accused in his hand. Accused accepted that amount by his left hand and kept that amount in left side back pocket of his pant. Thereafter complainant gave signal to panch No.2 and trap team."

16. The aforesaid evidence of panch witness indicate that on the day of trap the PW1 – Nivrutti – complainant under the garb of negotiation attempted to have dialogue with accused to get reduced the quantum of bribe of Rs.10,000/-. But, accused reprimanded and asked the complainant to wait for Shri. Dhamke, his superior (Senior Clerk). In response, the complainant and panch Shri Tadavi remained stranded in varanda of SDM Office for about 10-15 minutes for Shri Dhamke, Senior Clerk. Meanwhile, the accused left the premises of SDM Office for some errand and returned to Office within 10-15 minutes. Thereafter, accused asked the complainant and panch to accompany with him outside the office. It is worth to mention that the evidence of PW 1 – Nivrutti – complainant is totally silent about all these events occurred at the relevant time of trap in the office. The substantive evidence of PW 1 - Nivrutti about aforesaid circumstance is lacking in this case. It is not in dispute that the evidence of panch witness could be used for appreciation being corroborative piece of evidence. But, in absence of substantive evidence of PW 1- Nivrutti, it cannot be

substantially considered to prop up the edifice of the prosecution case. The omission of all these material factual aspect by the PW-1 complainant in his evidence before learned trial Court create serious flaw in the prosecution case.

17. In addition, the accused asked the complainant and panch witness to wait for Shri Dhamke, Senior Clerk in the Office for negotiation on quantum of bribe. It is also the fact that thereafter accused left the office and went outside for some work. He returned to Office after 10-15 minutes. It means that there was no further conversation in between complainant and accused on the issue of quantum of bribe since they were asked to wait for Shri. Dhamke. In such circumstances, it remains a conundrum that when the complainant was asked to wait for Senior Clerk Shri. Dhamke, then there was no reason for the accused to ask the complainant to accompany with him outside the office for acceptance of bribe amount from him, and that too prior to meeting with Shri. Dhamke. Moreover, the PW.-1 complainant in his cross- examination conceded that, *"It happened that when we first went in S.D.O. office on 09-01-2012, accused told me to take certificate when Dhamke would come."* Thereafter, the complainant and panch, both were stranded for half an hour outside the office to see Shri. Dhamke. But, without seeing the Senior Clerk Shri. Dhamke, the complainant attempted to pay bribe amount to accused. The conduct of PW-complainant seems to be suspicious and doubtful.

18 The complainant in cross-examination also divulged that, *"It*

happened that on the day of trap, accused met me and asked why the caste certificates were not taken till that day". This sort of dialogue conjures up an image about the innocence of accused. Admittedly, since last 4/5 days of the trap, the accused was not available in the office, and if there would have demand of bribe for issuance of caste certificates to the complainant, there would not have such conversation on the part of accused that "why he had not taken the certificates till the day of trap."

19. Moreover, the conduct and demeanor of the accused at the time of alleged trap found not unusual or unnatural one. When the complainant met with him, the accused treated him in routine and casual manner. He did not give any exceptional treatment to the complainant for extracting bribe from him. There were no efforts on the part of accused to convince or pursued the complainant for payment of bribe. In contrast, the accused expressed surprise while meeting with the complainant in the office for the first time by uttering words that why he had not taken certificates uptill this date. In addition, as per version of panch PW 2 - Shri Tadavi the accused also directed the complainant at the inception to wait for Senior Clerk Shri. Dhamke for discussion in the matter of his caste certificates.

20. It is to be noted that when there was no compliance of documentary formalities to remove the objections as per endorsement of S.D.O. for issuing certificates upto day of trap, in such circumstances, it would be preposterous to anticipate that the Junior Clerk like accused would venture to issue certificates by accepting bribe

without compliance of objections raised in the file.

21. At this juncture, the explanation tendered by the accused at the time of trap and his statement under Section 313 of Cr.P.C. assumes more significance. According to accused, the Caste Certificate proposals of brothers and sister of complainant were assigned to him in the office for further process. There were some deficiencies in the proposal and the complainant was asked to comply the same. The complainant was insisting to deliver the document of Caste Certificates to him in person. But, accused refused to budge in favour of complainant and asked him to collect the document after due compliance from "Setu Suvidha Kendra" where he filed the application for Caste Certificates. The complainant being press reporter became furious and disclosed to the accused that he had collected the Caste Certificate of his relative from the office itself on earlier occasion and he insisted to give the documents to him in person. The accused made endeavour to give understanding to the complainant but found unavailing. Eventually, taking umbrage of refusal of accused for delivery of document of Caste Certificate directly to complainant in person, he embroiled the accused falsely in this case by forcibly thrusting the tainted currency notes in his pant pocket, while he was returning from public Urinal located in office of Panchayat Samittee premises.

22. The explanation tendered by the accused immediately after alleged trap and in his statement under section 313 of the Cr.P.C. appears more plausible and reasonable one. As discussed above, the circumstances of demand and acceptance of bribe amount on the part

of accused found suspicious and dubious one. The evidence of PW2-Nivrutti appears cryptic and slender in nature in comparison with descriptive kind of evidence of shadow panch PW2-Shri Tadavi. It was not the case of the prosecution that PW-1 complainant made volte-face and turned hostile. But, there was an omission of material factual aspect in his evidence before the learned trial Court and obviously it created suspicion about the occurrence of factual score verbalized by the panch PW2- Shri Tadavi in his evidence. Be that as it may, in absence of substantive evidence of PW-1 complainant -Nivurtti, the evidence of panch witness would render otiose and worthless.

23. In contrast, the conduct and demeanour of accused since the inception found consistent with his innocence and inconsistent with his guilt. It is not discernable from the circumstances on record as discussed above, that accused made demand of bribe. There are clouds of doubt in the theory putforth on behalf of prosecution against accused in this case. There was no persuasive evidence available on record sufficient to draw adverse inference against the accused for demand of bribe from the complainant. In addition, probably there was no demand of bribe by the accused and therefore the complainant gave the story that accused made demand of bribe by gesture. The transcript shown in the respective documents of panchnamas cannot be accepted as substitute of the tape recording itself.

24. The learned trial Court much more gave emphasis on the call details record (CDR) of the cellphone of accused and arrived at the conclusion that on 02-01-2012 as well as 08-01-2012, accused made

contact with the complainant from his cell phone and communicated to the complainant to come to the office for collecting Caste Certificate on payment of bribe of Rs. 10,000/-. The document of CDR was placed on record before learned trial Court below (Exhibit-52). But, it appears that the document of CDR were not produced and proved on record as per the procedure prescribed under Section 61 of the Evidence Act. There was no certificate issued under Section 65-B of the Evidence Act, pertains to the CDR produced on record to show authenticity of electronic documents. In absence of compliance of procedure prescribed under Sections 61 and 65-B of the Evidence Act for proving the contents of documents the implicit reliance cannot be kept on this electronic record for adverse inference against the accused. It would be fallacious to conceive on the basis of these unproved electronic record that on 08-01-2012 the accused made contact with the complainant from his cell phone and called him in the office for payment of bribe.

25. It is to be borne in mind that the demand of illegal gratification is the *sine-qua-non* to constitute the offence punishable under section 7 and 13(1)9d) of the Act of 1988. The bare factum or recovery of currency notes cannot itself constitute the offence unless it is proved beyond all reasonable doubt that the accused made demand of illegal gratification and voluntarily accepted the same knowing it to be bribe amount. The Honourable Apex Court in the case of ***Khaleel Ahmed Versus State of Karnataka*** reported in **(2015) 16 Supreme Court Cases, 350** enunciated the legal guidelines in paragraphs No. 17 and 18 as follows :-

"17. We will first address the contention regarding proof of demand of illegal gratification. It is a well settled position of law that demand of illegal gratification is a sine-qua-non for the offences under Sections 7 and 13(1)(d). Conversely, in the absence of proof of demand of illegal gratification, the offences under Sections 7 and 13(1)(d) cannot be made out. In State of Maharashtra v. Dnaneshwar Laxman Rao Wankhede, this Court has held: (SCC P. 204, Para 16)

"16. Indisputably, the demand of illegal gratification is a sine-qua-non for the constitution of an offence under the provisions of the PC Act."

18. More recently, in B Jayaraj V. State of A.P, this Court has held: (SCC. P.58, paras 7-8)

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine-qua-non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe...."

8. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position

as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

26. In the light of aforesaid legal ratio laid down by the Hon'ble Apex Court, the evidence of prosecution witness in the matter in hand, as discussed above, if considered minutely, reveals that there is doubt as to accused in reality made demand of bribe from PW 1- Complainant for issuing Nomadic Tribe Caste Certificate of his brother and cousins. There are material discrepancies in the evidence of PW1- complainant and PW-2 panch Shri Tadavi. The PW1- Complainant maintained silence on the material events occurred in the office during conversation with the accused. The P.W. 2 Shri Tadavi made abortive attempt to describe the circumstances in more detail. But, in absence of substantive evidence of PW1-complainant, the evidence of panch witness could not prop-up the weak edifice of prosecution case. The theory propounded on behalf of prosecution about demand and acceptance of illegal gratification by the accused do not inspire confidence and on the basis of such incredulous and dubious evidence of star witnesses of prosecution, it is totally unsafe to fasten guilt on the accused.

27. In such backdrop, the explanation offered on behalf of accused found more plausible, reasonable and acceptable one. In the case of ***Punjabrao Versus State of Maharashtra*** reported in **(2002) 10 Supreme Court Cases 371**, the Honourable Apex Court elucidated that when the accused offers an explanation for receipt of illegal gratification, it is not required for the accused to establish his defence by proving beyond reasonable doubt as the prosecution but he can

establish the same by preponderance of probability. It has also delineated that even if accused did not offer any explanation at the time of trap, it would not make liable to throw away the explanation offered by the accused in his statement made under Section 313 of the Cr.P.C. The learned trial Court would have to ponder over the credibility of explanation tendered on behalf of accused on the principle of preponderance of probability and not by proving the defence beyond reasonable doubt at par with prosecution.

28. At this juncture, it would apposite to make a reference of observations made by the Honourable Apex Court in the case of **G.V. Najundiah Versus State (Delhi Administration)** reported in **1988 Cri.L.J. 152**, Their Lordships of Apex Court in paragraph No. 25 enunciated as follows :-

"25. Therefore, the very foundation of the prosecution case is shaken to a great extent. The question as to the handing over of any bribe and recovery of the same from the accused should be considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. When it is found that no such demand was made by the accused and the prosecution has given a false story in that regard, the Court will view the allegation of payment of the bribe to and recovery of the same from the accused with suspicion."

29. In the matter in hand, since beginning the appellant-accused was clamoring about his false implication in this case following rancour and malice conceived by the complainant against him. He came forward with specific pleading that there was no demand of bribe on his part,

but complainant forcibly thrust the tainted currency notes in his backside pant pocket. As discussed above, the allegation about the demand and acceptance of illegal gratification on the part of accused found incredulous, dubious and do not inspire confidence. In such circumstances, the explanation offered on behalf of accused appears sustainable and acceptable one. It was not essential for the accused to prove his defence beyond reasonable doubt.

30. It is also worth to mention that there was legal error committed by the learned trial Court while framing the charge (Exhibit-12) against the accused. The learned Judge proceeded to frame the charge solitary in nature against the accused in common for all the accusation made under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988. The Hon'ble Apex Court time and again held that both the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988, are separate and distinct offence. It is rule of law that every acceptance of illegal gratification, whether preceded by a demand or not would be covered by Section 7 of the Act of 1988. But, if the acceptance of illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1)(d) of the Act of 1988. Obviously, both the offences are separate and distinct one, though the offences are shown committed during single transaction. [*Emphasis is supplied on the exposition of law delineated by Hon'ble Apex Court in the case of **State represented by Inspector of Police Versus A Parthiban** reported in (2006) 11 Supreme Court Cases, 473.*]

31. Undisputedly, both the offences under Sections 7 and 13(1)(d) are separate and distinct offences and in view of provisions of Section 218 of Cr.P.C. it was incumbent on the part of learned trial Court to frame separate charges for distinct offence against the accused so that it would not cause any prejudice or injustice to him. In the instant matter, fortunately, that issue has not been arisen for appreciation. There were no grievance that the charge framed common in all would cause any prejudice to accused. In addition, the law does not prohibits to try or convict and punish the accused for both the offences on the similar set of facts. Nevertheless, it was incumbent for trial Court to take precaution while framing the charge against the accused for distinct offences by adhering to provisions of Section 218 of Cr.P.C. In the matter in hand, the accused was tried on the similar set of facts for allegation of demand of bribe punishable under Section 7 and for acceptance of bribe to obtain pecuniary advances, which amounts to misconduct punishable under Section 13(1)(d) read with Section 13(2) of the Act of 1988. Therefore, the learned trial Court ought to have frame separate charges for both the distinct offences as envisaged under section 218 of the Cr.P.C.

32. In the above premises, there is no impediment to arrive at the conclusion that the impugned Judgment and order of conviction and resultant sentence is perverse, bad-in-law and deserves to be set aside and quashed. Accordingly, the appeal stands allowed. The impugned Judgment and order of conviction and resultant sentence passed by the learned Special Judge, Amalner, District Jalgaon, is hereby set aside and quashed. The appellant-accused is acquitted for the offence

punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988. The bail bonds of the appellant-accused are discharged. The fine amount, if any, deposited by the appellant-accused be refunded to him. The rest of the order of trial Court about muddemal property is made absolute and confirmed.

33. In sequel, the appeal is hereby disposed of in above terms. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

MTK.
