

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

CRIMINAL APPEAL NO. 388 OF 2013

Aarif Ali Yusuf Ali Sayyad,
Age : 40 years, Occup. : Service,
Resident of : Plot No. 32,
Avishkar Colony, Chalisgaon Road,
Dhule, District Dhule

... APPELLANT
(Original Accused)

V E R S U S

The State of Maharashtra,
Through Police Inspector
ACB, Dhule, Dist. Dhule

... RESPONDENT

...
Mr. N.L. Chaudhari, Advocate for appellant
Mr. D.R. Kale, APP for respondent - State
...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 25th APRIL, 2019.

DELIVERED ON: 6th JUNE, 2019.

JUDGMENT :-

The appellant-accused by invoking remedy under Section 374 of the Code of Criminal Procedure ("Cr.P.C.") preferred present appeal and agitated the validity and propriety of impugned Judgment and order of conviction and resultant sentence awarded by learned Additional Sessions Judge / Special Judge, Dhule, in Special Case No. 19 of 2011, dated 30-09-2013, for the offences punishable under Sections 7 and 13(2) of the

Prevention of Corruption Act, 1988 (for short, "Act of 1988"). The appellant-accused was sentenced to suffer imprisonment for two years and to pay a fine of Rs.5000/- in default of payment of fine, he shall suffer simple imprisonment for five months for the offence punishable under Section 7 of the Act of 1988 as well as he was sentenced to suffer simple imprisonment for five years and to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for ten months for the offence punishable under Section 13(2) of the Act of 1988.

2. Scenario of the prosecution case culled out in brief is that, the complainant- Mr. Biharilal Punamchand Agrawal, resident of Ozar, Taluka Rajpur, District Barwani (Madhya Pradesh), on 22-07-2010 approached to the ACB sleuth, Dhule and ventilated the grievance that he was a merchant by profession and carrying the activities of trading of food grains under the firm named and styled as "M/s. Punmachand Kanhiyalal Agrawal", at Ozar (MP). He used to supply the food grains viz. wheat, maize, etc to the various Traders at Pune and Mumbai as per their requirements. It has been alleged that on 19-07-2010, the complainant purchased 160 Quintal wheat from the Agricultural Produce Market Committee (APMC) at Aanjad (MP) for its delivery to the Merchant from Washi, New Mumbai. He hired the vehicle truck on rent of Rs.13,600/- owned by one Kamru Nasrun of Sindhwa for carrying food grain wheat from Anjad (MP) to Mumbai.

Accordingly, complainant Mr. Biharilal accompanied with driver Mohmad Ashik on 21-07-2010 at about 10.00 a.m. started proceeding towards Mumbai from Anjad (MP) in the truck laden with 160 Quintal wheat. In the evening at about 5.30 p.m., they reached near village Songir on Mumbai-Agra Highway within the vicinity of District Dhule. It has been alleged that one Police Constable by name Mr. Sayyad from Songir Police Station intercepted their vehicle. He made enquiry about the goods laden in the vehicle - truck. Police Constable Mr. Sayyad i.e. appellant-accused cast allegations that complainant attempted to carry food grain – wheat meant for Ration Shop for selling it in the black market. The complainant made endeavour to convince the accused. But, he was not in a mood to give response to the complainant. The appellant-accused gave threat to the complainant to lodge criminal case against him under the Essential Commodities Act, 1955. Eventually, the appellant-accused demanded Rs.1,00,000/- as bribe for settlement of the matter in favour of complainant. After negotiation, appellant-accused agreed to accept Rs.70,000/- as illegal gratification from the complainant to show favour to him. The complainant was not willing or ready to pay bribe to the applicant-accused Mr. Sayyad, Police Constable attached to Songir Police Station, Dhule. Therefore, he rushed to the Office of ACB, Dhule and lodged the report for penal action against the appellant-accused.

3. Pursuant to the report, ACB Officer Dy.S.P. Mr. Jadhav secured presence of two panchas for further process. They were introduced with complainant and apprise them about the demand of bribe by the Police Constable - Arif Ali Yusuf Ali Sayyad from the complainant for not to initiate penal proceeding against him in regard to food grain wheat carried in the vehicle truck. The Police Officer Mr. Jadhav complied with procedural formalities of pre-trap panchnama. At last, the trap was laid and the appellant-accused was caught raid-handed, while accepting bribe from the complainant. The Police Officer, Dy.S.P. Mr. Jadhav drawn post-trap panchnama. Thereafter, Mr. Jadhav visited to Dhule City Police Station and filed FIR against the appellant-accused for the charges of bribery under the Act of 1988. In view of FIR of the Dy.S.P. Mr. Jadhav, the concerned PSO of City Police Station, Dhule, registered the Crime No. 138 of 2010 under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988 and set the penal law in motion. Investigating Officer - Mr. Jadhav recorded statements of witnesses acquainted with the facts of the case. He apprehended the appellant-accused for the sake of investigation into the crime. He collected relevant documents and after compliance of procedural formalities in regard to prosecution sanction, etc. filed the charge-sheet bearing Special Case No. 19 of 2011 against the appellant-accused herein.

4. Learned Special Judge, Dhule framed requisite charges against the appellant-accused and proceeded further for trial to evaluate his guilt. In order to bring home guilt of the accused, prosecution examined in all four witnesses, comprising PW-1 complainant Biharilal Punamchand Agrawal, PW-2 Kalu Sukram Bharude, shadow panch, PW-3 Shabsikant Eknath Shinde, Superintendent of Police for prosecution sanction and PW-4 Mr. Prabhakar Haribhau Jadhav, Investigating Officer, in this case. The learned Special Judge also recorded statement of appellant-accused under Section 313 of the Cr.P.C. to afford him an opportunity to explain the incriminating circumstances on record. After appreciation of entire oral and circumstantial evidence on record, the learned Special Judge held appellant-accused guilty for the offence punishable under sections 7 and 13(2) of the Act of 1988. Accordingly, the learned Special Judge passed the impugned Judgment and order of conviction and resultant sentence, which is the subject-matter of present appeal.

5. Mr. Chaudhary, learned counsel for appellant-accused vehemently submitted that the impugned Judgment and order of conviction and resultant sentence is illegal, erroneous and against well settled principles of law. The learned trial Court did not consider the evidence adduced on record in its proper perspective. Learned counsel for appellant harped on the circumstances that there is no corroboration to the evidence of

complainant. The conduct and demeanour of complainant was suspicious and doubtful. He was not accompanied with driver of the truck nor he was travelling in the vehicle – truck laden with food grain wheat. But, he came lateron after receipt of message from the driver of the truck. Therefore, no question arises of demand of bribe from the complainant.

6. Learned counsel further explained that appellant-accused was on patrolling duty at the relevant time along with one constable Mr. Nitin Patil. They intercepted the vehicle-truck laden with bags of wheat owned by the complainant. The appellant-accused made enquiry with the driver about source of food-grain wheat. But, the driver could not give satisfactory reply. Therefore, appellant-accused asked the driver to park the vehicle truck aside the road and directed him to produce relevant documents of food grain. According to learned counsel, till disclosure of cognizable offence, the FIR cannot be lodged against the owner of food grains and vehicle in the Police Station. But, the complainant instead of producing relevant documents of food grains before the concerned police authority of Songir Police Station, directly approached to ACB sleuth and filed complaint against the appellant-accused without any reasonable cause.

7. Learned Counsel also gave much more emphasis on the conduct and demeanour of the complainant and submitted that

since beginning the conduct of complainant was suspicious and dubious one. The complainant did not make any endeavour to contact with the Superior Officer of the accused-appellant or the Police Officer from the concerned Police Station nor he made an attempt to get verify identity of the appellant-accused being police personnel from Songir Police Station. The evidence on record reveals that the appellant-accused at the relevant time was not in Police Uniform, but he was in civil dress. The complainant or driver as well as accused were not in acquaintance with each other. In such circumstances, it is doubtful that in absence of enquiry about the credentials of the appellant-accused, the complainant ventured to pay such huge amount of Rs.70,000/- as bribe to the accused for food grain worth Rs.2,43,000/-. This sort of evidence of the complainant seems to be unnatural and creates doubt about its veracity. Moreover, there is no corroboration to the version of complainant from independent source.

8. Learned counsel further pointed out that there was no any evidence available on record in regard to recovery of tainted notes from the custody of appellant-accused. The entire evidence on record is silent about the same. Learned counsel for appellant drawn attention of this Court towards defence propounded on behalf of appellant-accused in regard to thrusting of tainted currency notes in his pant-pocket by the complainant.

He submitted that, in view of attending circumstances on record, the explanation offered on behalf of appellant-accused during the course of trial appears sustainable and believable one. The defence witness examined by the appellant-accused also deposed about the same. Learned counsel further added that defence of the accused is required to be considered on the basis of preponderance of probabilities and reasonableness. Learned counsel asserted that if really appellant-accused had an intention to demand and accept the bribe from complainant, he would have waited for the complainant at Hotel Hariyana Dhaba itself or he would have contacted the complainant on his mobile phone. Moreover, the appellant-accused did not accept the money in the Court campus also even after meeting with the complainant. It is ridiculous to consider that accused took the complainant to the premises of Police Headquarters, which was high sensitive area having presence of Superior Officer of the appellant-accused within the premises. According to learned counsel, the conduct and demeanour of appellant-accused since beginning was consistent with his innocence. But, the learned trial Court did not appreciate the circumstances on record in its proper perspective and gave much more emphasis on the discrepancies in the evidence of prosecution witnesses.

9. According to learned counsel for the appellant, there are clouds of doubt in the prosecution case and benefit of the same is

essential to be given to the appellant-accused. He has also raised doubt about propriety of prosecution sanction accorded by PW-3 Mr. Shinde, Superintendent of Police, Dhule, for prosecution of the appellant-accused under the charges of bribery. He cast allegation that the competent authority did not apply its mind in proper manner, but, mechanically accorded prosecution sanction. He drawn attention of this Court towards letter of Superintendent of Police, Dhule, dated 21-08-2010 (Exhibit-32) addressed to API Mr. Desale about his involvement in the alleged crime. Learned counsel for appellant submitted that, the competent authority did not make inquiry into the matter about involvement of other police personnel, but, accorded prosecution sanction only against sole appellant-accused. Prosecution did not describe or produce the documents on the basis of which the competent authority accorded prosecution sanction into the matter. Learned counsel for the appellant also pointed out that PW-4 Mr. Jadhav, I.O. was the officer of rank of Police Inspector and as per Section 17 of the Act of 1988, he was not authorized to conduct the investigation of the crime. Therefore, the entire trial is required to be vitiated on the basis of such legal infirmity. Eventually, learned counsel for appellant urged that the prosecution failed to prove charges against accused beyond all reasonable doubt. The learned trial Court ought to have exonerate the appellant-accused for the

charges pitted against him. But, the learned trial Court committed error and held appellant-accused guilty for the charges under Sections 7 and 13(2) of the Act of 1988. The learned counsel for appellant requested to upset the impugned findings of conviction recorded by the learned trial Court and appellant-accused be absolved from the charges pitted against him and he prayed to allow the appeal.

10. Mr. Kale, learned APP for respondent- State opposed the contentions propounded on behalf of appellant and submitted that the learned trial Court correctly appreciated each and every circumstance on record in proper manner. The learned APP produced on record the circular issued by the Home Department, Mantralaya, Mumbai, dated 19-04-1989, and submits that pursuant to circular, the powers are delegated to the Inspector of Police attached to ACB, Maharashtra to investigate into the offence punishable under the Act of 1988. Therefore, the PW-4 Mr. Jadhav was authorized to conduct the investigation into the crime, and therefore, there is no legal infirmity into the matter. There is no legal infirmity or perversity in the impugned findings recorded by the learned trial Court. Therefore, no interference is warranted at the behest of appellant-accused.

11. Having given anxious consideration to the rival submissions as well as factual score of the matter in hand, I find that the

argument advanced on behalf of learned counsel for appellant -accused appears much more sustainable and considerable one. Before adverting to the merits of the matter, it is essential to take into consideration that there was no any dispute that at the relevant time, appellant-accused was the Police Constable attached to the Songir Police Station, District Dhule, and as such, he was the Public Officer / Public Servant as defined in section 2(c) of the Act of 1988. It was also an admitted fact that on 21-07-2010, the appellant-accused was on patrolling duty and in the evening at about 5.30 p.m. he intercepted the vehicle - truck laden with food grain- wheat owned by the complainant. According to prosecution, the complainant Mr. Biharilal Agrawal was travelling in the truck accompanied with bags of food grain- wheat. He made attempt to convince the appellant-accused that wheat bags laden in the truck were not of Ration Shop. He purchased the wheat from Market Committee, Anjad (MP). The complainant shown relevant documents to the accused. But, he gave threats to the complainant to lodge criminal case against him. The appellant-accused demanded bribe of Rs.1,00,000/- to the complainant for not lodging the criminal complaint against him. However, after negotiation, appellant-accused agreed to accept Rs.70,000/- as bribe from the complainant. It has been alleged that appellant-accused asked the complainant to pay bribe amount at Hotel Hariyana Dhaba and he made vehicle truck

parked aside the road at Hotel Hariyana Dhaba for further process. The accused-appellant taken away with him relevant documents of food-grain wheat, the documents of vehicle-truck and its key, etc.

12. In refutation, the appellant-accused categorically came forward with specific defence that he had intercepted the vehicle truck laden with food grain wheat and at that time the complainant was not travelling in the truck with food grain-wheat. The appellant-accused made enquiry with the driver about source of food grain-wheat, but he could not give satisfactory reply. Therefore, he asked the driver to park the vehicle- truck aside the road. He further directed the driver to procure documents of the food grain from its owner. Accordingly, driver informed the owner of the food grain from his cellphone and communicated the appellant-accused that the documents of food grain-wheat would be produced by its owner. According to accused-appellant, the complainant, instead of producing the documents of food grain before the concerned Police of Songir Police Station, directly visited to the office of ACB, Dhule and filed the complaint. There was no occasion for appellant-accused to make demand of bribe from the complainant. It has propounded that the complainant met him at the time of trap and attempted to thrust the tainted currency notes in his pant pocket. But, the appellant-accused refused to accept the same and in-jostling the

currency notes were strewed on the ground. The ACB Personnel collected the same from the spot and carried it to the office of ACB for further process. The appellant-accused denied entire allegations of demand and acceptance of bribe for returning the documents of food grain-wheat, vehicle truck and its key, etc. without lodging any criminal complaint against complainant. The appellant-accused propounded his defence in his statement recorded by ACB personnel after trap as well as in his statement recorded under Section 313 of Cr.P.C. In such backdrop, the evidence of prosecution witnesses is required to be scrutinized to ascertain the truth of allegations nurtured on behalf of prosecution against the appellant.

13. It is worth to mention that in regard to the offences under Sections 7 and 13(1)(d) of the Act 1988, it is well settled position of law that, demand of illegal gratification is the *sine-quo-non* to constitute the offences. The factum of recovery of currency notes cannot itself sufficient to constitute offence unless it is proved beyond all reasonable doubt that accused made demand of illegal gratification and voluntarily accepted the same knowingly it to be bribe amount. The reliance is placed on the exposition of law delineated in the case of **Khaleel Ahmed Vs. State of Karnataka** reported in **(2015)16 SCC 350**, wherein Their Lordships of Honourable Apex Court in paragraph Nos. 17 and 18 observed as under :

"17. We will first address the contention regarding proof of illegal gratification. It is a well settled position of law that demand of illegal gratification is a sine qua non of 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 Versus Dnyaneshwar Laxman Rao Wankhede this Court has held: (SCC p.204, para 16)

"16. Indisputedly, 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 Versus 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."

14. In the matter in hand, careful examination of the evidence of PW-1 Biharilal Agrawal reflects the circumstances creating doubt about allegations of demand of illegal gratification by the

appellant-accused. PW-1 Biharilal Agrawal deposed that initially accused demanded Rs.1,00,000/- as bribe for not to lodge criminal case against him under the Essential Commodities Act. But, later on, after negotiation, accused agreed to accept Rs.70,000/- as illegal gratification to show favour to the complainant. It has contended that, PW-1 Biharilal Agrawal was unable to pay such huge amount. Albeit, accused told him to make necessary arrangement and come at Hotel "Hariyana Dhaba", on next day before noon. Thereafter, PW-1 Biharilal Agrawal contacted with younger brother on his cell phone and asked him to bring Rs.70,000/-. Accordingly, brother of the complainant arrived on the following morning with Rs.70,000/-. Thereafter, both brothers instead of any dialogue with accused-appellant straight way visited to the office of ACB, Dhule and lodged the report. The ACB sleuth procured presence of two panchas from the office of Zilla Parishad and drawn the pre-trap panchnama in between 12.30 p.m. to 1.55 p.m. on 22-07-2010.

15. It has brought on record in the evidence of PW-1 Biharilal Agrawal that when vehicle of the complainant was intercepted at Songir diversion (Phata) at about 5.30 p.m. that time one person made inquiry with driver about food grains laden in the truck. The said person introduced himself as Head Constable Mr. Sayyad of Songir Police Station and demanded documents of vehicle and food grains. The driver disclosed the accused Police

Constable that the owner of food grain was available in the vehicle. Thereafter, PW-1 Biharilal Agrawal got down from the vehicle and attempted to convince the accused. But, he demanded bribe. In the cross-examination PW-1 Biharilal Agrawal conceded that appellant-accused was not in police uniform, but he was in civil dress. There were no any person in police uniform nor any police vehicle was available nearby the spot. According to PW-1 Biharilal Agrawal, the spot where the accused intercepted their vehicle was at a distance of 8 to 10 Kms. from the place of Hotel "Hariyana Dhaba", where their vehicle Truck was made to park at the behest of accused. It would be perceived from the cross-examination of PW-1 Biharilal Agrawal that during intervening night of 21-07-2010 and 22-07-2010, PW-1 Biharilal Agrawal remained stayed in the hotel near Petrol pump, where their vehicle truck was accosted by the accused. It means that, PW-1 Biharilal Agrawal halted during night hours in the hotel which was at a distance of 8 to 10 Kms. from the place of Hariyana Dhaba, where vehicle truck was parked at the instance of appellant-accused. Thereafter, on the following day, his younger brother met him in the hotel and accordingly, they both rushed to ACB office, Dhule, for penal action against the appellant-accused.

16. The attending circumstances referred above demonstrate that PW-1 Biharilal Agrawal or his driver and the appellant-

accused had no acquaintance with each other prior to the incident. Moreover, at the relevant time, accused was not in a police uniform, but he was in civil dress. There were no any other persons in police uniform or police vehicle available nearby the spot of incident. In such circumstances, it remains a conundrum that for what reason PW-1 Biharilal Agrawal did not feel it necessary to make inquiry about credential of the accused being police personnel from Songir Police Station. The complainant did not even visit to the Songir Police Station to see Superior Officer of accused to redress his grievance. It is strange to appreciate that since 5.30 p.m. on the day of incident except conversation with his brother on cell phone that to only once, PW-1 complainant- Biharilal Agrawal remained ideal. There were no efforts to find out identity of accused for payment of such huge amount to get escape from the clutches of police. Moreover, after arrival of younger brother with amount of Rs.70,000/-, there were no endeavour to see the accused to convince him that food grain wheat laden in the truck was not of ration shop, but, it was purchased in the open market from APMC Anjad. I am, at a loss to understand for what reason the concerned ACB sleuth, Dhule did not take any step for verification of demand of bribe by the accused prior to formalities of trap . The facility of cell phone was available with both PW-1 complainant Biharilal Agrawal as well as with the accused. But, ACB personnel did not painstaking

to get verify the genuineness of demand of bribe by the accused. It is also hard to believe that when there was no fault on the part of complainant as he purchased the wheat in open market or he was not carrying the food grain wheat in a vehicle-truck in contravention of provisions of law, then for what reason he prepared himself to give such huge amount as bribe to accused or why he did not ventilate grievance to the Superior Officer of the appellant-accused for redressal.

17. The scrutiny of the documents impounded in this matter reveals that whatever documents of food-grain recovered in the present matter, did not contain the documents relating to purchase of the food grain wheat from the APMC, Anjad (MP). But, the receipts prepared by the complainant himself in the name of his firm for sell of food grain -wheat to Traders of New Mumbai were found available with the documents. These circumstances smacks something fishy about source of food grain carried in the alleged vehicle-truck.

18. In view of aforesaid peculiar circumstances, the explanation propounded on behalf of appellant-accused assumes more significance. According to appellant-accused, at the relevant time PW-1 Biharilal Agrawal was not travelling with food grains in the truck. When alleged vehicle truck was intercepted by accused that time he made inquiry about source of food grain with the

driver. But, he did not give any satisfactory reply. Therefore, he asked driver to park the vehicle-truck aside the road and directed him to produce the relevant documents. According to appellant-accused, driver of the vehicle truck consulted with the owner of the food grain wheat on cell phone for the relevant document of food grain. Thereafter, driver communicated the appellant-accused that owner of the food grain wheat would produce the documents after his arrival at the spot. This sort of explanation created doubt whether PW-1 complainant Biharilal Agrawal was travelling in the vehicle-truck at the relevant time to afford an opportunity to the appellant-accused to make demand of illegal gratification.

19. It would be reiterated that since beginning the conduct and demeanor of PW-1 Biharilal Agrawal appears suspicious and dubious one. When the accused was totally unknown to him and they both were not familiar with each other even though the complainant without any enquiry about credentials of accused prepared to give huge amount of bribe to the accused for the food grain wheat carried in the vehicle-truck having total cost of Rs.2,45,000/- only. The complainant did not make any attempt to visit the Songir Police Station to see Superior Police Officers for redressal of his grievance. There was no conversation between the appellant-accused and complainant PW-1 Biharilal Agrawal since the incident occurred at about 5.30 p.m. on 21-07-

2010 upto the alleged trap in the noon hours on following day i.e. on 22-07-2010. The time gap between demand of bribe and actual trap created serious flaw in the trustworthiness of prosecution case. The behaviour of PW-1 Biharilal Agrawal seems to be inconsonance with normal reaction and human behavioural pattern.

20. The factual aspects discussed above creates doubt as to whether the PW-1 Biharilal Agrawal was travelling in the truck when it was intercepted by the accused. In contrast, the explanation offered on behalf of appellant-accused appears more plausible and appreciable one. In such background, it is imperative to take search of corroborative piece of evidence, if any, available on record to fortify the contentions propounded on behalf of complainant PW-1 Biharilal Agrawal. The circumstance adumbrates that the driver of the vehicle-truck was the independent witness available for the prosecution to unfurl the entire episode occurred at the spot. He was present since the impugned vehicle truck was intercepted by the accused till laying trap at Hotel "Hariyana Dhaba". But, there were no efforts to adduce evidence of truck driver in this case. Moreover, complainant PW-1 Biharilal Agrawal during night hours on 21-07-2010 halted in the Hotel near the petrol pump where the vehicle truck was intercepted by accused. The said hotel was at a distance of 8 to 10 Kms from the spot where the vehicle truck

was parked near hotel "Hariyana Dhaba". Surprisingly, the hotel owner or concerned person from the hotel did not come forward to bring on record the circumstances of stay of PW-1 Biharilal Agrawal during the night hours of 21-07-2010 and 22-07-2010 in the hotel. The prosecution failed to adduce evidence of any person from hotel "Hariyana Dhaba" to strengthen the version of PW-1 Biharilal Agrawal about his presence during demand of bribe by accused in the evening hours at about 5.30 p.m. on 21-07-2010 in this case. These circumstances indicate that except the solitary version of PW-1 complainant Biharilal there was no any evidence available on record to corroborate testimony of PW-1 Biharilal Agrawal in this case. There were no endeavours to produce call detail report (CDR) of the cell phone used by the complainant PW-1 Biharilal Agrawal for his conversation with the younger brother from the destination of spot of incident i.e. Songir Phata, Dhule. The absence of these vital circumstances cause serious dent in the trustworthiness and veracity of the version of complainant PW-1 Biharilal Agrawal in regard to demand of bribe by the accused. It was not established by cogent and dependable evidence that PW-1 Biharilal Agrawal complainant was travelling in the vehicle- truck with his food grain. It would fallacious to believe that the accused had an opportunity to see the complainant during the relevant period at about 5.30 p.m. on 21-07-2010 and to make demand of illegal

gratification from the complainant PW-1 Biharilal Agrawal. When two views are possible, the benefit of the same is necessary to be given to accused.

21. At this juncture, it is essential to make a reference of golden principle of criminal law that the burden of proof required to be discharged by the prosecution is one of "proof beyond reasonable doubt". But, it is not necessary for the accused to prove his case beyond reasonable doubt. It is sufficient for the accused to establish his case by preponderance of probabilities. In the case of **Punjabrao Versus State of Maharashtra,** reported in **(2002) 10 Supreme Court Cases 371,** Their Lordships of Honourable Apex Court elucidated that the accused in bribery case is not required 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 if accused did not offer explanation at the time of trap, it would not make liable to throw away the explanation offered by accused in his statement under Section 313 of Cr.P.C., when such explanation could be held to be reasonable under the facts and circumstances of the case.

22. In the instant case, as discussed above, circumstances available on record are sufficient to perceive that the explanation offered on behalf of appellant-accused appears to be reasonable

and considerable one. I am of the considered view that the appellant-accused has discharged burden of proof placed on him by preponderance of probability. Therefore, there is no impediment to draw inference that the evidence of prosecution witnesses available on record is not sufficient to prove the factum of demand of illegal gratification by the accused.

23. In addition to aforesaid circumstances on record, it is also worth to mention that the evidence of prosecution witness PW-2 Shri Kalu Bharude – shadow panch remained silent about the substantiation of demand of bribe on the part of accused to show favour to the complainant. It is illogical and incongruous to proceed for laying trap by the ACB Sleuth without any verification of demand of bribe by the accused. The ACB Sleuth commenced the procedural formalities for trap believing the version of PW-1 complainant as gospel truth. In the cross-examination, the PW-2 panch conceded that there was conversation in between complainant and accused near the court premises which was lasted only for 3 to 4 minutes. In such short span of time, it would difficult to visualize that there was talk about demand of bribe to show favour to the complainant.

24. There was also no specific evidence on record about seizure of tainted currency notes from the custody of accused. The PW-2 Shri. Bharude deposed that the bribe amount was recovered from

the custody of the accused in the office of ACB. The accused was caught raid-handed while accepting the bribe at the spot in the premises of police head quarters. The document of post-trap panchnama also depicts recovery of tainted notes from accused in the office of ACB. It is strange to appreciate that for what reason the police (ACB) did not recover the tainted notes at the spot itself, immediately after the trap. The entire evidence of witnesses also silent about physical search of accused at the spot in presence of panchas. There were no efforts by the ACB personnel at the spot to get verify about actual acceptance of bribe by the accused. All these factual aspect give rise to appreciate explanation put-forth on behalf of accused that the complainant attempted to thrust the currency notes in his pant pocket but he refused to accept the same and in jostling the currency notes were strewed on the ground. According to accused, the police personnel collected the currency notes and brought it to the office of ACB. In absence of corroboration, it would difficult to accept theory propounded on behalf of prosecution in this case. The legal infirmities occurred in this case devastated the gravity of allegation nurtured on behalf of prosecution.

25. The ACB Sleuth did not take care for search of motor bike of the accused to recover documents of food grain vehicle-truck, its key, etc. at the spot immediately after trap. The

evidence of PW-2 panch, PW-4 Investigating Officer as well as recitals of post-trap panchnama demonstrate that after the trap the motorbike was carried to the office of ACB by the ACB personnel and thereafter, the documents and key of vehicle-truck were shown seized from the dickey of the motor bike. The factum of custody of motor bike with the ACB personnel, who carried it from spot of trap to office of ACB, looses the significance of recovery of documents of complainant and key of vehicle-truck from the dickey of motorbike of accused.

26. According to prosecution, the amount of bribe was demanded by the appellant-accused for returning the documents of his food grain, documents of vehicle-truck and keys of vehicle, etc. to the complainant without lodging any FIR against him. But, it appears that the complainant simply attempted to pay the tainted notes to the accused, but, he did not ask or demand the documents or key of vehicle-truck to the accused at the relevant time of trap to buttress the factum of demand of bribe. It appears that after payment of amount, he immediately gave predetermined signal to the members of raiding party. These circumstances are sufficient to conceive that the complainant was least bother about the documents of food grains or vehicle, etc. But, he was bent upon to embroil the accused in a trap for allegation of bribery. This conduct and demeanor of complainant conjures up an image about his purported motivation to get

involve the accused in the trap case to make his own escape good from the clutches of police.

27. At this juncture, it would apposite to mention that after the post-trap panchnama, etc., in the evening hours, the PW-4 Investigating Officer Shri. Jadhav allowed the complainant to take back the documents of food grain – wheat bags, documents of vehicle - truck and its key, etc. But, the PW-4 Investigating Officer Shri. Jadhav did not make enquiry about the source of food grain – wheat nor he had taken care to handover the matter to Police of Songir Police Station to ascertain the source of wheat bags laden in the truck. It was not verified whether the food grain-wheat carried in the truck was not meant for ration shop. The post-haste action of the ACB Sleuth to allow the complainant to make his escape good from the spot created doubt about genuineness of entire activities performed on the part of complainant.

28. Be that as it may, there is a lack of sufficient convincing evidence in this case. The evidence of key witnesses found suspicious, incredulous and dubious one. The version of PW-1 complainant do not inspire confidence. There was no corroboration available on material points in this case. The rule of law prescribed that if there is any room for doubt, obviously, the benefit should go to the accused. The explanation

propounded on behalf of appellant-accused seems to be plausible and reasonable one. The learned trial Court did not assign satisfactory reasons to disbelieve the defence put forth on behalf of accused. I am of the considered opinion that the findings of conviction expressed by the learned trial Court are erroneous, perverse and not within the ambit of law. The learned trial Court failed to appreciate the evidence on record in its proper perspective. Therefore, the impugned Judgment of conviction is liable to be upset and quashed.

29. In the above premises, the appeal stands allowed. The impugned Judgment and order of conviction and resultant sentence passed by the learned Special Judge, Dhule, is hereby set aside and quashed. The appellant-accused is acquitted for the offence punishable under Section 7, 13(1)(d) read with Section 13(2) 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 in regard to amount of Rs.70,000/- as well as other muddemal properties is made absolute and confirmed.

30. Accordingly, the appeal stands disposed of in above terms.

No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.