IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.799 OF 2014

The State of Maharashtra, ... **Appellant**
Through Illiyas Yusuf Munshi, [Ori.Complainant]
Age 42 years, Occc. Business,
R/o. 136, Jawahar Shashtri Nagar,
Omerga, Dist. Osmanabad.

VERSUS

Abhimanyu Laxman Kumbhar, ... **Respondent**
Age 46 years, Occ. Service, [Ori. Accused]
R/o. MSEDCL Office, Omerga,
Dist. Osmanabad.

...

Mr. Badakh V.S., A.P.P.for the appellant/State.
Mr. Bramhe S.P., holding for Mr.Sayyed A.R., Advocate for the respondent.

...

CORAM : S.M. GAVHANE, J.
DATE : 04.04.2019

J U D G M E N T :-

. This appeal is directed against the judgment and order dated 11.10.2013 passed by the Special Judge, Omerga Dist. Osmanabad in Special (ACB) Case No.2 of 2009, thereby acquitting the respondent-accused of the offences punishable under Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter, referred to as "the Act" for short).

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

a) Complainant Illiyas Yusuf Munshi (PW-1) was residing along with his wife Shobha Kulkarni in the house standing in her name at Omerga. The respondent-accused was working as a Junior Technician in Maharashtra State Electricity Distribution Co.Ltd. (hereinafter referred to as the "MSEDCL" for short). In the aforesaid house in the name of wife of the complainant, one electric meter was installed in the year 2006. However, since installation of said meter, no electric bill was given to the complainant or his wife, but the accused used to collect Rs.500/- from the complainant every month towards the electric bill without giving receipt of bill. It is alleged that on 22.07.2008 also, the accused as usual went to the complainant and demanded Rs.500/- to him towards electric bill. The complainant asked him that he would pay the amount in the next week, but the accused insisted to pay the said amount on the same day and threatened that, if he would not pay the amount, he would disconnect the electric supply of his house. Therefore, the complainant assured the accused that he would pay the amount in the evening at about 8.30 p.m. to 9.00 p.m. However, as the complainant was not willing to pay the said amount to the accused, he went to the Office of the Anti Corruption Bureau, Osmanabad (hereinafter, referred to as the "ACB Office, Osmanabad" for short). The complainant narrated his complaint to Dy.S.P. Shaikh, who reduced his complaint Exhibit 17 into writing.

b) Thereafter, on the same day i.e. on 22.07.2008, Dy.S.P. Shaikh called Dilip Maruti Surte (PW-2) and Shailesh Tate in the ACB Office, Osmanabad to act as panchas. The complainant narrated his complaint to them. As per the instructions of Dy.S.P. Shaikh, thereafter written complaint Exhibit 17 of the complainant was given to both the panchas to read over and they had confirmed the contents of said complaint. Then they had put their signatures on the said complaint. Thereafter, it was decided to lay a trap. The complainant produced five currency notes of Rs.100/- denomination. Anthracene powder was applied to said notes in presence of the panchas and the complainant. Thereafter, change in the appearance of the said currency notes under the light of ultraviolet of lamp was seen after the demonstration was made. After, the demonstration was made, the said currency notes were kept in the pocket of shirt of the complainant. Dy.S.P. Shaikh then gave necessary instructions to both the panchas and the complainant. Thereupon, pre-trap panchnama Exhibit 28 was prepared and the complainant and PW-2 (Panch No.1) as well as Dy.S.P. Shaikh and other members in the raiding party went to Omerga for a trap.

c) It is further case of the prosecution that the complainant and PW-2 went to the house of the complainant at about 8.30 p.m. The accused came to the house of the complainant and demanded a bribe amount of Rs.500/-. As decided, the complainant had given tainted currency notes of Rs.500/- to the accused in presence of PW-2, which were accepted by the accused and he kept the said currency notes in his pocket. Then the complainant gave pre-arranged signal to the raiding party members, who were out of the house of the complainant. After receiving the signal from the complainant, Dy.S.P. Shaikh and other members of the raiding party rushed to the house of the complainant, where PW-2 had introduced the accused to Dy.S.P. Shaikh and also told that the accused demanded and accepted Rs.500/- from the complainant and kept the said amount in the pocket of his shirt. Thereafter, Mr. Shaikh Dy.S.P. asked panch No.2 Shailesh Tate to take out money from the pocket of the accused. Accordingly, panch No.2 had taken out money from the pocket of the accused and the said currency notes were verified with the descriptions of the currency notes mentioned in the pre-trap panchnama. Thereafter, said currency notes were seen under the light of ultraviolet lamp and greenish shining was seen on the said currency notes. So also, both the hands and left side pocket of shirt of the accused were also verified under the light of ultraviolet lamp and greenish shining was found on both the hands of the accused and also on the pocket of his shirt. Then the complainant was called inside the house. His hands were also verified in the light of ultraviolet lamp and shining was seen on the right hand of the complainant. Dy.S.P. Shaikh had taken all these articles in his possession and those were sealed. He prepared detailed post pre-trap/spot panchnama Exhibit 29 and arrested the accused. Thereafter, Dy.S.P. Shaikh lodged complaint Exhibit 40 on behalf of the State in Omerga Police Station, Dist. Osmanabad, on the basis of which crime came to be registered against the accused for the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the Act. Dy.S.P. Shaikh carried out investigation and he collected relevant evidence during the investigation. So also, he obtained sanction order to prosecute the accused. After completion of the investigation, charge-sheet was submitted in the Special Court against the accused for the aforesaid offences.

d) Charge was framed against the accused for the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the Act. The accused pleaded not guilty to the charge. He claimed to be tried.

e) To prove the charge against the accused, the prosecution has examined in all 5 witnesses namely, complainant Illiyas Yusuf Munshi (PW-1), Dilip Surte, panch No.1 (PW-2), Appasaheb Malhari Khandekar (PW-3), Sadashiv Shaligram Tayade, Executive Engineer (PW-4) and Sanctioning Authority, who issued sanction order Exhibit 38 and Subhash Balasaheb Bagadi, ASI (PW-5), who was the member of the raiding party. The prosecution has also relied upon the complaint lodged by the complainant, pre-trap, post trap panchnamas and the sanction order.

f) Thereafter, statement of the accused under Section 313 of the Code of Criminal Procedure was recorded and he denied to have committed the offences, as alleged against him. According to him, the complainant in collusion with Dy.S.P. Illiyas Munshi lodged a false case against him.

g) Accused has relied upon his explanation/ statement Exhibit 30 dated 22.07.2008, which was given immediately after the trap giving explanation that old electric connection was taken in the name of

Smt.Shobha Kulkarni in Jawahar Shashtri Nagar. About 10-12 days, prior to said statement, the husband of the said lady consumer had applied for a second connection in the same name and he had given A-1 Form, Revision Copy and an amount of Rs.1,125/- towards demand to him (accused) to deposit the said amount and on the same day, he deposited the said amount in the bank. At that time, there was need of service wire for new connection of Mr.Munshi and service wire was not available with the MSEDCL. Mr.Munshi said that he will give him Rs.500/- for purchasing a service wire. On 22.07.2008 at about 9.00 p.m., he went to the house of Shri.Munshi. At that time, Mr.Munshi and one unknown person were sitting there. At that time, Mr.Munshi gave him Rs.500/- and told him to bring service wire and other material, required for connection. According to the accused, he never demanded and accepted the bribe from the complainant. The above said amount of Rs.500/- was taken for bringing a cable wire for new connection of wife of Mr.Munshi. The accused has relied upon the letter Exhibit 33, written by the

Assistant Engineer to Dy.S.P. Shaikh. The copy of extract of Consumer's personal Ledger Exh.34. Thus, defence of the accused is of total denial.

h) On considering the evidence adduced by the prosecution and defence of the accused, the learned Special Judge held that the prosecution has failed to prove the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the Act against the accused and also held that the prosecution has failed to prove that the sanction order to prosecute the accused was valid and legal and accordingly, acquitted the accused of the aforesaid offences by the impugned judgment and order, which is under challenge in this appeal by the appellant-State.

3. I have heard Mr.Badakh, learned APP appearing for the appellant-State and Mr.Bramhe, learned Advocate for the respondent-accused and with their assistance, I have perused the evidence adduced by the prosecution and impugned judgment and order.

4. Mr.Badakh, learned APP submitted that the prosecution has proved first and second demand made

by the accused to the complainant on 22.07.2008 on the basis of evidence of PW-1, the complainant and PW-2 (panch No.1) has corroborated the evidence of the complainant regarding second demand made by the accused on the date of trap. Further, it is submitted that the prosecution has proved acceptance of bribe amount by the accused and recovery of the said amount from him. According to the learned APP, PW-4 Executive Engineer is the Appointing Authority of the accused and hence, sanction order Exhibit 38 issued by him is valid sanction order. It is submitted that the Director of MSEDCL is not the removing authority of Class-IV employee i.e. the accused. As per the evidence of PW-3 Deputy Engineer, the accused was suspended by the Executive Director of the MSEDCL, Pune and in the matter of Anti Corruption, powers of suspending any employee are with the Executive Director, Pune only and therefore, merely because the accused-technician was suspended by the Executive Director of MSEDCL, Pune, it cannot be said that PW-4, Executive Engineer cannot accord sanction to prosecute the accused. Therefore, according to the learned APP, the finding recorded by the trial Court that the sanction order is not valid is incorrect. Lastly, it was submitted by the learned APP that the prosecution has proved the offences with which the accused was charged and therefore, the findings recorded by the trial Court that the prosecution has failed to prove the said offences against the accused are incorrect and thus acquittal of the accused of the said offences by the impugned judgment and order is not proper and the same be set aside and the accused be convicted for the offences with which he was charged by allowing the appeal.

5. Mr.Bramhe, learned Advocate for the respondent/accused, on the other hand, submitted that as per the prosecution case at the time of incident on 22.07.2008, house was in the name of the complainant's wife Shobha Kulkarni. It has come on record that there was no electric connection in the said house and it was disconnected in the year 2003. There is no evidence to show that said electric connection was restored. On the contrary, it has come on record that the complainant had applied for a

new connection on 04.07.2008 and new connection No. R-7704 was sanctioned to the wife of the complainant as seen from Exhibit 34 Consumer's Personal Ledger. In such circumstances, there is no material to show that new electric connection was working on 22.07.2008, when allegedly, the accused demanded Rs.500/- towards the electric bill from complainant and on his failure, accused threatened to disconnect the electric connection. According to learned Advocate, as there was no electric connection on the date of demand on 22.07.2008, there is no reason for the accused to claim electric charges/bills from the complainant and to make demand of bribe or to give threat to the complainant as alleged by the prosecution. It is submitted that the house was already sold prior to filing of the complaint. Therefore, the complainant was neither owner nor he was related to the person residing in the said house and hence, he had no authority to lodge the complainant. The prosecution has failed to prove very genesis of the prosecution and it has not proved the demand made by the accused. The accused had given explanation immediately after the trap on the same day as per Exhibit 30 and said explanation given by the accused is plausible explanation. Therefore, merely because tainted amount was found with the accused, no permission can be raised under Section 20 of the Act regarding guilt of the accused for the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the Act. It is submitted that on considering the entire evidence adduced by the prosecution, the learned Special Judge has rightly held that the prosecution has failed to prove the offences with which the accused was charged and rightly observed that the sanction accorded to prosecute the accused is not valid sanction and rightly acquitted the accused. Thus, the view taken by the trial Court was plausible view and it needs no interference by this Court in the appeal against the acquittal. Thus, the learned Advocate for the accused has claimed to dismiss the appeal.

6. Mr.Bramhe, learned Advocate for the respondent-accused to support his submissions has placed reliance on the following decisions :

i) In the case of **State of Kerala and Anr. V/s. C.P. Rao, 2012 ALL MR (Cri) 3068, wherein**, it was held that mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. When the Court to exercise its discretion in an appeal arising against an order of acquittal, the Court must remember that the innocence of the accused is further re-established by the judgment of acquittal.

ii) In the case of **V.Sejappa v/s. State of Police Inspector Lokayukta, Chitragdurga 2017(3) SCC (Cri) 699**, it was held that initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and the presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act. It was further held that merely because the appellate court on re-appreciation and re-valuation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. If the evaluation of the evidence and the findings recorded by the trial court does not suffer from any illegality or perversity and the ground on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal, if any view is possible.

7. Considering the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the Act alleged against the accused and his acquittal of said offences, the prosecution has to prove whether the accused while discharging his duty as a public servant as Junior Technician in MSESDCL, Omerga city on 22.07.2008, demanded and accepted Rs.500/- as illegal gratification other than legal

remuneration from the complainant for not disconnecting the electric supply of the house of wife of the complainant (Illiyas Munshi) and whether it is proved by the prosecution that the accused in his capacity as a public servant as Junior Technician at MSEDCL Office, Omerga City obtained for himself pecuniary advantage of Rs.500/- from the complainant by corrupt or illegal means and by abusing his position as a public servant.

8. Considering the submissions made by the learned Advocate for the accused that at the relevant time of incident, the house was not in the name of Shobha Kulkarni wife of the complainant, so also whatever electric connection was there to the house of the wife of the complainant was disconnected in the year 2003 and therefore, there was no reason for the accused to demand electric bill of the said house and threatening the complainant to disconnect the electric supply of the said house on 22.07.2008, on failure of the complainant to pay Rs.500/- to the accused as alleged by the prosecution, it is necessary to see at the first place whether there was

house at Shashtri Nagar, Omerga Dist.Osmanabad in the name of Shobha Kulkarni, wife of the complainant and there was electric supply to the said house on the date of the incident on 22.07.2008 so as to say that the accused had reason to demand Rs.500/- from the complainant for not disconnecting the electric supply of the said house on failure of the complainant to pay electric charges to the complainant. In this respect, it is the case of the prosecution that the complainant was residing at 136, Jawahar Shastri Nagar, Omerga with his wife Shobha Kulkarni and son and said house was in the name of his wife and new electric meter No.596520183264 was installed since two years prior to the complaint Exhibit 17 dated 22.07.2008. It was alleged that no electric bill was issued to the complainant, however, the accused used to take Rs.500/-, as a bill amount of the electric charges, per month, from the complainant and was not giving receipts to the complainant. In his evidence, the complainant (PW-1) has stated that electric meter was installed in his house in the year 2006 and since installation of electric meter, he has not received bill for electric charges.

9. In the cross-examination on behalf of the accused in paragraph 3, the complainant (PW-1) has deposed that he is not aware whether meter, mentioned in complaint of Shobha Kulkarni was permanently disconnected on 09.08.2003. He does not know whether on 03.07.2008, Shobha Kulkarni had applied for new electric meter. He states that Shobha Kulkarni had told him that she has applied for new meter, but he does not know whether, she has paid demand amount of Rs.1,125/- through the accused. He does not know whether, accordingly Kumbhar (accused) has paid said demand amount and till today, he possesses the receipt of the same. He had not applied for new electric connection, he does not know whether on 04.07.2008, MSEB Office had given new meter to the accused to install the same at the house of Shobha Kulkanri. He denied that from 04.07.2008 to 22.07.2008, the accused was asking him to make arrangement for service wire and kitkat board, but he was saying that it is part of the department. He denied that on account of that amount, there was

dispute between them and the accused. In paragraph 6 of his cross-examination, the complainant denied that there was no electric supply at their house since the year 2003 and that board was saying that without paying previous bills, no fresh connection would be given. Thus, it is clear from the above evidence of the complainant that he shows ignorance about the fact that electric meter mentioned in the complaint of his wife Shobha Kulkarni was permanently disconnected from 09.08.2003 and that she had applied on 03.07.2008 for a new electric meter. Further, he admitted that Shobha Kulkarni told him that she had applied for a new electric meter and that she paid Rs.1,125/- as a demand amount through the accused for a new electric meter. Thus, it is seen from the evidence of complainant that since 09.08.2003, electric meter of the house of Shobha Kulkarni was disconnected and further it appears from his evidence that on 04.07.2008, MSEDCL Office had given a new electric meter to the accused to install the same at the house of his (complainant's) wife Shobha Kulkarni. Thus, his evidence that since two years prior to the complaint, new electric meter was installed in the house of his wife Shobha Kulkarni and no electric bill of the said meter was given to him and still he was paying Rs.500/- per month towards the electric charges till the date of the complaint or trap on 22.07.2008 is not believable and sufficient to hold that there was electric meter at the house of his wife Shobha Kulkarni on the date of incident.

10. The evidence of ASI Bagadi (PW-5), who was one of the members of the raiding party in paragraph 13 (Para 12 in Marathi deposition) is that no verification about the ownership of House No.162/2 or 136/16 was made. He denied that the house of spot of incident does not belong to Shobha Kulkarni or complainant Illiyas. He further denied that he does not know whether the house of the spot of incident came in possession of Nagarabai Nagade from 18.09.2007. He does not know whether, Nagarabai Nagade was owner of said house. No information regarding ownership and possession of said house was called from the Municipal Council, Omerga. He

admitted that, it is mentioned in investigation papers that electric supply of Shobha Kulkarni was permanently disconnected from 11.08.2003. During investigation, it was not found that said electric supply was reconnected. No any document is on record to show that new connection was started. He denied that no electric supply was given in the house of Shobha Kulkarni. Thus, it is clear from the evidence of PW-5 that he does not deny the fact that Nagarabai Nagade was owner of the house from 18.09.2007, where the alleged incident took place. So also, he admitted that it was transpired during the investigation that electric supply of Shobha Kulkarni is permanently disconnected from 11.08.2003. Thus, from the evidence of ASI Bagadi (PW-5) one thing is clear that it is doubtful, whether Shobha Kulkarni, the wife of the complainant was owner and possessor of House No. 136/2 or 136/16 on the date of incident and it is clear from his evidence that electric supply to the house of Shobha Kulkarni was permanently stopped from 11.08.2003. Therefore, it is obvious there was no electric supply to the house of Shobha Kulkarni on

22.07.2008 on the date of trap. In such circumstances, when it is doubtful whether, Shobha Kulkarni was in possession of house and when there was no electric supply to the said house on the date of trap i.e. on 22.07.2008, the case of the prosecution that the accused was collecting Rs.500/- per month as a bill amount from the complainant towards electric charges and he demanded an amount of Rs.500/- on 22.07.2008 towards electric bill and threatened the complainant to disconnect the electric supply of house on the said date on failure of complainant to pay him electric bill amount of Rs.500/- is doubtful.

11. The evidence of Appasaheb Khandekar (PW-3), Deputy Engineer (MSEDCL) is that in the extract of Consumer Personal Ledger (Exh.34), date of permanent disconnection of electric supply of Shobha Kulkarni is mentioned as on 09.08.2003. The letter (Exh.33) of PW-3 addressed to the Dy.S.P., ACB Office, Osmanabad shows consumer number of Shobha Kulkarni as 596520183264 and the said connection has been given on 11.11.1992 and 65 bills were given for the said

connection from December, 1992 to accused till 2003. Said connection was disconnected permanently from 18.08.2003 and arrears of bill amount is Rs.25,143/-. Consumer Personal Ledger (Exhibit 34) also shows that there is permanent disconnection of the electric supply to the house of Shobha Kulkarni from 09.08.2003 and new connection is No.R-7704 dated 04.07.2008. But when as referred earlier, ASI Bagadi (PW-5) has stated that there is no document on record to show that new connection was started, it cannot be said that on 22.07.2008, there was electric connection in the house of Shobha Kulkarni, the wife the complainant.

12. For the reasons discussed above, on the basis of evidence of the complainant (PW-1), ASI Bagadi (PW-5), Exhibit 33, the letter of PW-3 and Consumer Personal Ledger (Exh.34), no interference can be drawn that on the date of trap i.e. on 22.07.2008, there was electric connection to the house of Shobha Kulkarni, the wife of the complainant and therefore, there was reason for the accused to demand Rs.500/- towards the electric

charges from complainant and on failure of the complainant to pay said amount, the accused had threatened the complainant, as alleged by the prosecution. Thus, the case of the prosecution regarding demand of Rs.500/- by the accused for not disconnecting the electric supply of the house of the wife of the complainant is not acceptable.

13. Assuming for the sake of argument that at material time of incident, the house was in possession of Shobha Kulkarni, the wife of the complainant and there was electric meter in the said house, let us consider, whether the prosecution has proved the demand of Rs.500/- by the accused from the complainant for not disconnecting the electric supply of the said house. To prove this first demand on 22.07.2008, the prosecution has relied upon the evidence of the complainant (PW-1) and complaint Exh.17 lodged by him. The evidence of the complainant (PW-1) is that on 22.07.2008, the appellant demanded Rs.500/- by way of payment of bill and he assured him that he would pay it in the next week. The accused had insisted to pay Rs.500/- on

the same day, otherwise, he threatened to cut off the electric supply. He stated that he assured him that he would pay the bill amount in the evening at about 08.30 to 09.00 p.m. He stated that he was not intending to give Rs.500/- to the accused and he went to the ACB Office, Osmanabad. He narrated the incident to Dy.S.P. Shaikh (PW-5). In the cross-examination in paragraph 7, he admitted that the accused did not demand Rs.500/- towards electric bill and further admitted that the accused did not say that if the amount is not paid, he would cut off the electric connection. Thus, in view of this admission of PW-1 the complainant, it cannot be said that the accused made a demand of Rs.500/- as alleged by the prosecution. In view of the above admission of the complainant his allegation in the complaint Exh.17 lodged by him in the ACB Office, Osmanabad that on 22.07.2008, the accused demanded Rs.500/- from the complainant towards the bill and on failure of the complainant, threatened to disconnect the electric supply is not believable. Thus, I hold that the prosecution has failed to prove initial demand of

Rs.500/- made by the accused from the complainant on 22.07.2008.

14. As regards the second demand, allegedly made by the accused from the complainant on the date of trap i.e. on 22.07.2008 at about 08.30 to 09.00 p.m. is concerned, the prosecution has relied upon the evidence of the complainant (PW-1) and panch No.1 (PW-2) to prove the said demand. The evidence of the complainant (PW-1) in respect of this demand is that on 22.07.2008 in the ACB Office, Osmanabad, Dy.S.P. Shaikh called two panchas namely Dilip Surte (PW-2) and Shailesh Tate (panch No.2). Both the panchas read over the FIR i.e. Exh.17. The complainant stated that he had given five currency notes of Rs.100/- denomination. The anthracene powder was applied to said currency notes and they were kept in left pocket of his shirt. Thereafter, the necessary instructions were given to him and the panchas by Dy.S.P. Shaikh (PW-5). He (complainant), Dy.S.P. Shaikh and office staff members proceeded to Omerga by jeep at about 6.30 to 6.45 p.m. They reached at Omerga at about 8.30 p.m. Jeep was parked near Soni Bar.

15. The material evidence of the complainant (PW-1) in respect of alleged 2nd demand made by the accused is that he and panch Dilip (PW-2) went to his house by walk and staff members had stopped near to his house. After 10 minutes, the accused came to his house. The accused demanded Rs.500/- for payment of light bill. He gave him five currency notes, which were kept in the pocket of his shirt. The accused accepted the said amount. He counted the notes by both the hands and kept the same in the pocket of his shirt. Then he gave signal to Dy.S.P. Shaikh and staff. They came there. They had seen his hands as well as hands of the accused under ultraviolet lamp by switching off lights of his house. The complainant further stated that he is not aware whether meter mentioned in the complaint of Shobha Kulkarni was permanently disconnected from 09.08.2003. As referred earlier in detail in paragraph 9 (*supra*), the complainant states that, he does not know whether Shobha Kulkarni applied for new meter, she told him that she paid demand amount of Rs.1,125/- through the accused and further states that he does not know

whether accused paid said demand amount and till he possesses receipt of the same. He also states he does not know whether on 04.07.2008, MSEB had given new meter to the accused to install the same in the house of Shobha Kulkarni and denied that from 04.07.2008 to 22.07.2008, accused was asking him to make arrangement for service wire and he admitted that he had asked the accused to bring the service wire. So also, he denied that the accused told him that cost of service wire would be Rs.500/- and that he told him that he would arrange said amount within 4-5 days. Thus, it is seen from the evidence of the complainant that on 04.07.2008, MSEB Office had given new meter to install the same in the house of complainant's wife and to purchase service wire to install the said meter, the complainant had asked the accused to bring the service wire. As mentioned above, according to the complainant on the date of trap after 08.30 p.m., the accused came to his house and demanded Rs.500/- for payment of light bill. This cannot be said to be demand of bribe for not disconnecting the electric supply of the house of the wife of the complainant as the complaint is not saying as per his complaint that he was paying Rs.500/- per month continuously to the accused from the year 2006 and the accused was not giving any receipt and as such, the accused had demanded Rs.500/- from him and on failure to pay the said amount, the accused had threatened to disconnect the electric supply as alleged in the complaint. Therefore, mere demand of Rs.500/- towards the electric bill also does not amount to demand of bribe.

16. The evidence of PW-2 (panch No.1) as regards the demand made by the accused from the complainant on the date of trap is that, on 22.07.2008 after the pre-trap panchnama Exh.28, he along with raiding party members and the complainant came to Omerga near Soni Beer Bar at about 20.35 hours. Thereafter, he along with the complainant came to the house of the complainant and another panch and raiding party members followed them. When they were sitting in the house of the complainant, one unknown person came there. At that time, the complainant told him that he

is Kumbhar Saheb (accused) and Mr.Kumbhar sat on the cot. The complainant asked Mr.Kumbhar as to what he has done about his electric bill. At that time, Mr.Kumbhar said that he would see himself about the bill, at first give him Rs.500/-. Then the complainant took out Rs.500/- by his right hand from his left side pocket of shirt and tendered to Mr.Kumbhar and Mr.Kumbhar accepted the said amount by his right hand and counted the same by both hands and then kept it in left side pocket of his shirt. The complainant went out of house. Then Mr. Shaikh along with raiding party and panch No.2 came inside the house. In the cross-examination, he has denied that the accused did not demand bribe of Rs.500/- and did not accept the said amount and that he is deposing false. PW-2 has not stated that the accused demanded Rs.500/- to the complainant and on failure of the complainant to pay Rs.500/- towards electric bill threatened to disconnect the electric supply as per the case of the prosecution case. Thus, the vague evidence of PW-2 referred to above is not sufficient to infer that the accused made demand of bribe of Rs.500/- to the complainant on the date of trap as alleged by the prosecution.

17. For the reasons discussed above, the evidence of the complainant (PW-1) and PW-2 (panch No.1) is not sufficient to state that the accused demanded a bribe of Rs.500/- from the complainant for not disconnecting the electric supply of the house of his wife Shobha Kulkarni.

18. From the evidence of the complainant, panch No.1 (PW-2) and ASI Bagadi (PW-5), who was in the raiding party, it is clear that tainted currency notes of Rs.500/- were found in possession of the accused. Therefore, it can be said that the prosecution has proved the acceptance of bribe amount of Rs.500/- by the accused. When the prosecution has failed to prove the demand of bribe by the accused from the complainant, mere acceptance of the said amount by the accused is not sufficient to attract the offences alleged against the accused. So also, mere acceptance of the said bribe amount by the accused is not sufficient to raise presumption under

Section 20 of the Act against the accused as regards of the offence under Section 7 of the Act.

19. Defence of the accused is as stated in paragraph 2(g) supra and at the cost of repetition, defence of the accused is that immediately after the trap on 22.07.2008, he had given statement Exh.30 giving explanation about accepting the amount of Rs.500/-. As per said statement, about 10-12 days prior to the said statement, the husband of Smt.Shobha Kulkarni had applied for second electric connection in the name of said Shobha Kulkarni. He had given A-1 Form, Revision Copy and an amount of Rs.1,125/- towards demand to the accused to deposit the said amount and he deposited the said amount in the bank. There was need of service wire for new connection of the complainant. Service wire was not available with the MSEDCL. The complainant said that he would give him (accused) Rs.500/- for purchasing the service wire and therefore, the accused had gone to the house of the complainant on 22.07.2008 at about 09.00 am and the complainant (Munshi) had given him Rs.500/- and told the accused to bring the

service wire and other material required for electric connection. This explanation given by the accused as per statement Exh.30 immediately after the trap and admission of the complainant that the accused did not demand Rs.500/- for paying the electric bill and that the accused did not say him that if the amount is not paid, he would cut off the electric connection clearly shows that an amount of Rs.500/- was paid by the complainant to the accused and said amount was accepted by the accused for purchasing service wire for giving second electric connection in the name of the wife of the complainant as the first electric connection was already disconnected in 2003 as observed earlier and the said explanation given by the accused is quite probable and acceptable. Therefore, mere acceptance of aforesaid amount by the accused from the complainant is not sufficient to state that the said amount was accepted by the accused as an illegal gratification, as alleged by the prosecution.

20. On perusal of the impugned judgment in paragraphs 16 to 22, learned Special Judge has

considered the evidence of the complainant and rightly concluded that Shobha Kulkarni wife of the complainant had sold her house on 18.09.2007 i.e. prior to trap to one Nagarabai Nagade for a consideration of Rs.1,90,000/- and therefore, question of installation of electric meter in the house of Shobha Kulkarni does not arise. Moreover, learned Special Judge has rightly observed that if there was no electric meter in the house of Shobha Kulkarni, question of receiving any electric bill by the complainant (PW-1) does not raise. So also, it has rightly observed that if there was no electric meter, then the question of demanding Rs.500/- towards electric bill and threatening to PW-1 of cutting off electric supply on non-payment of Rs.500/- does not arise. Moreover, it has rightly held that the prosecution has failed to prove that the accused accepted Rs.500/- from the complainant as a bribe and that the explanation given by the accused for accepting Rs.500/- from the complainant appears to be probable.

21. As regards sanction to prosecute the accused

as per Exh.38, there is no dispute that at the relevant time of incident, the accused was working as Junior Technician in MSEDCL, and he was Class-IV employee. This sanction order was issued by the Executive Engineer, Tuljapur Mr.Tayade (PW-4). According to him, Executive Engineer has got powers to remove Junior Technician from the service. In the cross-examination, he has stated that the powers of removal of Class-IV employees were with the Executive Engineer, but the powers of appointment of Class-IV employees were not with the Executive Engineer. He has denied that after formation of the Company, powers to remove Class-IV employees are with the Directors of the Company. He has denied that he has no powers to remove the Class-IV employees from the service. He has denied that he accorded false sanction without application of mind. The evidence of Appasaheb Khandekar, Deputy Engineer (PW-3) shows that the accused is suspended by the Executive Director, MSEDCL, Pune. In the matter of anti corruption, powers of suspending any employee are with the Executive Director, MSEDCL, Pune only. The prosecution has not produced service regulation 90, which empowers the Executive Engineer to remove Class-IV employee from the service. In the present case, the Executive Director, MSEDCL, Pune has suspended the accused and Exh.38 sanction order to prosecute the accused was issued by PW-4, the Executive Engineer. As per Section 19(1) (c) of the Act, an authority to competent to remove a public servant from his office is supposed to grant previous sanction for prosecution. As observed above, when in the present case the accused was suspended by the Executive Director, MSEDCL, Pune, it cannot be said that the Executive Engineer (PW-4) has power to remove the accused Class-IV employee and as such he has power to grant sanction to prosecute the accused. Therefore, when the prosecution has not produced the service regulations 90, which allegedly empowers the Executive Engineer to remove Class-IV employees from service, on record it cannot be said that the Executive Engineer (PW-4) had authority to accord sanction to prosecute the accused. Therefore, sanction accorded by the Executive Engineer (PW-4) to prosecute the accused cannot be said to be valid and legal. Learned Special Judge has properly considered the said aspect in paragraphs 11 and 12 of the impugned judgment. Therefore, I find no fault in the finding of the trial Court that the sanction accorded by PW-4 is not valid and legal.

22. For the reasons discussed above, I hold that the prosecution has failed to prove the offences under Sections 7 and 13(1) (d) read with Section 13(2) of the Act against the accused beyond reasonable doubt. The trial Court has rightly held so and rightly acquitted the appellant-accused of the said offences. The trial Court has properly considered the evidence. The view taken by the trial Court is possible view. Thus, there is no ground to interfere with the impugned judgment and order acquitting the respondent-accused of the aforesaid offences. Thus, the appeal being devoid of merits and the same is liable to be dismissed. Accordingly, the same is dismissed. The bail bond of the appellant-accused stands cancelled.

[S.M. GAVHANE, J.]

sarowar