

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.663 OF 2016

VIJAYKUMAR PIRAJI CHINCHALKAR)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.A.H.H.Ponda a/w. Mr.Shantibhushan Nirmal, Mrs.Nilofer Sayed and Mr.Santosh Maske i/b. Mrs.Shweta Rathod and Mr.Prashant Mairale, Advocate for the Appellant.

Mr.A.R.Kapadnis, APP for the Respondent – State.

Mr.Nitin B. Vijaykumar, Deputy Superintendent of Police, Ratnagiri, present in the court with the APP.

CORAM : A. M. BADAR, J.

**DATE : RESERVED ON 5th SEPT. 2019
PRONOUNCED ON 9th SEPT. 2019**

JUDGMENT :

1 In view of order dated 14th January 2019 passed by the co-ordinate Bench of this court (Coram : Smt.Sadhana S. Jadhav, J.) and the order dated 14th December 2018 passed by the

Honourable Supreme Court in the petition for Special Leave to Appeal (Criminal) No.10486 of 2018, this appeal is taken up for final hearing.

2 The appellant/convicted accused, who was working as the Superintendent, State Excise Department at Ratnagiri, by this appeal, is challenging the judgment and order dated 5th October 2016 passed by the learned Special Judge, District Ratnagiri, in Special Case No.10 of 2015, thereby convicting him of offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. On both counts, the appellant/convicted accused is separately sentenced to suffer rigorous imprisonment for 5 years apart from direction to pay fine of Rs.10,000/- and in default, to undergo simple imprisonment for 6 months. The learned Special Judge further directed that substantive sentences shall run concurrently.

3 Facts, in nutshell, leading to prosecution and the resultant conviction of the appellant/convicted accused, as

gathered from the complaint Exhibit 36 lodged by complainant/PW1 Rajaram Gadade as well as from the charge-sheet vis-a-vis response of the defence thereto, are thus :

- (a) Complainant/PW1 Rajaram Gadade had obtained license bearing No.CL-III/99 in the year 1973 for retail sale of country liquor from House No.490, Survey No.113 of Village Pacheri Sada in Guhagar Taluka of Ratnagiri District. He renewed that license from time to time and conducted business up to 31st March 1989. Thereafter, he did not renew his CL-III license for retail sale of country liquor. The defence has not disputed this part of the prosecution case.
- (b) In the year 1999, complainant/PW1 Rajaram Gadade again applied for renewal of his license by making an application to the Commissioner of the State Excise Department of the State. Under orders of the Commissioner, State Excise, his license came to be renewed up to year 2000, on payment of the license fees for the entire period. Accordingly, he deposited an amount of Rs.37,375/- in the State Treasury.

Accordingly, complainant/PW1 Rajaram Gadade opened his country liquor shop but again within ten to fifteen days, the State Government suspended his license on the ground that the Commissioner of the State Excise had no power to renew the same. The accused is accepting the position, as seen from the line of cross-examination of complainant/PW1 Rajaram Gadade.

- (c) Feeling aggrieved by the action of the State Government, on 16th December 2000, complainant/PW1 Rajaram Gadade preferred revision petition, which came to be disposed off by an order dated 31st March 2007, by the Hon'ble Minister of the State Excise Department, by directing the District Committee to take suitable decision in the matter. The District Committee then rejected the prayer for renewal of the CL-III license, made by complainant/PW1 Rajaram Gadade. This part of the prosecution case is also not challenged by the defence during the trial.

- (d) Dissatisfied by the refusal on the part of the State Authorities to renew his CL-III license, complainant/PW1 Rajaram Gadade again preferred a revision petition before the Hon'ble Minister of the State Excise Department of the State. By the undated order of February 2013 (Exhibit 39), the Hon'ble Minister for the State Excise Department of the State was pleased to allow the said revision petition. By the said order, it was directed that by imposing the renewal fees from the year 2000-01 to 2012-13, the CL-III license of complainant/PW1 Rajaram Gadade be renewed. The revisional order (Exhibit 39) was served on the complainant on 13th March 2013 vide covering letter dated 1st March 2013 of the Home Department of the State. The accused has accepted this fact and has produced and proved this order along with the covering letter (Exhibit 39) while cross-examining complainant/PW1 Rajaram Gadade.
- (e) According to the prosecution case, then, complainant/ PW1 Rajaram Gadade went to the office of the Superintendent,

State Excise Department, Ratnagiri, and met the appellant/convicted accused, who was working there as the Superintendent of the State Excise, for renewal of his license. On the pretext of studying the matter, the appellant/ convicted accused gave evasive replies on each visit of complainant/PW1 Rajaram Gadade. Ultimately, on 30th July 2013, complainant/PW1 Rajaram Gadade questioned the appellant/convicted accused as to why his matter is being delayed and then the appellant/convicted accused made a tacit demand by showing ten fingers of the palm. The appellant/convicted accused orally also demanded an amount of Rs.10 lakh from complainant/PW1 Rajaram Gadade for renewal of his CL-III license, at that time.

- (f) As complainant/PW1 Rajaram Gadade was not willing to pay bribe to the appellant/convicted accused Vijaykumar Chinchalkar, Superintendent of the State Excise, Ratnagiri, on 12th August 2013 he approached the office of the Anti-

Corruption Bureau at Thane and lodged complaint Exhibit 36, which came to be recorded by PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane.

- (g) PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, then on 12th August 2013 itself summoned two panch witnesses namely PW2 Lakhanlal Dhapade, who was working at the Animal Husbandry Department of the Zilla Parishad, Thane, and Chintaman Sankhe, who was working with the District Rural Development Agency, Thane. PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, introduced complainant/PW1 Rajaram Gadade to both panch witnesses. Thereafter, complainant/PW1 Rajaram Gadade disclosed his grievances to both panch witnesses. They also read the complaint Exhibit 36 lodged by complainant/PW1 Rajaram Gadade. As complainant/ PW1 Rajaram Gadade had informed that he is called by the appellant/convicted accused for receiving illegal gratification on 13th August 2013 at his office at

Ratnagiri, the raiding party of the Anti-Corruption Bureau, Thane, accompanied by panch witnesses and complainant/PW1 Rajaram Gadade left Thane for Ratnagiri at 5.30 p.m. of 12th August 2013. They reached near Chiplun city at 11.30 p.m. of 12th August 2013. As Ratnagiri city was at a distance of 100 kilometers, it was decided to take a night halt. Complainant/PW1 Rajaram Gadade informed the raiding team that his partner Rajendra Ghosalkar is residing at Village Jamsud and therefore, they can stay at Village Jamsud in the house of his partner Rajendra Ghosalkar. The raiding party and panch witnesses then stayed at the Farm House of Rajendra Ghosalkar at Village Jamsud in the night intervening 12th August 2013 and 13th August 2013.

- (h) In the morning hours of 13th August 2013, Rajendra Ghosalkar informed PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, and others that the appellant/convicted accused had sent a SMS on his cell

phone informing that the appellant/convicted accused would be coming to his office at Ratnagiri on 14th August 2013. PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, then verified the SMS sent by the appellant/convicted accused on the cell phone of Rajendra Ghosalkar. Hence, proposed trap of 13th August 2013 came to be postponed and it was decided to continue the stay of the raiding party and panch witnesses at the Farm House of Rajendra Ghosalkar. Accordingly, Panchnama dated 13th August 2013 (Exhibit 43) of postponement of the trap to 14th August 2013 came to be prepared at the Farm House of Rajendra Ghosalkar, on 13th August 2013.

- (i) In the morning hours of 14th August 2013, PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, in presence of panch witnesses, ascertained from complainant/PW1 Rajaram Gadade as to from where the money to be paid as bribe would be arranged by him. Complainant/PW1 Rajaram Gadade informed them that his

partner Rajendra Ghosalkar has transferred an amount of Rs.5 lakh to his bank account maintained at the Bank of India, Abloli Branch. He also informed that as against demand of illegal gratification of Rs.10 lakh, he would pay that amount of Rs.5 lakh to the appellant/convicted accused and would request him to reduce the bribe amount or assure him that balance amount would be paid subsequently. Thereafter, at about 10.00 a.m. of 14th August 2013, raiding party of the Anti-Corruption Bureau, Thane, headed by PW4 Vijay Sarbhukan, Police Inspector along with panch witnesses, left the Farm House of Rajendra Ghosalkar by taking with them complainant/PW1 Rajaram Gadade as well as Rajendra Ghosalkar for going to the Ratnagiri city for trapping the appellant/accused. On the way, complainant/PW1 Rajaram Gadade had withdrawn cash amounting to Rs.5 lakh from the bank. Then Room No.106 in Hotel Sai Leela Super Deluxe of Ratnagiri came to be hired by complainant/PW1 Rajaram Gadade. At that place, Police Naik Mahadik smeared the currency notes produced

by complainant/PW1 Rajaram Gadade with anthracene powder after noting down numbers of those currency notes. Then, those currency notes were kept in the handbag of complainant/PW1 Rajaram Gadade. Demonstration of use of anthracene powder was given to the panch witnesses, complainant/PW1 Rajaram Gadade and Rajendra Ghosalkar. Necessary instructions were imparted to both panch witnesses as well as complainant/PW1 Rajaram Gadade and also to Rajendra Ghosalkar. PW2 Lakhanlal Dhapade was to act as shadow panch and he was directed to accompany complainant/PW1 Rajaram Gadade and Rajendra Ghosalkar. He was instructed to hear the conversation between the appellant/convicted accused and complainant/PW1 Rajaram Gadade as well as Rajendra Ghosalkar. He was asked to see passing of amount of illegal gratification and receipt thereof by the appellant/convicted accused. Complainant/PW1 Rajaram Gadade and Rajendra Ghosalkar were instructed not to pay the amount of bribe unless demanded, and on demand, complainant/PW1 Rajaram Gadade should come

out of the cabin of the appellant/accused for taking the amount of bribe for payment thereof to the appellant/convicted accused. Digital Voice Recorder was attached to the body of complainant/PW1 Rajaram Gadade and he was asked to record the conversation with the appellant/convicted accused.

- (j) After completion of necessary pretrap formalities, the raiding party of Anti-Corruption Bureau, Thane, accompanied by both panch witnesses as well as complainant/PW1 Rajaram Gadade and Rajendra Ghosalkar went to the Office of the Superintendent, State Excise, Ratnagiri. Members of the raiding team took their position in the vicinity. After conducting verification proceedings, at 4.30 p.m. of 14th August 2013, complainant/PW1 Rajaram Gadade, Rajendra Ghosalkar and PW2 Lakhanlal Dhapade (shadow panch) went inside the Office of the Superintendent, State Excise, Ratnagiri, for meeting the appellant/convicted accused.

- (k) According to the prosecution case, complainant/PW1 Rajaram Gadade, accompanied by Rajendra Ghosalkar, entered in the cabin of the appellant/convicted accused, whereas shadow panch PW2 Lakhanlal Dhapade remained outside and sat on the bench in the office. The appellant/convicted accused then asked as to how much amount is brought and complainant/PW1 Rajaram Gadade informed him that he had brought an amount of Rs.5 lakh. By gestures then the appellant/convicted accused asked the complainant to keep the amount in the drawer of his table. The complainant was informed by the appellant/convicted accused that balance amount of Rs.4 lakh be paid to him subsequently. This was as a result of negotiation. Initial demand of Rs.10 lakh came to be reduced to Rs.9 lakh. As decided, complainant/PW1 Rajaram Gadade came out of the cabin of the appellant/convicted accused, took his handbag and re-entered in the cabin of the appellant/convicted accused. He then put the tainted currency notes amounting to Rs.5 lakh in the drawer of the table of the

appellant/convicted accused. Then, complainant/PW1 Rajaram Gadade came out of the cabin and gave prearranged signal.

- (1) Upon getting the prearranged signal, the raiding team including PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, panch no.2 Chintaman Sankhe and others entered in the cabin of the appellant/convicted accused. He came to be apprehended. From the drawer of his office table tainted currency notes amounting to Rs.5 lakh came to be recovered. Numbers of the recovered currency notes came to be tallied. Then, hands as well as handbag of complainant/PW1 Rajaram Gadade came to be tested. Traces of anthracene powder were found thereon. Traces of anthracene powder were also found on fingertips of fingers of right palm of the appellant/convicted accused. Sketch map of the spot of the incident came to be drawn, so also the 'Verification cum Pre and Post trap panchnama' Exhibit 44, by PW4 Vijay Sarbhukan, Police Inspector, Anti-

Corruption Bureau, Thane, narrating all events from the time the raiding team left the Farm House of Rajendra Ghosalkar.

- (m) PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, then lodged the First Information Report (FIR) (Exhibit 65) with the Police Station Ratnagiri City on 15th August 2013. Accordingly, Crime No.39 of 2013 for offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, came to be registered against the appellant/convicted accused. Further investigation of the crime in question came to be entrusted to the Anti-Corruption Bureau, Ratnagiri. PW5 Lokesh Kanase, Police Inspector of the Anti-Corruption Bureau at Ratnagiri carried out the investigation. He collected voice samples of the appellant/convicted accused in presence of panch witnesses. Recorded conversation in the Digital Voice Recorder was taken on the Compact Disc with the help of the clip and Panchnama Exhibit 68 came to

be prepared. Compact Disc of recorded conversation and voice samples of the appellant/convicted accused were then sent for forensic examination. However, till completion of trial, reports of the Forensic Science Laboratory were not made available to the trial court. Even till disposal of this appeal, they were not produced, by taking resort to the provisions of Section 391 of the Code of Criminal Procedure. Call Detail Record of the appellant/convicted accused came to be collected. Sanction for prosecuting the appellant/convicted accused came to be obtained from the State Government and on completion of investigation, appellant/convicted accused came to be charge-sheeted.

- (n) The learned trial court framed and explained the Charge for offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 to the appellant/convicted accused. He abjured his guilt and claimed trial.

- (o) In order to bring home the guilt to the appellant/convicted accused, the prosecution has examined in all five witnesses.

They are :-

WITNESS NO.	NAME	ROLE
PW1	Rajaram Gadade, Complainant	Filed complaint and participated in further proceedings
PW2	Lakhanlal Dhapade, Panch Witness	Shadow panch who was witness to further proceedings after lodging the complaint
PW3	Ankush Gharge, Joint Secretary, Home Department of the State	Examined to prove sanction to prosecute the appellant/accused
PW4	Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane	He recorded the complaint (Exhibit 36) and conducted all formalities including laying the trap till filing of the FIR
PW5	PW5 Lokesh Kanase, Police Inspector, Anti- Corruption Bureau, Ratnagiri	Investigating Officer who conducted the investigation after filing of the FIR

(p) The prosecution has proved the following documents :-

SR. NO.	DOCUMENTS	EXHIBIT NUMBER
1	Original complaint of Rajaram Gadade	36
2	Verification Panchanama	43
3	Verification Pretrap & Post trap Panchnama	44
4	Receipt of Sai Leela Hotel, Ratnagiri where allegedly trap team A.C.B. Thane halted at Ratnagiri on 14/8/2013 for smearing the currency notes with anthracene powder	45
5	Map of spot of incident	46
6	Receipts of articles found on person of the accused	47
7	Statement given by accused after alleged trap	48
8	Arrest Panchnama	49
9	Another Panchnama of destruction of paper (having no significance)	50
10	Sanction order	57
11	F.I.R. lodged by Shri. Sarbhukan, P.I., A.C.B., Thane	65
12	Panchnama of C.D.S. of voice sample	68

(q) Defence of the appellant/convicted accused was that of total denial. According to him, he is falsely implicated in the crime in question. He examined Santosh Shelke, Driver, as the defence witness. Following documents are proved and relied by the defence :-

SR. NO.	DOCUMENTS	EXHIBIT NUMBER
1	Application dated 19 th August 2013 of the complainant addressed to the office of the accused received on 21 st August 2013 for renewal of his CL-III license	37
2	Application preferred by the complainant in the year 2007 for transfer of his license in the name of other person	38
3	Copy of the undated revisional order passed in February 2013 by the Hon'ble Minister, State Excise, allowing the revision petition of complainant/PW1 Rajaram Gadade and directing renewal of his CL-III license along with the covering letter	39
4	Copies of entire proceeding initiated before the Minister, State Excise Department	49
5	Photographs of cabin of the accused	52 & 54
6	Copy of the file in respect of sanction	59
7	Copy of the file dealing with suspension of the appellant/convicted accused	60
8	Copy of the file regarding promotion of the appellant/convicted accused	61

(r) After hearing the parties, the learned trial court, by the impugned judgment and order, was pleased to convict the appellant/convicted accused and sentenced him accordingly, as indicated in the opening paragraph of this judgment.

4 I have heard Mr.Ponda, the learned counsel appearing for the appellant/convicted accused. He argued that the case in hand is a classic example of the complainant sponsored investigation leading to false implication of the appellant/convicted accused. In his submission, entire arrangement for laying down the trap was made by complainant/PW1 Rajaram Gadade in association with his friend Rajendra Ghosalkar, who had taken a lead role in lodging the complaint against the appellant/convicted accused. However, said Rajendra Ghosalkar is not examined by the prosecution, despite the fact that evidence of complainant/PW1 Rajaram Gadade is vague and lacunic. It is further argued that in paragraph 27 of his cross-examination, complainant/PW1 Rajaram Gadade had disowned the prosecution case and candidly accepted the fact that he had no talks with any other person than Rajendra Ghosalkar, when they had been to the chamber of the appellant/convicted accused, allegedly for payment of the bribe. According to Mr.Ponda, the learned counsel, case of the prosecution is suspect because the raiding party stayed at the farm house of Rajendra Ghosalkar, who was

instrumental in laying the trap against the appellant/convicted accused, by making a false complaint through complainant/PW1 Rajaram Gadade. Complainant/PW1 Rajaram Gadade was not even in a position to identify the appellant/convicted accused. There is no evidence in respect of any demand as well as acceptance. There is no plausible explanation as to why instead of approaching the Office of the Superintendent, Anti-Corruption Bureau of Ratnagiri, in whose territorial jurisdiction the alleged incident took place, complainant/PW1 Rajaram Gadade had chosen to approach the Anti-Corruption Bureau, Thane, which was not having any territorial jurisdiction in the matter. This, in submission of Mr.Ponda, the learned counsel, happened only because Rajendra Ghosalkar, who wanted to falsely implicate the appellant/convicted accused, was having clout at Thane and he is a resident of Thane. The prosecution against the appellant/convicted accused was a politically motivated prosecution by Rajendra Ghosalkar. Therefore, according to the learned counsel, the appellant/convicted accused is entitled for acquittal. Mr.Ponda, the learned counsel, placed reliance on judgments in

the matter of B. Jayaraj vs. State of Andhra Pradesh¹ and M.K.Harshan vs. State of Kerala² to substantiate his contention that evidence regarding demand of illegal gratification is an essential ingredient for making out the offence punishable under Section 7 as well as under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. He placed reliance on the judgment in the matter of Anwar vs. P. K. Basheer and Others³ for contending that without certificate under Section 65B of the Evidence Act, electronic evidence cannot be made use of.

5 As against this, Mr.Kapadnis, the learned APP, argued that first demand is proved by the prosecution through evidence of complainant/PW1 Rajaram Gadade and there was no prohibition to lodge the complaint in respect of the incident of Ratnagiri with the Anti-Corruption Bureau, Thane. It is further argued by the learned APP that evidence of complainant/PW1 Rajaram Gadade is sufficient to show that the appellant/convicted accused had again demanded illegal gratification on the day of the

1 (2014) 13 Supreme Court Cases 55

2 1996 (11) SCC 720

3 2014 (10) SCC 473

trap i.e. on 14th August 2013, in presence of Rajendra Ghosalkar and accepted the same by asking complainant/PW1 Rajaram Gadade to keep the amount of bribe of Rs.5 lakh in his drawer. The learned APP further argued that transcript of conversation between complainant/PW1 Rajaram Gadade as well as the appellant/convicted accused reflected in the Panchnama Exhibit 44 shows that there was demand of bribe of Rs.5 lakh by the appellant/convicted accused and the acceptance of the amount of illegal gratification by him, by directing complainant/PW1 Rajaram Gadade to keep it in the drawer of his office table. Therefore, demand and acceptance is duly proved. By relying on judgment in the matter of **Shafhi Mohd. vs. State of Himachal Pradesh**⁴ the learned APP submitted that there is no need for certificate, as required by Section 65B(4) of the Evidence Act in the case in hand, as it was for the Forensic Department of the State to give such certificate after examining the Compact Disc containing recorded conversation between the appellant/convicted accused and complainant/PW1 Rajaram Gadade. The Anti-Corruption Bureau is not competent to produce such

⁴ 2018 (1) SCC 860

certificate. With these submissions, the learned APP supported the impugned judgment and order of conviction as well as the resultant sentence imposed on the appellant/convicted accused by the learned Special Judge, Ratnagiri.

6 I have carefully considered the submissions so advanced and perused the record and proceedings including oral as well as documentary evidence adduced by the parties. I have elaborately set out the entire prosecution case against the appellant/convicted accused reflecting from the charge-sheet which includes the complaint (Exhibit 36) and the documents proved during the course of investigation, in order to avoid repetition of facts, in the later part of the judgment.

7 In order to bring home the guilt to the appellant/convicted accused, it will have to be proved by the prosecution by cogent evidence that -

- (a) the appellant/convicted accused, at the relevant time, was a public servant;

- (b) the appellant/convicted accused had demanded and accepted or obtained for himself gratification other than legal remuneration;
- (c) such illegal gratification was accepted as a motive or reward for doing official act i.e. for renewing CL-III license of complainant/PW1 Rajaram Gadade in terms of revisional order passed by the Hon'ble Minister, State Excise Department, Mumbai;
- (d) the appellant/convicted accused by corrupt or illegal means obtained for himself pecuniary advantage in the form of bribe of Rs.5 lakh from complainant/PW1 Rajaram Gadade.

If these ingredients are established by the prosecution, then the Charge leveled, can be held to be proved. The third requirement in respect of motive or reward for doing official act is generally difficult to prove against the public servant. Therefore, the legislature has enacted Section 20 which prescribes rule of presumption. The presumption specified therein will arise only

upon proof that accused had, in pursuant to demand, accepted any gratification other than legal remuneration. This mandatory presumption of law is required to be understood in terrorum i.e. in tone of command (see **M. Narsinga Rao vs. State of Andhra Pradesh**⁵).

8 With this, now let us recapitulate the undisputed position emerging on record vis-a-vis case of the prosecution. Undisputedly, the appellant/convicted accused was the public servant, posted as the Superintendent, State Excise, Ratnagiri. Undisputedly, the complainant/PW1 was holding license for retail sale of country liquor bearing No.CL-III/99 from House No.490, Survey No.113 of Village Pacheri Sada in Guhagar Taluka of Ratnagiri District. The same was not renewed after 31st March 1989. Undisputedly, in the second round of litigation, the Revision Petition bearing No.RVN-0113/RA-26-SE-3 preferred by complainant/PW1 Rajaram Gadade came to be allowed by an undated order of February 2013 by the Hon'ble Minister for State Excise, Maharashtra State, and that order (Exhibit 39) came to be

5 (2001) 1 SCC 691

served on complainant/PW1 Rajaram Gadade on 13th March 2013 with the covering letter dated 1st March 2013 which is a part of Exhibit 39. It was ordered that by imposing renewal fees from 2000-01 to 2012-13, CL-III license of complainant/PW1 Rajaram Gadade be renewed. It is held by the revisional authority that complainant/ PW1 Rajaram Gadade has already paid license fees for 1989-90 to 1999-2000 and hence, CL-III license held by him can be renewed by assessing license renewal fees from the year 1999-2000 to 2012-13. According to the prosecution case, in view of this revisional order for getting CL-III license of complainant /PW1 Rajaram Gadade renewed, the appellant/ convicted accused had demanded illegal gratification amounting to Rs.10 lakh on 30th July 2013 and at the time of its acceptance on 14th August 2013, the said amount of bribe came to be reduced to Rs.9 lakh by negotiation. According to prosecution case, complainant/PW1 Rajaram Gadade then paid Rs.5 lakh towards part payment of illegal gratification to the appellant/convicted accused by keeping tainted currency notes in the drawer of his office table, as per the instructions of the appellant/convicted accused. On this

backdrop, undisputedly, from receipt of the order i.e. on 13th March 2013 till the alleged trap dated 14th August 2013, complainant/PW1 Rajaram Gadade had never submitted necessary application for renewal of CL-III license bearing No.CL-III/99 in terms of the order of the revisional authority. For the first time, he submitted such application (Exhibit 37) dated 19th August 2013 to the office of the Superintendent, State Excise Department, Ratnagiri, on 21st August 2013. It is pertinent to note that on 19th August 2013, his statement under Section 161 of the Code of Criminal Procedure came to be recorded by the Anti-Corruption Bureau. This fact is clear from cross-examination of complainant/PW1 Rajaram Gadade.

9 It is not in dispute that financial condition of complainant/PW1 Rajaram Gadade was very weak and therefore, he was unable to carry out business of sale of country liquor. Due to penury, he was unable even to afford journey by hiring the vehicle from Ratnagiri to Thane for lodging complaint with the Anti-Corruption Bureau, Thane. Undisputedly, complainant/PW1

Rajaram Gadade was the close friend of Rajendra Ghosalkar and he had decided to carry on business in country liquor with the help of Rajendra Ghosalkar way back in the year 2008 itself. Prior to that, he was doing that business with partner named M.R.Bhonkar and thereafter, he applied for inducting one Sanjeev Khilnani as partner, vide application dated 4th May 2007 (Exhibit 38). With this, undisputed position emerging on record, let us now examine whether the prosecution has established demand and acceptance of illegal gratification by the appellant/convicted accused as a motive or reward for showing favour in official act. Before advertng to evidence of complainant/PW1 Rajaram Gadade and shadow panch PW2 Lakhanlal Dhapade, it would apposite to keep in mind the law regarding appreciation of evidence of trap witnesses as well as the complainant found in catena of judgments delivered by the Hon'ble Apex Court as well as by this court. In **M.O.Shamsudhin vs. State of Kerala**⁶ in paragraphs 22 and 23, following are the observations of the Honourable Supreme Court in this regard :

6 (1995) 3 Supreme Court Cases 351

“22 Now coming to the witnesses in trap cases, as held in **State of Bihar vs. Basawan Singh (AIR 1958 SC 500)** by a Bench of Five Judges, if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charge, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices in that sense but are only partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested which may vary from case to case and the corroboration in the case of such interested witnesses can be in a general way and not as one required in material particulars as in the case of an approver. Therefore in seeking corroboration for the evidence of trap witnesses a distinction has to be drawn where participation of an individual in a crime is not voluntary but is the result of pressure. In such a case the element of mens rea to commit the crime is not apparent and (*sic*) cannot strictly be classified as an accomplice and at any rate be treated as being on the same footing. Where bribe has already been demanded from a man and if without giving the bribe he goes to the police or magistrate and brings them to

witness the payment it will be a legitimate trap and in such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the court depending upon the facts and circumstances of each case. However as a rule of prudence, the court has to scrutinise the evidence of such interested witnesses carefully.”

“23 Now coming to the nature of corroborating evidence that is required, it is well settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The court should weigh the evidence and then see whether corroboration is necessary. Therefore as a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon.

Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case. In a case of bribe, the person who pays the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about the bribe and it is not possible to get absolutely independent evidence about the payment of bribe. However, it is cautioned that the evidence of a bribe-giver has to be scrutinised very carefully and it is for the court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon or not in those given circumstances.”

In the matter of **Sudhakar Jadhao vs. State of Maharashtra**⁷ it is held thus :-

“After all, P.W.1. is himself the complainant and therefore, interested in the success of the prosecution of his complaint. The evidence of an interested witness cannot be accepted by itself. It is unsafe to accept the evidence of interested witness unless corroborated by independent witnesses.”

⁷ 2004 ALL MR (Cri.) 648

Similarly, the Hon'ble Apex Court in the matter of **Jaswant Sing vs. State of Punjab**⁸ has held thus :

“As P.W.1. is the complainant, his evidence will have to be considered with great caution and it will not be ordinarily safe to accept his interested testimony unless there is material corroboration found in the other evidence adduced by the prosecution.”

In the matter of **Ramprakash Arora vs. State of Punjab**⁹ the Hon'ble Apex Court has given guidelines guide-lines regarding appreciation of evidence of trap witnesses and has held that they are concerned with the success of the trap and their evidence must be tested in the same way as that of other interested witnesses and in a proper case, the court may look for independent corroboration.

10 Keeping in mind this position of law in respect of appreciation of evidence of the complainant/PW1 as well as trap

8 AIR 1973 SC 707

9 AIR 1973 SC 498

witnesses in a case under the Prevention of Corruption Act, 1988, let us examine evidence adduced by the prosecution in order to establish guilt of the appellant/convicted accused, by reviewing and re-appreciating the entire evidence. This being an appeal challenging conviction, there is no embargo on reviewing the entire evidence or rather it becomes the duty of this court to re-appreciate the entire evidence, this court being the last fact finding court in the subject matter.

11 Evidence of complainant/PW1 Rajaram Gadade appearing in his chief-examination is as vague as it can be. However, material facts required for having proper understanding of the matter are elicited from him by the defence in cross-examination and those are already put on record in foregoing paragraphs while stating undisputed position emerging on record. In his chief-examination, complainant/PW1 Rajaram Gadade stated in a cryptic manner that he filed the revision petition before the Hon'ble Minister after renewal of his CL-III license came to be stayed and on allowing the said revision petition, he deposited the

necessary amount. Then his country liquor shop came to be restarted. By omitting to state all necessary factual position in this regard, then this complainant/PW1 straightaway started narrating in his chief-examination that, thereafter, he went to meet the appellant/convicted accused, who showed the file to him. Then, as stated by the complainant/PW1, he asked the appellant/convicted accused whether his work is done or not. Then, the appellant/convicted accused told him to wait for four days. Thereafter, he again met the appellant/ convicted accused but same reply was given. After four days, he again met the appellant/convicted accused and asked him as to what happened about his work. The appellant/convicted accused, as stated by the complainant/PW1 before the court, then informed him that the work would be done. As per version of the complainant/PW1 in his chief-examination, he further asked the appellant/convicted accused if he is supposed to deposit any fees and then the appellant/convicted accused signaled by showing ten fingers and told him that he is supposed to pay an amount of Rs.10 lakh. In chief-examination itself, complainant/ PW1 Rajaram Gadade has

stated that his partner Rajendra Ghosalkar was present with him at that time. The complainant/ PW1, however, did not mention the date on which this demand was emanated from the appellant/accused. He stated that, he, then, straightaway went to the office of the Anti-Corruption Bureau and lodged the complaint Exhibit 36 on 12th August 2013, thereby conveying that the day on which the demand of illegal gratification was made by the appellant/ convicted accused, he rushed from Ratnagiri to Thane and lodged the report with the Anti-Corruption Bureau, Thane, on the very same day. The complainant/PW1 has not clarified in his chief-examination as to why after restarting his liquor shop, he went to meet the appellant/convicted accused repeatedly. However, at this juncture, it needs to be noted that factual position reflected from cross-examination of this witness is otherwise. It will be dealt with at the later part of this judgment.

12 Complainant/PW1 Rajaram Gadade further deposed in his chief-examination that after lodging the complaint with the Anti-Corruption Bureau, Thane, on 12th August 2013, in the

evening itself, they started from Thane to Ratnagiri. He further testified that on 13th August 2013, the appellant/convicted accused telephoned his friend Rajendra Ghosalkar and also sent the SMS on the mobile phone of Rajendra Ghosalkar. Therefore, they decided to go to Ratnagiri on 14th August 2013. This witness further deposed that he withdrew an amount of Rs.5 lakh from the bank and went to Room No.106 of the hotel. There, currency notes were smeared with anthracene powder. He was asked to put those currency notes in his bag. According to the complainant/PW1, thereafter, they all came out and went to the office of the appellant/convicted accused.

13 While deposing, in the course of his chief-examination, the complainant/PW1 conveniently skipped the happenings during the intervening period ranging from evening hours of 12th August 2013 to morning hours of 14th August 2013. In the chief-examination itself, he accepted the fact that he handled the currency notes smeared with anthracene powder and kept them in the bag.

14 So far as actual trapping the appellant/convicted accused is concerned, in paragraph 6 of his chief-examination, the complainant/PW1 deposed in the following manner :

“We again went to the office of the accused at about 2.30 p.m. I and Ghosalkar both had gone to the office. I told the accused that I had brought the money. Accused asked me how much amount I had brought. I told him that I had brought Rs.5,00,000/- only. They said that it is O.K. give me the amount. I came outside and then took the money from my bag. The accused told me to put the amount in drawer. I had put the currency amount in the drawer, total amount of Rs.5,00,000/-. Then I again came outside and gave sign to anti corruption officers. The officers came inside and they asked me to sit outside.”

With this version, the complainant/PW1 clarified that shadow panch PW2 Lakhanlal Dhapade had not accompanied them to the office of the appellant/convicted accused at Ratnagiri. The

complainant/PW1 further deposed in the following manner, in paragraph 6 of his chief-examination itself, for giving a dent to the prosecution case :

“I cannot tell what happened inside. My statement was recorded as stated by me. I cannot identify the accused. It is difficult to me to identify the said amount. Now the amount shown to me might be the same amount.”

Thus, the complainant/PW1 was not in a position either to identify the accused or the tainted currency notes, allegedly given as a bribe to the appellant/convicted accused. Refusing to identify the appellant/convicted accused while in the dock by the holder of the CL-III license depicts strange conduct of the complainant/PW1. This fact assumes importance because the appellant/convicted accused was the Superintendent of the State Excise for Ratnagiri District, where the complainant/PW1 was doing business of retail sale of country liquor. The complainant/PW1 had left no stone unturned right from the year 1999 for getting his license renewed. He had got favourable order

in revision petition from the Hon'ble Minister of the State Excise. Thereafter, he claimed to have met the appellant/convicted accused on many occasions at the office of the Excise department at Ratnagiri. Still, this complainant/PW1 in his chief-examination stated that he is unable to identify the appellant/convicted accused. Such inability of the complainant/PW1 to identify the appellant/convicted accused, at any rate, cannot be attributed to the lapse of his memory and he is also not saying so. The inference which may be deduced from non-identification of the appellant/convicted accused by the complainant/PW1 while in the witness box is to the effect that the complainant/PW1 might not have ever met the appellant/convicted accused at his office at Ratnagiri where the alleged demand of illegal gratification was made, which allegedly resulted in tacit acceptance thereof. Non-identification of the appellant/convicted accused by the complainant/PW1 raise serious doubt in the case of the prosecution regarding demand and acceptance of bribe by the appellant/convicted accused, particularly because except the complainant/PW1, no other witness examined by the prosecution

vouched about the demand and acceptance of bribe by the appellant/convicted accused. In the wake of, even non-filing of required application for renewal of license even prior to lodging of the FIR in the matter after the trap, along with inability of the complainant/PW1 to identify the appellant/convicted accused, goes a long way to cast shadow of doubt on case of the prosecution. In this fact situation, a doubt lurks in the judicial mind that as the things in respect of the license were managed and handled by partner of the complainant/PW1 namely Rajendra Ghosalkar, it might have happened that only Rajendra Ghosalkar had met the appellant/convicted accused and not the complainant/PW1.

15 This is all that the complainant/PW1 states against the appellant/convicted accused in his chief-examination, which is lacking all details.

16 With admissions fatal to the prosecution case by shadow panch/ PW2 Lakhanlal Dhapade, which will be dealt with

in later part of this judgment, it becomes clear that only evidence available on record of demand at the time of the trap laid on 14th August 2013 and tacit acceptance of bribe by directing the complainant/PW1 to keep the money in the drawer of the office table, is that of the complainant/PW1. Shadow panch/PW2 Lakhanlal Dhapade was neither present on the spot nor heard any conversation between the alleged bribe seeker and the bribe giver as well as companion of the bribe giver. The other person present on the spot at this time, according to the prosecution case, was Rajendra Ghosalkar – mentor of the complainant/PW1 and the brain behind the implication of the appellant/convicted accused in the instant case. His evidence is not forthcoming as he is not examined as a witness in this case by the prosecution, for the reasons best known to it. According to the complainant/PW1, even at the time of alleged initial demand at the office of the appellant/convicted accused at Ratnagiri, this Rajendra Ghosalkar was present with him. In this fact situation, only evidence in respect of the demand and acceptance of bribe available on record is that of complainant/PW1 Rajaram Gadade.

17 It is now well settled that for the purpose of proving offence punishable under Section 7 as well as Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, it is obligatory on the part of the prosecution to prove that there was demand of illegal gratification by a public servant for showing favour or disfavour, rendering any service or disservice in respect of official act, and he, infact, received or obtained the money as bribe by corrupt or illegal means or by abusing his position as a public servant. Mere recovery of money de hors the demand would not be sufficient to convict the public servant for such offences. At this juncture, it is apposite to quote relevant portions of paragraphs 7 to 9 from the judgment of the Honourable Apex Court in the matter of **B. Jayaraj vs. State of Andhra Pradesh(supra)** :-

“7 In so far 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. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma Vs. State of A.P.[(2010) 15 SCC 1] and C.M. Girish Babu Vs. C.B.I.[(2009) 3 SCC 779].”

“8Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under [Section 7](#). The above also will be conclusive in so far as the offence under [Section 13\(1\)\(d\)\(i\)\(ii\)](#) 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.”

“9 In so far as the presumption permissible to be drawn under [Section 20](#) of the Act is concerned, such presumption can only be in respect of the offence under [Section 7](#) and not the offences under [Section 13\(1\)\(d\)\(i\)\(ii\)](#) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under [Section 20](#) of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of

illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under [Section 20](#) can be drawn are wholly absent.”

18 In a trap case, the complainant is certainly an interested witness and as a rule of prudence, the court has to scrutinize his evidence carefully. Whether his evidence requires corroboration or not can be determined upon examining facts and circumstances of the particular case and corroborating evidence can be given by way of circumstantial evidence. For securing conviction for offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, satisfactory evidence regarding demand is necessary. Mere recovery by itself would not prove the charge against the accused. In absence of any evidence to prove payment of bribe and voluntary acceptance of such money, knowing it to be bribe, conviction cannot be sustained. In the case in hand, in his chief-examination, complainant/PW1 Rajaram Gadade had not deposed the date on which demand of illegal gratification was made to him

in presence of Rajendra Ghosalkar by the appellant/convicted accused but he indicated that as soon as the demand was made, he rushed to the office of the Anti-Corruption Bureau, Thane, and lodged complaint Exhibit 36. Thus, he tried to convey that the demand was emanated from appellant/convicted accused on 12th August 2013 and he took immediate action in the matter. However, in cross-examination, he admitted that as per prosecution case, the alleged demand was made on 30th July 2013 at Ratnagiri, whereas, he lodged complaint thereof on 12th August 2013 and that too, with the Anti-Corruption Bureau, Thane. As accepted by him from 30th July 2013 to 12th August 2013, he was doing all his routine work daily. Thus, the complainant/PW1 never felt it necessary to lodge the complaint immediately despite availability of the office of the Anti-Corruption Bureau at Ratnagiri city itself. Evidence of this complainant/ PW1 suggests that he was under advise of Rajendra Ghosalkar – a man of worldly wisdom, who used to visit various offices and having potential of securing a favourable order of renewal of license in revision petition. Rajendra Ghosalkar seems to be the person who stage

manged the trap. This position is clear from cross-examination of the complainant/PW1 and shadow panch/ PW2 Lakhanlal Dhapade. As seen from paragraph 20 of cross-examination of the complainant/PW1, there were deliberations at the farm house of Rajendra Ghosalkar on 12th August 2013 and 13th August 2013 for planning how to carry out the raid for trapping the appellant/convicted accused, and Rajendra Ghosalkar as well as his brother-in-law Nana Shirke had also participated in that long and considerate discussion with the staff of the Anti-Corruption Bureau, Thane. This material unerringly gives an inference that even prior to lodging the complaint (Exhibit 36), there must have been due deliberation for the purpose of bolstering the case of prosecution, which the complainant/PW1 and Rajendra Ghosalkar were intending to set up. That must be the reason for delay in lodging the complaint Exhibit 36. The delay in approaching the Anti-Corruption Bureau apart from choice of the preferred office of the Anti-Corruption Bureau, makes evidence of the complainant/PW1 suspect and unsafe to rely without corroboration in material particulars. However, appreciation and

scrutiny of evidence of prosecution shows that, infact, there is no corroborative evidence for supporting vague and highly interested version of the complainant/PW1.

19 The complainant/PW1 clarified in his cross-examination that according to him, the demand of illegal gratification was made to him by the appellant/convicted accused on 30th July 2013. He had lodged the complaint (Exhibit 36) on 12th August 2013. The complainant/PW1 accepted the fact that during the intervening period he was doing his routine work. The complainant/PW1 accepted the fact that he met the appellant/convicted accused on three or four occasions after the order was passed by the Hon'ble Minister allowing his revision petition and directing renewal of his CL-III license. The complainant/PW1 went on accepting the fact that during all those meetings, the appellant/convicted accused never demanded any illegal gratification from him. The complainant/PW1 further accepted in his cross-examination the fact that the appellant/convicted accused told him that he would go through the file and see what

could be done. He admitted that as his work was not done, he felt that the Office of the Superintendent, State Excise was delaying his work, and therefore, he should adopt some other method for getting his work done. In continuation, the complainant/PW1 further admitted that, at that time, his financial position was weak. This material, brought on record, suggests that the complainant/PW1 was visiting the Office of the Superintendent, State Excise, after passing of the revisional order and was meeting the appellant/convicted accused from time to time but there was no demand of any illegal gratification to him by the appellant/convicted accused. Due to delay in getting his work done, the complainant/PW1 was thinking of adopting some other method for getting his work done. This thinking, as stated by the complainant/PW1, started despite the fact that the appellant/convicted accused had even shown the office file to the complainant/PW1.

20 Further cross-examination of the complainant/PW1 shows that he was not novice in the matter of procedure which

needs to be adopted for renewal of the country liquor license. He candidly admitted that as he was in the business of retail sale of country liquor from the year 1973, he was knowing the procedure for renewal of the CL-III license. He added that, for this purpose, an application in prescribed format is required to be submitted to the Office of the State Excise Department. Thereafter, formalities such as visit of the Excise Inspector and police verification takes place. Those reports are then sent to the Collector of the District and then directions in the matter of renewal of license are given by the Collector to the Excise Department. The complainant/PW1 accepted the fact in his cross-examination that the appellant/convicted accused, being the Superintendent of the Excise Department, was not concerned in such matter. This material reflected from cross-examination of the complainant/PW1 assumes overbearing importance in the matter, as neither at the time of lodging the complaint nor at the time of laying of the trap against the appellant/convicted accused, the complainant/PW1 had not even submitted an application for renewal of the CL-III license in terms of directions in the revisional

order Exhibit 39. The revisional order, as stated earlier, directed renewal of CL-III license of the complainant/PW1 on payment of fees for renewal for the period from 1999-2000 to 2012-13. Thus, for getting his CL-III license renewed in terms of the revisional order of February 2013, it was incumbent on the part of the complainant/PW1 to move an application in prescribed format for renewal to the Office of the Superintendent, State Excise, Ratnagiri, at the first instance, apart from depositing requisite fees for about 14 years. Without such application being made on depositing necessary fees, the office of the Superintendent, State Excise Department of Ratnagiri, had no occasion to renew the license by following the order passed in the revision petition. The complainant/PW1 has not even whispered as to what efforts were made by him for payment of license fees for fourteen years and why he had not preferred an application for renewal prior to or after lodging the complaint. Consequently, there cannot be any reason with the appellant/convicted accused to demand bribe for doing the official act.

21 The material elicited from cross-examination of the complainant/PW1 shows that such application for renewal of CL-III license, dated 19th August 2013, for the first time, came to be submitted by the complainant/PW1 on 21st August 2013, in the office of the Superintendent, State Excise, Ratnagiri. This happened, when the investigation of the crime in question was almost over, after lodging of the FIR Exhibit 65 on 15th August 2013 by PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, with the Ratnagiri City Police Station, Ratnagiri, on alleged success of the trap dated 14th August 2013. This factual position emerging on record makes evidence of the complainant/PW1, regarding the initial demand, highly doubtful and untrustworthy. His sole testimony, as such, cannot be relied upon for basing the conviction.

22 As the complainant/PW1 accepted in his cross-examination that he seriously thought about adopting other mode of getting the work done, let us examine the role played by his friend Rajendra Ghosalkar in this matter. This is necessary,

because, as stated in his chief-examination by the complainant/PW1 and as reflected from the prosecution case, and more particularly, in 'Verification cum Pre and Post trap Panchnama' Exhibit 44, said Rajendra Ghosalkar was present and participated on each and every important event i.e. right from alleged initial demand till completion of the trap on alleged acceptance of illegal gratification by the appellant/convicted accused. What was attempted to be concealed by the complainant/PW1 is brought on record by the defence from his cross-examination. The complainant/PW1, in his cross-examination, accepted the fact that as his intended partner named Khilnani had not approached him despite submission of application at Exhibit 38 to the Office of the State Excise, he decided, in the year 2008 itself, to carry on business in country liquor with the help of Rajendra Ghosalkar, who was his close friend. How the complainant/PW1 became successful in getting revisional order in February 2013 passed in his favour is also explained by him in his cross-examination. The complainant/PW1 stated that Rajendra Ghosalkar was having friendship with a

political leader named Sushil Velhal and Rajendra Ghosalkar made efforts to get favourable order in the revision petition through Sushil Velhal. As stated by the complainant/PW1, with the help of said Sushil Velhal, the revisional order came to be passed in his favour. Thus, as accepted by the complainant/PW1, Rajendra Ghosalkar played a vital role in getting the revisional order passed in favour of the complainant/PW1 for enabling them to carry out liquor business. That is how, they decided to carry on business together under the CL-III license. The complainant/PW1 also went on to accept the fact that he, infact, transferred his CL-III license in the name of Rajendra Ghosalkar. This might have been done privately by him. Rajendra Ghosalkar, as seen from evidence of the complainant/PW1, is having a flat at Thane. Nana Shirke is brother-in-law of Rajendra Ghosalkar (husband of wife's sister). The complainant/PW1, as seen from his cross-examination, admitted that, Thane city is 350 kilometers away from his residence in Ratnagiri district and he was not acquainted with anybody in Thane city. He was not having personal knowledge even about location of the Office of the Anti-

Corruption Bureau at Thane. The complainant/PW1, as admitted by him, was neither having any relative nor friend at Thane. In cross-examination, he was unable to give any reason for filing the complaint with the Office of the Superintendent, Anti-Corruption Bureau at Thane, though similar Office of the Superintendent, Anti-Corruption Bureau, is also located at Ratnagiri. Further cross-examination of the complainant/PW1 reflects that his financial condition was not sound, so as to afford journey from Ratnagiri to Thane by a jeep. He went to Thane, accompanied by Nana Shirke – brother-in-law of Rajendra Ghosalkar, in a Bolero jeep, for lodging the complaint with the Anti-Corruption Bureau at Thane. The complaint (Exhibit 36) was then lodged in presence of Nana Shirke, at the Office of the Anti-Corruption Bureau, Thane, by him, and this fact is also accepted in his evidence by PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, who recorded the said complaint.

23 What happened after lodging the complaint Exhibit 36 at the Office of the Anti-Corruption Bureau at Thane, is again

reflected from cross-examination of the complainant/PW1. In cross-examination, he accepted the fact that accompanied by PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane and other members of the raiding team as well as panch witnesses, they started from Thane to Ratnagiri on 12th August 2013 itself, for trapping the appellant/convicted accused. This aspect is further clarified by PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane. This official witness stated that as the complainant/PW1 had told that he was called on 13th August 2013 by the appellant/convicted accused, for receiving illegal gratification, they all started journey from Thane to Ratnagiri, at 5.30 p.m. of 12th August 2013, and at 11.30 p.m. of 12th August 2013, they reached Chiplun city, from where Ratnagiri was 100 kilometers away. Cross-examination of the complainant/PW1 as well as evidence coming on record from chief-examination of PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane and shadow panch PW2 Lakhanlal Dhapade, shows that, it was decided to stay at the farm house of Rajendra Ghosalkar in the night intervening 12th August 2013 and

13th August 2013. These witnesses have also stated in their evidence that Rajendra Ghosalkar had made all arrangements for stay, lunch, dinner and breakfast of ten to fifteen persons, who happened to be members of the raiding team, at his farm house, and members of the raiding team as well as panch witnesses stayed at the farm house of Rajendra Ghosalkar from 12th August 2013 to 10.00 a.m. of 14th August 2013. PW2 Lakhanlal Dhapade has accepted the fact that from the activities which he was witnessing, he gathered that Rajendra Ghosalkar had taken a lead role in laying the trap against the appellant/convicted accused. In cross-examination, this panch witness/PW2 Lakhanlal Dhapade candidly stated that Village Jamsud was not on Thane – Ratnagiri highway but it was at a distance of 40 to 45 kilometers from Chiplun town and it was not a convenient place for taking halt by a person traveling from Thane to Ratnagiri. PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, in his chief-examination itself stated that on reaching Chiplun, at about 11.30 p.m. of 12th August 2013, as farm house of Rajendra Ghosalkar was located at Village Jamsud and as complainant/PW1

Rajaram Gadade told him that Rajendra Ghosalkar had made arrangements for stay of all of them at his farm house, it was decided to stay at the farm house of Rajendra Ghosalkar, at Village Jamsud.

24 As testified by complainant/PW1 Rajaram Gadade, shadow panch PW2 Lakhanlal Dhapade and PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, though it was decided to trap the appellant/convicted accused on 13th August 2013, the SMS from the appellant/convicted accused was received on the mobile phone of Rajendra Ghosalkar and that SMS was to the effect that, the appellant/convicted accused would be coming to his office at Ratnagiri on 14th August 2013. PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane claimed in his evidence that the said SMS was seen by him as well as the panch witnesses. Hence, it was decided to lay a trap on 14th August 2013.

25 Congruous evidence of complainant/PW1 Rajaram Gadade, PW2 Lakhanlal Dhapade and PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, shows that Rajendra Ghosalkar was also staying with the raiding party at his own farm house and apart from making the necessary arrangements of stay of the raiding party at his farm house, he was planning with the officers of the Anti-Corruption Bureau about the mode and manner of laying a trap to apprehend the appellant/convicted accused red handed. The complainant/PW1 is very specific in his deposition on this topic of participation of Rajendra Ghosalkar in deliberation with the raiding team at the Farm House.

26 Cross-examination of the complainant/PW1 so also evidence of PW2 Lakhanlal Dhapade and PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, shows that the raiding team accompanied by panch witnesses, the complainant/PW1 and Rajendra Ghosalkar then left for Ratnagiri from Jamsud at 10.00 a.m. of 14th August 2013, and on the way to

Ratnagiri, complainant/PW1 Rajaram Gadade had withdrawn the amount of Rs.5 lakh from his bank account with the State Bank of India, which was credited to his account by Rajendra Ghosalkar. Thus, the amount, which was to be given as bribe, was also provided by Rajendra Ghosalkar. Thereafter, on reaching Ratnagiri City, complainant/PW1 Rajaram Gadade, at his own expenses, booked Room No.106 in Hotel Sai Leela Super Deluxe and cash memo issued by the said hotel is at Exhibit 45. The Anti-Corruption Bureau, Thane did not care to bear the room rent also though the team was hired for the official purpose. Panchnama Exhibit 44 prepared after completion of the trap also shows that amount spent on taking this room on rent was paid by complainant/PW1 Rajaram Gadade. In that room, anthracene powder was stated to be smeared on currency notes worth Rs.5 lakh, withdrawn by the complainant/PW1 from this bank account.

27 What happened at the time of actual trap now becomes relevant. Evidence of PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, makes it clear that the

shadow panch was specifically directed to accompany complainant/PW1 Rajaram Gadade, at the time of his meeting with the appellant/convicted accused. Similarly, Rajendra Ghosalkar was also to accompany the complainant/PW1 at that time. 'Verification Pre and Post trap panchnama' Exhibit 44 makes it clear that specific instructions were given to PW2 Lakhanlal Dhapade to hear conversation of the complainant/PW1 with the appellant/convicted accused and to witness passing of the amount of bribe.

28 On this backdrop, PW2 Lakhanlal Dhapade in his chief-examination itself has stated that though complainant/PW1 Rajaram Gadade and Rajendra Ghosalkar had entered in the chamber of the appellant/convicted accused, had chosen to sit outside that chamber. PW2 Lakhanlal Dhapade – shadow panch candidly admitted in the cross-examination that he has not personally seen or heard the appellant/convicted accused demanding the amount of bribe from complainant/PW1 Rajaram Gadade nor he witnessed complainant/PW1 Rajaram Gadade

paying that amount to the appellant/convicted accused. The shadow panch further admitted that he has not personally heard any conversation in between complainant/PW1 Rajaram Gadade and the appellant/convicted accused. As stated by this panch witness, as he did not enter in the chamber, he has no personal knowledge whether the complainant/PW1 followed the instructions given by the officer of the Anti-Corruption Bureau or not. Chief-examination of this shadow panch itself reveals that when the complainant/PW1 came outside the chamber of the appellant/convicted accused, he was asked as to where the amount was kept and upon that, complainant/PW1 Rajaram Gadade told that he had kept the amount in the drawer of the table. This makes it clear that evidence of shadow panch PW2 Lakhanlal Dhapade is not at all useful for the purpose of inferring demand emanating from the appellant/convicted accused and consequent acceptance of illegal gratification by the appellant/convicted accused, at the time of the trap i.e. on 14th August 2013. On the contrary, evidence of the shadow panch / PW2 Lakhanlal Dhapade makes it clear that it was

complainant/PW1 Rajaram Gadade, who kept the tainted currency notes in the drawer of the office table of the appellant/convicted accused and the appellant/convicted accused did not handle it.

29 Thus, what remains in respect of the alleged demand and acceptance at the time of the trap, is evidence of complainant/PW1 Rajaram Gadade. However, this witness has clearly disowned the case of the prosecution in paragraph 27 of his cross-examination. First sentence of paragraph 27 of cross-examination of complainant/PW1 Rajaram Gadade appears to be wrongly translated in English deposition, and therefore, I was constrained to look at Marathi deposition of this witness. In paragraph 27 of his cross-examination, the complainant/PW1 has candidly accepted the fact that it was Rajendra Ghosalkar, who told him to go outside the chamber of the appellant/convicted accused and bring the bribe amount of Rs.5 lakh. He admitted that except talk with Rajendra Ghosalkar, he had no talk with any other person, at that time of the trap. The complainant/PW1

further accepted the fact that from chamber of the appellant/convicted accused, he went outside to bring the bag containing the tainted currency notes and then after coming inside the chamber, he directly put the tainted currency notes in the drawer of the appellant/convicted accused. To propound the defence of planting the tainted currency notes, it is seen that, complainant/PW1 Rajaram Gadade was specifically questioned that at that point of time of putting the money in the drawer of the table, the appellant/convicted accused had gone to the toilet. Instead of giving either affirmative or negative answer to this question, the complainant/PW1 conveniently answered that he did not remember whether at that time the appellant/convicted accused had gone to the toilet or not. Cumulative effect of the material elicited from cross-examination of complainant/PW1 Rajaram Gadade casts a serious shadow of doubt on his version in the chief-examination regarding initial demand as well as demand and acceptance of illegal gratification by the appellant/convicted accused on 14th August 2013. It probabalises the defence of the appellant/convicted accused that in given set of facts, there

cannot be any demand of illegal gratification or acceptance thereof by him and that the tainted currency notes might have been planted in the drawer of his office table when he had been to the washroom. The sketch map (Exhibit 46) probabalises this defence as the cabin was having attached washroom besides the front door thereof.

30 At any rate, evidence of the prosecution witnesses shows that the appellant/convicted accused had not handled the tainted currency notes, at any point of time and in any manner. However, still, after apprehending the appellant/convicted accused, tips of his fingers were found to be smeared with anthracene powder. The prosecution has not explained how this has happened making its case seriously doubtful. Even case of prosecution set out in 'Verification, Pre and Post Trap panchnama' Exhibit 44 and Exhibit 65 is to the effect that the amount of bribe was accepted by the appellant/convicted accused by directing him to keep it in the drawer of the office table of his chamber. It was not handled by the appellant/convicted accused. PW4 Vijay

Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, in his deposition, made it clear that on getting prearranged signal from the complainant/PW1, he and other members of the raiding party immediately rushed and barged in the cabin and apprehended the appellant/convicted accused. It is seen that in order to bolster up the prosecution case, this witness has stated that the anthracene powder came to be detected on finger tips of right hand of the appellant/convicted accused. This version is totally contrary to the version of the complainant/PW1 so also the positive case of the prosecution that the bribe amount came to be accepted by the appellant/convicted accused by directing the complainant/PW1 to keep it in the drawer of the table. As against this, plea of the appellant/convicted accused is that of planting of the tainted currency notes in the drawer of his office table. The recitals in panchnama (Exhibit 44) indicates that apart from the complainant/PW1 and Rajendra Ghosalkar, the driver of the appellant/convicted accused was also present in the chamber of the appellant/convicted accused. The said driver is examined as DW1 by the appellant/convicted accused. Evidence of this driver

Santosh Shelke is to the effect that in his presence, when the appellant/convicted accused went to the washroom attached to his chamber, out of two persons present there, one went out and came back. Then, that person put something in the drawer of the office table of the appellant/convicted accused. In the light of these conflicting versions and suspicious features of the prosecution case vis-a-vis evidence adduced, it needs to be held that the defence has probabalised the plea of planting and evidence of the prosecution does not appear to be clinching and trustworthy. Somewhat similar situation was dealt with by the Honourable Supreme Court in the matter of **M.K.Harshan (supra)**. By noting anxiety and an attempt on the part of the Investigating Officer and other prosecution witnesses to show that the accused therein handled the currency notes and thereby tried to connect him directly with the receipt of the tainted currency notes, it was held in the wake of conflicting versions and suspicious features that evidence of the prosecution witnesses, in such situation, cannot be acted upon. Similar is the case in hand where there is no clinching evidence to establish that under the

directions and with tacit approval of the appellant/convicted accused, the money had been put in the drawer of the table. There is no plausible explanation with the prosecution as to how anthracene powder came to be found on tips of fingers of his right palm.

31 It is well settled that it is not necessary to examine all witnesses of prosecution but the prosecution is enjoined with duty to examine those witnesses which are necessary for unfolding the prosecution case. The Honourable Supreme Court in **Tej Prakash vs. State of Haryana**¹⁰ has held that all the witnesses of the prosecution need not be called but witnesses who are essential to the unfolding of the narrative of which the prosecution is based must be called by the prosecution, whether the effect of their testimony is for or against case of the prosecution and that failure to examine such a witness might affect a fair trial. However, whether examination of a particular witness is necessary for unfolding the prosecution story is a question which needs to be answered on the basis of facts and circumstances of each case. I

¹⁰ 1996 SCC (Cri) 412

have pointed out how evidence of complainant/PW1 Rajaram Gadade is lacunic and discrepant. At the same time, foregoing discussion makes it clear that Rajendra Ghosalkar, who according to the version of shadow panch PW2 Lakhanlal Dhapade, was the kingpin in laying down the trap. He was present at the time of all important events alleged by the prosecution leading to the prosecution of the appellant/convicted accused, including that of initial demand and last demand at the time of the trap as well as alleged acceptance of the illegal gratification by the appellant/convicted accused on 14th August 2013. He could have been a star witness for the prosecution. Foregoing discussion makes it clear that despite through and careful scrutiny of evidence of the complainant/PW1, shadow panch/ PW2 Lakhanlal Dhapade as well as trap laying officer, the same cannot be said to be worth placing the explicit reliance thereon and testimony of these witnesses cannot be accepted and acted upon on its face value. The reasons therefor are stated in the foregoing paragraphs. Thus, available evidence against the appellant/convicted accused is certainly suffering from several infirmities

and lacuna. The same, as such, cannot be accepted in absence of other evidence. Though such other evidence was certainly available in the form of witness named Rajendra Ghosalkar, the same has been withheld from the court, for no reasons, by the prosecution. This, certainly, invites adverse inference against the prosecution. As per illustration (a) to Section 114 of the Evidence Act, if a party in possession of best evidence which will throw light on controversy, withholds it, the court can draw an adverse inference against such party. Non-examination of Rajendra Ghosalkar, in the given set of facts and circumstances emerging on record, as such makes the prosecution case suspect, warranting drawing of an adverse inference.

32 The alleged offence took place in Ratnagiri which is a district place having the Office of the Superintendent of the Anti-Corruption Bureau. PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, in his cross-examination has accepted this fact as well as the fact that the appellant/convicted accused was working as the public servant at Ratnagiri city. He, further,

accepted the position that generally if any one wishes to lodge complaint against a public servant, then the same has to be lodged with the Anti-Corruption Bureau's office of that area and when such complaint is in respect of demand of bribe, then it needs to be lodged with the Superintendent of that area. Still, as accepted by this witness, he made no enquiry from complainant/PW1 Rajaram Gadade as to why he had lodged complaint with the Anti-Corruption Bureau at Thane instead of the Anti-Corruption Bureau at Ratnagiri. No explanation for lodging the complaint at Anti-Corruption Bureau Thane was obtained by this witness from complainant/PW1 Rajaram Gadade. This Inspector of the Anti-Corruption Bureau, Thane/PW4 Vijay Sarbhukan, further made it clear in his cross-examination that there was no complaint by complainant/PW1 Rajaram Gadade that though he (complainant/PW1) attempted to lodge complaint against a public servant at the Office of the Anti-Corruption Bureau at Ratnagiri, the said complaint was not entertained by the said office. PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, further admitted that complainant/PW1 Rajaram Gadade had also

not given any reason as to why he did not lodge complaint at Ratnagiri. When questioned about this fact, in his cross-examination, complainant/PW1 Rajaram Gadade has stated that he did not remember as to why he filed complaint at the Office of the Anti-Corruption Bureau, Thane, instead of lodging the same with the Anti-Corruption Bureau, Ratnagiri, despite the fact that Thane is about 350 kilometers away from Ratnagiri. This material coming on record coupled with admission given in cross-examination by complainant/PW1 Rajaram Gadade regarding the fact that Rajendra Ghosalkar has a flat at Thane and he was accompanied by Nana Shirke - brother-in-law of Rajendra Ghosalkar to the office of the Anti-Corruption Bureau, Thane, makes it clear that lodgment of the complaint against the appellant/convicted accused in respect of alleged offence was certainly not an innocent action taken in a routine manner by complainant/PW1 Rajaram Gadade. This conduct of complainant/PW1 Rajaram Gadade coupled with the fact that right from providing his relative as well as the vehicle for enabling the complainant/PW1 to go to Thane and then making

arrangements of stay of the raiding party and others at his farmhouse at Village Jamsud, which was not even on Thane – Ratnagiri highway, indicates that there was something fundamentally wrong in the manner of lodging the complaint. Natural inference on the basis of evidence on record follows that at the instance of Rajendra Ghosalkar, office of the Anti-Corruption Bureau, Thane, came to be certainly and specially chosen with some object and motive to lodge the complaint against the accused/public servant, who was posted at Ratnagiri, and for his alleged act of offence committed at Ratnagiri. The prosecution has not explained as to why this particular office of the Anti-Corruption Bureau was chosen for lodging the complaint, though considering the geographical location, even other offices of the Anti-Corruption Bureau, such as offices at Satara, Pune etc. were near to Ratnagiri than Thane. Thus, entire case of the prosecution is shrouded in mystery, since its inception.

33 Sponsoring of investigation by Rajendra Ghosalkar so also by complainant/PW1 Rajaram Gadade is also making the case

of the prosecution seriously doubtful. As per case of the prosecution as well as evidence on record, entire expenses of stay, food etc. of the raiding team as well as panch witnesses from evening of 12th August 2013 to 10.00 a.m. of 14th August 2013 were borne by Rajendra Ghosalkar, by keeping them all at his farm house at Jamsud, Ratnagiri. On 14th August 2013, Room No.106 in Hotel Sai Leela Super Deluxe was hired for conducting pre trap formalities. Room rent of Rs.600/- of that room was paid by the complainant/PW1. The Honourable Apex Court had an occasion to deal with such contingency and following are the observations found in paragraphs 17 to 19 of its judgment in the matter of **Navinchandra N.Majithia vs. State of Meghalaya**¹¹ :

“17 The above discussion was made for emphasizing the need for official investigation to be totally extricated from any extraneous influence. The police investigation should necessarily be with the fund supplied by the State. It may be possible for a rich complainant to supply any amount of fund to the police for conducting investigation into his complaint. But a poor man cannot afford to supply any financial assistance to the police. It is an

11 (2000) 8 Supreme Court Cases 323

acknowledged reality that he who pays the piper calls the tune. So he would call the shots. Its corollary is that somebody who incurs the cost of anything would normally secure its control also. In our constitutional scheme, the police and other statutory investigating agency cannot be allowed to be hackneyed by those who can afford it. All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint.”

“18 Financial crunch of any state treasury is no justification for allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigations is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interested private parties would vitiate the investigation contemplated in the Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private parties to supply financial assistance to the police for

conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimatur.”

“19 If the impugned judgments are allowed to stand, it would set up an unwholesome precedent. Hence we set aside the directions contained in the impugned judgments for supplying funds to the police.”

Evidence collected in such investigation sponsored by the complainant and his friend Rajendra Ghosalkar naturally becomes suspect. Evidence of PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, makes it clear that at about 11.30 p.m. of 12th August 2013, they had reached Chiplun city in Ratnagiri District. It was possible for him, being the leader of the raiding team and high ranking officer of the Anti-Corruption Bureau, to take a halt at the Government Rest House at Chiplun, at the expenses of the State. Panch witnesses, being on official duty, were also entitled for getting permissible expenses reimbursed from their office, as per service rules for this work. Even the Investigating Officer as well as staff members of the raiding team,

being on duty employees of the Anti-Corruption Bureau, were entitled for reimbursement of admissible expenses of their stay at the outstation, as per service rules. However, instead of making official arrangement for their stay, the raiding team including its leader PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, as well as panch witnesses conveniently enjoyed hospitality offered by Rajendra Ghosalkar, who had stage managed to lay a trap on the appellant/convicted accused, through his partner complainant/PW1 Rajaram Gadade, by staying at his Farm House. This circumstance certainly makes evidence of prosecution coming on record from mouth of the interested witnesses such as the complainant/PW1, shadow panch / PW2 Lakhanlal Dhapade and PW4 Vijay Sarbhukan, Police Inspector, Anti-Corruption Bureau, Thane, highly doubtful and unworthy of credit. It is not, therefore, possible to place reliance on such tainted evidence for basing conviction for serious offences having far reaching consequences on career and life of a public servant.

34 As deposed by prosecution witnesses including complainant/PW1, shadow panch / PW2 Lakhanlal Dhapade and PW4 Vijay Sarbhukan – Investigating Officer, during their stay at the farm house of Rajendra Ghosalkar at Village Jamsud, the appellant/convicted accused had sent a text message indicating his non-availability in his office on 13th August 2013 and communicating the fact that he will be available at his place on 14th August 2013. The prosecution attempted to demonstrate that the trap contemplated on 13th August 2013 came to be postponed to 14th August 2013 in view of this text message and sending of the text message indicates the demand. The prudent Investigator, understanding importance of such text message of the appellant/convicted accused, ought to have taken efforts to produce the same in evidence during the trial. This is not done and the cell phone containing the text message sent by the appellant/convicted accused was also not seized for producing the same in evidence.

35 The learned APP faintly argued that the transcript of conversation recorded in the Digital Voice Recorder and reflected in the 'Verification Pre and Post trap panchnama' Exhibit 44 corroborates the version of the complainant/PW1. That panchnama itself shows that the contents of the Digital Voice Recorder came to be transferred to the laptop by Police Naik Mahadik. Then the data of conversation from the laptop was taken in the Compact Disc. Thereafter, the conversation from the Digital Voice Recorder came to be deleted. The transcript of conversation, which is made part of the panchnama Exhibit 44, is prepared from the contents of the Digital Voice Recorder.

36 By amending the [Indian Evidence Act](#) in 2000, [Sections 65A](#) and [65B](#) were introduced into Chapter V relating to documentary evidence. [Section 65A](#) provides that contents of electronic records may be admitted as evidence if the criteria provided in [Section 65B](#) is complied with. The computer generated electronic records in evidence are admissible at a trial if

proved in the manner specified by [Section 65B](#) of the Evidence Act. Sub-section (1) of [Section 65B](#) makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfillment of the conditions specified in sub-section (2) of [Section 65B](#). Secondary evidence of contents of document can also be led under [Section 65](#) of the Evidence Act. Thus, computer generated electronic record is admissible in evidence provided the same is accompanied by the certificate, as required by [Section 65B](#) of the Evidence Act. Mr.Ponda, the learned counsel for the appellant/convicted accused, rightly relied on the judgment in the matter of **Anwar vs. P. K. Basheer and Others (supra)**. Paragraphs 14, 15 and 22 of the said judgment need reproduction and those read thus :

“14 “Any documentary evidence by way of an electronic record under the [Evidence Act](#), in view of [Sections 59](#) and [65A](#), can be proved only in accordance with the procedure prescribed under [Section 65B](#). [Section 65B](#) deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence

in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the [Evidence Act](#), any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under [Section 65B\(2\)](#). Following are the specified conditions under [Section 65B\(2\)](#) of the Evidence Act:

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from which the

information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

Under [Section 65B\(4\)](#) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under [Section 65B\(2\)](#) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence.”

“15 Under [Section 65B\(4\)](#) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;

- (d) The certificate must deal with the applicable conditions mentioned under [Section 65B\(2\)](#) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”

“22 The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under [Section 63](#) read with [Section 65](#) of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of [Sections 59](#) and [65A](#) dealing with the admissibility of electronic record. [Sections 63](#) and [65](#) have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by [Sections 65A](#) and [65B](#). To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence

shall not be admitted in evidence unless the requirements under [Section 65B](#) are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of [Section 65B](#) obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.”

37 The learned APP attempted to argue that certificate, as required by Section 65B of the Evidence Act, is not sine-qua-non for proving the electronic evidence and for that purpose, he relied on the judgment in the matter of **Shafhi Mohd. vs. State of Himachal Pradesh (supra)**. However, in that case, the electronic evidence was in possession of the third person, and as such, it was not possible to produce the certificate. In the light of such facts, the Honourable Apex Court has held that, the applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing the certificate, is to be applied only when such electronic evidence is produced by a person, who is in a position to produce such certificate being in control of the said device and

not of the opposite party. In the case in hand, the Digital Voice Recorder as well as the laptop containing the data was with the prosecuting agency, and as such, for proving this electronic evidence, the prosecution ought to have complied with the provisions of Section 65B(4) of the Evidence Act. This is not done in the instant case.

38 Even if it is assumed that the transcript of conversation recorded in the Digital Voice Recorder contained in the panchnama Exhibit 44 can be read in evidence, still, there is total divergence in what is stated in evidence by the complainant/PW1 and what is reproduced in the panchnama as the conversation between the complainant/PW1 and the appellant/convicted accused as well as Rajendra Ghosalkar. Evidence of the complainant/PW1 is not in tune with the transcription of the alleged conversation between him, Rajendra Ghosalkar and the appellant/convicted accused. Hence, this evidence is of no avail to the prosecution, leave apart the fact that the same is not admissible for want of necessary certificate.

39 It is, thus, clear that the prosecution has neither proved the demand nor acceptance and as such, there is no question of raising presumption as envisaged by Section 20 of the Prevention of Corruption Act.

40 In the light of the foregoing discussion, I am unable to endorse the view taken by the learned trial court and the reasons recorded by it for convicting and sentencing the appellant/convicted accused of the offence with which he was charged. The findings given by the learned trial court cannot be sustained in the wake of evidence available on record, and therefore, for the reasons stated in the foregoing paragraphs, it is held that the prosecution has duly failed to prove guilt of the appellant/convicted accused in respect of the charge leveled against him. In the result, I proceed to pass the following order :

ORDER

- i) The appeal is allowed.

- ii) The impugned judgment and order of conviction and the resultant sentence imposed on the appellant/accused vide judgment and order dated 5th October 2016 passed in Special Case No.10 of 2015, by the learned Special Judge, Ratnagiri, is quashed and set aside.
- iii) The appellant/accused is acquitted of offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.
- iv) His bail bonds stand cancelled.
- v) Fine amount, if any, paid by the appellant/accused be refunded to him.
- vi) Muddemal be disposed off in terms of order of disposal of muddemal passed by the learned Special Judge, Ratnagiri, in the impugned judgment and order.
- vii) The appeal stands disposed off accordingly.

(A. M. BADAR, J.)