

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.142 OF 2002

State of Maharashtra	]	.. Appellant (Orig. Complainant)
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Vs.

1] Janardan Piloba Anpat	]	
Age - 45 years, Occu.- Service	]	
R/at.Room No.30, MIDC Colony,	]	
Chinchwad, Pune;	]	
2] Umesh Dattusing Pardeshi,	]	
Age - 32 years, Occu.- Business,	]	.. Respondent
R/at. Shubhyog Saha Building,	]	(Orig. Accused
Chinchwadgaon, Pune	]	Nos.1 and 2.)

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Mr.Y.M. Nakhawa, APP for Appellant - State.

Mr.Rushikesh Kale i/b. Mr.Viresh Purwant, Advocate for Respondent No.1.

Mr.Rohan Surve with Mr.Kunal Naik i/b. Mr.Madhav Jamdar, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 16, 2019.

ORAL JUDGMENT :

The Appellant/State of Maharashtra has preferred this Appeal by invoking section 378(1) of the Code of Criminal Procedure, challenging the impugned judgment and order dated 28th August, 2001, passed by the Special Judge, Pune, in Special

Case No.1 of 1988. The respondents were acquitted of the offences punishable under Sections 161, 165(A), 5(2), 5(1)(d) of the Prevention of Corruption Act, 1947.

2 Brief facts of the prosecution case evident from the version of complainant are as follows:

- (a) The complainant was serving as a Project Manager with M/s.Compact System and Equipments situated at 43/2 Erandvane, Karve Road, Pune - 38. In January 1986 he was assigned duty to find out plot in MIDC, Chinchwad area for the construction of factory building. The complainant visited the office of MIDC at Pimpri Chinchwad. He contacted the office superintendent Mr.Raje who informed him that the plot of small size were not available. The complainant met Regional Manager Mr.Mujawar. He also informed him that the plot is not available. Accordingly, complainant reported the matter to his director Mr.Rathi. The Directors of the Company, made inquiry about the availability of plot by visiting the office of MIDC along with the complainant. They met Mr.Mujawar. They were informed that the plot was not available. However, if anyone surrenders plot, they would get it.

- (b) At the end of April 1986 Mr.Rathi informed the complainant to visit office of MIDC to make inquiry about the availability of industrial plot. The complainant visited the office of MIDC Chinchwad. Mr.Mujawar was not available in the office. One person met him and inquired about the purpose of complainant's visit to the office, which the complainant explained to him. He introduced him to accused no.2. Complainant told Accused no.2 about requirement of plot. Accused no.2 stated that two plots are available. The accused no.2 quoted his fees as Rs.1,200/-. He also informed that half the price of plot is required to be deposited by draft. The accused no.2 further informed that, the complainant will have to spent Rs.15,000/- to 20,000/-, in cash to various officers in MIDC. Those officers were Regional Manager, Assistant Engineer and Office Superintendent.
- (c) Complainant informed the aforesaid facts to his Director Mr.Rathi and he was told to go ahead with purchase of plot.
- (d) Complainant visited office of accused no.2 at Pimpri. The accused no.2 was not available. His assistant showed the

map of plots available, and, took the complainant on the site and showed him the plots. Thereafter, both of them returned to the office.

- (e) The complainant informed that the plot shown to him has been approved. The accused no.2 gave list of documents required for applying for plot. He also informed that draft amount of Rs..27,000/-, would be required towards plot. Complainant left the office.
- (f) Complainant conveyed the above facts to Mr.Rathi, who stated that corruption is increasing day by day and he would do something for that. Complainant informed Mr.Rathi, that he would report the matter to police. Mr.Rathi told him to go ahead and in first week of May complainant went to the office of ACB.
- (g) The complainant approached ACB and filed complaint vide Exhibit-77. The complainant was called to the office of ACB on 5th May, 1986. Two panch witnesses were summoned. The complainant visited the office of ACB on 5th May, 1986. Panch witnesses were introduced to him..

- (h) The complainant produced bribe amount of Rs.17,000/- Anthrasin powder was applied to the currency notes, which were kept in envelope which was given to complainant. He kept the said envelope in Shabnam bag carried by him.
- (i) The trap which was laid on 5th May, 1986 and 6th May, 1986 was unsuccessful and the same was withdrawn by drawing withdrawal panchanama of the trap. While withdrawing second trap, it was agreed between accused no.2 and the complainant that accused no.2 would contact the complainant on phone in respect of future action.
- (j) Telephone call was received from accused no.2 by the complainant to the effect that the amount of Rs.3,000/- was to be disbursed in the office of MIDC on 10th May, 1986, and told him to visit MIDC office with the said amount at 11:30 a.m. He was also informed that letter of allotment would be issued on 10th May, 1986. Complainant informed the said fact to ACB

- (k) Complainant approached ACB on 10th May, 1986 panchas were present. Anthrasin powder was applied to bribe amount. Pre trap panchanama was drawn bribe amount of Rs.3,000/-, was kept in packet. Complainant and panchas followed by raiding party proceeded to MIDC office. No trap was effected. They returned to office of ACB. Complainant was told to visit the office of ACB on 12th May, 1986. Rs.3000/- was taken as a bribe amount. Anthrasin powder was applied to the said amount. The currency notes were kept in one envelope and the said envelope was kept in the Shabnam bag of the complainant. Pre trap panchanama was recorded.
- (e) On 12th May, 1986, the complainant and panch no.1 left the office of ACB to MIDC office. The complainant took out the packet containing bribe amount from the Shabnam bag and handed over the same to accused no.1. The amount was accepted by accused no.1 on instruction of accused no.2. After acceptance of the bribe amount, the complainant gave signal to the members of raiding party. The raiding party effected raid and the accused were apprehended. Search of accused no.1 was conducted.

Anthrasin powder was found on the outer cover packet containing bribe amount. Post-trap panchanama was drawn. The packet containing bribe amount was also recovered. Anthrasin power was noticed on the pocket of accused no.1. The investigation completed and the charge sheet was filed.

3 Charge was framed vide order dated 7th March, 1991 for the offences punishable under Sections 161, 165A of Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947.

4 Prosecution examined three witnesses in support of its case. P.W.1 Hiramab Anant Patwardhan is the complainant, P.W.2 Balwant Wasudeo Soman is the panch witness and P.W.3 Ramchandra Krishnaji Joshi is the investigating officer.

5 After recording the evidence of the witnesses, the statement of accused was recorded under Section 313 of Code of Criminal Procedure. Accused had also tendered the defence in writing vide Exhibit - 95.

6 Learned Special Judge after analysing the evidence on record has arrived at the conclusion that the prosecution has not been able to establish its case beyond doubt and acquitted the accused of all the charges. The said judgment of acquittal is under challenge in this Appeal.

7 Learned APP submitted that the prosecution has examined three witnesses in support of its case. The demand and acceptance of the bribe amount has been established. The defence has not been able to discard the evidence of the prosecution witnesses. It is further submitted that there is sufficient evidence to prove the charges and the trial Court has committed an error in acquitting the accused. Respondent no.1 was the public servant working with MIDC and respondent no.2 was a private person acting as an agent. It is submitted that the evidence of P.W.1/complainant clearly establishes that for allotment of the plot required by the complainant's company, the accused had demanded the bribe. It is further submitted that accused nos.1 and 2 were acting in connivance and on instructions of accused no.2, the bribe was accepted by accused no.1. The demand and acceptance has been proved. Anthrasin powder was noticed on the currency notes, the envelope

containing the currency notes, hands of the accused no.1 and the pant pocket of accused no.1. It is submitted that the fact that the bribe amount has been recovered from the possession of accused no.1 has been clearly proved the charges beyond doubt. Trial Court had failed to appreciate the evidence on record. Since the demand and acceptance has been established, the accused ought not have been acquitted by the trial Court. The judgment of the trial Court is contrary to the evidence on record. It is, therefore, submitted that the judgment is required to be interfered with by setting aside the same and the accused deserves to be convicted for the offences for which they were charged.

8 Whereas, learned advocate Mr. Surve appearing for Respondent No.2/accused no.2 submitted that the prosecution has failed to establish its case beyond all reasonable doubt. Respondent no.2/accused no.2 is not a public servant and he was purportedly an agent, liaising for making the plots available. It is submitted that there is no cogent evidence to establish that the accused no.2 have aided and abetted in any manner in commission of the offence. He submitted that the fact that there was demand and that the bribe amount was accepted by accused no.1 itself has not been established beyond doubt and hence the

question of convicting respondent no.2 as an abettor, does not arise. He further submitted that the trial Court has appreciated the evidence on record and has given its finding in support of the order of acquittal, which does not requires interference. Learned counsel draw my attention to the observations of the trial Court in paragraphs 28, 29 and 30 of the impugned judgment and submitted that the trial Court has taken a possible view which is required to be set aside while adjudicating the Appeal against the judgment of acquittal. It is further submitted that the benefit of doubt must be given to the accused. Learned advocate Mr.Kale appearing for Respondent no.1 submitted that the prosecution case suffers from serious infirmities which creates doubt about the veracity of the evidence of the witnesses examined by the prosecution. The prosecution has not been able to prove that the accused no.1 have demanded the amount. Assuming that the amount is recovered from the possession of accused no.1, mere acceptance of the amount is not sufficient to prove the charge levelled against the accused. Apart from that, the acceptance of the amount itself is under the shadow of doubt as the evidence of P.W.Nos.1 and 2 do not inspire confidence. It is further submitted that the case of the prosecution is that the negotiations were held with accused no.2 by the complainant and the prosecution has

not established that demand of bribe was made by accused no.1. In the absence of demand and the clear evidence of acceptance of the amount as a bribe amount, the accused no.1 cannot be convicted for the alleged offences. Learned counsel further submitted that the accused no.1 had no authority to allot plot of land to the complainant's company. Therefore, the question of accepting the bribe amount for allotment of the plot does not arise. The prosecution has not established that the amount was to be paid to the other officers of MIDC, and, therefore, the prosecution case suffers from serious infirmities. It is, therefore, submitted that the trial Court has rightly appreciated the evidence and has given a finding of acquittal which is not required to be set aside.

9 I have perused the evidence on record. The prosecution has examined three witnesses. P.W. 1 is the Complainant, P.W.2 is panch witness. P.W.3 is the investigating officer. The witnesses were cross-examined by the defence. Thus, the defence of the accused which is apparent from the statement recorded under Section 313 of Cr.P.C. and the written submissions tendered before the trial Court vide Exhibit 95 denotes that the accused have denied the incident, and, thus,

the defence is of total denial. It is also contended that amount is thrust upon the accused no.1 by the complainant. I have also perused the reasons assigned by trial Court while passing impugned judgment of acquittal. On perusal of the evidence on record, I do not find that any interference is required to disturb judgment of the trial Court. The evidence of the witness suffers from various infirmities which creates doubt about the veracity of the evidence of the witnesses examined by the prosecution. I do not find any reason to take a different view then which is taken by the trial Court while acquitting the accused.

10 P.W.1 has stated that in January 1986 the Director of his company Mr.Rathi told him to find out a plot in MIDC Chinchwad area for factory building of the company. In that connection he contacted office superintendent of MIDC Chinchwad and he was informed that there was no small plot available then. Thereafter he met Regional Manager Mr.Mujawar and even he told him that the plot is not available. P.W.1 informed about the same to Mr.Rathi. After about two days, P.W.1 and his Directors again approached Mr.Mujawar. They were informed that no plot is available and in the event any one surrenders plot then such plot could be allotted to them. At the end of April 1986,

Mr.Rathi again told P.W.1 to make inquiry about the plot. He again went to the office of Mr.Mujawar. However, he was not available. One person who was present at the office inquired with him about the purpose of his visit and introduced him to accused no.2. P.W.1 spoke to Mr.Pardeshi and appraised him about the requirement of plot. Shri Pardeshi told him that two plots are available. He also stated that he would charge Rs.1200/- as his commission and half the price of the plot is required to be deposited by way of draft. Mr.Pardeshi also told him that he will have to pay Rs.15,000/- to Rs.20,000/-, in cash to various officers in MIDC. He also stated that those officers were Regional Manager, Assistant Engineer and Office Superintendent. P.W.1 informed about the said fact to Director Mr.Rathi who told him to go ahead. Thereafter P.W.1 went to the office of Mr.Pardeshi to meet him. He was shown the map and the plots which were available. P.W.1 approved one plot. He was told that a draft for an amount of Rs.27,000/-, will have to be given for applying for the plot. P.W.1 conveyed this fact to Director Mr.Rathi. Mr.Rathi said corruption is increasing and he has to do something. After obtaining instructions from Mr.Rathi, P.W.1 approached the office of ACB in first week of May 1986. He lodged the complaint with the office. He was called in the office on 5th May, 1986. Panchas

were called. P.W.1 produced amount of Rs.17,000/-, to be used in the trap. Pre-trap panchanama was recorded. Instructions were given to P.W.1 as well as the panchas. The raiding party proceeded to the office of MIDC. P.W.1 and the pancha (P.W.2) entered into the office of MIDC. They met accused no.1. They were informed that accused no.2 was waiting for them for considerable time, and, thereafter, he left the office. They were told to contact accused no.2. P.W.1 contacted accused no.2 on phone. Accused no.2 informed him that the bribe amount was to be handed over to Mr.Mujawar by going to his residence. He was called near Alka Talkies for visiting house of Mujawar. Thereafter, at about 7:30 p.m., P.W. 1 and panch no.1 went to Alka Talkies. Raiding party followed them. Accused no.2. met them. They went towards Mukund Nagar. On reaching near the house of Mujawar, accused no.2 asked them to wait there as he would make inquiry about the availability of Mr.Mujawar. Accused no.2 went to the house of Mr.Mujawar and after returning informed P.W.1 and panch that it is not possible to hand over the amount to Mr.Mujawar as there are guests in his house. Hence, all of them returned to the office of ACB. Trap was withdrawn. Bribe amount was taken from P.W.1 and he was instructed to come on the next day morning at 8:30 a.m. for trap. He further deposed that on 6th

May, 1986, he went to the office of ACB. The bribe amount of Rs17,000/- were kept in two packets, one packet was containing Rs.15,000/- and another packet was Rs.2,000/-. Anthresin powder was applied to the bribe amount and the same were kept in an envelope. Both the packets were given to the complainant which were kept by him in the Shabnam bag, which he was carrying. Instructions were given to him and panchas. They proceeded towards MIDC office. P.W.1 and panch no.1 sat in the office of Mr.Mujawar. Accused no.2 came there. Accused no.2 then met Mr.Mujawar. He informed P.W.1 that his work is done. Accused no.2 asked P.W.1 whether he was aware about the phone call from Mr.Rathi to Mr.Mujawar. He told P.W.1 to make enquiry about the call. Thereafter, P.W.1, accused no.2 and panch came downstairs. Accused no.2 left. Trap was withdrawn. Both the packets containing bribe amount were taken by P.I Joshi. After 2 to 3 days, P.W.1 received a phone call from accused no.2 inquiring about the amount to be paid to Mr.Mujawar and disbursing amount of Rs.3,000/- in office and told him to bring the amount of Rs.3,000/- on 10th May, 1986 in the office of MIDC at 11:30 a.m. Accused no.2 also informed him that the letter of allotment would be issued to the company on 10th May, 1986. P.W.1 approached office of ACB on 10th May, 1986. Again Anthrasin powder was

applied to bribe amount. Pre-trap panchanama was drawn. Bribe amount of Rs.3,000/- were kept in one packet. The raiding party proceeded towards the office of MIDC. P.W.1 and panch no.1 went in office of MIDC. On 10th May, 1986, no trap was effected. The complainant could not assign any reason for failure of the trap on 10th May, 1986. All of them returned to the office of ACB. Amount was taken from him. P.W.1 was again called at MIDC office on 12th May, 1986. P.W.1 went to office of ACB on 12th May, 1986. Panchas were present. Again pre-trap panchanama was drawn. Requisite formalities were completed. Anthrasin powder was applied to Rs.3,000/-. P.W.1 and panch no.1 went to the office of MIDC. Raiding party followed them. When they reached at MIDC office, accused no.2 was not there. Accused no.1 approached to them and invited them for tea. Accused no.1 informed that he is getting his work done from the Superintendent. Accused no.2 came to the office at about 1:30 to 2:00 p.m. Accused no.2 met the Superintendent Raje and after meeting him he met the complainant. Accused no.2 handed over allotment letter and agreement to P.W.1. Allotment letter was in the signature of Mr.Mujawar. Accused no.2 inquired as to whether P.W.1 has brought the bribe amount. All them went to ground floor. Accused no.2 told P.W.1 to hand over the amount to

accused no.1. Panch no.1 suggested not to give bribe amount to the accused and despite suggestion from panch P.W.1, decided to give amount to accused no.1. They went to the canteen. P.W.1 took the packet containing bribe amount and kept the same in front of accused no.1 near the counter. The distance between the counter and the door is one feet. The accused no.2 gave a signal to accused no.1 to accept the amount. Accordingly, accused no.1 took the packet in his hand and kept the same in his pant pocket. P.W.1 then gave signal to the raiding party who entered into the canteen and apprehended the accused. Post trap panchanama was drawn. Amount was recovered.

11 In the cross-examination of P.W.1 it was elicited that about 3 to 4 months prior to filing complaint, he met Mr.Mujawar in his office. He again met Mr.Mujawar along with Mr.Rathi and Mr.Lohiya regarding allotment of plot. They were informed that small plot is not available. P.W.1 again went to the MIDC office on 19th April, 1986. He met accused no.1 who inquired about his visit. He asked to wait. Accused no.2 came there. Accused no.1 introduced accused no.2 to P.W.1. In the examination-in-chief it was deposed that accused no.2 was introduced to P.W1 by one person from MIDC office. He deposed that allotment of plots from

MIDC area was within exclusive power of Mr.Mujawar. Allotment letter was given to him on 12th May, 1986, the date on which trap was effected. Anthrasin powder was applied on outer cover of packet and every time bribe amount was kept in custody of P.W.3 whenever the trap is not effected. By retaining bribe amount, Shabnam bag was given to him. From 5th May, 1986 to 12th May, 1986, accused no.1 did not demand money from him. Accused no.2 had informed him that the amount was to be handed over to Mr.Mujawar. Accused no.2 informed him that plot was allotted to company and that necessary documents would be prepared in the office and would be given to the company. He also admitted that there was crowd of customers in the canteen and the person sitting on counter and customers in the canteen witnessed giving of bribe. Crowd was gathered after the trap.

12 On scrutiny of the evidence of P.W.1, it is apparent that the trap dated 5th May, 1986, 6th May, 1986 and 10th May, 1986, were unsuccessful. He could not give any reason for failure of trap on 10th May, 1986. He also admitted that the bribe amount was to be given to Mr.Mujawar as informed by accused no.2. There was no demand of bribe amount at the instance of accused no.1. from 5th May, 1986 to 12th May, 1986. It is also apparent that

the allotment letter of the plot was issued in favour of complainant's company. The alleged bribe amount was handed over to accused no.1 at the instance of accused no.2. On 5th May, 1986, the bribe amount which was to be handed over to the accused was in the sum of Rs.17,000/-. On 6th May, 1986, the amount of bribe was Rs.17,000/- and amount was divided into two parts as Rs.15,000/- and Rs.2,000/-. On 10th May, 1986 bribe amount was Rs.3,000/-. On 12th May, 1986, the amount of bribe was Rs.3,000/- fluctuation in quantum of amount creates doubt about the version of the complainant. It is also clear that the requisite formalities towards allotment of plot were completed. It is not the case of the prosecution that before issuance of allotment letter, the accused kept on demanding the money for allotting the plot. It appears that after the allotment letter was issued on completing the requisite formalities, the alleged trap was effected on 12th May, 1986. Complaint proceeded on the basis that the bribe amount was to be paid to Mr.Mujawar. The amount was not given to Mr.Mujawar on 5th May, 1986, 6th May, 1986 and 12th May, 1986. The agreement and allotment letter was handed over to P.W.1 on 12th May, 1986 Initially P.W.1 was informed by accused no.2 that cash amount of Rs.15,000/-, to Rs.20,000/- was to be given to MIDC officers and according to P.W.1, the said fact

was disclosed by him to Mr.Rathi and despite that P.W.1 was informed by Mr.Rathi to go ahead with purchase of plot. However, as per deposition of P.W.1, Mr.Rathi was allegedly concerned about corruption and it was decided to lodge complaint with ACB. The complaint was lodged on 3rd May, 1986.

13 P.W.2 is the panch witness. He has deposed that he was called in the office of ACB on 5th May, 1986. He was apprised the facts mentioned in the complaint. He has referred to the events of 5th May, 1986, such as recording pre trap panchanama, production of bribe amount, applying anthrasin powder etc. According to him, on 5th May, 1986, he went to MIDC office along with P.W.1. They met accused no.1 who informed them that the work of complainant is done. They were also informed that accused no.2 was waiting for them and he has left the office. Complainant wanted to see the plot allotted to him. Accused no.1 showed P.W.1 the map pointing the plot. It is relevant to note that P.W.1 has not referred to fact that map was shown by accused no.1 on 5th May, 1986. According to P.W.1 map of plot and the plot was shown by accused no.2 prior to 5th May, 1986. It is pertinent to note that accused no.1 did not make any demand of bribe amount for completing the work. On the same day at about 6:30

p.m., the raiding party proceeded to house of Mr.Mujawar with accused no.2. Trap was not effected. P.W.2 then referred to the incident dated 6th May, 1986 and arrangements made for the trap, application of anthrasin powder to the bribe amount etc. He further deposed that the amount of bribe was kept in the Shabnam bag carried by P.W.1. Both of them then went to the office of MIDC. Accused no.2 handed over agreement letter of allotment and other necessary documents. Draft of Rs.27,000/-, was given by complainant to accused no.2. Thereafter accused no.2 was called by Regional Officer in his cabin. Accused no.2 informed the complainant that Regional Manager has received a telephone from Director of Company and that they were acquainted with each other. Accused no.2 told P.W.1 to hand over Rs.2,000/- to enable him to distribute the same amongst senior staff. Complainant did not handover the amount to accused no.2. Evidence of P.W.2 is contrary to P.W.1. According to PW.1 agreement, allotment letter was handed over on 12th May, 1986. Trap could not be effected and, hence, the same was withdrawn. On 12th May, 1986, P.W.2 was called in the office of ACB and the complainant informed that amount of Rs.3,000/- was only to be handed over and no amount was to be handed over to Regional Manager due to telephonic call between the Regional Manager

and Director of company. Hence, Anthrasin powder was applied to the amount of Rs.3,000/-, which was kept in the packet. Thereafter they proceeded to MIDC office. They met accused nos.1 and 2. Complainant was informed that his work is done. Accused no.2 told the complainant to hand over packet containing Rs.3,000/- to accused no.1. Thereafter, all of them went to the canteen. Complainant took out the packet from his Shabnam bag and handed over the same to accused no.1, on instructions of accused no.2. Thereafter, to signal was given to the members of raiding party and accused were apprehended. The bribe amount was recovered. Anterasin powder was noticed on the hands and pant pocket of accused no.1. Post-trap panchanama was recorded.

14 It is not established that accused no.1 was aware that the packet which were handed over by the complainant to him was towards the bribe amount. The case of the prosecution proceeded on the basis that the bribe was to be paid to Mr.Mujawar which was not effected and ultimately the alleged bribe amount was handed over to accused no.2 on 12th May, 1986. There was no demand of the bribe amount by accused no.1. P.W.2 has not referred to unsuccessful trap dated 10th May, 1986,

although according to P.W.1 same panchas were called in office for trap on 10th May,1986, anthrasin powder was applied to bribe amount of Rs.3000/-, pre trap panchanama was drawn, P.W1 and P.W.2 went to office of MIDC, followed by raiding party.

15 In the cross-examination PW.2 has stated that after withdrawal of trap, bribe amount was kept in ACB office along with contents of Shabnam bag. On 5th May, 1986, accused no.2 took auto rickshaw to residence of Mr.Mujawar. Accused no.2 gave visiting card of Regional Manager. On 6th May, 1986, he gave one chit to complainant. Plot allotted by Regional Manager. On 6th May, 1986, letter of allotment was given by accused no.2 to P.W.1. It is the case of the prosecution that whenever a pre-trap panchanama was recorded, anthrasin powder was applied to the bribe amount and the same was kept in an envelope. It is also alleged that Anthrasin powder was also applied to the envelope containing the bribe amount which was kept in the Shabnam bag. On failure of the trap on 5th May, 1986, 6th May, 1986, the bribe amount kept in the envelope was handed over to the investigating officer. It is relevant to note that the Shabnam bag in which the bribe amount was kept was not seized and there is nothing to indicate that there was existence of Anthrasin powder to the

inner side of the Shabnam bag since envelope containing the bribe amount was by the time kept in the Shabnam bag. The witnesses have not deposed as to what was done to the bribe amount which was returned in the office of the ACB on 5th May, 1986 and 6th May, 1986. The defence of the accused that the amount was thrust upon him appears to be plausible. It is also evident that the bribe amount was allegedly handed over to accused no.1 in the canteen. The witnesses have deposed that there were customers in the canteen.

16 P.W.3 Ramchandra Joshi is the investigating officer. He has narrated the case of the prosecution and recording of pre-trap panchanama and post-trap panchanama. In the cross-examination he has deposed that the complaint of P.W.1 was against Mr.Mujawar. On 5th May, 1986, after withdrawal of trap, envelope kept in a cupboard and articles kept therein were taken out. He could not assign any reason as to why the panchanama effected in that regard is not on record. On 6th May, 1986 and 10th May, 1986 only statements of complainant were recorded. On 5th May, 1986, 6th May, 1986 and 12th May, 1986, he was waiting at the ground floor of the MIDC Office. This witness has not stated the reason for not effecting the trap dated 10th May, 1986. P.W.3

further deposed that he had not recorded statement of witnesses from canteen. Chit seized from accused no.1 is not on record. On 3rd May, 1986, the complainant had paid Rs.1,200/- as fees to accused no.2. Accused no.1 did not demand the amount from the complainant. On say of accused no.2 bribe amount was handed over to accused no.1. He did not seize Shabnam bag which carry bribe amount. Considering the nature of evidence, it cannot be said that the prosecution has been able to establish the demand and acceptance of the bribe amount beyond all reasonable doubt.

17 I have perused the copy of the complaint, pre-trap panchanama dated 5th May, 1986, withdrawal panchanama dated 5th May, 1986, withdrawal panchanama dated 6th May, 1986, pre-trap panchanama dated 6th May, 1986, withdrawal panchanama dated 6th May, 1986, pre-trap panchanama dated 12th May, 1986 and post trap panchanama dated 12th May, 1986. I have also perused application for land in MIDC addressed to the Regional Officer MIDC dated 2nd May, 1986 by complainant's company (Exhibit-54), proforma of application for a plot of land in MIDC area forwarded by the complainant's company Exhibit-55, documents forwarded by the complainant company as in support of application for plot of land, letter dated 2nd May, 1986, issued

by MIDC to the Director of complainant's company with regards to allotment of plot (Exhibit-63/64), MIDC document relating to allotment of plot (Exhibit-65) sanction order dated 12th May, 1986 for allotment of land admeasuring 540.00 square metres arising out of plot from Pimpri industrial area to the complaint's company. Letter dated 5th May, 1986 (Exhibit-68), forwarded by the complainant's company (Exhibit-66/67) to the Regional Officer stating that the offer letter dated 2nd May, 1986, was received by the complainant's company and the draft of Rs.27,000/- dated 5th May, 1986 is being forwarded and the balance amount shall be paid within the stipulated time. The letter also indicate that application for allotment duly filled and signed by the partners of the company is submitted and the request was made to issue the allotment letter at the earliest. The form of application dated 5th May, 1986 was exhibited in evidence vide Exhibit-70. Exhibit - 71 is the order issued on 9th May, 1986 by chief executive officer for acceptance of payment of Rs.27,000/- made by complainants company towards earnest money for plot. On perusal of these documents, it is apparent that the work of the complainant was being done and the allotment letter was issued to the complainant's company.

18 Taking into consideration the nature of evidence as stated hereinabove and the reasons assigned by the trial Court while acquitting the accused, I do not think any interference is warranted in the judgment delivered by the trial Court. On scrutiny of the complaint Exhibit-77, it can be seen that the amount of Rs.15,000/- to Rs.20,000/-, as a bribe amount was allegedly demanded for paying the same to the Regional Officer Mr.Mujawar. The said amount was allegedly demanded by accused no.2 from complainant. Accused no.2 was purportedly doing the work of agent and helping buyer of the plot in MIDC industrial area. As stated in the complaint, Rs.15,000/- to Rs.20,000/-, were demanded as a bribe amount in paying the same to the office of MIDC. The said amount was to be paid on instructions of accused no.2. Thus, admittedly, there was no demand of bribe amount by accused no.1. Although, Rs.15,000/- to Rs.20,000/- was to be paid as a bribe amount to the officers of MIDC, in the trap dated 12th May, 1986, the amount of Rs.3,000/-, was allegedly handed over to accused no.1 on the instructions of accused no.2. The earlier trap dated 5th May, 1986, 6th May, 1986 and 10th May, 1986 had admittedly failed. The trap had allegedly effected on 12th May, 1986. Prior to that the application was already forwarded, the same was accepted, earnest amount of

Rs.27,000/-, was already deposited by the complainant's company and request was made to issue the allotment letter. The allotment was issued and the final sanction order was issued on 12th May, 1986. Thus, apparently, on 12th May, 1986, the day on which the sanction letter was issued, trap was allegedly effected. There are contradictions in the evidence of witnesses. P.W3 has not given any reason for not effecting trap on 10th May, 1986.

19 Section 161 of Indian Penal Code reads as follows:

“161. Public servant taking gratification other than legal remuneration in respect of an official act. - Section 161. Public Servant taking gratification other than legal remuneration in respect of an official act.- Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with [the Central or any State Government or Parliament or the Legislature of any State], or with any local

authority, corporation or Government company referred to in clause (2) of section 21, or with any public service, [as such, whether named or otherwise] shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Explanations.- "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section." [Repealed by the Prevention of Corruption Act, 1988 (49 of 1988), section 31]."

20 The requisite ingredients of the said provision are that, the public servant should accept the gratification for himself and the gratification should be as a motive or reward for rendering or attempting to render any service or dis- service to any person or with any other public servant. Mere fact that a public servant accepts money would not by itself necessarily be an offence under Section 161 IPC. Unless the ingredients of the aforesaid provisions are made out, the accused cannot be convicted for the said offence. There is no cogent evidence to establish that accused no.1 accepted gratification as a motive or reward for rendering or attempting to render any service or dis-

service to any person with any other public servant. It is not the prosecution case that accused no.1 at any point of time had assured that he would get the work done from the Regional Officer Mr.Mujawar or from any other person. Accused no.2 was not a public servant. He is a private person. He is acting as an agent by charging commission. He is charged for abetting commission of crime by accused no.1. The offence against principle offender itself had not been established beyond doubt. Section 165A reads as follows:

“Section 165A, IPC, before repeal : Punishment for abetment of offence defined in section 161 or section 165. – Whoever, abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of entire description for a term which may extend to three years, or with fine, or with both.”

The case of the prosecution suffers from serious infirmities, which creates doubt about its authenticity, and, therefore, the accused were rightly acquitted by the trial Court. The prosecution evidence do not establish that Mr.Mujawar or any one at his instance had demanded the bribe amount from the complainant. It is not the case of the prosecution that accused

no.1 had demanded the amount from the complainant for distribution of the amount in the office of the MIDC to facilitate the allotment of the plot to the complainant. There is no evidence to indicate that the complainant met any person from MIDC office and also that such person had demanded bribe amount from the complainant. As per Section 5(1)(d) of Prevention of Corruption Act, 1947, a public servant is said to commit the offence of criminal misconduct, if he, by corrupt or illegal means or by otherwise abusing his position as public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. Section 5(2) related to punishment for criminal misconduct. Section 4 depicts presumption when public servant accepts gratification other than legal remuneration. In any trial of an offence punishable under Sections 161 or 165 of IPC or of an offence referred to in clause (a) or clause (b) of Sub-section (1) of Section 5 of the Acct, punishable under Sub-section (2) thereof, it is proved that on accused person has accepted or has agreed to accept or attempted to obtain for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing as

the case may be as motive or reward such as mentioned in section 161, or as the case may be without consideration or for a consideration which he knew to be inadequate where in any trial of an offence punishable under Section 165 A of IPC or under clause (ii) of Sub-section (3) of section 5 of the Act, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be as a motive or reward such as mentioned in section 161 of IPC or as the case may be without consideration or for a consideration which he knows to be inadequate.

21 The evidence on record do not satisfy the ingredients of Sections 161, 165A IPC and Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, 1947. The presumption envisaged under Section 4 of P.C. Act can be invoked in the event it is proved that accused has accepted or obtained or has agreed to acceptor attempted to obtain for himself or for any other person any gratification or valuable thing. The demand by public servant has not been proved. The evidence on the contrary indicate that there was no demand of bribe by accused no.1, who

is allegedly principal offender. In the case of ***Surajmal Vs. State (Delhi Administration)***¹ it was observed that mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable.

22 To summarise the case of prosecution, the plot was required to be purchased by complainants company in MIDC area Chinchwad. Enquiry was made in January 1986. Initially P.W.1 contacted office superintendent MIDC for plot and he was informed about non-availability of plot. P.W.1 than approached Regional Manager Mr.Mujawar who also stated that plot is not available. P.W.1, Mr.Rathi and another Director of company again approached MIDC and they were again informed about non availability of plot. At the end of April 1986, Mr.Rathi told P.W.1 to again make enquiry regarding plot. P.W.1 met accused no.2 that plot is available. He also informed that Rs.15,000/- to Rs.20,000/- is required to be paid to various officers. P.W.1 contacted Mr.Rathi and apprised him about the aforesaid fact. Mr.Rathi told him to go ahead. The date of this incident is not disclosed. P.W.1 or Mr.Rathi did not lodge complaint, and P.W.1 was instructed to

1 *AIR 1979 SC 1408*

go ahead with purchase of plot. P.W.1 was explained requirement for purchasing plot. P.W.1 approached accused no.2. Map and plot were shown to him. Accused did not make any demand of bribe on that day. Mr.Rathi showed concern for corruption although initially he instructed P.W.1 to go ahead with purchase of plot. Complaint registered on 3rd May, 1986. Trap arranged on 5th May, 1986. Bribe amount was Rs.17,000/-. On what basis the quantum of bribe was decided is not clear. Raiding party visited MIDC office. Accused no.2 had left. Accused No.1 did not demand bribe. Accused no.2 was contacted on phone. He stated that amount is to be paid to Mr.Mujawar and told P.W.1 to meet in evening. However, again trap failed. Accused no.2 did not demand money. The amount to be paid was not accepted by accused no.2. On 6th May, 1986 again trap was arranged. Amount was divided in two packets (Rs.15,000/- and Rs.20,000/-). The reason is not known. Accused no.2 informed that work is done. Accused no.2 told P.W.1 that there was call from Mr.Rathi to Mr.Mujawar. P.W.1 has not stated that Mr.Rathi had told him that he had called Mr.Mujawar. Trap was unsuccessful. Thereafter trap was arranged on 10th May, 1986 which was also aborted. Reason has not been disclosed, who had called P.W.1 to MIDC on 12th May, 1986 is not clear. Bribe amount was reduced to Rs.3,000/-. The

amount was allegedly accepted by accused no.1. P.W.1 has not disclosed the details about preferring application for plot and completing requisite procedure for allotment of plot.

23 The company of complainant submitted handwritten application for land in MIDC on 2nd May, 1986 (Exhibit - 54). Application in proforma was submitted to MIDC (Exhibit - 55). Requisite documents, such as Bio-Data, project report, partnership deed etc., were also forwarded. Letter dated 2nd May, 1986, stating that, it will be possible for the corporation to consider their request for allotment of plot admeasuring 450 square feet. The company was requested to submit application and earnest money in the sum of Rs.27,000/- (Exhibit - 63/64). The complainant is silent regards to aforesaid documents. P.W.1 has not disclosed the date on which the accused no.2 had told him about payment of money to various officers. The complaint to ACB was lodged on 3rd May, 1986. The MIDC issued document dated 12th May, 1986 containing office remark about application for plot deposit of earnest money of Rs.27,000/- and request for further order (Exhibit-65). MIDC issued order dated 12th May, 1986 granting Sanction for allotment of plot (Exhibit-66/67). Letter dated 5th May, 1986 was sent by complainant company to

Regional Officer MIDC, enclosing Demand Draft of Rs.27,000/- (Exhibit - 68) order accepting amount of Rs.27,000/- dated 5th May, 1986 (Exhibit - 71). Thus, application for plot is dated 2nd May, 1986, earnest money was given on 5th May, 1986 and sanction order was dated 12th May, 1986. P.W.1 has not furnished details about the same. The bribe was to be paid to officers of MIDC in the sum of Rs.15,000/- to Rs.20,000/-. On 5th May, 1986, the bribe was to be given to accused no.2 and Mr.Mujawar. Trap has failed on 5th May, 1986. On 6th May, 1986, bribe amount of Rs.15,000/- and Rs.20,000/- was to be given to Assistant Engineer and Mr.Mujawar. Trap had failed. Rs.3,000/- was to be paid to office on 10th May, 1986. Trap had failed on 10th May, 1986. On 12th May, 1986 allegedly amount of Rs.3,000/- was accepted by accused no.1. No demand by accused no.1. No evidence to substantiate that demand of bribe by Mr.Mujawar. The evidence of P.W.1 and P.W.2 speaks volume of doubt. Hence, the prosecution has failed to prove its case beyond doubt. Hence, trial Court has rightly acquitted accused.

24 In view of the above, I do not find any reason to deviate from the view taken by the trial Court and hence the Appeal preferred by the State challenging impugned judgment of acquittal deserves to be dismissed.

23 Hence, I pass the following order:

:: ORDER ::

- (i) Appeal is dismissed.

(PRAKASH D. NAIK, J.)