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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 318 OF 2010**

Mr. Shashikant Dondiram Karande
Age: 42 years, Occupation: Service,
R/o. Prem Nagar, Bldg. No.4,
A Wing, Flat No.02,
Mandpeshwar Road, Borivali (W),
Mumbai – 400 095.

... Appellant

V/s.

The State of Maharashtra
(At the instance of ACB Mumbai,
Vide C. R. No. 24/04)

... Respondent

**WITH
CRIMINAL APPEAL NO. 412 OF 2010**

The State of Maharashtra
(At the instance of ACB Mumbai,
Vide C. R. No. 24/04)

... Appellant

V/s.

Mr. Shashikant dondiram Karande
Age: 42 years, Occupation: Service,
R/o. Prem Nagar, Bldg. No.4,
A Wing, Flat No.02,
Mandpeshwar Road, Borivali (W),
Mumbai – 400 095.

... Respondent

.....

Mr. Satyavrat Joshi Advocate for Appellant.
Mr. A.R. Kapadnis, APP for Respondent-State.

.....

CORAM : PRAKASH D. NAIK, J.

Date of reserving the Judgment : 4th August, 2018

Date of Direction/Clarification : 1st July, 2019

Date of pronouncing the Judgment : 9th July, 2019

JUDGMENT :-

Criminal Appeal No. 318 of 2010 is preferred by the accused challenging the Judgment and order dated 11th March 2010, passed by Special Judge, City Civil & Sessions Court, Gr. Mumbai, Bombay in Special Case No. 19 of 2015, convicting the appellant for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C. Act' for short) and sentencing him to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/- and also convicting him for the offence punishable under Section 13(1)(d) read with 13(2) of P.C. Act, whereby he is sentenced to suffer six months rigorous imprisonment and to pay fine of Rs.1,000/-. Whereas Criminal Appeal No. 412 of 2010 is preferred by the State of Maharashtra under Section 377(1) of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.' for short) for enhancement of sentence passed by the Court in the aforesaid Judgment and order. For the sake of brevity, the appellant in Criminal Appeal No. 318 of 2010 is hereinafter referred to as accused. The appeals were listed for direction/clarification on 1st July 2019 and after hearing parties again closed for Judgment.

2. The prosecution case is as follows:-

i. The accused was API attached to Malvani Police Station at the relevant time.

ii. In 2004, during off season, the complainant had started work of repairs of buildings. His friend Hasam Shaikh @ Khaja is a supplier of building material.

iii. On 10th March 2004, one Parvez Beig was brought by complainant's friend Hasam Shaikh and was introduced to the complainant. Parvez Beig was residing in Chawl No.19, Gaikwad Nagar, Malvani, Bombay. He wanted to raise the height of his residential house.

iv. On 19th March 2004, the complainant visited the house of Parvez Beig and inspected the site. Complainant agreed to carry out work of repairs of house. The work commenced and continued for four to five days. On 22nd March 2004, complainant was called at beat no.2 of Malvani Police Station. The accused was present. He questioned the complainant as to how he started the construction work without informing the Police. The complainant told him that it

was a minor repair work and he thought that it is not necessary to report the same to Police. The accused then asked whether the permission was obtained from BMC for carrying out necessary work of the house. The complainant told him that no such permission was obtained from BMC as he was not raising the height exceeding the permissible height of the structure. Though, the complainant tried to convince the accused that it was a minor work, so that the action would not be taken against him, the accused demanded Rs.5,000/- for not taking action against him. The complainant told the accused that he had taken the work which was of a minor nature and there would be no profit to him and the demand of Rs.5,000/- was exorbitant. However, the accused insisted his demand. The complainant then sought time for payment.

v. On 24th March 2004, the accused took away five labourers with him from the construction site at the house of Parvez Beig to Malvani Police Station and imposed fine of Rs.1,250/- per head on each labourer engaged by complainant. Complainant visited Malvani Police Station. The complainant paid Rs.1,250/- for each labourer. After paying fine, the complainant again instructed the labourers to carry out work of repairs.

vi. The complainant was again called at Malvani Police Station at beat no.2. The complainant visited Police Station. The accused was present. He was questioned as to how he restarted the construction work. The accused threatened the complainant that if he fails to pay him Rs.5,000/- he will lodge a case against him under MRTP Act. The complainant showed his inability to pay the amount, but the accused warned him of the complaint. Hence, the complainant told him that he would meet him soon in that connection.

vii. On 26th March 2004, the complainant went to Anti-Corruption Bureau (ACB) at Worli, and lodged the complaint against the accused. The complaint was recorded by PW No.6.

viii. The complainant was asked to produce the amount of Rs.5,000/-. Panchas were arranged, personal search of the complainant was carried out. Xerox copies of currency were taken for the purpose of trap. Anthracene powder was pasted on the currency notes. Trap money was examined in UV light. Trap panchanama was prepared.

ix. The complainant alongwith panchas and members of raiding party proceeded to Malvani Police Station, beat no.2. The

complainant and panchas reached Malvani Police Station. The accused was found sitting at the table. The accused asked as to what had happened and why he had come. The complainant disclosed that he had come to give Rs.5,000/-. The accused said to the complainant that if he had paid the amount on the earlier date, he would not have fined the labourers. The complainant took out the money and gave it to the accused, which were accepted by him by his right hand. The complainant came out of the Police Station and gave signal to the raiding party. They rushed to the room. The accused was apprehended. The raiding party went to Malvani Police Station. Anthracene powder was detected on the currency notes. Panchanama recorded. Investigation was completed and the charge-sheet was filed.

3. The charge was framed under Sections 7, 13(1)(d) read with 13(2) of P.C. Act by order dated 2nd August 2008. The prosecution examined seven witnesses. Statement of the accused was recorded under Section 313 of Cr.P.C. The accused was convicted for the offences as stated hereinabove. Hence, the accused have preferred an appeal under Section 374(2) of Cr.P.C., whereas the State has preferred an appeal under Section 377 (1) of Cr.P.C. seeking enhancement of sentence.

4. Learned Advocate for the appellant submitted that there is no cogent evidence to convict the appellant. The evidence of the witnesses suffers from serious defects. The prosecution has not established the demand of bribe and acceptance of the same. The prosecution stands vitiated on account of invalid sanction. The sanctioning authority were not empowered to grant sanction for prosecution of the accused. The evidence suffers from omission and contradictions. The complainant has falsely implicated the accused in the crime. It is submitted that the BMC to take action in case of unauthorized construction. The question of initiating action by the Police does not arise and hence the allegation leveled by the complainant with regard to demand of bribe is false. With regard to previous demand, there was no verification. Panch witness was professional. Tainted currency notes were not sealed. The evidence of complainant is doubtful. The Trial Court have not considered improbabilities in the case of prosecution. The service sheet accepted, at the instance of the prosecution suggest that the accused was appointed by DG, MS, Mumbai as PSI and thus equivalency of the post will not empower the Commissioner of Police to accord sanction as subordinate officer to DG, MS, Mumbai. The claim of the witness about having seen the copy of appointment letter of the

accused assigned by Additional DG, MS, Mumbai is not substantiated by the prosecution by production of any such document and hence there was no other material in support of such claim. Therefore, the service sheet of the accused ought to have prevailed over such claim. The accused was appointed as PSI by order of DG, MS, Mumbai. Hence, DG, MS, Mumbai being superior officer no subordinate officer like PW No.7 would be empowered to accord sanction. The Police force is established by the State of Maharashtra having overall control over the Police force. All notifications, orders, acts of the State are issued in the name of the Governor of the State or concerned Ministry under the signatures of Under Secretary of the competent office. The seized currency notes were not sealed and therefore tampering is not ruled out. Complainant's hands were not examined under light of lamp. There is discrepancy in recording statement of accused under Section 313 of Cr.P.C.

5. Learned Counsel relied upon the following decisions:-

i. **Jawansingh Ramsingh Gaud & Anr. v/s. State of Maharashtra, 2016(2) Bom.C.R.(Cri.) 421.**

ii. Suraj Mal v/s. The State (Delhi Administration), 1979 CRI. L. J. 1087/AIR 1979 SC 1408.

iii. Swapnali @ Sapana Sharad Mahadik v/s. The State of Maharashtra, 2016 ALL MR (Cri.) 1824.

iv. Sharad Tavhare v/s. State of Maharashtra, Criminal Appeal No. 23 of 2009.

v. Somdatta Khandare v/s. State of Maharashtra & Ors., Criminal Application No.94 of 2016.

vi. Arun Joshi v/s. State of Maharashtra & Ors., Criminal Application No. 142 of 2016.

vii. Ashok Phalle v/s. State of Maharashtra & Ors., Criminal Application No. 737 of 2016.

6. Learned APP submitted that the prosecution has established its case, the demand is proved. The accused was found in a possession of currency notes. Anthracene powder was detected on the currency

notes. The case of the complainant is supported by independent witness PW No.2. The case is also supported by Parvez Beig PW No.4. PW No.7 was empowered to grant sanction for the prosecution of the accused. There is no defect in the sanction order. The Trial Court has considered the issue about the authority of PW No.7 to grant sanction in detail and no interference is called for in the findings of the Trial Court.

7. PW No.1 Kiran Sindhi have deposed that on 10th March 2004 Parvez Beig was brought to him by his friend Hasam Shaikh as Mr. Beig wanted to carry out some repairs to his residential house. He visited the house of Mr. Beig and inspected the same. He agreed to carry out the repairs for raising the height of his house. The work continued for four to five days. The site was situated within the area of beat no.2, Malvani Police Station. On 22nd March 2004, PW No.1 was called at beat no.2 of Malvani Police Station. He visited the Police Station on the same day, accused was present. He questioned him as to how he started the construction work without informing him. He was informed that the work was of minor nature and hence it was not reported. Accused also informed whether permission for BMC was opted for the work. PW No.1 told him that there is no need

to obtain permission as the height did not exceed the permissible limits. He told him to produce papers regarding permission of BMC for carrying out necessary work at the house of Parvez Beig for inspection and warned him that otherwise an action would be taken against him. The accused demanded Rs.5,000/- for not taking action. The complainant sought time. On 24th March 2004, the accused took away labourers from the construction site. The complainant went to the Police Station, fine was imposed in the sum of Rs.1,250/- on each labourer. The complainant paid the fine, receipts were issued. The work commenced, the complainant was again called at beat no.2, Malvani Police Station. PW No.1 visited the Police Station. The accused told him that if he fails to pay him Rs.5,000/- he would lodge a case against him under MRTP Act. The complainant told accused that he will meet him soon in that connection. Complaint was lodged on 26th March 2004 with ACB against the accused for demanding bribe of Rs.5,000/-. The complaint was recorded by PW No.6. Panchas were called, currency notes were arranged by the complainant. Xerox copies of currency notes were produced. Panchas signed on the xerox copies of the currency notes. Anthracene powder was applied to the currency notes. The notes were kept in the pocket of the complainant. He was instructed to contact the accused and

only on demand for bribe, the currency notes were to be handed over to him. Panch/PW No.2 was asked to remain with PW No.1. The signal of accepting the bribe by moving left hand over the head was instructed to be given by the complainant. The raiding party left the ACB office by vehicle to beat no.2, Malvani Police Station. PW No.1 and PW No.2 proceeded towards beat no.2, Malvani Police Station. The accused was present. The staff attached to beat no.2 was also present. PW No.1 and PW No.2 went to the accused. They occupied the seats on the chairs, the accused asked him as to what had happened and why he had come. He disclosed to the accused that he had come to pay Rs.5,000/- The accused stated that if he had paid the amount on earlier date, he would not have fined the labourers. PW No.1 took currency notes from his pocket of shirt and handed over the same to the accused who accepted the same. He handedover the currency notes to the accused only after the accused asked whether he had brought the amount of Rs.5,000/- and on his demand the amount was taken out and handed over to the accused who accepted the same. The complainant came out of beat no.2 and gave signal to the members of raiding party. The smeared currency notes were in the right palm of accused, he was caught. The currency notes were seized by the Police. Accused was taken to Malvani Police

Station, palms of the accused were examined under the light of the lamp and green colour was noticed on the right palm. In the cross-examination, he stated that he is working for political party and also a social worker. He did not possess registration certificate of the business of tours and travels. He did not possess licence issued by BMC for carrying out repairs of the buildings or business of Civil Contractor. After the incident, nobody created hurdle in completion of work of Mr. Beig. Mr. Tupe was the first officer to meet at office of ACB. He took him to the superior officer. In the cross-examination certain omissions were brought on record from the evidence of PW No.1. The accused was asked as to how he started construction work at the house of Parvez Beig without informing him and that the complainant told him that the work was of minor nature and therefore he did not report the same to the Police Station, is not appearing in the FIR. The fact that there was no need to obtain permission for raising the height of the house of Mr. Beig as the proposed increase in the height of the house was not exceeding permissible height, was not appearing in any statement. PW No.1 instructed the labourers to carry out the work at the house of Parvez Beig and he was again called at beat no.2, Malvani Police Station is not appearing in the FIR. The fact that the accused told the

complainant that he had restarted the work is not appearing in the FIR. The fact that PW No.1 and Panchas were taken to one room where they were told about the characteristic of chemical powder is not appearing in the statement before the Police.

8. PW No.2 Dinkar Kamble has acted as Panch witness. He referred to the recording of pre-trap panchanama and post trap panchanama. He was accompanying PW No.1. After visiting the Police Station with PW No.1, accused asked complainant whether he had brought the money as he had told complainant that he had brought Rs.5,000/-. The complainant asked the accused whether he would not take any action in respect of work. The accused said that if he would have paid the money earlier, labourers would not have been charge-sheeted. The accused demanded money. The complainant handed over tainted money on receiving signal, the raiding party reached the spot and apprehended the accused. Personal search of the accused was conducted. Cash was seized. He acted as a Panch witness in 5-6 trap cases. He read the papers and deposed in the Court. He acted as a Panch with different persons in different places. There were other persons and Police staff besides the accused in the Police Chowki when they entered. He cannot state

that in which hand PW No.2 took the bribe money. There is no reference in post trap panchanama of he going to Malvani Police Station in Police vehicle. He did not point to the IO, when he read the panchanama. That his reference is not there for going to Malvani Police Station as he was not knowing the procedure of panchanama. Panchas did not examine the accused in UV light. The members of raiding party focussed UV light on the person of accused in presence of Panchas. PW No.3 Sudhir Shinde is PSI attached to Malvani Police Station. He was appointed at beat no.2, Malvani Police Station. Accused was beat incharge. He saw one person outside the chowki, so he came out. Three persons came their and went to chowki. The witness resiled from previous statement and hence APP was permitted to cross-examine him. In the cross conducted by APP, he stated that the statement was recorded by PW No.6 on 1st April 2004. It is not true that at about 8:15 p.m. he was talking to three Police Officers outside the chowki. It is not correct to say that three person in the Civil dress came to him and they told him that they were from Anti Corruption Office and they restrained him there. In the cross conducted by the accused, it is stated that he did not handle MRTP matter. BMC officer is the complainant in MRTP matter.

9. PW No.4 Parvez Beig is the witness whose house was being repaired. He stated that he had purchased the room at Gaikwad Nagar. He produced documents in that regard. The room was at a lower level. There was no facility of toilet/bathroom. The water of gutter was throwing from there and public made it as a toilet. He met Shri Khaja bhai for repairs who suggested name of PW No.1 Kiran Sindhi. He has no document of ownership of the room. He had purchased the room from Smt. Nadira Kausar. She had purchased the room from Shehnaz Khan. He had produced xerox copy of the agreement. The said document was executed between Shehnaz Khan and Nadira Kausar. He also produced affidavit executed by Shehnaz Khan. In cross, he stated that he came to the Court with Khajabhai and complainant. He did not receive the summons. He did not register any document while purchasing property. He did not go BMC for seeking permission for repairs. PW No.5 Suresh Shinde was attached to Malvani Police Station. He stated that on 24th March 2003 he was SHO at Malvani Police Station. API Karande (accused) was the beat officer. He had sent five labourers alongwith constable to be charged for nuisance on the road. He prepared five receipts for that charge against five persons, each receipt for amount of

Rs.1,200/-. PW No.6 Asmita Bhosale was Police Inspector at ACB. She conducted investigation. The complainant narrated his grievance to her, she recorded the same in writing. He complained against accused about demand of bribe of Rs.5,000/- for not taking action against the complainant's construction. The complainant signed the FIR, she also signed it. FIR was registered vide C.R. No. 24 of 2004 under Section 7 of P.C. Act. She requested P.I. Bansod to bring two panchas. P.I. Bansod brought panchas, she enquired with them about the antecedents, names and addresses. She introduced the complainant to panchas. She also explained the substance of complaint to panchas. The panchas asked the name and address of complainant. Panchas took personal search of the complainant. She took cash produced by the complainant for the purpose of trap. Xerox copies of the currency notes were taken for the purpose of trap. Signatures of the panchas were obtained on the xerox copies of currency notes. The panchas and the complainant were explained about the anthracene powder. She examined the trap money. Thereafter, anthracene powder was applied. Trap was arranged. She instructed the complainant to go to Malvani Police Station to meet the accused. PW No.1 was instructed that only on demand by the accused about the bribe, tainted currency notes should be given to

him and till then he should not touch the same. The raiding party proceeded to Malvani Police Station. The complainant and panch no.1 got down from the vehicle and proceeded to beat no.2. They followed them from the distance. The complainant and panch no.1 went inside beat no.2. After sometime, complainant gave signal. Raiding party went to the place of incident and apprehended the accused. The amount was recovered. Since there was a crowd, it was decided to go to Malvani Police Station for preparing post trap panchanama. Accused was examined in UV light and anthracene powder was detected on his both hands fingers and no shining was seen on his clothes. Anthracene powder was detected on shirt's pocket (inner side) of complainant and right hand fingers. She was cross-examined by the defendant. She has deposed that the receipt for imposing fine on the labourers were for keeping the dirt on the public road and keeping garbage on road obstructing the traffic. Police have power to take cognizance of unauthorized construction under MRTP Act. The BMC officer is the complainant under the MRTP Act. She enquired with the panch whether they have acted as a panch in a trap case any previously and they said they did not. She recorded the statements of witnesses.

10. PW No.7 Anami Roy had accorded sanction for prosecution of the accused. According to him, he was Commissioner of Police in the year 2004. The accused was attached to Malvani Police Station as API. He was appointed by Additional Director General of Police. Additional Director General of Police is the removing Authority. Commissioner of Police, Mumbai is Additional Director General of Police and is competent to remove. Letter dated 30th August 2004 was sent by Additional C.P., Anti Corruption for sanction to prosecute the accused. He produced the forwarding letter (Exh.32). Draft sanction order, investigation papers were also sent. Papers were examined in the office and put up before him. He scrutinized the papers and record. He was satisfied that prima-facie case was there to accord sanction. Draft of sanction order was prepared, referring the draft sanction sent by ACB. He made necessary corrections in the draft sanction order received by him and then final sanction order was prepared. In the cross-examination, he stated that it is not the order of appointment/promotion of accused by DG as per the entry in the service book at page no. 287. It cannot be inferred from entry in service book at page no. 287 that the accused was promoted by D.G. He produced order of promotion (Exh.36). The Police can take action in respect of unauthorized construction

under MRTP Act on the complaint of BMC Officer. Malvani Police Station had not taken any action under MRTP Act. As per entries on page 243 of the charge-sheet, the Police took action against the persons putting the garbage on the street. API is a Gazetted Post. He was in the employment of State of Maharashtra.

11. In addition to the submissions advanced by the learned APP in support of the Judgment and conviction, it was also submitted that the sentence imposed upon the accused was not adequate. The offence of corruption is of serious nature. There was no reason for imposing a lesser punishment and taking a lenient view. No reasons were assigned for imposing sentence of six months on both the counts. The offence invites maximum punishment provided under the law. The learned Counsel for the accused have submitted that the conviction itself is not maintainable and the question of enhancing the sentence does not arise. Apart from that the sentence cannot be said to be inadequate and the Trial Court has used its discretion, which do not warrant interference.

12. The prosecution case is based on evidence of the witnesses. I have analysed the nature of their evidence. The defence of the

accused is of denial. According to him as narrated in the statement under Section 313 of Cr.P.C., he was at night duty at beat no.2, Malvani Police Station. At around 20:45 known officer came to chowki and told him that he has some work in Malvani Police Station. Hence, he took him to Malvani Police Station. At that time, PW No.6, met him there and she told him that one Sindhi has complained against him. She requested him to come to Worli ACB office. He went to ACB Office, Worli with them. At that time, PW No.6 took complaint of complainant. Pre-trap and post-trap panchanama was prepared at that time and his signature as well as of panchas was obtained. His appointment and promotion was made by D.G., Maharashtra, Mumbai. He has been falsely implicated by Police.

13. The accused was attached to Malvani Police Station. He is a Public servant within meaning of Section 2(c) of P.C. Act. The complainant has deposed that after commencement of construction on 22nd March 2004, he was called at beat no.2 of Malvani Police Station. He visited Police Station. Accused was present. He questioned the complainant as to how he started construction work. Accused demanded Rs.5,000/- for not taking action against him in

respect of commencement of work. The complainant sought time. On 24th March 2004, five labourers from the construction site were taken to the Police Station and fine was imposed on each labourer for Rs.1,250/-. The fine was paid. The work began again. The complainant was again called at beat no.2 at Malvani Police Station. He visited the Police Station. The accused questioned him about the work, he was warned that if he fails to pay Rs.5,000/-, case would be lodged against him under MRTP Act. The complainant approached ACB. PW No.6 is the person who had purchased the room, which was under repairs. The said repairs were being carried out by PW No.1. Thus, the fact that the repairs in respect to the premises were being carried out is established by the prosecution. The fact that the labourers were fined by Malvani Police Station at the instance of the accused was also established. PW No.1 have also referred to the demand made by the accused. Although, both these witnesses were cross-examined, their version could not be demolished. It is the case of the complainant that the work, which was alleged to be undertaken by him at the house of PW No.4 was minor for which permission is not required. The complainant also stated that after the incident, the work was completed and nobody created hurdle in completion of the work of raising height of the house of PW No.4. In

the light, admission of the complainant and fact that the accused took five labourers from work and fine was imposed on them and the threats given by the accused to the complainant about initiating action under MRTP Act leads to intention of the accused to obtain illegal gratification by threatening the complainant.

14. The complainant has stated that he alongwith PW No.2 went to accused. The accused stated that if the amount was paid earlier, he would not have fined the labourers. The amount was paid to the accused in the presence of PW No.2. Thereafter, the complainant gave signal to the raiding party and he was apprehended. It is the case of the prosecution that the amount was accepted by the accused and the complainant was asked to leave the place. Anthracene powder was noticed on the clothes and the hand of the complainant. Whereas, anthracene powder noticed on the tainted currency notes and on the hand fingers of the accused. The evidence of PW No.1 is corroborated by PW No.2 minor infirmities such as omissions and contradictions are not fatal to the prosecution case. The defence has argued that there was no verification of the complaint. It is true that normally the verification is being conducted by ACB. However, the accused have demanded the money and in pursuant to that the

complainant visited the Police Station and again there was a demand of the amount, which was followed by the bribe money being handed over to the accused, which was corroborated by the evidence of witnesses. Although, there was no verification of complaint, the evidence adduced by the prosecution does not create any doubt and hence on that count the prosecution case cannot be discarded. It is also contended that the panch witness has acted as panch on several occasions. PW No.2 has indeed deposed that he has acted as a panch previously in 5-6 trap cases. The earlier trap were unsuccessful. However, the evidence of the said witness, in the present case, clearly support the prosecution case and there is nothing to doubt his version. He deposed that he cannot give details of earlier cases and he do not have any documents of those cases. He has also stated that the accused had asked complainant whether he had brought the money as he had demanded Rs.5,000/-. The complainant said that he had brought Rs.5,000/-. The complainant then asked, whether he would not take any action in respect of his work and the accused told that if he had paid the amount earlier, his labourers would not have been charge-sheeted. The accused then demanded money, which was handed over by the complainant. Thus, the evidence of PW No.2 corroborates the case of PW No.1 and establishes the

charge against. The pre-trap and post-trap panchanama has been explained and the contents are proved. PW No.2 has stated that complainant was checked in UV light when greenish light was seen on his right hand fingers and pant pocket inner side. It is also pertinent to note that the Police can initiate an action under the provisions of MRTP Act, although, the complaint is required to be lodged by the BMC Officer. Thus, it cannot be contended by defence that the Police could not have initiated any action against the complainant in respect to the construction and that question of demanding the bribe amount for not taking any action does not arise.

15. The evidence of PW No.1 and PW No.2 establishes the demand and acceptance of bribe. The evidence of PW No.5 indicates that labourers were working at the site of construction carried by PW No.1 and PW No.4 were charged with fine. At that time, the accused was the beat incharge. The Advocate for the accused have also contended that the evidence of PW No.1 indicate that when he alongwith panch witness visited the Police Station and met the accused, the accused asked him as to for what has happened and why he had came. The complainant disclosed to him that he had

come to pay him Rs.5,000/-. It is submitted by the Advocate for the accused that the accused did not demand the amount and it is the complainant who stated that he had come to pay him Rs.5,000/-. However, the further version appearing in the evidence of PW No.1 bears importance as accused has said to him that if he had paid the amount on earlier date, he would not have fined the labourers. It is also pertinent to note that the complainant has also stated in his examination-in-chief in the same paragraph that he had handed over currency notes to the accused only after the accused asked whether he had brought the amount of Rs.5,000/- and on his demand, he took out the same currency notes and handed over it to the accused, which was accepted by him. Thus, evidence of PW No. 1 and PW No.2 establishes that the accused had demanded the said amount and thereafter the tainted money was handed over to him. The defence has also assailed the recording of statement of accused under Section 313 Cr.P.C. by contending that, all the circumstances are not put to accused and no opportunity is given to him to explain. I have perused the statement of accused and I do not find any discrepancy leading to prejudice to accused.

16. The evidence of complainants and panchas corroborates each other. Minor discrepancies, contradictions and omissions are not

sufficient to discard the evidence of the witnesses. Thus, the prosecution has proved its case beyond reasonable doubt. The anthracene powder was found on the right hand fingers of accused. He has however taken the defence of Alibi, which has not been established by him. The prosecution has proved its case against the accused.

17. The defence has also agitated that there is non application of mind to the sanction order accorded by PW No.7. It is also contended that the sanctioning authority was not empowered to accord the sanction against the accused. I have perused the sanction order, it is clearly stated that the authority has applied its mind to the case. It is indicated that the papers of investigation in the case were perused by PW No.7 and after perusal of the papers he was satisfied that the accused being a Public servant should be prosecuted for the offences charged against him. The defence contended that the appointment/promotion of accused is by Director General of Police as per entry in service book Page No. 287. PW No.7 states that, entry at page no.287 does not mean that, the accused was promoted by D.G. The copy was shown to PW No.7. He admitted that it is showing the dispatch number and not

appointment order by D.G. He produced order of promotion of the accused dated 13th February 2002 (Exh.36). The order (Exh. 36) is signed by Addl. D.G. Shri D.K. Chowdhari. He also deposed that, initially the accused was appointed as PSI. Addl. D.G. is the removing authority. Accused was appointed by Addl. D.G. of Police. Commissioner of Police, Mumbai is Addl. D.G. of Police and competent to remove. In the light of PW No.7, above was Commissioner of Police and thus empowered to remove accused. PW No.7 was the Commissioner of Police in the year 2004. The accused was attached to Malvani Police Station as API. The Trial Court has considered the issue about the validity of the sanction, the power of PW No.7 in according sanction in much details and by assigning cogent reasons, the Trial Court held that PW No.7 was empowered to grant sanction. I do not find any reason to deviate from said findings of the Trial Court. According to the defence, the DG is an appointing authority of the accused and he is promoted by the order of DG of Police. However, the Trial Court has observed that no record is produced by the accused to show that he is appointed by the DG of Police.

18. Learned Counsel for appellant relied upon the decisions

referred to above. In the case of Swapnali @ Sapana Sharad Mahadik (supra), this Court has observed that, every error or omission in compliance with provisions of Section 313 of Cr.P.C. does not necessarily vitiate the trial. Such errors fall within the category of curable irregularities and question, whether trial is vitiated in each case, depends upon the degree of error and whether prejudice has been or is likely to have been caused to the accused. The ultimate test in determining whether or not the accused has been fairly examined under this Section is to see whether having regard to the questions put to him, he did not get an opportunity to say what he wanted to say in respect of the prosecution case against him. Where the non-compliance with Section 313 of Cr.P.C. holds the trial to be vitiated, ordinarily the proper course is to retrial from the stage at which the provisions of this Section were not complied with. However, on perusal of the statement of accused, I do not find any infirmity which vitiates the case causing prejudice to accused. In Jawansingh Ramsingh Gaud (supra), the conviction of accused for the offences under P.C. Act was set aside as initial demand of bribe by accused is not satisfactorily proved, complainant was not examined, evidence of Panch witness and Police Officer did not inspire confidence. In the decision of Supreme Court in Surajmal

(supra) it was observed that, three witnesses who had witnessed payment of bribe had resiled from the statements made in examination in chief. The evidence on which conviction of appellant was based, had been rejected with respect to the same transaction and thus if one integral part of the story given by witnesses was not believable, then the entire case failed. It was not open to convict appellant on same evidence which suffered from infirmities and disbelieved against co-accused. In the Judgment dated 30th June 2018 in Criminal Appeal Nos. 23 of 2009 and 53 of 2009, this Court set aside conviction of accused for offences under P.C. Act. The complainant did not support prosecution case, Panch was habitual and another Panch did not support prosecution case. The Panch witness admitted in cross-examination that at the instance of Officers of ACB, he is giving false evidence to implicate accused. The orders passed by this Court in Criminal Application Nos. 94 of 2016, 142 of 2016 and 737 of 2016 relates to withdrawal of sanction order for technical reason and according fresh sanction. The case of applicants therein was that, appointing authority of applicants was D.G. of Police, Maharashtra State and sanction was accorded by Assistant Inspector General of Police (Law and Order) who is equivalent in rank of Superintendent of Police. All these decisions were delivered

in facts of the case and not applicable in present case. The prosecution has proved its case beyond doubt and the order of conviction deserves to be confirmed.

19. The State has preferred an appeal seeking enhancement of the sentence imposed by the Trial Court. The incident in question had taken place in 2004. The accused was convicted by Judgment and order dated 11th March 2010. The Trial Court while convicting him for the offence under Section 7 of the P.C. Act had sentenced him to suffer rigorous imprisonment for six months. Whereas, for conviction under Section 13(1)(d) read with 13(2) of P.C. Act, the appellant accused has been sentenced to suffer rigorous imprisonment for six months. The Trial Court has used its discretion while imposing the sentence. Section 7 and 13 (2) of P.C. Act has been amended/substituted on 16th January 2014 and 26th July 2018. Prior to amendment the sentence provided for the offence under Section 7 of P.C. Act, 1988 the punishment prescribed was imprisonment not less than six months and maximum punishment extending upto five years. Whereas for the offence punishable under Section 13(2) of P.C. Act, 1988 the minimum sentence of one year and maximum sentence of imprisonment extending upto seven years was

prescribed. The incident is of 26th March 2004 and the punishment prior to amendment is applicable in the present case. I am not inclined to enhance the punishment imposed by Trial Court for the conviction under Section 7 of P.C. Act. However, the minimum sentence which could be awarded for conviction under Section 13(1) (d) read with 13(2) of P.C. Act, 1988 is one year which could be extended upto seven years. Hence, the Trial Court could not have awarded sentence of six months which is lesser than minimum sentence prescribed by law for conviction under Section 13(2) of P.C. Act. In the circumstances, the sentence of imprisonment for conviction under Section 13(1) (d) read with 13(2) of P.C. Act is enhanced to rigorous imprisonment for one year with fine of Rs.1000/- and in default of payment of fine to suffer simple imprisonment for three months.

20. Hence, I pass the following order:-

:: ORDER ::

- i) Criminal Appeal No. 318 of 2010 stands dismissed;
- ii) The Judgment and order dated 11th March 2010 convicting the appellant for the offences under Section 7 and 13(1)(d) read with 13(2) of P.C. Act, 1988, passed by Special Judge, City Civil & Sessions

Court, Gr. Bombay in Spl. Case No. 19 of 2005, stands confirmed;

- iii) The Criminal Appeal No. 412 of 2010 seeking enhancement of sentence is partly allowed;
- iv) The sentence of imprisonment awarded for conviction under Section 13(1) (d) read with 13(2) is modified/enhanced to one year rigorous imprisonment and fine of Rs.1,000/- and in default of payment of fine to suffer simple imprisonment for three months.
- v) The accused is granted three months to surrender before the Trial Court for undergoing sentence.

(PRAKASH D. NAIK, J.)