

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

CRIMINAL APPEAL NO.728 OF 2005

Dattatraya Jagannathrao Zombade,
Age 57 yrs., Occ. Service as
Awwal Karkun in Tahsil Office,
Osmanabad, Dist. Osmanabad.

... Appellant

... **Versus** ...

The State of Maharashtra

... Respondent

...

Mr. B.R. Waramaa, Advocate for appellant

Mr. S.W. Munde, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 08th OCTOBER, 2020

PRONOUNCED ON : 24th NOVEMBER, 2020.

JUDGMENT :

1 Present appeal has been filed by the original accused challenging his conviction in Special Case (AC) No.8/2000 by learned Special Judge, Osmanabad on 07.10.2005, for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988

(hereinafter referred to as, "P.C. Act").

2 The present appellant i.e. original accused was the Awwal Karkun, working with Tahsil Office, Osmanabad in January, 2000.

3 Original complainant Shaikh Yusuf Shaikh Kasimsaab, R/o Khirni Malla, Osmanabad lodged complaint with Anti Corruption Bureau on 03.01.2000. He contended that he is 'Takari' by caste and he wanted loan from Bank for his business purpose. He came to know that due to his caste he can get immediate loan and also some concession, and therefore, he was in need of caste certificate. He gave application to Tahsil Office for issuance of his caste certificate in August, 1998. He had attached certain documents along with his application. After some time, when he made inquiry with the Tahsil Office about his application, he came to know that the said application has been assigned to present accused. He was not knowing the designation as well as full name of the accused. But he was certain that he serves with Tahsil Office. After some days of filing that application, he had met accused and requested him to issue caste certificate. Accused asked him to come after three days. After three days he met accused. Accused told him that his application has been assigned to him but he should meet him 2-3 days thereafter. He further states that he lost the acknowledgment in respect of application filed by him in August, 1998, and therefore, he made fresh

application for getting caste certificate on 15.06.1999. After the acknowledgment regarding that application was received by him, he had gone to Tahsil Office about 20 times and met accused with a request to issue the certificate, but each time he was asked to come after few days. He went to Tahsil Office on 03.01.2000 and met the accused and made again the same request. At that time, the accused told that the Tahsildar has not signed the certificate and it was told that now the work of issuing of certificate of Takari caste is closed, and therefore, it is hard for him to get such certificate. Informant again requested that he should give him that certificate as it is utmost necessary and asked the accused to find out some way. The accused told him that he will have to prepare back dated certificate. Complainant could not understand it, but then told the accused that he may do anything but he should give him the certificate. Accused then told him that he should give him amount of Rs.2,000/- and then he would issue a back dated certificate. Complainant shown him the financial disability and asked as to whether that amount of Rs.2,000/- is a Government fee. Accused told that it is not a Government fee, but then he will have to give that amount. At that time the complainant realized that accused was demanding bribe of Rs.2,000/-. After much request from the complainant that amount was lowered to Rs.1,500/-. The complainant agreed to give that amount, as no alternative was left. Accused told that if he gives that amount him on that

day, then he would prepare the certificate within 2-3 days. Complainant took time from him to give that amount and accordingly accused told him to come on 04.01.2000. Accused told that the complainant should give him amount of Rs.1,000/- on the next day and remaining Rs.500/- after the certificate is received by the complainant. The complainant had no intention to give bribe, and therefore, he approached Anti Corruption Bureau and lodged the complaint.

4 After the complaint was lodged, two panchas were arranged and in their presence verification panchnama was carried out. After the verification was done it was decided to carry out raid. ACB officer explained the entire procedure, as to how the raid would be carried out, gave instructions to complainant and both the panchas. It was also explained to them, as to how the anthracene powder applied on the amount brought by the complainant would act and demonstration was shown. Pre-trap panchnama was carried out.

5 After the complainant went along with panch No.1 to the Tahsil office, there was conversation. It is the prosecution story that the accused accepted the amount, which was an illegal gratification for issuing caste certificate. After the raid was completed, panchnama was carried out. The accused was found with the tainted money. ACB officer Mr. K.S.

Suryawansbhi lodged First Information Report (FIR) against the accused on behalf of State and carried out further investigation.

6 During the course of the investigation the statements of witnesses were recorded, accused came to be arrested, sanction was obtained and after the completion of investigation charge sheet was filed.

7 After the accused had appeared before the Special Judge, charge was framed at Exh.19 against the accused. The contents of the charge were read over and explained to him in vernacular. He pleaded not guilty and his trial has been conducted. In all six witnesses have been examined. After considering the evidence on record and hearing both sides the present appellant has been convicted by the learned Special Judge. The appellant has been sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for three months for committing offence punishable under Section 7 of The Prevention of Corruption Act, 1988. He has been further sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment of six months for committing offence punishable under Section 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act, 1988. This order is under challenge in this appeal.

8 Heard learned APP Mr. B.R. Waramaa for appellant and learned

APP Mr. S.W. Munde for prosecution. Perused the paper book and evidence.

9 It has been vehemently submitted on behalf of the appellant that the prosecution has examined in all six witnesses. PW 1 is the complainant. He has stated that he was in need of caste certificate, and therefore, met the accused from time to time. First and the foremost fact, that is required to be noted is, that accused being Awwal Karkun was not at all authorized to issue caste certificate. The cross-examination of the complainant would show that he had filed one application earlier and according to him, since he lost the acknowledgment he filed another application. In his written explanation, after the trap, the accused has specifically stated that the accused had already given his notings on the File on 30.07.1999 and 12.08.1999. He has specifically stated that thereafter the File did not come to him, it remained with another Clerk. He has explained as to how the tainted amount had come in his possession. According to him, he was in need of amount of Rs.5,000/-. One Devidas Dongre, who is his relative, knew the need of accused. Dongre has expressed inability to give hand loan on 31.12.1999 to the accused, but told that he would make arrangement for the loan, for the sake of accused. When the accused was sitting on his table at about 10.30 a.m. on 03.01.2000, at that time, his said relative Mr. Dongre came with a Muslim person having beard. That person was introduced by Dongre as the

person, who gives money as loan on interest. After making inquiry regarding the interest, the accused states that he started requesting the said Muslim person to extent him amount of Rs.2,000/-. That person went by saying that he would give the amount on the next day around 11.00 a.m.. The complainant has further stated that at about 11.30 a.m. when the accused came outside the cabin of Tahsildar on 03.01.2000 he found Dongre as well as the Muslim person along with one more unknown person standing there. The accused asked the Muslim person as to what happened in respect of the amount. That person told that he has brought amount of Rs.1,000/- and thereupon the accused told him that he would return the said amount after a month. All of them thereafter went to a nearby Tea Stall. After he had ordered tea and he had smoked cigarette, the Muslim person took out the amount from left side pocket of his shirt and offered it to the accused. Accused accepted the said amount and thereafter certain persons came running. They were from the raiding party. Thus, the complainant had given proper explanation for the possession of tainted amount, which has not been considered by the learned Special Judge.

10 Learned Advocate appearing for the appellant further submitted that the testimony of the panch witness would show that there was absolutely no demand by the present appellant and the exchange of

dialogues would show, as to 'whether the work has been done by the complainant'. It was in the mind of the accused that when the complainant would be extending hand loan he would be doing his work, and therefore, he asked as to whether the work would be done. The amount has been accepted by the accused, yet, there is an explanation in respect of the said acceptance. In clear terms the panch witness has admitted that the accused did not demand any amount from complainant in Tahsil Office. A question was asked, whether the accused in his presence demanded sum of Rs.1,000/- to the complainant in the hotel for the purpose of caste certificate ? He has answered it, in the negative. Therefore, it cannot be stated that the testimony of PW 2 panch witness is corroborating to the testimony of the complainant. PW 3 is the Tahsildar, who has given the procedure, which was then adopted for the applications for seeking caste certificate. In his cross-examination he has admitted that as per the duty list Junior Clerk Mr. D.K. Koli was expected to retain with him the files pertaining to issue of caste certificates. Therefore, the present appellant had no control over the said certificate or File. His testimony would further show that the second application of the complainant for issuance of caste certificate was not at all handled by the accused. If that fact is considered, then there was absolutely no reason for the accused to demand any illegal gratification.

11 The learned Advocate appearing for the appellant would further submit that PW 5 Surendrakumar Bagade was the Joint Chief Executive Officer, Information and Technology, M.I.D.C., Mumbai-cum-Sanctioning Authority. His testimony would show that there was absolutely no proper application of mind while issuing sanction order. He has admitted in the cross-examination that he has received the draft sanction order from the Investigating Agency along with File. If we peruse the draft sanction order with the sanction order Exh.56, then it can be seen that there is absolutely no deviation. The same order, which in fact, was issued after filling up the blank spaces has been used. When the earlier application filed by the complainant was recommended by the accused, there was absolutely no necessity for the accused to demand bribe. Another glaring fact has not been considered by the learned Judge that according to the Investigating Officer, the complainant had visited the Anti Corruption Bureau twice on 01.01.2000. PW 1 Shaikh Yusuf does not say that he had gone to ACB office on 01.01.2000. His testimony would give picture that he directly went to ACB office on 03.01.2000. But if we consider the documentary evidence as well as evidence of PW 2 panch witness that notice in writing was given to the panch witness to remain present in the ACB office on 01.01.2000. How the Investigating Officer can call panchas before the filing of complaint, is a question, which has been left unanswered. The Investigating Officer could

not have predicted on 01.01.2000 that a person would come on 03.01.2000 to lodge a report. Therefore, taking into consideration all these aspects it could not have been held by the learned Special Judge that the offence has been proved against the accused beyond reasonable doubt. He prayed for allowing the appeal.

12 Per contra, the learned APP strongly supported the reasons given by the learned Trial Judge. It was submitted that PW 1 Shaikh has proved the contents of the complaint, wherein, he has specifically stated about the demand. The conversation between accused and PW 1 Shaikh would show the demand, which is covered under Section 7 of the P.C. Act. Accused is accepting that the tainted amount was found from his possession when the raiding party caught hold of him. Therefore, when acceptance is admitted, then the burden would shift on the accused to explain the possession. There would be presumption under Section 20 of the P.C. Act when acceptance is admitted. From the testimony of PW 3 it can be seen that the caste certificate was never issued at all. The sanctioning authority has applied its mind. All the papers, which were forwarded by the Investigating Officer, were perused by the sanctioning authority, then only the sanction came to be issued, and therefore, it is legal. Accused ought to have examined said Devidas Dongre to support his defence. When the opportunity was given to the accused and

he has not examined said Dongre. We cannot accept the theory put forward by him regarding hand loan for want of evidence. The learned Trial Judge was justified in convicting the appellant. He prayed for the dismissal of the appeal.

13 Taking into consideration the above submissions, following points arise for determination, findings and reasons for the same are as follows.

POINTS

- 1 Whether the prosecution has proved demand and acceptance of the bribe by the accused from the complainant ?
- 2 Whether interference is required in the decision of convicting the present appellant ?

REASONS

14 At the outset, while deciding any case involving the offence under Anti Corruption Laws, the fact is required to be borne in mind, that the complainant's evidence will have to be scrutinized meticulously. Giving bribe is also an offence but then in order to arrest a person, who has demanded and then would be accepting the bribe, it has to be given; then the testimony of such person requires to be carefully tested. In **Pannalal Damodar Rathi vs.**

State of Maharashtra, AIR 1979 SC 1191; it has been held that “There could be no doubt that the evidence of the complainant should be corroborated in material particulars After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon”.

14.1 Further, in **M.O. Shamsudhin vs. State of Kerala, (1995) 3 SCC 351**; wherein it has been held that “the word ‘accomplice’ is not defined under the Indian Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in a crime. Reading section 133 and illustration (b) to section 114 of the Evidence Act together, the courts in India have held, that while it is not illegal to act upon the uncorroborated testimony of accomplice, the rule of prudence so universally followed has to amount to rule of law, that it is unsafe to act in the evidence of accomplice unless it is corroborated in material aspects so as to implicate the accused”. In this case the Hon’ble Supreme Court has thoroughly discussed as to how the evidence of bribe giver is required to be appreciated.

14.2 Further, reliance can be placed on the decision in **Bhiva Doulu Patil vs. State of Maharashtra, AIR 1963 SC 599**; wherein it has been held that “the combined effect of section 133 and 114, illustration (b) may be

stated as follows: according to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will, as a matter of practice, nor accept the evidence of such a witness without corroboration in material particulars”.

14.3 Further, reliance can be placed on the decision in **Gulam Mahmood A. Malek vs. State of Gujarat, 1980 (Supp) SCC 684**; wherein it has been held that “the complainant himself is in the nature of an accomplice and his story is prima-facie suspect for which corroboration in material particulars is necessary”.

15 Now, after taking note of the legal requirement as to how the evidence of complainant is required to be appreciated, we would see the testimony of PW 1 Shaikh Yusuf in this case. He has deposed that he was a small trader and belonging to Takari Muslim caste. He had approached to Samarth Urban Co-operative Bank in 1998 for loan. In connection with the loan transaction he was in need of caste certificate. He applied for the same in the month of August, 1998. According to him, he had lost the receipt/acknowledgment in respect of that application, and therefore, he

submitted another application on 15.06.1999. The accused was working as a Senior Clerk in the office of Tahsildar and it is stated that he was in-charge of the said work of dealing with caste certificate. He had contacted the accused in connection with his work about 15 times. The accused avoided on the earlier occasions, but lastly he told that the practice of issuing caste certificate for that caste has been discontinued, and therefore, he offered that he would give the caste certificate to the complainant having back date. In connection with the said work he demanded an amount of Rs.2,000/-. Later on that amount was settled at Rs.1,500/-. He showed his willingness to pay amount of Rs.1,000/- to him and then accused consented for the same. Accused assured that he would complete the work within 2-3 days. He has again corrected himself by saying that he had paid the sum of Rs.1,000/- to the accused and told that he would pay the remaining amount of Rs.500/- within 2-4 days. He says that thereafter he had gone to Anti Corruption Office. Pausing for a moment here, it can be seen from the paragraph No.2 of his testimony that it is his say that he had already paid amount of Rs.1,000/- before he approached Anti Corruption Office. Only amount of Rs.500/- was remaining, which he had promised to pay within 2-3 days. But if his complaint Exh.32 is considered then there is absolutely no whisper about payment of Rs.1,000/- prior to the lodging of the same, rather it gives an impression that absolutely no amount was paid and he had no intention to

pay any amount as bribe. Further, if the facts are considered, impression has been created that he had presented two currency notes of denomination of Rs.500/- before the Anti Corruption Bureau. However, as it is reflecting in the pre-trap panchnama as well as in the post-trap panchnama, one currency note of Rs.500/- denomination and five currency notes of Rs.100/- were presented before the Anti Corruption Bureau and number of those currency notes are given. It is the case of the prosecution that amount of Rs.1,000/- in that denomination was recovered from the accused. Thus, there is apparent discrepancy going to the root of this case. There is no attempt by the prosecution to get the said statement corrected, though it appears at a later stage of examination-in-chief that answer has been extracted that he gave amount of Rs.1,000/- to the Anti Corruption Bureau to which anthracene powder was applied. However, again there is discrepancy in respect of the currency notes in his paragraph No.3 of the examination-in-chief. He says that the notes were of denomination of Rs.500/-, Rs.100/- and Rs.50/-. He then states that there was one currency note of Rs.500/-, five currency notes of Rs.100/- each and one currency note of Rs.50/-. Thus, we are unable to get then the account of Rs.50/- in his examination-in-chief. Again it appears that in the later part of the same paragraph the same has not been got corrected. Thus, the testimony of the complainant appears to be shaky, which is affecting his veracity.

16 The complainant in his cross-examination claimed ignorance as to whether the caste certificate has been issued from Tahsil Office to any one after he had submitted his second application. He admits that he was angry against the office of the accused as he had to visit many times to the said office for his work. There is absolutely no explanation extracted by the prosecution as to what had happened to his first application. Though the complainant might have lost the acknowledgment receipt of his first application, yet, the application would be with the office and then it was necessary for the prosecution to bring it on record, as to which steps were taken in respect of the same.

17 One more fact, that is required to be considered from the testimony of PW 1 Shaikh Yusuf that in the presence of the officer of the Anti Corruption Bureau as well as panchas no verification was conducted. It is not the case of the prosecution that after the complaint Exh.32 was filed the complainant was asked in presence of the Investigating Officer as well as both the panchas to make a call to the accused or to send the complainant along with panch to verify the truthness in the allegations in Exh.32. Reliance can be placed on the decision of this Court in **Avinash Sitaram Garware vs. State of Maharashtra, 2007(4) Bom. L.R. 2579**, wherein it has been held that, *“Once the prior demand is not proved the rest of the*

prosecution case regarding money allegedly demanded by the accused will have to be read with great caution and circumspection". The testimony of PW 2 Pradip Hangargekar, panch No.1 will have to be then considered, as to whether even immediately after the pre-trap panchnama, when the complainant met accused, whether there was any demand from the accused to the complainant regarding bribe. Panch No.1 states that when he went along with complainant at about 10.55 a.m. in the office of the accused twice, the accused asked the complainant to wait for five minutes, then the accused finished of his work and asked the complainant to join for a cup of tea. Thereafter they all went in a hotel near M.S.E.B. office. According to him, the accused had purchased one cigarette from Pan Stall near the hotel and they were standing nearby the said stall. Accused asked complainant, as to 'whether he has done the work'. Complainant told the accused that he has done his work. Accused asked him the figure of the amount and then complainant told the figure as 1000. Then accused asked the complainant to pay that amount to him. Complainant took out the said amount from the left side pocket of his shirt and offered it, which accused accepted by his right hand and kept it in his pocket. Now, if we try to correlate those dialogues with the testimony of the complainant, then the complainant's testimony of silent about the exchange of dialogues and it creates doubt. He states that the accused smoke a cigarette. Complainant paid the amount to the accused.

The accused kept the amount in the pocket of his pant. This part of the complainant's testimony, which is of course not supported by PW 2 Hangargekar, gives a picture that without any demand the complainant had paid him that amount. Further, if we consider the post-trap panchnama, then it is as per the testimony of PW 2 Hangargekar. However, it is also the part of post-trap panchnama that immediately after the accused was caught when he was asked by the Investigating Officer, as to whether he has accepted the bribe amount, then the accused told him that he has accepted and when it was asked, as to why he has accepted, he explained that it was for private purpose as "loan". The accused has given the explanation in writing as it appears from the case of the prosecution and it has been produced on record at Exh.58. Therefore, it was for the prosecution to prove that though the amount has been accepted, it was accepted even by the accused as bribe or illegal gratification and not as 'loan' or for any other purpose. From the evidence, that has been, led by the prosecution one more aspect is coming forward that the Investigating Officer has not made use of any modern technology. He could have got the recording of the conversation done. But he has not explained as to why he has not made use of the modern technology. In his cross-examination PW 2 Hangargekar has clearly admitted that accused did not demand any amount from complainant in Tahsil Office. Further, in an answer to a question, which has been taken in question and

answer form, PW 2 has answered that the accused has not demanded amount of Rs.1,000/- to the complainant in the hotel for the purpose of caste certificate in his presence, and therefore, there was absolutely no cogent and conclusive evidence regarding the demand and acceptance of the amount as bribe by the accused.

18 Now, turning towards the testimony of PW 3, who was a Naib Tahsildar, who appears to have been examined to explain the procedure. He has stated that accused was the Awwal Karkun on 04.01.2000 and it was his duty to complete the procedure regarding issuance of caste certificate and to place it before Sub Divisional Officer for signature. It appears that he was deposing in respect of the second application, which was presented by the complainant. Nobody has been examined by the prosecution to prove as to what had happened in respect of the earlier application filed by the complainant. However, it has come on record through PW 3 Koli that it was the duty of one D.K. Koli, Junior Clerk to retain with him the Files pertaining to issue of caste certificates. That means, on the day of trap accused was not having the custody of the File. Further, in connection with this point it is necessary to see the testimony of PW 5 Surendrakumar Kashinath Bagade, who was the sanctioning authority. He was serving as Collector, Osmanabad from 25.06.1999 to 08.10.2000. He states that he received the File from Anti

Corruption Bureau, applied his mind and accorded sanction Exh.56. In his cross-examination he has admitted that he has received the draft sanction order along with the File. That means, he is accepting the fact that the model draft of sanction order was sent to him. He has also admitted that the contents of the sanction order issued by him i.e. Exh.56 are the same as per the draft sanction order. It appears from his examination-in-chief that he has not considered, as to what had happened to the earlier application filed by the complainant. What was the duty list of the accused and whether on the day of the trap accused was having custody of the File. It appears that the said File has been got produced after it was called on the say of accused and it shows that even as regards earlier application, the note was given by the present accused that such caste certificate should be issued to the complainant. It appears that thereafter the matter was pending before the appropriate authority for issuance of the certificate, on the basis of the first application filed by the complainant. Accused is not the competent authority to issue said caste certificate. In the meantime, as the complainant says that he lost the acknowledgment he has made the second application. When the second application was made it automatically ought to have been tagged with the first application and it was not necessary for any fresh endorsement on the second application. The prosecution has not come with a case that when the first application was in process, there was any kind of illegal demand by

the accused from the complainant. Therefore, the sanction, that has been, accorded by PW 5 at Exh.56 appears to be totally without application of mind, and therefore, the entire prosecution should fail.

19 Reliance can be placed on the decision in **State of Maharashtra through Central Bureau of Investigation vs. Mahesh G. Jain, (2013) 8 SCC 119**, wherein it has been held -

1)

2) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

20 Further, in **C.S. Krishnamurthy vs. State of Karnataka, (2005) 4 SCC 81**, following observations have been made -

“The sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. But, when the sanction order itself is eloquent

enough, then in that case only formal evidence has to be produced by the sanctioning authority or by any other evidence that the sanction was accorded by a competent person with due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. When the sanction itself is very expressive, then in that case, the argument that particular material was not properly placed before the sanctioning authority for according sanction and the sanctioning authority has not applied its mind becomes unsustainable.”

21 Therefore, taking into consideration the ratio in the above pronouncements and applying the tests/those observations to the facts of the case, especially the testimony of PW 5 it can be said that there is no legal and proper application of mind while according sanction to prosecute the appellant.

22 The learned Advocate for the appellant has rightly pointed out the unnecessary active role of the Investigating Officer PW 6 Suryawanshi in this matter. Investigating Officer had come with a new case in his cross-examination that the complainant had gone to Anti Corruption Bureau for the first time on 01.01.2000, when in fact, PW 1 Shaikh Yusuf himself has not come with that case. When the alleged demand to him as per his own complaint Exh.32 was on 03.01.2000, where was the question of complainant going to the Anti Corruption Bureau on 01.01.2000. The

Investigating Officer further says that the complainant had come to Bureau twice till the trap was held. Though he says that he had not called the panchas to the Bureau on 01.01.2000, yet, he has admitted that he had sent intimation to the Principal of Industrial Training Institute, Osmanabad on 01.01.2000. In the said intimation he had requested for the presence of two employees from the said establishment in connection with some confidential work at the Bureau on 01.01.2000. Investigating Officer could not have a dream that the complainant would come on 03.01.2000 and for that purpose he should give the intimation in advance for two days. This glaring fact of unnecessary anxiety or activeness on the part of the Investigating Officer has not been noticed by the learned Trial Judge. Another fact, that is also required to be considered from the testimony of the Investigating Officer that the accused has already given his written say, in which he has stated that through the intervention of his relative he had asked the complainant to give some amount as loan. What kind of investigation the Investigating Officer had carried out, from the angle of the say that was filed by the accused, has not been disclosed by him. The written say of the accused in such cases will have to be considered by the Investigating Officers and there has to be investigation from that angle also, just to rule out a possibility that the amount, that was demanded and accepted, was not due to the accused by anybody. This would definitely then help the prosecution that the amount is

nothing but illegal gratification. When the burden of proof “beyond reasonable doubt” is on the shoulders of the prosecution, that exercise is necessary for the Investigation Officers. The Investigating Officer has not stated that he had taken a statement of the relative of the accused, whose name has been referred in the written say and from the said angle he could not find that the amount that was given by the complainant was by way of loan. The Investigating Officer has not forwarded the said written say taken from the accused to the sanctioning authority PW 5 Surendrakumar Bagade. If that say would have been forwarded, it would have been easy for the sanctioning authority to apply his mind. Basis of inquiry would have been different and on the basis of that inquiry the process of according sanction would have been of another level.

23 In such Anti Corruption cases mere demand and acceptance is not sufficient but some more thing is required. The demand for the bribe is the *Sine qua non* to convict the accused in such cases, as it has been held in **Krishan Chander vs. State of Delhi, 2016(5) Mh.L.J. (Cri) 578**, that the money should be accepted as ‘bribe’ or that should be ‘illegal gratification’ and not as fees or loan etc. This criteria is not fulfilled in this case. Though the accused has not led evidence of his said relative, yet, his own immediate written say is on record. He has given that explanation in his statement

under Section 313 of the Code of Criminal Procedure also, which is not an empty formality. We must know the background also while appreciating this point. When the first application was filed by the complainant and a favourable remark was already given by the accused, there was no question of any further remark on the second application as already the first application was still pending with the superiors and now the alleged acceptance is accepted by the accused and he is coming with a case that acceptance of money is as 'loan' then the stand taken by the accused appears to be probable. The testimony of sanctioning authority does not make it clear that when alleged demand was made, the practice of issuing caste certificate of 'Takari' caste was stopped. Who had issued that order of stopping of issuance of such certificate, when and why such order was passed is not explained. No written order issued by the appropriate department of the Government to that effect has been produced. Why there should have been a back dated certificate? Unless those circumstances would have been brought, there was no question of demand and acceptance. It can be therefore said that the presumption under Section 20 of the P.C. Act has been rebutted by the accused by preponderance of probabilities.

24 Taking into consideration all the above said evidence, scanning thereof and the reasons aforesaid, it will have to be held, that the prosecution

has miserably failed in proving the charge levelled against the accused, and therefore, the first point is answered in the negative. Point No.2 is required to be given in affirmative, as the Judgment and order passed by the Special Judge requires interference. The learned Special Judge has not considered all the aspects involved in the matter in proper perspective. The appeal deserves to be allowed. Hence, following order.

ORDER

- 1 Appeal stands allowed.
- 2 The Judgment and order passed by learned Special Judge, Osmanabad in Special Case (AC) No.8 of 2000 dated 07.10.2005, is hereby set aside.
- 3 The appellant-accused stands acquitted of the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. His bail bonds stand cancelled.
- 4 Fine amount be refunded to him after statutory period.
- 5 The order regarding muddemal property, if any, stands confirmed.

(Smt. Vibha Kankanwadi, J.)