

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

CRIMINAL APPEAL NO.132 OF 2010

Shrikant Sadanand Jadhav, Age 50 years,
Occ.Clerk `A` Grade, Establishment Section,
Thane Municipal Corporation,
R/o.New Sandeep Co-op. Housing Society,
Room No.204, Shastrinagar Road,
Kalwa, District Thane.

Appellant

versus

The State of Maharashtra

Respondent

Mr.Ujwal R. Agandsurve, Advocate for appellant.
Mr.A.R.Kapadnis, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 11th September 2020

Date of Pronouncing the Judgment : 30th September 2020

JUDGMENT :-

1. The appellant has preferred this appeal under Section 374 of Code of Criminal Procedure challenging the judgment and order dated 28th January 2010 passed by learned Additional Sessions Judge, Thane in Special Case No.9 of 2004 convicting the appellant for the offence punishable u/s 7 of Prevention of Corruption Act, 1988 and sentencing him to undergo simple imprisonment for six months and to pay fine of Rs.500/- and also convicting him for the offence punishable u/s 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988 ("P.C. Act" for short) and sentencing him to

undergo simple imprisonment for one year and to pay fine of Rs.1,000/-. During pendency of the appeal the sentence of imprisonment has been suspended and bail has been granted to the appellant by this Court.

2. The prosecution case is as under :

(a) The complainant is a retired clerk from Thane Municipal Corporation on superannuation. He wanted his daughter Swati Bhalekar to be appointed as peon in Municipal Corporation, Thane on compassionate ground on the strength of some government resolution issued in that behalf;

(b) The complainant submitted application to the establishment section of the Municipal Corporation where the accused was posted. The complainant met the accused from time to time and he was assured by the accused of securing the placement for his daughter as 'peon' in the Municipal Corporation;

(c) On 7th January 2003 the accused demanded Rs.200/- for processing the application by representing the complainant that it was required to be channelized through eight departments;

(d) The accused called the complainant to his office on 9th January 2003. The complainant submitted a complaint to the Police Inspector Chikhale attached to Anti Corruption Bureau ('ACB' for short). Trap was planned. On 9th January 2003 at around 1.30 to 2.00 pm, the complainant met the accused at his office and on demand made by him, gave amount of Rs.200/-. Immediately

thereafter the complainant gave a signal to the raiding party and thereupon the members of raiding party rushed into the office of accused;

(e) The hands of accused were examined in ultra violet rays which showed shining on his right hand. The currency notes of Rs.200/- were seized from the accused which were examined under ultra violet rays which also shined. Panchanama was prepared. Investigation was conducted. On completion of investigation charge sheet came to be presented before the Court.

3. Charge under Sections 7, 13(1)(d) r/w Section 13(2) of P.C.Act were framed against the accused. The accused denied the charges. The defense of the accused is of total denial.

4. The prosecution examined four witnesses. The Trial Court gave finding that demand and acceptance is proved. Hence, the accused was convicted.

5. With the assistance of learned counsel for appellant and learned APP, I have perused the oral evidence of witnesses and the documentary evidence on record. To determine whether the prosecution has succeeded to prove the charges of demand and acceptance of bribe, it would be appropriate to analyze the evidence on record.

6. PW-1 Gajanan Karanjkar is the complainant. According to him he was employed in Thane Municipal Corporation as a clerk. He retired on 31st August 2000. After his retirement he wanted his

daughter Smt.Swati Bhalekar, aged 35 years, to be employed in Thane Municipal Corporation. A Government Resolution had come in the year 2002 to the effect that employments could be effected in Thane Municipal Corporation by heirship. His daughter applied for job on 7th September 2002 for the post of Peon in the Municipal Corporation. After filing application the complainant visited the office of Municipal Corporation several times and met accused who was clerk in the establishment department. He was repeatedly called by the complainant for a period of about four months. On 7th January 2003 he again met the accused. The accused told the complainant that the work was difficult but the same would be done. The file will have to be moved in eight departments and for that the complainant will have to spend Rs.200/-. The accused told him to come on 9th January 2003. He was sure that unless he pays Rs.200/- to accused, his work would not be done. Hence, the complainant approached ACB on 8th January 2003. He was called on the next day. His complaint was recorded on next day. Complaint was recorded. Two panchas were called and introduced to the complainant. He produced Rs.200/- containing two notes of Rs.100/- denomination each to be used as trap money. The currency notes were smeared by anthracene powder. The currency notes were kept in the left side of shirt pocket of the complainant. Police Inspector Chikhale instructed panch no.1 to accompany PW-1 and observe what happens in his presence and to report the same to police. PW-1, two panchas and police went to the office of Municipal Corporation. PW-1 and panch no.1 proceeded ahead. Others followed them. The establishment department was situated on the second floor of municipal office. The complainant went near the table of accused. The accused showed him eight forms prepared by him to be sent to different

departments for seeking information whether any heir of complainant was employed in the departments. The accused asked him whether he has brought money. PW-1 answered in affirmative. He was asked to wait outside. PW-1 and panch no.1 came out and waited. Accused came out. He again inquired about money. The complainant told him that he has brought the money and whether he should pay him. The accused agreed for acceptance of payment. He took the currency notes from PW-1 and went inside. PW-1 gave signal to police. Police arrived. PW-1 was asked to wait outside. After some time he was called inside. The fingers of his right hand and shirt pocket were observed in normal light and no shining was noticed. Under ultra violet rays blue shining was noticed on the fingers of complainant's right hand and on the left shirt pocket. Supplementary statement of the complainant was recorded on the next day.

In the cross-examination PW-1 has deposed that he has worked in all departments of Municipal Corporation. He came to know the accused when he met him in connection with his daughter's application. He had joined the service as a peon and promoted to the post of clerk. He did not see the GR in respect of entitlement of service by heirship. The GR in respect of service by heirship was restricted to Class-IV servants only. The post of clerk is Class-III post. Application for appointment of Swati was filed on 7th April 2002. After 7th September 2002 he never met any higher officers of Corporation in connection with his application. He met the accused for first time after fifteen days of filing the application. He was again called. The accused gave him idea that facility of job by heirship is available only for the children of Class-IV employees and not for

Class-III employees. He had told the accused repeatedly that his original appointment was of Class-IV employee i.e. peon and hence the facility can be made available to him. On 7th January 2003 he met accused and on 8th January 2003 he went to the office of ACB. He met Mr.Gosavi. Incident was narrated to him. It was recorded. He was there for about one and half hour. He was called again on 9th January 2003. He again filed complaint on 9th January 2003. At that time he did not state that accused called him on number of times within a span of two to four months. While filing complaint he had referred to the conversation taken place on 7th January 2003 between him and accused. He had stated that accused told him that file will have to be moved in eight departments for which he will have to spend Rs.200/-. He did not state before police that accused told him that work was difficult but it will be done. He did not state so before police because accused had not stated so. He cannot say why it is not mentioned in his complaint that accused told him that file will have to be moved in eight departments for which he has to pay expenses of Rs.200/-. He had also told police that on 7th January 2003 accused told him to come after two to three days but he cannot assign any reason why it is not mentioned in his complaint. He did not see eight forms prepared by the accused on 7th January 2003. When he met accused two clerks on his right and left side were working on their tables. When he met the accused on 9th January 2003, those clerks were not present. Suggestion was given to him that when he came out of establishment department, he tried to push money in accused's hand and the accused refused to accept it. He tried to thrust money in his hand. The accused was not accepting the money by his hand. Hence it was thrust in his shirt pocket. The suggestion was denied. He did not remember whether he stated

before police that on 9th January 2003 when accused came out of establishment department he asked him as to whether he has brought the money and he told the the accused that he has brought money and it was with him and then asked him as to whether he should pay the money to him and the accused told him to pay. He cannot assign any reason as to why it is not mentioned in his statement. Suggestion was given to him that his daughter was not getting job and he felt that accused was hurdle in the way and to remove the hurdle hence he filed the false complaint. The complaint was marked as Exhibit-10. Application of daughter dated 7th September 2002, application by complainant dated 7th September 2002 and school leaving certificate, map were marked in evidence as Exhibits-11, 12, 13 and 14 respectively.

7. PW-2 Sanjay Landge stated that he was working as clerk in the office of Joint District Registrar, at Thane. He was called on 9th January 2003 and informed that he should visit the office of ACB to act as panch. He along with his colleague went to the office of ACB. The complainant was present. The written complaint was showed to them. Police Inspector Chikhale started proceedings. The complainant arranged bribe amount of Rs.200/- consisting of two currency notes of Rs.100/-. Anthracene powder was applied to the currency notes. He was instructed to remain present with the complainant and to hear the conversation between the accused and complainant at the time of trap and to disclose the same to the raiding party. They went to the office of Corporation. The complainant and PW-2 went to the second floor of the building. He was taken to establishment department. The complainant pointed towards accused. PW-1 and PW-2 went across the table of accused.

The complainant asked the accused as to what has happened about his work. The accused told that complainant's work would not be done and also told that employment by heirship could be given only to the heirs of peons and sweepers. He would see. The complainant told the accused that as asked by him, he has brought money. The accused told them to wait outside. Accordingly the complainant and PW-2 came out of establishment department. They waited outside. The accused came out. The complainant took out the currency notes and handed over the same to the accused which were accepted by the accused. Signal was given to the raiding party. They rushed to the spot. Accused was apprehended. The bribe money was recovered from the accused. Blue shining was noticed on the currency notes.

In cross-examination it was stated that the accused prepared letters to different departments of Corporation asking query whether any other person has claimed employment by heirship in place of complainant in any of those departments. When he along with PW-1 visited the accused, the accused did not make inquiry about him with complainant or with him. The accused did not object his presence. PW-1 did not tell accused that they are before him as per his directions. At that time it did not happen that the accused showed eight forms to PW-1. It did not happen that the accused told PW-1 that he had prepared eight forms. When they were inside the office, the accused did not ask PW-1 as to whether he brought the money. It did not happen that the accused demanded money with PW-1. He has acted as panch in a trap case in relation to Talathi conducted in Pen Taluka. Eight forms were not found in the file. Pre-trap panchanama was marked as Exhibit-17 and Trap panchanama was marked as Exhibit-18.

8. PW-3 Dattatraya Ratnaparkhi was working as Superintendent in the establishment department of Municipal Corporation. The nature of his duties was to keep vigilance on the working of employees and matters relating to salary, promotions, appointments etc.. In the process of cases of appointment of legal heirs of the deceased employees on compassionate ground, applications were received in the establishment department and the work was assigned to the clerk in his department. The accused was in the establishment department and he was in-charge of preparation of proposals on the basis of applications for appointments of legal heirs of deceased employees on compassionate ground. The application Exhibit-12 was received in the office on 12th September 2002. It was marked to accused. PW-3 made an endorsement on the application by mentioning name of accused. The accused was supposed to call written report of the Ward Officer and a letter was required to be written under signature of PW-3. In the case of application of complainant, such letter was not sent by accused to the ward officer.

In the cross-examination he deposed that the condition required to be fulfilled for claim of appointment in the service of Corporation by legal heirs of the employees are that the employee should have died during continuation of service or in case the employee suffers due to incurable disease and for that reason he has been compulsorily retired from the service or on account of accidental injury and/or mental disability. In case of Class-IV sweepers, the legal heirs were entitled to get appointment on compassionate ground irrespective of above reasons. The complainant had retired. The application of his daughter was not

complying any conditions. The complainant was not Class-IV sweeper. The eligibility criteria for appointment on compassionate ground was verified in the establishment department and in case of eligible candidates only the report is called from the Ward Officer. The accused was not authorized to send letter under his signature to the ward officer for calling report. Even if such letter could have been placed before him by the accused, he would not have signed the same. At the time of raid, all the documents relating to the case of complainant were in custody of accused. The letter was not prepared by the accused to be sent to the ward officer for calling the report. The legal heir of complainant was not eligible for getting appointment on compassionate ground. No complaint was received against accused during the period he was working with PW-3.

9. PW-4 Krishnakant Bhoge was the Commissioner of Thane Municipal Corporation during the relevant period. He stated that papers were received by him for according sanction for prosecution vide covering letter dated 16th September 2003. According to him he prepared proposal for resolution to be sent to general body of Corporation for passing resolution. On 20th February 2004 the resolution was passed by the general body. He is vested with powers of appointing and removing the accused after the resolution to that effect was passed by Corporation. In cross-examination he stated that he received the papers of investigation vide letter dated 5th September 2003. Along with letter he received draft of proposed sanction to be accorded. The papers were sent to Personnel Officer. He came to the conclusion that sanction needs to be accorded. He sent proposal on 5th November 2003 to general body for passing resolution. He received papers back on 25th November 2003. The

draft sanction was sent to him on 6th January 2004. The Deputy Commissioner placed his counter signature on the report on 8th January 2004. It is true that the text of proposed sanction i.e. draft sanction and the sanction order passed by him is word to word same. In the entire file there is no document showing that he has drawn notes of his study on the file. As per government policy legal heir of the employee who died during continuation of service or legal heir of employee who suffers due to incurable disease or legal heir of employee who has been compulsorily retired from service or if the employee is retired on account of any accidental injury and/or on account of any mental disability, are entitled for service on compassionate ground. The complainant had retired in due course and his legal heir was not entitled to get service in Corporation on compassionate ground. Such service can be given to legal heir of the employee who retires in due course as an exceptional case if it is so considered by the general body or by the Commissioner. Even if resolution is passed by the general body of Corporation in exceptional case, it is for the Commissioner to recommend the same to Government either for acceptance or cancellation. No such resolution was passed in the case of complainant. After receipt of application from complainant, the accused did not take any action on it. The sanction order was marked as Exhibit-26.

10. PW-5 Rajendra Chikhale is the Investigating Officer. According to him, he was attached to ACB, Thane. The complainant visited the office of ACB and filed complaint that accused has demanded bribe on 7th January 2003. The complaint was recorded on 9th January 2003 and the formalities relating to trap were completed. The raiding party proceeded to the office of accused. The panch no.1 and the complainant went ahead to meet accused. Panch no.2 and others

followed them. The accused had talk with complainant after coming out of office. Signal was given to the raiding party. The accused was apprehended. The currency notes of Rs.200/- were recovered from him. On examination under UV light shining was noticed. Panchanama was recorded. In cross-examination he deposed that ACB did not keep register about complainants coming to their office recording date and time of their visit. The complainant had visited the office on 9th January 2003 at 9.00 am.. He did not disclose on which date prior to 7th January 2003 he met accused. He did not try to obtain GR of 2002. He did not make inquiry with complainant who was sitting around the table as to when he approached him. On 9th January 2003 when the complainant and panch no.1 met accused and they had talk about the work with accused, he did not demand any money from him. The accused was accosted outside his office. It is not true that the complainant tried to thrust tainted money into the hands of accused outside his office while he was saying no and he was warding off the action of complainant by extending his palm. He also denied the suggestion that the accused was not accepting money and the complainant thrust the tainted money into his chest pocket. The complainant did not state that at the time of panchanama when he had been to the complainant, he had showed eight forms which were to be sent to different departments and the accused asked him whether he has got money and the complainant answered that he had brought the money. The omissions were proved through this witness. The complainant or the panch did not state that the accused had again asked whether complainant has brought the money and he stated that he brought it and the complainant had asked him whether he should pay, to which the accused had replied that the amount should be paid to him. This

was the portion marked 'A' stated by the complainant which is incorrect. It is also not stated in the complaint that when the complainant met the accused he said that file will have to be moved in eight departments for which the complainant will have to spend money. It is true that the complainant had stated in the complaint that accused told him that facility to provide job by heirship is available only to Class-IV employees i.e. peons and sweepers. The complainant had retired as clerk.

11. Learned advocate for appellant submitted that the demand and acceptance has not been proved beyond reasonable doubt. The evidence of PW-1 and PW-2 suffers from omissions and contradictions. PW-1 is not truthful witness. According to him, he had approached ACB on 8th January 2003, however, the Investigating Officer PW-5 contradicts his version. One of the important omission in the evidence of PW-1 is that it was not mentioned in the complaint that the accused told him that file was required to be moved in eight departments for which the complainant had to pay expenses of Rs.200/-. The evidence of PW-1 in respect of demand is not cogent. PW-2 has admitted that when he was inside the office, the accused did not ask the complainant as to whether he brought money. He has admitted that it did not happen that the appellant demanded money. The panch witness has admitted that he had acted as panch in a trap case earlier also which was initiated by ACB. Thus, he was habitual panch. The evidence discloses that there were at least two clerks and one peon sitting near the table of accused but all of them were shown absent on that day. The complainant was not entitled for the reliefs claimed by him in the application on the basis of heirship. The accused was not the authority to grant application preferred by complainant. The defense of the accused that the

complainant had motive to falsely implicate the appellant and that money was thrust is plausible. The accused had rebutted the presumption u/s 20 of P.C.Act. The alleged demand of bribe as contended by the complainant is not corroborated by any evidence. Merely finding of alleged bribe amount would not be sufficient to convict the appellant. There was no verification of demand. PW-2 did not hear the demand of bribe. The sanction to prosecute accused was granted mechanically. PW-3 has admitted that the wordings appearing in the draft sanction order and the sanction order are at verbatim similar. The sanction order shows that there was no application of mind by sanctioning authority. The omissions were proved through the evidence of PW-5. PW-5 has stated that there was no demand on 9th January 2003. Considering the infirmities in evidence, it cannot be said that the prosecution has succeeded to establish the charges against accused.

12. Learned advocate for appellant relied upon following decisions:-

- (i) Motiram Jaisingh Pawar Vs. State of Maharashtra
1985(1)-Bom.C.R.-669;
- (ii) Suraj Mal Vs. State (Delhi) Administration
AIR-1979-SC-1408;
- (iii) B.Jayaraj Vs. State of A.P (Supreme Court Judgment in
Criminal Appeal No.696 of 2014, arising out of SLP
(Cri).No.2085 of 2012;
- (iv) A.Subair Vs. State of Kerala (Supreme Court judgment in
Criminal Appeal No.639 of 2004);
- (v) P.Satyanarayana Murthy Vs. The District Inspector of Police
and another (2015-SAR (Criminal)1142);
- (vi) Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh
(1979)4-SCC-172;

(vii) Madhav Bhalchandra Rajurkar Vs. The State of Maharashtra
2015-ALL MR (Cri)-3518.

13. Learned APP submitted that the prosecution has successfully established through evidence of PW Nos.1, 2 and 3 that there was demand by the accused and acceptance of bribe. The tainted currency notes were recovered from the possession of appellant. The evidence of PW-1 mentions that he had visited the establishment department on several occasions. The accused had assured that the work of complainant would be done. After several visits the accused told the complainant that the complainant will have to spend Rs.200/- for getting work done and demanded bribe from him. PW-2 was accompanying PW-1. The trap was successful. PW-2 is an independent person. He has corroborated the version of PW-1. He has referred to the conversation between PW nos.1 and 2 which proves the demand and acceptance. He is a shadow witness. After the signal was given to the raiding party, the accused was apprehended and currency notes were recovered from him. The explanation of the accused about finding of the currency notes is not satisfactory. The defense of the accused cannot be believed. The theory of thrusting of notes is after thought. The omissions and contradictions did not affect the case of prosecution that the accused made demand and the bribe was accepted by the accused. Section 20 of P.C.Act could be invoked against appellant. He has not succeeded in rebutting presumption. Such presumption could be drawn as the appellant is found in possession of tainted currency notes. The application for appointment on the basis of heirship was not tenable and in spite of that the accused gave assurance to the complainant and made demand of illegal gratification. There is no infirmity in the evidence of sanctioning authority. Although draft

sanction order was submitted to him, he had applied independent mind to the material on record and thought it fit to grant sanction for prosecution of the accused. Learned APP relied upon the evidence of witnesses and documentary evidence in the form of pre-trap panchanama, trap panchanama, application tendered by complainant for appointment of his daughter for employment etc. The witnesses have corroborated each other. The offences were proved against accused. The Trial Court has considered the evidence on record and by assigning reasons gave finding of guilt which does not require interference. Hence, appeal be dismissed and conviction be confirmed.

14. The case of prosecution stems on the complaint of PW-1 that he had retired as a clerk from Thane Municipal Corporation on 31st August 2000. He made application for appointment of his daughter for the post of peon in the said Corporation on the basis of heirship on 7th September 2002. The accused was working as clerk in the establishment department of Corporation. He demanded bribe of Rs.200/- for getting work done. The complainant then approached ACB. The complaint was lodged on 9th January 2003 (Exhibit-10). According to the prosecution trap was arranged on 9th January 2003. The raiding party proceeded towards the office of accused. The amount was allegedly accepted by accused. He was allegedly apprehended and the bribe amount was recovered from him. According to PW-1 demand was made by accused on 7th January 2003. He visited ACB office on 8th January 2003. His complaint was recorded. He was at the ACB office for one and half hours. He was again called on 9th January 2003. He again filed complaint on 9th January 2003. The complaint adduced in evidence is dated 9th January 2003. According to PW-5 the PW-1 has not visited the office

of ACB on 8th January 2003. The statement or complaint purportedly recorded on 8th January 2003 is not on record. The question would arise whether the previous complaint is suppressed.

15. There were serious omissions in the evidence of PW-1 which can be summarized as under :

(i) Accused told PW-1 that file will have to be moved in eight departments and for that he will have to pay expenses of Rs.200/-;

(ii) Accused told him that the work is difficult but the work will be done;

(iii) On 7th January 2003 accused told him to come after 2 to 3 days, when PW-1 asked him when should he come;

(iv) On 9th January 2003 when the accused come out of establishment department, he asked him as to whether he has brought money and PW-1 told him that he has brought money and it was with him and whether he should pay the money to him and accused told him to pay.

These facts were not reflected in his statement before ACB. The complainant proceeds on the basis that demand was made by accused on 7th January 2003 on the ground that file is required to be moved in several departments, which is a clear omission. In the complaint it was stated that on 7th January 2003, the complainant visited office of accused and inquired about forms from him and learnt that forms were not forwarded by accused. Unless the forms

are forwarded and required information is not received, the appointment of his daughter would not be done. Hence he requested the accused to forward the forms for which accused demanded Rs.200/-.

16. From the evidence of PW-1 it also appears that 10 to 15 employees were working in the establishment department of Corporation. Three clerks including accused used to sit facing South. Table of accused was at the centre and two tables of other two clerks were on either side of table of accused. The rough map (Exhibit-14) was produced by prosecution. When PW-1 met accused two clerks on his right side were working on their tables. On 9th January 2003, those two clerks were not present. One peon is deputed in that section who has got a stool to sit next western door. Peon was not present on the day of his visit on 7th January 2003 and 9th January 2003. Thus, there are several staff members. None of them were interrogated and examined. Two clerks were present on 7th January 2003. They were not examined. Surprisingly all of them were absent on 9th January 2003. The version of PW-1 spreads volumes of doubt.

17. PW-2 is the shadow witness. He acted as panch witness. He was supposed to accompany the complainant. He was instructed to hear the conversation between the complainant and accused and what is happening at the time of trap. It is relevant to note that whatever he has stated qua the conversation between the accused and the complainant, does not establish that there was demand by the accused for bribe from the complainant. Thus, there is no corroboration to the version of PW-1 about demand of bribe. According to PW-2 complainant asked the accused as to what is

happened to his work. The accused told him that his work would not be done and he also told that employment by heirship could be given only to the heirs of peons and sweepers. He further told that he would see. Thus, the accused has made it clear to the complainant that the employment by heirship is given to heirs of peons and sweepers. The complainant told the accused that as was asked by him the complainant has brought the money and then the accused told him to wait outside. On perusal of evidence of PW-1 it can be seen that he has not stated that he had told the accused that he has brought money as was asked by him. Thus, there is contradiction in the version of both the witnesses. PW-2 do not corroborate the entire version of PW-1. The consequence of events at the time of trap reflected in the evidence of PW nos.1 and 2 is contradictory to each other. The evidence of both these witnesses, therefore, creates doubt about its veracity. The evidence of PW-2 in any case does not establish that the accused had demanded bribe. Thus, in the light of doubts in his evidence, his version that the accused accepted money and kept in his shirt pocket, cannot be accepted. PW-2 has also stated that when they were inside the office, the accused did not ask the complainant as to whether he has brought the money. Accused did not object for his presence. He did inquire about him which also supports the defense of accused that there was no demand of bribe. PW-2 has also stated that accused did not show eight forms. He did not say that he has prepared eight forms. Accused did not ask inside office whether complainant has brought money. Thus, both witnesses contradicts each other.

18. PW-3 Dattatraya Ratnaparkhi has stated that the application of the complainant was received in his office. He marked it to the accused on 12th September 2002. The accused was supposed to call

report of the ward officer. For calling report a letter was required to be written to the ward officer under signature of PW-3. However, the said letter with his signature was not sent by the accused to ward officer. The accused was not authorized to send letter under signature of PW-3 to the ward officer for calling report. Even if the accused could have placed such letter before PW-3, he would not have signed the same. At the time of raid all the documents relating to complainant's case were in custody of accused. Thus, nothing incriminating can be inferred from the version of PW-3 against accused. On the contrary, it is clear that the accused had not forwarded the required application to the ward officer, since there was no provision for granting employment to complainant's daughter. The defense of the accused is that complainant felt that accused was hurdle in forwarding his application.

19. PW-4 is the sanctioning authority. From his evidence it appears that the draft of sanction was forwarded to him. The text of the proposed sanction i.e. draft sanction and the sanction order passed by him is word to word same. In the entire file there is no document showing that he has drawn notes of his study on the file. As per government policy legal heir of employee who died during continuation of service or legal heir of employee who suffered due to incurable disease or legal heir of employee who has been compulsorily retired or if the employee is retired on the ground of accidental injury or mental disability, are entitled for service on compassionate ground. However, he has stated that such service can be given to legal heir of the employee who retired in due course as an exceptional case if it is considered by the general body or Commissioner. The accused had not taken any action on application

preferred by the complainant. Thus, the complainant was not entitled for the claim made in his application with regards to appointment of his daughter. In exceptional cases the application of a legal heir of the person who has retired can be considered subject to sanction by Government. No adverse conclusions can be drawn from the evidence of PW-4 against appellant. On the contrary, it is clear that application was not permissible and no steps were taken by accused.

20. PW-5 is the Investigating Officer. The omissions appearing in the evidence of PW-1 were proved through his evidence. From the evidence of this witness it is clear that the accused was not empowered to appoint daughter of complainant on any job. The investigating officer did not make inquiry with the complainant as to who was sitting around the accused near his table when he approached him. He admitted that on 9th January 2003 when the complainant and panch no.1 met the accused and that they had talk of his work with the accused, he did not demand any money from him. This establishes the fact that there was no demand on 9th January 2003.

21. Thus, the evidence of witnesses suffer from serious infirmities. It is under clouds of suspicion. The demand of bribe has not been established beyond all the reasonable doubt. Since the evidence with regards to demand was marred by serious discrepancies like omissions and contradictions and non corroboration, the defense of the accused that the amount was thrust appears plausible. The appellant had filed written statement by way of explanation under Section 313 of Cr.P.C. It is stated therein that on 9th January 2003

the complainant came to his office and made inquiry regarding his daughter's application for appointment. Accused told him that work cannot be done because the employment scheme can be given to heirs of sweepers and peons and to no others. Complainant was working as clerk and his daughter was not eligible for employment, which fact was told to complainant earlier also. During lunch time when the accused was proceeding towards canteen, the complainant met him and took money from shirt pocket and started offering to accused. He refused to accept money by pushing money by palm of right hand. The complainant then thrust money in left side of pocket of shirt. He tried to remove money from his pocket and suddenly 8-9 people marched there and held him. He did not demand or accept money from applicant. He had not prepared any letter to be sent to Ward Officer because complainant's daughter was not eligible for employment. The evidence on record supports the defense of accused. The prosecution has not been able to establish the foundation of demand and no presumption could be drawn against appellant by invoking Section 20 of PC.Act.

22. The prosecution has to prove the charge beyond reasonable doubt. In **Sujit Biswas Vs. State of Assam (2013)12-SCC-406**, it is held that suspicion, however grave, cannot take place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. The Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances two views are plausible, then benefit of doubt must be given to the accused.

23. Mere recovery of currency notes in the facts of the present case by itself cannot be held to be proper or sufficient proof of demand and acceptance of bribe when the evidence produced by prosecution has neither quality nor credibility, it would be unsafe to base conviction upon such evidence. As far as presumption under Section 20 is concerned, such presumption can only be drawn on proof of acceptance of illegal gratification, being received for doing or for bearing to do any official act. Proof of acceptance of illegal gratification can follow in case of proof of demand.

24. In the case of Mohd. Iqbal Ahmed (supra), it was observed that sanctioning authority must be shown to have applied its mind. In the case of A.Subair (supra) it was observed that the essential ingredients of Section 13(1)(d) of the Act are that the accused should be public servant, he should have used corrupt or illegal means or otherwise abused his position as public servant and obtain valuable thing or pecuniary advantage for himself or for any other person. The primary requisite of offence u/s 13(1)(d) of the Act is proof of demand or request for valuable thing or pecuniary advantage by the public servant. In the absence of proof of demand, the request from the public servant for a valuable thing or pecuniary advantage, the offence u/s 13(1)(d) cannot be held to be established. In the case of B.Jayaraj (supra) it was observed that so far as offence u/s 7 is concerned, it is settled position that demand of illegal gratification is sine-qua-non to constitute the offence and mere recovery of currency notes cannot constitute the offence u/s 7, unless it is proved beyond all reasonable doubts that the accused voluntarily accepted money knowing it to be a bribe. In the case of Suraj Mal (supra), it was held that mere recovery of money de-hors

from circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence of the case is not reliable. In the case of Motiram Pawar (supra), this Court has observed that it is well settled in the matter of trap cases, particularly when the initial part or the genesis of the story of demand and negotiations is found to be untrustworthy, then the entire prosecution case must fail as the testimony of the complainant by itself can never be accepted. In Madhav Rajurkar (supra) this Court has observed that sanction was defective and it has resulted in failure of justice. The sanction was improper.

25. Considering the law laid down in several precedents stated above and the factual aspects of the matter, the conclusion which can be drawn is that the prosecution has not been able to establish the case against accused beyond all reasonable doubts and hence the accused cannot be convicted on the basis of such evidence. The judgment of conviction is required to be set aside.

26. Hence, I pass following order :

ORDER

- (i) Criminal Appeal No.132 of 2010 is allowed;
- (ii) The judgment and order dated 28th January 2010 passed by District Judge-2 and Additional Sessions Judge, Thane in Special Case No.09 of 2004 convicting the appellant for the offence u/s 7 of Prevention of Corruption Act, 1988 and under Section 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988, and sentencing him to imprisonment and fine, is quashed and set aside and the appellant is acquitted of all the charges.

27. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

MST