

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

**CRIMINAL APPEAL NO.1112 OF 2013
WITH
INTERIM APPLICATION NO.120 OF 2020**

Raosaheb Arjun Lokhande, Age 49 years,
Occ.Service (Asstt.Police Inspector),
R/o.2, Narmadha Mukund CHS,
Thane (West).

Appellant

versus

The State of Maharashtra

Respondent

Mr.Abhishek Rajendra Avchat with Adv.Abhijeet S. Khandre for
appellant.

Mr.S.B.Pednekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 19th October 2020

Date of Pronouncing the Judgment : 9th December 2020

JUDGMENT :

1. This appeal has been preferred against judgment and order dated 7th September 2013 passed by the Special Judge under the Prevention of Corruption Act, Greater Bombay in ACB Special Case No.4 of 2012 convicting the appellant for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 ('P.C. Act') and sentencing him to undergo rigorous imprisonment for one year and pay fine of Rs.1,000/-, and in default to further undergo simple imprisonment for one month and also convicting the appellant for offence punishable under Section 13(1)(d) r/w 13(2) of the P.C.Act and sentencing him to undergo rigorous imprisonment for two years and pay fine of Rs.2,000/-.

2. The case of the prosecution is that on 5th April 2010 the complainant was confronted by the police and taken to RCF Police Station. The accused was P.S.O at Police Station. Enquiry was made with the complainant about one C.R.Yadav. The complainant was assaulted by Police and threatened that if he did not assist in arrest of C.R.Yadav, he would be implicated in the case of theft of diesel and petrol. The accused demanded Rs.50,000/- for his release. The demand was then reduced to amount of Rs.25,000/-. The complainant contacted his relative and friend Ashok Nishad and Dinesh Yadav on mobile phone and told them to come to RCF Police Station. They arranged an amount of Rs.10,000/- which was paid to accused. The balance of Rs.15,000/- was decided to be paid on 6th April 2010. The complainant was allowed to go at 11.30 p.m. He approached ACB on 6th April 2010. He lodged the complaint with ACB. On the same day at about 9.35 pm, the complainant received a call from the accused. Conversation took place between them. It was recorded in DVR and CD was prepared. The conversation indicated that the accused had told the complainant to remain present before him on the following day for giving attendance. Verification panchanama was recorded. It was decided that again verification would be recorded on 7th April 2010. The raiding party proceeded to RCF Police Station on 7th April 2010. Complainant and pancha Rasam entered RCF Police Station. DVR was attached on the person of the complainant. The complainant and Rasam went inside RCF Police Station. After returning complainant informed Police Inspector Ratnaparkhi that the accused had told him to pay the amount on the same day in the evening. At about 10.20 pm, the complainant visited ACB. Panchas were there. Currency notes for the purpose of raid were arranged. Anthracene powder was applied.

The raiding party proceeded to RCF Police Station. DVR was attached on the person of complainant. The complainant proceeded to RCF Police Station. He met accused. The panch witness remained outside. Complainant had conversation with accused. The amount of Rs.10,000/- was accepted by the accused. The raiding party entered into the office of the accused. He was apprehended. Tainted currency notes were recovered from his possession. Panchanama was executed. Pre-trap panchanama, verification panchanama and post-trap panchanama were recorded. Voice samples of accused and complainant were obtained. On completing investigation charge sheet was filed.

3. Charge was framed by order dated 11th June 2013 which was subsequently altered on 2nd July 2013 for the offences u/s.7, 13(1) (d), 13(2) of P.C.Act. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined five witnesses viz. Complainant Suresh Ramdhari Yadav (PW-1), Panch no.1 Vilas Babi Parab (PW-2), Ashok Nandlal Nishad (PW-3), Dinesh Ramanand Yadav (PW-4) and Investigating Officer Police Inspector Ramesh Kashiram Ratnaparkhi (PW-5).

5. The submissions of learned Advocate for the appellant can be summarized as under :

- (i) Demand of bribe not proved;
- (ii) Acceptance of bribe amount not proved;
- (iii) The demand has not been verified properly;

(iv) Complainant is tainted witness. He is to be treated as accomplice. He is interested witness. He was an accused in one matter of oil theft in which C.R.Yadav was also indicted. In order to get rid of being indicted in CR No.16 of 2010, he falsely laid a trap against the appellant;

(v) Complainant though declared hostile has neither supported the accused nor supported prosecution;

(vi) Entire script of recording related to the trap proceedings was not produced which creates doubt about the evidence of script;

(vii) FSL report with regards to voice identification of the accused was not produced. Hence adverse presumption has to be raised;

(viii) Statement of appellant which was recorded by Investigating Officer has not been placed on record. Hence, adverse presumption with regards to exact events that occurred will have to be drawn;

(ix) Panch Rasam who accompanied the complainant during verification has not been examined;

(x) Independent witness Pagare, Salian and Dherde were not examined by the prosecution;

(xi) PW-2 and PW-3 did not state the bribe amount was given to appellant. They were not declared hostile;

(xii) CDR of Police Dherde is on record. He was associated with investigation in CR No.16 of 2010. He has not been examined. His CDR shows, his contact with complainant on 7th April 2010 at 12.00 am. The said call is shown to be that of the accused and it is alleged that bribe was demanded at that time;

(xiii) There is no certificate u/s 65-B of the evidence with regards to the script. The said script cannot be read in evidence.

The original device and computer used for recording the conversation are not produced in evidence;

(xiv) The Trial Court has held that the demand dated 5th April 2010 has not been proved. The said finding has not been challenged by the prosecution.

6. Learned counsel for the appellant relied upon the following decisions :

- (i) M.O.Shamsudhin Vs. State of Kerala (1995)3-SCC-351;
- (ii) State of Punjab Vs. Madan Mohanlal Verma (2013)14-SCC-153;
- (iii) V.Venkata Subbarao Vs. State – AIR-2007-SC-489;
- (iv) Karupanna Thevar and others Vs. State of T.N. - AIR-1976-SC-980
- (v) B.Jayraj Vs. State of A.P. 0 (2014)13-SCC-55;
- (vi) Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others delivered in Civil Appeal No.20825-20826 of 2017;
- (vii) Gulabdatagir Ramzan Inamdar and another Vs. The State of Maharashtra – 2019-ALL MR (CR)-17;
- (viii) Waman Malhari Jambulkar Vs. The State of Maharashtra – 2018-DGLS (Bom)-1932;
- (ix) Bismillakha Salarkha Pathan Vs. The State of Maharashtra – 2003-BI-131;
- (x) Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra – 2018-DGLS (Bom)-816;
- (xi) Vijaykumar Piraji Chinchalkar Vs. The State of Maharashtra (2019-ALL MR (Cri)-4065.
- (xii) Kanu Ambu Vish Vs. State of Maharashtra – (1971)1-SCC-503.

7. Learned APP submitted that the prosecution has proved the case against the accused. There is sufficient evidence on record which has been accepted by the Trial Court to establish the demand of bribe and its acceptance. The complainant was cross-examined when he resiled from the statement and in the cross-examination the complainant has deposed incriminating evidence against the accused which can be accepted in law. The cross-examination of the complainant has not been successful in discarding his evidence. The evidence of the other witnesses i.e. PW-2, PW-3 and PW-4 inspire confidence. Although the Trial Court has held that the demand dated 5th April 2010 was not proved, the evidence on record clearly proves beyond doubt the subsequent demand and acceptance of bribe amount. The tainted amount was found in possession of the appellant. He could not afford any explanation for finding of bribe amount on his person. The evidence in respect to demand and acceptance of bribe is not shaken in any manner by defense. Since the amount was found on the person of the accused, Section 20 of the P.C.Act can be invoked against him. The appellant has not been able to rebut the presumption u/s 20 of the P.C.Act. It was not necessary to declare PW-3 and PW-4 hostile. The prosecution has been able to prove that the accused demanded the money and accepted the bribe amount on 7th April 2010. The evidence of panch witness, the documentary evidence such as verification, demand, pre-trap panchanama, trap panchanama etc. has been duly proved by the prosecution. The conviction of the appellant needs to be confirmed.

8. Learned APP relied upon the following decisions of the Supreme Court :

- (i) S.Kasi Vs. State delivered in Criminal Appeal No.452 of 2020 (arising out of SLP (Cri.) No.2433 of 2020;
- (ii) Mrs.Neeraj Dutta Vs. State (Govt. of NCT of Delhi) delivered in Criminal Appeal No.1669 of 2009.

9. I have perused the evidence of witnesses and the documentary evidence on record. According to PW-1 Suresh Yadav, on 3rd or 4th April 2010 he was distributing newspapers. He was taken to Police Station. He was assaulted. He was asked to produce one C.R.Yaav who was wanted in a case by police. He took police to the house of C.R.Yadav which was found locked. He was again taken to police station. He was kept in custody. He was threatened that if money was not paid, he would be made as accused in a case. Demand of Rs.50,000/- was made by accused. He showed his inability to satisfy the demand. The demand was then reduced to Rs.25,000/-. He gave telephone calls to some persons. Dinesh Yadav and Ashok Nishad brought the amount. He do not know to whom they paid the amount since he was in confinement. He was allowed to go. He went to the office of ACB on the next day. He received calls from the accused. His complaint was reduced in to writing. He was told that unless telephone call is received by him from accused, the ACB would not do anything. In the evening the complainant received call from accused. He was told to come on the next day. The complainant reached the office of ACB on the following day. He waited for call from accused. He was sent to RCF Police Station and instructed to hold discussion only about his work. He went to RCF Police Station and met accused. He spoke to him for a minute or

two. He returned to office of ACB. The tape recording device installed on his person was heard. He told Ratnaparkhi that he had sought time till next day from accused. He did not know what happened thereafter. He further stated that on 7th April 2010 he went to office of ACB. He did not remember the details of what had happened on that day. He contacted C.R.Yadav who stated that he had no money and he would not give money. He handed over currency notes to PW-5. The currency notes of Rs.10,000/- were used for investigation. He was instructed to keep the notes in his pocket. They proceeded to RCF Police Station. The recording device was concealed on his person. The complainant walked to RCF Police Station. He handed over the currency notes to accused. The accused accepted the currency notes. After handing over currency notes, he came out of cab in and the trap party went inside. Nothing else directly involving complainant took place on that day. Around 4 pm the trap party came out from RCF Police Station. He was dropped at Kherwadi. On the request of Special PP, permission was granted to cross examine PW-1 as he has resiled from his previous statement. Cross-examination was conducted by Special PP. In the cross-examination whatever questions were put to him in the form of leading questions were answered in affirmative by the witness. He admitted that the accused demanded Rs.50,000/- from him for his release. Dinesh Yadav and Nishad handed over Rs.10,000/- to accused. Accused told him to bring Rs.15,000/- on 6th April 2010. Accused told him to come to RCF Police Station with amount of Rs.10,000/- in the night of 7th April 2010. Trap was arranged. He met the accused in the gallery which is outside the detection room. Thereafter talk took place between them and they went inside the police station. He was taken in a room in the police station which

was to his left. The accused asked whether he has brought the money. The accused demanded money. He took out the amount from his pant pocket and gave it to the accused. He kept it in the right side pocket of his pant. The accused then asked him to go to the room to the right side and sit there. The accused came out of the back room had chat with some other persons outside the room and then came to the right side room where complainant was sitting and occupied his chair. Thereafter the complainant went out of the room and gave predetermined signal to the trap team. On 8th April 2010, transcript of conversation between him and the accused was shown to him for the purpose of reading and he read it. He had stated before police while recording FIR and supplementary statement that he had contacted C.R.Yadav and he stated that he did not have money. He denied that he did not state these details before the police at any point of time and hence it does not appear in the FIR or in his supplementary statement. He had wrongly stated that on 3rd or 4th April he was taken to RCF Police Station. This witness was cross-examined by the advocate for the accused. In the cross-examination he stated that he found that Sunil Yadav was in police lock-up on the allegation of theft of oil. On 5th April 2010, on his mobile phone, he received number of calls from mobile phone of C.R.Yadav. He knew C.R.Yadav since 6 years prior to the incident. On 5th April 2010 he had told C.R.Yadav that to trace his whereabouts, police have taken him to RCF Police Station. When he left RCF Police Station, accused was not there in the room where he was. On 5th April 2010, he did not give mobile number of C.R.Yadav to police constables whenever inquiring with him. Police did not ask him about the mobile number of C.R.Yadav. He had taken mobile number of Tukaram Patil because he used to meet Yadav. In application (Exhibit-10) given by him,

name of the accused is not mentioned. He had scribed Exhibit-10 on his own accord. He did not remember the name of accused while writing application Exhibit-10. Hence, he did not mention his name. The accused gave his mobile number and asked him to contact him on coming to know about whereabouts of C.R.Yadav. He received call from accused on 6th April 2010. One case of oil theft was registered against him at RCF Police Station. C.R.Yadav is the co-accused in that case and the said case is pending in Kurla Court and even in that case C.R.Yadav is wanted accused. He was arrested in a case of oil theft registered at RCF Police Station in which C.R.Yadav is co-accused. So far C.R.Yadav is not arrested in connection with case of oil theft in which police wanted him to disclose his whereabouts.

10. PW-2 Vilas Babi Parab is the panch witness. According to him, he was called by ACB on 6th April 2010. Another person Rasam was also called to act as panch. They were introduced to the complainant. Complainant was asked to contact the person demanding bribe on telephone and hence complainant gave call to said person. This conversation between them was recorded by using instrument. They were made to listen the tape recorded conversation. CD of the conversation was prepared. PW-2 and Mr.Rasam were asked to come to ACB on 7th April 2010. They reached office of ACB on 7th April 2010 at about 10 am. All of them proceeded towards RCF Police Station. Recording instrument was attached on the person of the complainant. The complainant entered RCF Police Station. He came out after 25 minutes. The person who was expected to demand bribe, did not meet the complainant. Hence they went back to ACB office. They were made to listen the

conversation recorded in the instrument. The complainant brought currency notes of Rs.10,000/-. Powder was smeared on the currency notes. All of them proceeded to RCF Police Station. Digital recorder was attached inside the shirt of the complainant. The complainant entered the RCF Police Station. He followed him inside police station. He saw complainant talking to one person. Both of them went inside the room. He came out of the police station and waited in open ground. He could see the complainant and one more person inside the room in the police station. After about 2 to 4 minutes both of them came out of the room. The complainant went to another room. The person who was talking with complainant was talking to some other persons. Thereafter he went inside the room where complainant was sitting. Thereafter the complainant came out of the room. He gave signal to the raiding party. All of them entered into the room. The accused was present in the room. He was apprehended. His fingers and the pant pocket were examined under ultra violet rays and traces of powder were visible. On 8th April 2010 he and Rasam were again called to ACB office. They were called to identify the voices recorded on the digital recorder. He identified the voice of accused and the complainant. He do not remember what procedure was adopted for voice identification. He did not remember what else took place on that day. He did not remember what formalities were performed before the complainant was asked to go and bring the amount which was to be offered as bribe. He admitted contents of panchanama which was marked as Exhibit-16. He did not remember whether anything else apart from whatever stated him took place in the office of ACB on 7th April 2010. Permission was sought by Special PP to cross-examine the witness on the ground that he had resiled from his previous stand. It was

granted. In the cross-examination by Special PP, PW-1 stated that while going through trap panchanama, he did not find that sequence of events as they had taken place were changed. He do not remember whether the digital recorder was played in the presence of complainant. After listening to the recording the complainant identified one of the voices to be that of accused. On the basis of identification name of the concerned person was written in the trap panchanama before particular utterances made by him. From the recorded conversation it transpired that the accused had demanded Rs.10,000/- and the complainant was to go with the amount around 10.00 p.m. Several other questions were put to this witness by the Special PP which were answered in affirmative. Several documents were exhibited through his cross-examination. It is pertinent to note that this witness has answered the questions which were in the form of leading questions in the affirmative. In the cross-examination conducted by the defense, he stated that the digital device used for recording was not seized and sealed on 7th April 2010 in the morning as well as in the evening. Panchas were not present at the spot when conversation was being recorded on 7th April 2010. They were at some distance from the said spot. The recital on page 2 in panchanama Exhibit-18 that on 7th April 2010 pancha Rasam went with complainant inside RCF Police Station could be true His version in Examination-in-Chief that policemen examined fingers and person of the accused is not correct. When the complainant initially entered the cabin, he was waiting outside near passage. He could not see or hear what was taking place in the cabin. The complainant was instructed to give signal soon after handing over bribe amount. After coming out of first cabin the complainant did not give any signal. There were two to four persons in the passage. He could not hear

what talk was going on in passage between accused and these persons. When the complainant came out of second cabin, PW-5, one ACP and two policemen entered in the cabin.

11. PW-3 Ashok Nandlal Nishad is the friend of complainant. He deposed that the complainant had contacted him on his mobile phone in April-2010. He do not remember the exact date. He was informed that RCF Police had taken complainant to the police station. He along with Dinesh Yadav went to RCF Police Station to meet complainant. Dinesh Yadav was also informed by the complainant. Both met accused at RCF Police Station. They made inquiry and were informed that the complainant was taken to police station in connection with some matter. The accused said that some amount will have to be paid. He had quoted figure of Rs.30,000/-. They were not having that much amount. They left the police station. They collected Rs.10,000/-. They did not give this amount to the accused. Some other officer whose name he did not remember was paid this amount. Thereafter the complainant was allowed to go. The accused told them to bring remaining amount of Rs.20,000/-. In the cross examination he stated that on 5th April 2010 when he visited RCF Police Station, the accused was not there. His version in examination-in-chief is not correct. PW-4 Dinesh Ramanand Yadav was accompanying PW-3. His version is similar to PW-3. At the police station he was informed that complainant was arrested and to secure his release, amount will have to be paid. PW-3 was with him. They met accused. Discussion took place at the police station and they were informed that the complainant would be released after payment of Rs.30,000/-. They arranged Rs.10,000/- as per the say of accused and the amount was paid to another officer

who was sitting in cabin. Remaining amount of Rs.20,000/- was to be paid on the following day. After payment of Rs.10,000/- complainant was released. In the cross-examination he denied that during their visit to RCF Police Station, the accused was not there. He stated before ACB officer while giving statement that on that day between 11 am to 11.30 am, he and PW-3 had been to RCF Police Station and they found that accused was not there. Although he stated before ACB officer that he and PW-3 met accused, discussion took place at the police station regarding release of complainant after payment of Rs.30,000/-, is not reflected in his statement. He had not stated before ACB Officer that accused asked them to pay Rs.10,000/- to some other police officer and not stated the name of police officer to whom they paid Rs.10,000/-.

12. PW-5 Ramesh Kashiram Ratnaparkhi is the Investigating Officer. According to him, he was present at the office of ACB on 6th April 2010. Complainant visited the office of ACB and gave complaint of demand of bribe by public servant. He scribed his complaint in Marathi as per say. Panchas were called. Complainant had informed that the concerned public servant would contact him on mobile phone on that day at about 8.00 p.m. At 9.35 p.m call was received by complainant on his mobile phone from public servant. Conservation was recorded. Transcript was prepared. CD was prepared. On 7th April 2020 the complainant informed that during the previous night around 1.30 am, he received call from the public servant asking him to remain present in his office at 9.30 am. The complainant and panchas were called in the office of ACB at 9.00 am. Panch Rasam was instructed to go with complainant by keeping some distance. All of them proceeded towards RCF Police Station. Digital recorder was attached on the person of complainant.

The complainant informed that he spoke to accused regarding demand of bribe made by him. Transcript of the conversation was prepared. Panchanama was recorded. Trap was arranged. The raiding team proceeded to RCF Police Station. Accused entered the room. The complainant was with the accused. The complainant gave signal after coming out of the room of the accused. The raiding team went to the room of accused and he was apprehended. Currency notes were recovered from him. Conversation was heard. CD was prepared. He recorded statement of the accused. The accused himself scribed his statement. PW-5 and the panchas put their signatures on the statement. Voice samples of the accused and complainant were obtained on 8th April 2010. On 11th April 2010 he forwarded CDs to FSL. The report is awaited. He recorded statement of Head Constable Gherde and one private persons Salian. He also recorded statements of PW-3 and PW-4. CDR was obtained. He scribed complaint Exhibit-10 after panchas came to ACB. He did not at once scribe complaint of the complainant to preserve confidentiality of the information. Confidentiality could have been breached by anybody before whom the information was imparted. The complainant told him about amount given by him to accused earlier. To preserve confidentiality it was not mentioned in complaint Exhibit-10. Acceptance of bribe amount is a cognizable offence. He did not preserve the original digital recorded dated 6th April 2010 and 7th April 2010. The original digital recorder is primary evidence. He know that primary evidence, if it is available, should be tendered before the Court. He did not obtain certificate from the person who prepared CD from digital recorder. He is aware about the procedure that such certificate should be obtained. In April-2010 said procedure was not followed. The accused was talking with another

person and voice of the said person and said conversation are also recorded. In the conversation apart from voice of the complainant and the accused, voice of one or more person was recorded. He did not prepare CD of complete conversation. Neither any panch nor anybody else in the trap party could hear the conversation between the accused and the complainant, nor could anybody see what was taking place in the room. He had instructed the complainant to give signal after acceptance of money. When the complainant came out of room of the accused for the first time he did not give any signal. He asked panch Parab to keep with him tainted currency notes of Rs.10,000/-.

13. The Trial Court held that the prosecution has not proved that on 5th April 2010 the accused demanded and accepted the amount of Rs.10,000/- at RCF Police Station from the complainant as gratification other than legal remuneration as a motive or reward for doing an official act amounting to the offence punishable u/s 7 of the PC.Act. The Trial Court also held that the prosecution has not proved that on 5th April 2010 the accused had obtained for himself by corrupt means, pecuniary advantage to the extent of Rs.10,000/- and committed an offence u/s 13(1)(d) of the Act punishable u/s 13(2) of the Act. In paragraph 18 of the impugned judgment it was observed by the Trial Court that it is not disputed that on 5th April 2010 the complainant Suresh Yadav was taken to RCF Police Station early in the morning by accused and some other policemen. According to prosecution initially accused demanded Rs.50,000/- from the complainant and then reduced the amount to Rs.25,000/-. The complainant in his examination-in-chief stated about demand of Rs.25,000/- having been made by the accused. In the cross-examination by Special PP, the complainant stated about initial

demand being Rs.50,000/- and the said figure having been reduced to Rs.25,000/-. According to PW-3 and PW-4, the accused made a demand of Rs.30,000/-. In cross-examination PW-3 stated that when he had been to the police station on 5th April 2010, the accused was not there and his version in examination-in-chief which was contrary was not correct. His further cross-examination shows that his version regarding demand of Rs.30,000/- made by accused is in the nature of improvement. According to PW-4 he did not remember whether on 5th April 2010 when he had been to RCF Police Station, the accused was there. His version regarding demand of Rs.30,000/- by accused also appears to be an improvement. According to complainant when he was allowed to go on 5th April 2010, the accused was not there in that room. It is the version of the complainant that on 5th April 2010, amount of Rs.10,000/- was paid to the accused pursuant to his demand. According to PW-3 and PW-4 amount of Rs.10,000/- was not paid to accused but to some other policeman. There is nothing to indicate that any investigation was conducted as to who had received the amount of Rs.10,000/- pursuant to demand stated to have been made by the accused. In complaint Exhibit-10 dated 6th April 2010 there is no mention of name of accused nor there is any mention of payment of Rs.10,000/- received either by accused or by someone else on his behalf. Complainant and PW-5 have given different explanations as to why in complaint (Exhibit-10) there is no mention of aforesaid circumstances.

14. During his statement under Section 313 of Cr.P.C, when the accused was asked vide question no.113, why the prosecution witnesses PW-1, PW-2, PW-4 and PW-5 have deposed against him, he gave following answer :

“In January 2010 Crime No.16/2010 was registered at RCF Police Station. API Kumbhar was the investigating officer. The investigation was with him for about four months. During this period there was no progress in the investigation. On 04.04.2010 the investigation of said crime was handed over to me. I arrested four accused in the said crime. Investigation revealed that C.R.Yadav was the main accused and Suresh Yadav was also an accused. Sunil Yadav who was under arrest in the said crime disclosed that Suresh Yadav could furnish whereabouts of C.R.Yadav. Therefore, Suresh Yadav was taken to police station for interrogation. We wanted to reach C.R.Yadav with the help of Suresh Yadav. For this reason, Suresh Yadav was taken to police station on 05.04.2010. He had promised me that he would tell us whereabouts of C.R.Yadav. Because of said promise he was released. On 06.04.2010 I made telephone call to him asking him why he had not come as per his promise,. In the meantime he hatched a conspiracy and approached ACB. It is true that on 08.04.2010 Suresh Yadav had come to RCF Police Station. I was assigned duty of night PI. Mob of around 150 persons had gathered there. PSI Pagare who was assigned duty for the area was afraid because the mob was getting violent. I tackled the mob. The mob went away. I went back to my room. At that time Suresh Yadav came there and he kept currency notes of Rs.10,000/- in my pant pocket”.

While answering question no.116, whether he wanted to say anything more about the case, he stated as follows :

“C.R.Yadav and Suresh Yadav both are part of oil mafia. I was trying to arrest them in Crime No.16 of 2010. To avoid their arrest they falsely implicated me. There is record to show that on 05.04.2010 C.R.Yadav and Suresh Yadav were constantly in touch with each other on phone. Subsequently, in August 2010 Suresh Yadav was arrested in another case registered at RCF Police Station”.

15. According to prosecution, appellant was Assistant Police Inspector attached to RCF Police Station. He was investigating an offence relating to theft of oil. The crime was registered vide CR No.16 of 2010 with RCF Police Station for offences punishable u/s 245, 379, 511 r/w 34 IPC. One Sunil Yadav was arrested in the said case. During investigation it was revealed that one C.R.Yadav was involved and investigation in that regard was in progress. He was absconding. Investigation was entrusted to the accused. On 5th April 2010 the appellant was investigating the aforesaid crime. According to the complainant, he was picked up by the accused and his team on 5th April 2020. He was taken to RCF Police Station. He was interrogated about the whereabouts of C.R.Yadav. The complainant showed the residence of C.R.Yadav to police team. It was found locked. The complainant was again taken to RCF Police Station. He was confined. According to him amount of Rs.50,000/- was demanded with complainant as bribe for not indicting him in the crime under investigation. The demand was reduced to Rs.25,000/-. The complainant then called his relative and friend PW-3 and PW-4 and told them that he is confined at RCF Police Station. PW-3 and PW-4 then visited the police station. The accused demanded the amount. They made arrangement of Rs.10,000/- which was handed over to the police. The balance amount was to be given to the accused. The complainant approached office of ACB and submitted written application in the form of complaint on 6th April 2010. The said application has been exhibited in evidence as Exhibit-10. On 6th April 2010 verification was conducted. The complainant received call at about 9.35 pm from accused. The conversation between them was recorded in voice recorder. Conversation script was prepared. There was no demand of bribe amount in the said conversation by

the accused. The conversation indicated that the complainant was summoned to attend the police station for attendance. CD of the conversation was prepared. Verification panchanama dated 6th April 2010 was recorded from 6.30 pm to 11.00 pm which was exhibited in evidence as Exhibit-14. According to prosecution again verification was conducted on 7th April 2010. Complainant and panch Rasam went to RCF Police Station. Voice recorder was installed on the person of the complainant. The complainant and panch witness returned to ACB. The conversation recorded in the recorder was heard and the script was prepared. The conversation indicated that the accused demanded Rs.10,000/-. Verification panchanama Exhibit-18 was recorded on 7th April 2010. FIR was registered thereafter with RCF Police Station on the basis of the statement of the complainant recorded on the same day. The FIR was marked as Exhibit-11. Pre-trap panchanama (Exhibit-16) was recorded on 7th April 2010 between 8.20 pm to 9.00 pm. Preparation for trap was made. DVR was attached on the person of the complainant. He walked towards police station. He was accompanied by panch witness (PW-2). The panch waited outside. The accused accepted the amount of bribe. Signal was given to raiding party. Accused was apprehended. Conversation was heard. Script was prepared. Trap panchanama (Exhibit-15) was recorded on 7th April 2010. Statements of witnesses were recorded. Voice specimen of complainant and the accused was recorded vide panchanama Exhibit-19. Sanction was obtained which was granted vide sanction order dated 22nd November 2011. On completing investigation charge sheet was filed.

16. The evidence of PW-1 complainant suffers from serious infirmities. He is not reliable witness. Conviction cannot be based

on shaky evidence of the complainant. It appears from the record that the accused took charge of the investigation on 4th April 2010. The version of complainant is that he was taken for inquiry at RCF Police Station on 3rd or 4th April 2010. It is difficult to believe that immediately after taking over the investigation, the accused were arrested and alleged demand of bribe was made from the complainant. The case of the prosecution which appears from the version of PW-1 is that he was picked up for interrogation in respect to the theft of oil in which one C.R.Yadav was involved. The fact that the complainant was acquainted with C.R.Yadav is implicit in evidence. PW-1 has stated that he was acquainted with C.R.Yadav. He was involved in one case where C.R.Yadav was co-accused. C.R.Yadav was wanted in that case. In the present case the whereabouts of C.R.Yadav were required by police. It is also apparent from evidence of PW-1 that he did not give the mobile number of C.R.Yadav to Police. He has categorically stated that he spoke to C.R.Yadav on 5th April 2010. He informed Mr.Yadav the fact that he has been confined at police station. C.R.Yadav expressed his inability to pay money. This clearly shows nexus between PW-1 and C.R.Yadav. It is also apparent that PW-1 tried to shield C.R.Yadav. PW-1 suppressed the fact that he made calls to C.R.Yadav from police station. He did not give whereabouts of C.R.Yadav. He took mobile number of P.C.Tukaram Patil since he used to talk with Mr.C.R.Yadav. There is nexus between C.R.Yadav, Tukaram Patil and complainant. Thus, the defense of the accused that the complainant apprehended that he would be indicted in the case with C.R.Yadav and to avoid that false trap was arranged by him in connivance with ACB appears to be plausible.

17. The evidence of PW-1 is full of suspicion. In complaint Exhibit-10 he did not mention name of the appellant as the person who demanded the amount. The quantum of amount demanded as bribe is also not mentioned in the said complaint dated 6th April 2010. The theory of demand of Rs.50,000/-, reduction of bribe amount to Rs.25,000/- and payment of Rs.10,000/- as a part amount of bribe is doubtful. The explanation for not mentioning the name of the offender in complaint Exhibit-10 given by PW-1 is that he was not aware about the name of the offender. The explanation given by PW-5 is contrary. According to him, to maintain secrecy the name of the offender was not mentioned in the complaint Exhibit-10. The contrary stand of both these witnesses create suspicion about the case of the prosecution. Although it is the case of the complainant and the other witnesses that amount of Rs.10,000/- was handed over to the policemen on 5th April 2010 for releasing the complainant who was under confinement, the evidence of PW-1 indicate that he did not know to whom the amount was paid as he was under confinement. The theory of confinement itself is under clouds of suspicion because according to the complainant he spoke to PW-3 and PW-4 and informed about the fact that he was at RCF Police Station and pursuant to that PW nos.3 and 4 had visited RCF Police Station. The fact that calls were made to these two persons by PW-1 would falsify his version that he was under confinement. In the cross-examination, however, PW-1 had stated that the amount of Rs.10,000/- was handed over to the accused. The evidence of PW-3 and PW-4, however, is contrary to the said version of the complainant. According to them the amount of Rs.10,000/- was not handed over to the appellant-accused by PW-3 and PW-4 and in fact it was handed over to some other police officer. Thus, the

prosecution case which stem from the allegation that amount of Rs.10,000/- was paid on 5th April 2010 for release of the complainant is itself doubtful and cannot be accepted. The Trial Court has given finding that the acceptance of Rs.10,000/- by the accused on 5th April 2010 has not been establishment by the prosecution. It is also pertinent to note that on 6th April 2010 there was a conversation between the accused and the complainant. Call was received at about 9.35 pm from accused. The conversation was recorded. The script of the conservation was also recorded. The said conversation indicate that there was no demand of bribe amount from the accused with complainant. The script would indicate that the accused told him that "Haziri Ke Liye Aa Jana". Thus the complainant was called for interrogation. In spite of that, the raiding party and the complainant had proceeded further with the pre-trap panchanama and the trap. In the examination-in-chief, the complainant stated that amount of Rs.10,000/- was given to accused. He did not say that accused told him to pay balance amount of Rs.15,000/-. After he approached ACB, his complaint was recorded. However, he did not refer to presence of panchas at that time. In examination-in-chief PW-1 stated that on the day when he lodged the complaint, he received call from accused in the evening. He was called by ACB on next day. HE did not state what was the conversation between him and accused. There was no reference of demand by accused. He stated that he came out of the cabin after the amount was handed over to the accused. He do not refer to signal being given to the raiding party after the amount was accepted by the accused. On the contrary, he stated that nothing has took place after that and he did not refer to demand, acceptance, finding of money on the person of the accused etc. According to PW-1 he left home after he left the

office room of the accused. The complainant did not attribute as such any role to panch witness PW-2 in the examination-in-chief. The prosecution sought permission to cross-examine the witness on the ground that he had resiled from his previous statement. The prosecution did not confront the complainant with his version in the previous statement. However, lengthy cross-examination was conducted at the instance of the prosecution by the Special P.P. The nature of cross-examination was in the form of several leading questions which were answered in affirmative by the complainant and he has given description of the alleged events which had occurred according to him on 7th April 2010. In the cross-examination conducted by the prosecution, PW-1 stated that PW-3 and PW-4 had handed over the amount of Rs.10,000/- to the accused on 5th April 2010. He stated that accused demanded and accepted bribe on 7th April 2010. The testimony of PW-1 regarding demand and acceptance of bribe is uncorroborated. Panch witness was waiting outside. This version was contrary to what he had stated in the examination-in-chief. Thus, the analysis of evidence of PW-1 would indicate that there was variation in his deposition. In such scenario the question which falls for consideration is whether any weightage could be given to evidence of such a witness to indict the accused and to give a finding that the offence stands proved against the accused. The cross-examination of PW-1 conducted by the defense would show that the complainant has given certain admissions which speaks volumes of doubt about the version of this witness. The cross-examination shows that one Sunil Yadav was in custody in relation to the case which was under investigation being conducted by the accused and in which the complainant was taken to RCF Police Station for the purpose of interrogation. He had

categorically stated that on 5th April 2010 he did not give mobile number of C.R.Yadav to police when they were making inquiry. He admitted that name of the accused was not appearing in his application/ complaint Exhibit-10. He also stated that theft case was registered against him at RCF Police Station where C.R.Yadav was wanted. He was arrested in a case where C.R.Yadav was co-accused. The accused cannot be convicted on such evidence. PW-1 cannot be considered as reliable witness.

18. It is the case of the prosecution that on 7th April 2010 the complainant entered RCF Police Station. He and the accused initially went to one room, in that room the accused demanded and accepted bribe of Rs.10,000/- and thereafter the accused asked the complainant to go out and sit in another room. The complainant accordingly went out and after some time the accused went to the said room. Thereafter the complainant came out of room and gave signal to trap party whereupon the trap party came there and apprehended the accused. The complainant has stated that he was instructed by PW-5 to give signal immediately after acceptance of bribe by the accused, but considering the aforesaid sequence of events, it is clear that the complainant did not act as per instructions given to him by PW-5. PW-5 has stated that on 7th April 2010 in the morning he saw on his mobile phone one missed call from the complainant and hence he called the complainant. The complainant told him that during previous night around 1.30 am, he had received the call from the public servant asking him to remain present in his office at 9.30 am and in view of the said development timing for carrying out verification was preponed. The said version of PW-5 has not been corroborated by complainant. The testimony of complainant is silent in that regard. The CDR record does not

support the version of PW-5. From CDR it appears that it was Head Constable Dherde who called the complainant. The said person has not been examined. He was attached to RCF Police Station at the relevant time. The complainant has stated that he met the accused at RCF Police Station and sought time till next day to make payment to him and he disclosed it to PW-5. This version of PW-1 cannot infer that whether such time was sought by PW-1 from accused to make payment on 6th April 2010 or 7th April 2010. On 7th April 2010 when one more verification was attempted, the complainant visited RCF Police Station in the morning. The panch Rasam was with the complainant, who was entrusted with the duty to hear the talk between the complainant and the accused and to observe the same. Panch Rasam has not been examined. PW-5 has deposed that Panch Rasam had told him that he kept distance from complainant. He saw PW-1 entering office of accused and having come back after some time.

19. PW-2 has stated that on 6th April 2010 he went to office of ACB. PW-5 told PW-1 to give call to accused. PW-1 gave call. Conversation was recorded. He has not stated what was the conversation in the recorded in the CD between PW-2 and the accused. He has further stated that on 7th April 2010 at about 10.00 am, he went to office of ACB . At 12.30 pm he went to RCF Police Station. PW-1 entered police station. He came out within 25 minutes. The person expected to demand money was not there. CD was prepared in respect to conversation. However, he again did not state what was the conversation. On 7th April 2010 again at 7.00 p.m, PW-2 and others proceeded to RCF Police Station. Currency notes were arranged. Complainant entered RCF Police Station. PW-2 followed him. Complainant was talking to one person. Both went

inside the room. PW-2 came out of police station and waited. He could see them. Complainant went to another room. Then complainant came out and gave signal. It is apparent that this witness could not hear and could not see what had happened between the complainant and the accused when the alleged demand for bribe and the acceptance of bribe amount had occurred. Thus, the evidence of PW-1 which is of suspicious nature was not corroborated by independent evidence of panch witnesses in respect to the demand of bribe and acceptance of money. PW-2 in the examination-in-chief has stated that he identified the voice of complainant and the accused. Complainant was made to read the portion of the script and that was recorded and sent to FSL. The original script is not on record. It is also pertinent to note that according to PW-2 he did not hear talk between the complainant and the accused and he came to know the name of the accused after trap. Since PW-2 had no occasion to hear the accused, his version that he has identified the voice of the accused cannot be accepted. PW-2 had stated that he do not know what procedure was adopted for voice identification. The day on which panchanama was conducted, CD of conversation recorded on digital recorder, was prepared by using computer. The conversation between the complainant and the accused were taken down in CD. He do not remember what the conversation was about. The conversation initially recorded on digital tape recorded and thereafter on CD was played before them and noted in the panchanama. He do not remember on what basis the voices were identified. He did not remember what else took place on that day. He do no remember what formalities were performed before the complainant was asked to go and bring the amount which was to be offered as bribe. In the cross-examination

conducted by the prosecution, PW-2 has stated that complainant identified voice of accused in recorded conversation. Demand of Rs.10,000/- was transpired. He do not remember whether the digital recorder was played in the presence of the complainant. After listening to the recording the complainant identified one of the voices to be that of the accused. On the basis of said identification name of concerned person was written in trap panchanama before particular utterances made by him. Thus, the voice identification was based on the evidence of the complainant whose evidence is under the clouds of suspicion. The panch witness PW-2 had no occasion to hear the voice of accused as he never heard conversation with him nor had any occasion to identify the voice. Considering the version of this witness as stated above, it is clear that the name of the accused was mentioned in the script of conversation because the complainant has identified it as voice of the accused. He further stated that the digital device used for recording was not seized and sealed. The report of voice identification from FSL is not on record. PW-5 had instructed him to be near the complainant. He was following the complainant and keeping some distance from him to avoid suspicion. When the complainant entered cabin, he was waiting outside near the passage. He could not see or hear what was taking place in the cabin. The complainant was instructed to give signal after handing over amount of bribe. After coming out of first cabin, the complainant did not give any signal and there was two to four other persons in the passage. He could not hear what talk was going on in the passage between the accused and those persons. When the complainant came out of the second cabin, the raiding team entered in the cabin. Thus, the evidence of PW-2 also suffers from several infirmities. He has not corroborated the demand and

acceptance and the prosecution has to base its case on the version of the complainant. Considering the nature of evidence adduced by the prosecution qua PW-1, PW-2, PW-3 and PW-4, the other circumstantial evidence in the nature of the complaints, verification panchanama, pre-trap panchanama, trap panchanama and voice identification panchanama would not be helpful to the prosecution to drive conviction of the accused.

20. The evidence of PW Nos.3 and 4 do not inspire confidence. They are apparently got up witnesses to suit the prosecution case. According to PW nos.3 and 4, they visited RCF Police Station on receipt of call from the complainant. Their evidence is contrary to evidence of PW No.1. PW-3 has stated that the accused demanded the amount of Rs.30,000/-. The case of complainant was that there was a demand of Rs.50,000/- which was reduced to Rs.25,000/-. Thus, the version of PW-3 runs counter to the prosecution case. He has also stated that the amount was not paid to the accused but it was paid to some other officer whose name he does not remember. He further stated that on 5th April 2010 when he had been to RCF Police Station, the accused was not there. Whatever he has stated in the examination-in-chief in that regard, is not correct. The version of PW-4 is similar. In the cross-examination of the said witness he stated that he do not remember whether he had stated before ACB while giving statement that on that day between 11.00 am and 11.30 am, he and PW-3 had been to RCF Police Station and they found that the accused was not there. He had stated before ACB officer that he and PW-3 met the accused, discussion took place at the police station during meeting regarding release of complainant after payment of Rs.30,000/-. However, he cannot assign any reason why these details were not incorporated in his statement. He had not stated

before ACB officer that the accused asked them to pay Rs.10,000/- to sum other police officer. He had not stated in his statement the name of the police officer to whom they paid Rs.10,000/-. Thus, the evidence of PW nos.3 and 4 also does not inspire confidence and cannot be relied upon to convict the accused.

21. PW-5 deposed that on 11th April 2010 he forwarded CDs to FSL and the report is awaited. He did not make any attempt to get the report. It is difficult to believe that the report was awaited as the FIR was registered on 7th April 2010. Thereafter investigation proceeded. Charge sheet was filed. The evidence of PW-5 was recorded on 26th August 2013. It is difficult to believe that the report of FSL was awaited for a period of about more than 2 years. He did not produce original DVR. He did not obtain certificate u/s 65B. Voice of other persons with whom the accused was having conversation, is not recorded. He did not prepare CD of entire conversation. Nobody has heard conversation between accused and complainant and nobody has heard conversation between accused and complainant and what was going on in the room. Although he instructed complainant to give signal after the bribe was accepted, he did not give such signal. He told panch witness to keep the tainted notes with him. Thus, the evidence of PW-5 shows that there were discrepancies and lacuna in investigation conducted by him.

22. Section 20 of P.C Act would not be adverse to accused, considering the evidence on record. In the light of the evidence laid by the prosecution and the infirmities pointed out hereinabove, I am of the considered opinion that the demand and acceptance of the bribe amount, which are the requirements to constitute the offences against accused, were not proved beyond reasonable doubt.

23. In the case of M.O.Shamsudhin Vs. State of Kerala (supra), it was observed that the person who offers bribe is an accomplice. Whether the evidence of force bribe giver requires corroboration or not would be within the discretion of the Court depending upon the facts and circumstances of each case. In State of Punjab Vs. Madan Mohan Lal Verma (supra), it was observed that mere recovery of tainted money is not enough. Burden is on accused to displace the statutory presumption. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as they of any other interested witness. In the case of V.Venkata Subbarao Vs. State (supra), it was observed by the Supreme Court that presumption that money was accepted as motive or reward, cannot be raised when demand by accused has not been proved. In Karupanna Thevar and others Vs The State of Tamil Nadu (supra), it was observed that a hostile witness may not be rejected outright but Court has at least to be aware that prima facie, a witness who makes different statements at different times, has no regard for truth. The Court should therefore be slow to act on the testimony of such witness and normally it should look for corroboration to his evidence. In case of B.Jayraj Vs. The State of Andhra Pradesh (supra), the complainant had turned hostile. No other witness present at the time of transaction between the complainant and the accused were

examined. The complainant disowned his own statement, contents of the complaint cannot be relied on. In the absence of proof of demand for illegal gratification, mere recovery of tainted currency notes from the accused did not establish commission of offence. The demand of illegal gratification by the accused was not proved beyond reasonable doubt. In the case of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others (supra), it was observed that to prove electronic evidence in the nature of secondary evidence, the certificate u/s 65B of the Evidence Act is required to be produced. In the case of Gulabdatagir Ramzan Inamdar and another Vs. The State of Maharashtra (supra), this Court has observed that the prosecution did not produce and prove electronic evidence in the form of recorded conversation though it was available with it. The audio recording was sent for forensic examination for necessary report as to whether the voice in the questioned recording matches with that of the accused. However, the prosecution had not produced on record the said report. The reason for non production was not disclosed. Hence, adverse inference can be drawn against the prosecution. In case of Waman Malhari Jambulkar Vs. The State of Maharashtra (supra), this Court has considered the fact that the statement of the accused recorded by the I.O after the trap was executed but the said statement was never placed on record by the prosecution. In the situation an adverse inference needs to be drawn against the prosecution. It has to be presumed that the explanation of the accused was not placed on record by prosecution as it did not favour the prosecution case and that the said document was deliberately suppressed. In Bismillakha Salarkha Pathan Vs. The State of Maharashtra (supra), it was observed that it will be dangerous to rely on sole uncorroborated testimony of the

complainant as the alleged demand was made by the accused to him. In the case of Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra (supra) this Court had observed that the complainant had conceded that he was having grudge against accused and there is every reason to believe and draw inference that with a view to implicate the accused in false case, informant might have kept alleged bribe amount in the drawer of the accused when he was not present at Police Station on two consecutive occasions before conducting the raid in question. In Vijaykumar Piraji Chinchalkar Vs. The State of Maharashtra (supra) it was observed that demand of illegal gratification is sine-qua-non for constitution of offence under P.C.Act. Prosecution is bound to prove demand and acceptance of money beyond reasonable doubt. In the case of Kanu Ambu Vish Vs. State of Maharashtra (supra), the Supreme Court in the statement made in the panchanama cannot be used in evidence except for the purpose of contradicting the witness whose statement is contained in panchanama but if it is intended to contradict him by writing his attention must before the writing can be proved be called to those parts of it which are to be used for contradicting him. This is required u/s 145 of the Evidence Act but even where a witness is confronted by his previous statement and given an opportunity to explain that part of the statement i.e. put to him, does not constitute substantive evidence. The decision in the case of S.Kasi Vs. The State (supra) was in respect to reference of matter to a larger Bench in the light of the decision of co-ordinate Bench on the similar issue. This decision is not applicable in the present case. The decision in the case of Mrs.Neeraj Dutta Vs. State (Govt. of NCT of Delhi) (supra) delivered in Criminal Appeal No.1669 of 2009, the Apex Court had observed that the view expressed in the case of Satyanarayana

Murthy Vs. District Inspector of Police, State of A.P. and another (2015)10-SCC-152 requires to be reconsidered and the matter was referred to the larger Bench.

24. In view of the observations made hereinabove, the conviction rendered by the Trial Court convicting the appellant is required to be set aside and consequently the accused-appellant deserves to be acquitted.

25. Hence, I pass following order :

ORDER

- (i) Criminal Appeal No.1112 of 2013 is allowed;
- (ii) The impugned judgment and order dated 7th September 2013 passed by learned Special Judge under the Prevention of Corruption Act, Greater Bombay in ACB Special Case No.4 of 2012 convicting the appellant for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 ('P.C. Act') and sentencing him to undergo rigorous imprisonment for one year and pay fine of Rs.1,000/-, and in default to further undergo simple imprisonment for one month and further convicting the appellant under Section 13(1)(d) r/w 13(2) of the P.C.Act and sentencing him for rigorous imprisonment for two years and to pay fine of Rs.2,000/-, and in default to further undergo simple imprisonment for two months, is set aside and the appellant is acquitted of all the charges;
- (iii) Bail bonds stand cancelled;
- (iv) The appeal is disposed of. In view of disposal of appeal, Interim Application No.120 of 2020 does not survive and stands disposed of as such.

(PRAKASH D. NAIK, J.)