IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 453 OF 2015

Satish Ganpatrao Suryavanshi
Age : 37 yrs, Occ – Service,
R/o – 12/A, Dwarka Nagar, Paachgaon,
Tal. Karveer, Dist. Kolhapur **… Appellant**

Versus

State of Maharashtra **… Respondent**

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Mr. Satyavrat Joshi with Mr. Nitesh Mohite i/b Mr. Tejas Hilage, Advocate for the Appellant.
Mr. A. R. Kapadnis, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.
RESERVED ON : 28th OCTOBER, 2020.
PRONOUNCED ON : 18th DECEMBER, 2020.

JUDGMENT : -

RajeP. Aher Digitally signed by RajeP. Aher Date: 2020.12.19 13:21:41 +0530

1. This appeal is preferred against the Judgment and order dated 31st March, 2015 passed by learned Special Judge Ichalkaranji, Dist. Kolhapur in Special Case No.01 of 2008 convicting the appellant for the offence under Section 7 of Prevention of Corruption Act, 1988 (for short "PC Act") and Section 13(1)(d) r/w Section 13(2) of the PC Act, wherein the applicant is sentenced to suffer rigorous imprisonment for two years on each count.

2. The brief facts of the prosecution case are as under: -

i) Original complainant Sadashiv Mahadev Patil is agriculturist and resident of old Pargaon, Taluka - Hatkanangale, Dist.-Kolhapur. On 1st July, 2005 he obtained land Gat No.49 admeasuring 0-H 20-R situated at Pargaon from its owner Uday Rangrao Ghatage by way of registered mortgage by conditional sale. Since then complainant was in possession of the said land. He made application to Talathi, Pargaon for making entry of mortgage in other rights column of 7/12 extract in respect of mortgage of land Gat No.49.

ii) Uday Ghatage gave an application to Talathi Pargaon objecting the entry of mortgage in other rights column of 7/12 extract in favour of complainant, on the ground that, Mr. Patil executed the mortgage by conditional sale under threats. Thereafter, Talathi Pargaon referred the matter to the office of Tahsildar, Hatkanangale.

iii) The complainant received notice of Tahsildar for appearing in the said proceedings on 15th December, 2006 at 11.00 a.m. Accordingly, on 15th December, 2006 complainant appeared in the office of Tahsildar and came to know that the proceedings are with the accused, who is working as clerk in the said office. Complainant met the accused, who gave further dates from time to time.

iv) Sadashiv Mahadev Patil told the complainant that, he would put up his file before Tahsildar as early as possible for giving decision in his favour and for that he has to pay Rs.4,000/- to him. After negotiation, the amount was reduced to Rs.3,000/-. Complainant unwillingly agreed to pay the amount to accused. He was told to bring the amount on 20th March, 2007 in the office of Tahsildar.

v) On 17th March, 2007, complainant approached Anti-Corruption Bureau, Kolhapur (for short “ACB”) and lodged complaint against the accused. The complaint was reduced into writing as per his say. His signature was obtained on the complaint. Panch witnesses were called. They were directed to come to ACB office on 20th March, 2007. Complainant and panch Kaingade and Rekha Patil appeared in the office of ACB at 10.00 a.m. Complainant produced amount of Rs.3,000/-. Anthracene powder was applied to the currency notes. Instructions were given to the complainant and panch. Panch No.1 was instructed to be with complainant in the office of Tahsildar and hear conversation between complainant and accused and observe their movements after acceptance of bribe by accused.

vi) Complainant and Panch No.1- Rekha Patil entered into office of Tahsildar. They met the accused. They were asked to wait out. Accused joined them. He told the complainant and panch to come towards hotel. They went to Bhagwan hotel near the office of Tahsildar. Complainant inquired about his work. Accused asked him, whether he has brought Rs.3,000/-. The complainant took out the currency notes. Accused took currency notes in his left hand and put the same into pocket of his pant. Complainant gave signal to raiding party. Accused was apprehended. Tainted notes were recovered from his possession. Statement of witnesses were recorded. On completing investigation, charge-sheet was filed.

3. Charge was framed on 25th July, 2011. The motive as per evidence of PW-1 is contrary to charge. It reads as follows:-

> *" That between 1-07-2006 to 20-3-2007 you were working as the rights entry clerk in Tahsil Office, Hatkanangale, District, Kolhapur and after 12/12/2006 you being a public servant demanded Rs.4,000/- to the original complainant Sadashiv Mahadeo Patil for making the entry of encumbrances of Conditional mortgage in the 7x12 extract of land Gat No. 49 admeasuring 20-R situated in village old Pargoan and after negotiation agreed to accept Rs. 3,000/- and on 20/3/2007 in the room of Hotel Bhagwan situated near the Tahsil Office, Hatkanangale, accepted Rs.3,000/- from complainant Sadashiv Mahadeo Patil as the gratification other than legal remuneration as a motive or reward for making the official act of making the entry in exercise of your official function and thereby*

committed an offence punishable U/s. 7 of the Prevention of Corruption Act, 1988 and within the cognizance of this Court.

Secondly, on the above said date, time and place you being the public servant as rights entry clerk in the Tehsil office, Hatkanangale, committed the offence of criminal mis-conduct by corrupt or illegal means by demanding Rs. 4,000/- and by accepting Rs. 3,000/- for making the entry of encumbrances of conditional mortgage in the record of 7x12 extract if the above said land i.e. Gat No. 49 from the original complainant Sadashiv Mahadeo Patil and thereby committed an offence punishable U/s. 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and within the cognizance of this Court.

And I hereby direct that you be tried by me on the aforesaid charge."

4. Prosecution examined 4 witnesses. PW-1 Sadashiv Mahadev Patil is the original complainant. PW-2 Rekha Bajirao Patil is panch witness. PW-3 Dattatray Devaji Valavi is the sanctioning authority. PW-4 Hanmant Bhiva Vakade is the Investigating Officer.

5. The appellant has assailed the impugned Judgment and order of conviction on several grounds. Learned counsel for the appellant has urged that, the prosecution has failed to establish the case of demand and acceptance of bribe The complainant's evidence

is contrary to charge. He has not deposed that the amount was demanded for making entry in 7/12 extract. The complainant has denied the contents of portion marked as “A”, “B” & “C” of his statement dated 11th April, 2007. His evidence is not free from doubt. The conduct of complainant is suspicious. He had not mentioned the date on which he met accused. He admitted that PW-4 typed the complaint on computer as per his say on 17th March, 2007. However, typewritten complaint was not produced. PW-2 admitted that, on 17th March, 2007, no writing took place at the office of ACB. However, the complaint bears her signature. The purpose of alleged demand made by the accused was for placing papers before Tahsildar and getting favourable Judgment. Complainant admitted that the power to deliver the Judgment was vested with Tahsildar. Cases were conducted in the Court hall. Proceedings were put up before Tahsildar. Complainant and his advocate were attending proceedings. There was no question of placing papers for getting order in favour of the complainant. PW-3 has stated that, Tahsildar used to give dates to the parties by calling them. The date of decision would be informed by Tahsildar and the Judgment would be delivered by Tahsildar. The matter was not heard. There is nothing to show that, it was due for Judgment. The complainant did not make any complaint to Tahsildar regarding demand of money by accused. Statement of

Tahsildar was recorded by PW-4. However, he was not examined. PW-2 stated that, documents were taken from cupboard of Tahsildar. The demand was not verified. In panchnama Exh.93 it is mentioned that, when the tape recorder was played, no conversation was recorded. Evidence of PW-1 and PW-2 is contrary to each other. The demand of money is not proved beyond reasonable doubt. The accused while recording his statement under Section 313 of Code of Criminal Procedure (for short “Cr.P.C.) has given an explanation that, complainant tried to forcefully thrust the tainted currency notes in rear pocket of his pant. The evidence of PW-2 is doubtful. She could not tell which contents of Panchanama were dictated by her. She did not remember whether Panchanama was typed in hotel. She does not remember whether Tahsildar was present in his room. She did not recollect most of the events which took place at the time of trap. In the post-trap panchnama it is mentioned that statement of the accused was recorded in his own handwriting. However, said statement was not produced in trial. Statement of independent persons namely Umesh Suryavanshi and Kiran Karte who were present in the hotel at the time of trap were recorded. However, they were not examined by prosecution. PW-2 admitted that there was no marking of black pen on flap and admit that 1 c.m. below stitching of flap of pocket, there was marking of black pen. There was no marking on any other part of the pant. This, falsifies the fact that notes were kept inside the pocket of pant as no anthracene powder was found deep inside the pocket. Complainant is interested witness. His evidence has to be considered with caution. PW-2 admitted that in Panchanama Exh.93 it is not mentioned that the currency notes having anthracene powder were sealed. PW-4 stated that in the Panchanama Exh.93 it is mentioned that seized currency notes were taken in custody, however, they were not sealed. The possibility of tampering cannot be ruled out. First Information Report (for short "FIR") Exh.141 is recorded after post-trap Panchanama. PW-3 has no authority to grant sanction for prosecution of accused. He was not the appointing authority. The appointment of the accused was by District Collector. The powers of granting sanction cannot be delegated. There is nothing on record to show that the charge of granting sanction to the prosecution was given to PW-3. He was not appointing and removing authority.

6. Learned advocate for the appellant relied upon following decisions :-

(1) *State of Punjab Vs. Madan Mohan Lal Verma* 2013 DGLS (SC) 633.

(2) *Panalal Damodar Rathi Vs. State of Maharashtra* 1979 DGLS (SC)58.

(3) *Kashinath Ahire Vs. The State* (Delhi Administration) 2020 ALL MR (Cri) 288.

(4) *Suraj Mal Vs. The State (Delhi Administration)* AIR 1979 SC 1408.

(5) *State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede* 2009 DGLS (SC) 1109.

(6) *Khusalchand Yashwant Gaikwad Vs. The State of Maharashtra*, 2018 SCC Online Bom 1073.

(7) *Laxman Nanabhau Bangar and Others Vs. State of Maharashtra*, 2019 DGLS (Bom.) 710.

(8) *Bismillakha s/o Salarakha Pathan Vs. State of Maharashtra* 2004 ALL MR (CRI) 1341.

(9) *KrishnaKumar Vs. Divisional Assistant Electrical Engineer,* 1979(4) SCC 289.

(10) *Mohanlal Keshavlal Vs. State*, AIR 1956 Bombay 504.

(11) *Bhauro Manekar Vs. State of Maharashtra,* 1980 Mh.L.J. 445.

(12) *Maruti Shinde Vs. State of Maharashtra* in Criminal Appeal No. 10 of 2001.

(13) *State of Maharashtra Vs. Bhikan S. Maniyar* in Criminal Appeal No.144 of 2020.

7. Learned APP submitted that, there is overwhelming evidence on record to establish the charges framed against the accused. The twin requirement of demand and acceptance of bribe to constitute offences alleged against the accused were proved beyond doubt. The evidence of PW-1 establishes the demand and acceptance of amount. The version is supported by

PW-2. The documentary evidence corroborates the version of witnesses. PW-2 has corroborated the evidence of PW-1. Her evidence could not be shaken in any manner through the cross examination by defence. PW-2 had accompanied PW-1 in the office of accused. She was in close proximity with the accused and complainant at the time of demand and acceptance of bribe amount. It is proved that the accused demanded amount of Rs.3,000/- and accepted the same. The acceptance of the amount was corroborated by presence of the anthracene powder on the pant pocket and hands of the accused. He could not give plausible explanation to rebut the presumption under Section 20 of the PC Act. The tainted currency notes were recovered from possession of accused. The defence of the accused that the amount was thrust, cannot be accepted. PW-3 has authority to issue sanction order. This witness has produced documents on record to establish that he was empowered to grant sanction for prosecution. There was no failure of justice while according sanction as envisaged under Section 19 of the PC Act. PW-4 Investigating Officer has explained all the events right from inception till filing of charge-sheet. There are no infirmities in the evidence of witnesses. The conviction of the accused deserves to be confirmed.

8. I have scrutinized the evidence on record. The complainant's evidence indicates that, in 2005 Uday Ghatage mortgaged 20 Guntha land of Gat No.49 to him by conditional sale. He submitted application to Talathi of old Pargaon for entering his name to 7/12 extract of said land. Uday Ghatage made an application to Talathi, objecting the application of complainant. The matter was then referred to Tahsildar. The complainant received notice to attend the proceedings before Tahsildar. He attended the office of Tahsildar on 15th December, 2006. He met accused who told him that he is looking into the matter and gave him further date of 22nd December, 2006. Subsequently, also dates were given to the complainant by accused. The complainant filed his say through his advocate. The accused told him that, he will send the matter to Tahsildar for speedy disposal and for giving decision in his favour and for that purpose he has to pay Rs.4,000/- to him. The amount was reduced to Rs.3,000/-. The complainant was told to bring the amount on 20th March, 2007. On 17th March, 2007 complainant

approached ACB, Kolhapur and gave complaint. He visited ACB on 20th March, 2007. Panchas were called by ACB. The complainant produced currency notes of Rs.3,000/-. Trap was arranged. Currency notes were handed over to the complainant. Panch witness was told to accompany the complainant. At about 12.30 noon they proceeded to office of Tahsildar. Complainant and PW-2 Rekha Patil entered Tahsil Office. Accused told them to stay out of the office and he would join them within five minutes. The accused came out of the office and took them towards Bhagwan hotel. They sat in the backside room of the hotel. The complainant made inquiry about his work. The accused asked him whether he has brought Rs.3,000/-. The complainant told him that he has brought the money. On demand, the complainant removed the amount which was accepted by the accused and kept it in the right side back pocket of his pant. The complainant came out of the hotel and gave signal to raiding party. Accused was apprehended. Currency notes were recovered. The pant pocket and hands of the accused were examined. The requisite procedure was completed.

9. PW-2 Rekha Patil is the panch No.1. She deposed that, she was directed to visit office of ACB on 17th March, 2007. They were instructed to attend the ACB office on 20th March, 2007. Hence, they attended the office of ACB on 20th March, 2007 at about 10.00 a.m. Complainant was present. He narrated his grievance to the panch witnesses. She referred to the procedure conducted by the ACB for arrangement of trap. Requisite instructions were given to her, other panch and the complainant. She stated that, all of them proceeded towards the office of Tahsildar. She accompanied complainant. They entered into the office of the accused. The accused came out of the office after some time and took them towards Bhagwan hotel. Complainant inquired about his work. Accused asked whether he has brough Rs.3,000/-. He demanded the said amount. Complainant took out the currency notes which were accepted by the accused and kept it in the rear pocket of his pant. Complainant gave signal to raiding party. Accused was apprehended. Tainted currency notes were recovered from his possession. His hands and the pant pocket were examined under UVL. It showed signs of anthracene powder.

10. PW-3 Dattatray Valavi is the Sanctioning Officer. According to him, the accused was appointed by order dated 18th March, 2004 as clerk-cum-typist in the office of Tahsildar Shirol. On 4th October, 2007 letter was issued by Superintendent of Police Anti Corruption Bureau along with papers of investigation to District Collector for according sanction to prosecute the accused under the provision of PC Act. He went through the papers of investigation and found that the accused had accepted the bribe. He accorded sanction for prosecuting the accused. Sanction order was produced and marked as Exh.120. In the re-examination he stated that, confidential letter dated 4th October, 2007 by ACB was given to District Collector for according sanction. It was marked as Exh.123. Certificate dated 11th April, 2008 of handing over charge of District Collector, Kolhapur to him was produced and marked as Exh.124.

11. PW-4 Hanmant Bhiva Wakade conducted investigation. He has narrated the events occurred right from inception. He stated that the complainant had approached on 17th March, 2007. He lodged complaint with ACB. According to

him complainant lodged oral complaint stating that, accused had demanded Rs.4,000/- for making entry of encumbrances of mortgage in 7/12 extract of his land and by negotiation he agreed to accept Rs.3,000/- as bribe. He also stated that, he had given application to Talathi but the mortgagor has taken objection for making entry and hence the file was sent to office of Tahsildar. The complaint was reduced into writing. Panch witnesses were called. Instructions were given to the complainant and panch witnesses. Pre-trap Panchanama was recorded. All of them proceeded to office of Tahsildar for trap. The complainant and PW-2 entered into office of Tahsildar. After sometime the complainant gave signal. Tape recorder was given to the complainant. Conversation could not be recorded in the tape recorder. The accused accepted the amount. The raiding party apprehended the accused. Amount was recovered. Accused was arrested. Trap panchanama recorded. Sanction was obtained. On completing investigation, charge-sheet was filed.

12. The law in respect to the prosecution under Section 7 r/w Sections 13(1)(d) and 13(2) of PC Act is well settled. The demand of illegal gratification is sine-qua-non for constituting an

offence under the Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable. Unless there is evidence to prove payment of bribe or to show that amount was accepted voluntarily as bribe, the accused cannot be convicted for such offence. Mere receipt of the amount by accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Section 20 of the PC Act relates to the presumption against the accused. The explanation of accused to rebut presumption is considered on the touchstone of preponderance of probability. Before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution.

13. PW-1 has brought on record, the application for entry of name in 7/12 extract made by him (Exh.43) The rojnama with regards to the proceedings before the Tahsildar Hatkanangale was exhibited in evidence as Exh.44. The rojnama indicate that the proceedings were before the Tahsildar on 15th December, 2006. Uday Ghatage was the applicant and complainant was respondent. The presence of applicant and his advocate as well as the complainant is shown in the rojnama. The proceedings were adjourned to 22nd February, 2006. Subsequently the application was preferred at the

instance of applicant Ghatage for adjournment. Similar application was also preferred at the instance of the complainant and the case was adjourned to 5th January, 2007. Thereafter, on 5th January, 2007 on application for adjournment preferred at the instance of Uday Ghatage, the case was adjourned to 22nd January, 2007. Thereafter submissions were tendered at the instance of the applicant on 22nd January, 2007. Complainant was present. Case was adjourned to 9th February, 2007. On the next day applicant was present and advocate for the complainant was present and case was adjourned to 15th February, 2007. Both the parties were absent on 15th February, 2007 and the matter was adjourned to 20th February, 2007. Subsequently, reply was tendered by complainant. Applicant was present and proceedings were adjourned to 27th February, 2007. Written say of the complainant is adduced in evidence and marked as Exh.45. Hand written complaint of the complainant dated 17th March, 2007 (Exh.46) was placed on record. The application preferred by Uday Ghatage dated 9th June, 2006 objecting the entry of the complainant in 7/12 extract was marked as Exh.51. The contents of this document indicate that, according to applicant Uday Ghatage, undue advantage of his ill health was taken by the complainant and under threat the document relating to Gat No.18 owned by him was prepared. At the same time document relating to Gat No.19 was also prepared under threat. He came to know that encumebrances would be entered by the complainant. He has entered his name on documents of several farmers and cheated them. The complainant prepared the document relating to Gat No.18 and hence the request of the complainant be rejected.

14. Scrutiny of evidence of PW-1 indicate that he is not reliable witness. His evidence is contrary to charge. He has not stated that the amount demanded was for making entry in 7/12 extract. In examination-in-chief he did not mention date of demand. The rojnama of the proceedings before Tahsildar shows that, PW-1 and the opponent appeared in the proceedings on several occasions. Dates were given by accused. Say was filed by PW-1. The complainant had appeared. The proceedings were before the Tahsildar on 15-12-2006, 22-12-2006, 05-01-2007, 22-01-2007, 09-02-2007, 15-02-2007 and 20-02-2007. On these occasions there was no demand of bribe at the instance of the accused. The rojnama also do not indicate that the case was due for delivering the final Judgment. The question of demanding bribe amount by the accused for placing the papers before the Tahsildar for giving favourable decision does not arise. The charge framed against the accused alleges that, the bribe amount was demanded for making entry in the 7/12 extract in respect to the property in the name of the

complainant. According to the complainant he went to the office of ACB on 17th March, 2007. The complaint was reduced into writing on 17th March, 2007. On perusal of the complaint Exh.46 it can be seen that the complaint has nowhere mentioned the date on which the demand of Rs.4,000/- was made by the accused. In the complaint it is mentioned that, the accused told him that he would place the file before Tahsildar expeditiously and the Judgment will be delivered in his favour. It is pertinent to note that, the power of giving decision was vested with Tahsildar. PW-1 did not make any complaint to Tahsildar regarding alleged demand of money by the accused. The complainant tried to cover up his inaction by voluntarily stating that peon did not allow him to meet Tahsildar. However, he admitted that he had not stated before the ACB Officer while recording his statement that peon did not allow him to meet Tahsildar. It is also pertinent to note that, PW-1 has admitted that the proceedings were conducted in Court hall and there was no difficulty to disclose the fact of demand of money by accused to Tahsildar in the Court hall. PW-1 has also stated that, PW-4 had typed his complaint on computer as per his say on 17th March, 2007. It took about one hour to type the complaint. It was read over to him and after confirming its correctness he put his signature. However, the typewritten complaint was not produced by the prosecution. The complainant denied the contents of portion marked as “A”, “B” & “C” of his statement dated 11th April, 2007. The prosecution case is that, tape recorder was given to the complainant and it was attached on his person to record the conversation between him and the accused. In supplementary statement, PW-1 stated that accused sent message through advocate Patil that he should meet him and he alone went to meet him. However, he denied the said fact in his cross examination. In his statement it was mentioned that when he met the accused as per the message of Advocate Patil, the accused demanded Rs.3,000/-. However, the said version in statement dated 11th April, 2007 has been denied by him in the cross examination. In his statement dated 11th April, 2007 he stated that he do not remember the date of demand of bribe. However, he denied the said fact in the cross examination. He deposed that he met accused on 17th March, 2007 and the demand was made on 17th March, 2007. There is improvement in his version. His conduct is suspicious. In cross examination he admitted that he had not stated while lodging complaint the fact that he met accused on 17th March, 2007 and that he demanded Rs.4,000/- which amount was settled to Rs.3,000/-. According to him the accused demanded money for giving Judgment in favour of the complainant by Tahsildar. However, he did not disclose this fact to his advocate. According to him the demand of bribe was made to keep file before Tahsildar. However, the file was already before Tahsildar. The demand of amount was for recommending to Tahsildar to give favourable Judgment. However, although opportunity was available to the complainant to lodge his protest before the Tahsildar, he did not take any such action. He admitted that in the statement it was written that instructions were given to him to request accused to put file before Tahsildar for quick decision. Accused told him that if amount is not paid he would not produce file before Tahsildar. He went to Tahsildar Office on date fixed in case about 7 to 8 times. His opponent was not present on date. He admitted that he used to sign rojnama. The contents of rojnama are contrary to version of PW-1. The version of the complainant and the panch witnesses about demand and acceptance of the amount in the hotel is doubtful. PW-1 admitted that at the entrance of the hotel there is counter table. There was no talk about money till reaching hotel Bhagwan on the date of trap. He could not state any reason why words used by accused were not written in his statement. The defence of the accused reflected in the statement under Section 313 of Cr.P.C. He admitted that, Uday Ghatage gave complaint to talathi not to enter his name. He was confronted by letter dated 9th June, 2006. According to him for the first time he had seen application of Ghatage. He filed his reply through advocate. It is difficult to believe that reply was filed without reading complaint/application of Uday Ghatage. The proceedings were already before Tahsildar and the same were attended by parties and Advocate. Thus, there is no question of demand of bribe for placing papers before Tahsildar.

15. In the Panchanama Exh.93 it is mentioned that, when the tape recorder was played, no conversation was recorded therein and the complainant when questioned responded that, he could not handle the tape recorder. The prosecution had not verified the alleged demand and although the version of the complainant was suspicious the raiding party proceeded with the trap.

16. The prosecution is relying on the evidence of PW-2, who had allegedly acted as panch witness. She has deposed that, the complainant had narrated his transaction with Ghatage and also referred to the demand of bribe amount by the accused. On perusal of her evidence, however, it is seen that the complainant did not state the date of demand of bribe by the accused. It is also pertinent to note that, the alleged written complaint of the complainant Exh.46 was reduced in writing on 17th March, 2007. PW-2 in her evidence has not referred to such complaint. On 17th March, 2007 she had visited office of ACB along with other panch. She has not referred to

execution of any complaint. on that day. The signature of PW-2 and the other panch is appearing on the complaint. According to her, she signed the complaint on 20th March, 2007, however, surprisingly there is no date below the signature of PW-1 and the other panch. Pre-trap panchanam was exhibited in evidence through PW-2. There is narration of the version of PW-1. However, it is apparent that the complainant had not stated the date of demand by the accused. Thus, there are discrepancies in the evidence of PW-1 and PW-2. The first demand is under clouds of suspicious. PW-2 has stated that the tape recorder was played, however, there was no conversation in the tape recorder. She also deposed that, the case papers were taken from iron cupboard situated in the office of Tahsildar by the accused. She admitted that there was no writing on 17th March, 2007 in the office of ACB and she was called on 20th March, 2007. This witness has also stated that, in their presence inquiry was made with complainant about his complaint. As per the complaint, money was demanded for making entry of encumbrances in 7/12 extract and there is no other reason. Thus, there are contradictions with regards to the reason for which the alleged bribe was demanded by the accused. In Exh.93 it is mentioned that the documents were taken out from the iron cupboard in the room having board of Tahsildar cum Executive Magistrate and Appellate Authority. Thus, the version of the complainant that the documents were to be placed before the amount was taken for placing documents and for recommending the favourable Judgment by Tahsidar suffers from doubt. The version is obviously concocted. The evidence of PW-2 does not inspire confidence. She has deliberately avoided answering questions put to her. She stated that, there was no other person in the back room of the hotel where complainant, accused and she was sitting at the time of alleged demand and acceptance of amount. She did not remember how many rooms were crossed by them at the relevant time. She also stated that, ACB did not record statement of any person in the hotel. At the distance of 2 to 3 feet after entrance there is counter. She did not remember whether someone were present at the counter or not. She did not remember whether customers were sitting on the table. She did not remember whether waiters were present in the hotel. ACB did not record statement of any person in the hotel. She did not remember whether ACB prepared sketch map of the hotel. She also stated that, she cannot tell which content of the panchnama were dictated by her and Panch No.2. She did not remember whether Tahsildar was present or not in his room when panchanama was typed. She did not remember whether ACB gave information to Tahsildar or not. She did not remember whether it happened that the contents of the Panchanama were dictated by ACB Officer. She did not remember whether conversation was recorded in tape recorder or not before pre-trap panchanama. While recording statement by ACB officer she has not stated the fact of bringing tape recorder and demonstration of tape recorder. She did not remember as to whether she stated or not that the tape recorder was given to complainant and he kept the same in his pocket. She admitted that in pre-trap Panchanama it is not mentioned that the currency notes having anthracene powder were sealed. PW-2 has stated that the alleged demand made by the complainant was for creating the charge of mortgage which is contrary to the version of complainant. She admitted that in her presence inquiry was made with complainant about his complaint. The proceedings of making entry in 7/12 extract were to be conducted by Talathi and Circle Officer. She did not recollect most of the events which took place at the time of alleged trap. Her version gave the impression that she is feigning ignorance. In the cross examination, she admits that there was no marking of black pen on flap and one c.m. above and just below stitching of flap of the back pocket of the pant, there is marking of black pen. Except above marking there is no marking of black pen on any other part of pant. The fact that the notes were kept in the pant pocket is doubtful as no anthracene powder was found deep inside the pocket. She admitted that in paragraph-2 of pre-trap panchanama Exh.93, it is not mentioned that the currency notes having anthracene powder were sealed. The tape recorder and cassette were not produced during trial. In panchanama Exh.93 it was stated that statement of accused was recorded in his handwriting. It was not produced. There is variance in FIR Exh.141 and post-trap panchanama Exh.93 regarding finding of anthracene powder on hands of accused.

17. It is pertinent to note that, PW-3 Dattatray Valavi was Additional Collector of Kolhapur. He stated that Tahsildar used to give dates to the party by calling them. The date of decision would be informed by Tahsildar and the Tahsildar would deliver the Judgment. The statement of Subhash Bhagade was recorded by PW-4. This fact is admitted by PW-4 in his evidence. The prosecution mentioned name of Subhash Bhagade as the witness to be examined. However, he was not examined. Statement of independent witnesses Umesh Suryvanshi and Kiran Karte, who were present in the hotel at the time of alleged trap were recorded and they were named as witnesses to be examined. However, they were not examined by prosecution. PW-4 was questioned about finding of anthracene powder on the hands of the accused and he admitted that in complaint Exh.141 it is mentioned that, anthracene powder was stacked in different places at front deeps of fingers of right hand. FIR

was recorded after trap Panchanama. There is variance between these two documents. Pre-trap Panchanama it is mentioned that, traces of anthracene powder were found on both hands. Considering the infirmities in the evidence the defence of the accused tendered by way of written submission as part of his explanation under Section 313 of Cr.P.C. assumes importance. Accused have stated that the matter of complainant was received by the Tahsildar office. As per procedure, dates were given by Tahsildar. The appellant was not empowered to give dates of the hearing. The complainant had engaged advocate and the proceedings were in progress. The complainant had approached the accused and asked him whether he would influence the Mamledar for getting favourable order for him which was refused by the accused and hence false case was lodged against him by the complainant. The lunch time of Tahsildar office is between 2 to 2.30 p.m. The accused used to bring tiffin as he used to travel from Kolhapur to Hatkanangale for service. On the date of trap he had gone for lunch. While washing his hands after lunch at the wash basin, the complainant tried to thrust the amount in his hip pocket. The accused pushed the money. Panch were not present in the hotel. Customers were their in the hotel. The persons available in hotel were not examined and false case was concocted against him. The accused never demanded money from the complainant, nor accepted the same and not recovered from him. For not supporting the demand of the complainant, false case is registered by him in connivance with ACB Officer. His appointment was by District Collector. PW-3 is not empowered to grant sanction for prosecution. It was granted without perusing the documents.

18. PW-4 has stated that, complaint Exh.46 does not mention on which date accused demanded money for the first time. At the time of lodging complaint, complainant had not stated that on that day he met accused. On the basis of complaint he came to know that the complainant had appointed his advocate for conducting proceedings in office of Tahsildar. The complaint Exh.46 do not bear his handwriting. The name and signature of writer is not mentioned on the complaint. Complaint Exh.141 does not mention about the use of tape recorder for trap. Cassette was inserted in tape recorder. Conversation between complainant, panch and ACB Officer was to be recorded in the tape recorded before proceeding for trap. He has not seized the Cassette. He recorded statement of Tahsildar Subhash Bhagade. He recorded statement of waiter Kiran Karte. In the said statement it was revealed that the accused came into the hotel with tiffin for taking meal as usual and he sat inside the room and demanded empty plate with waiter Karte and he provided the

plate. He recorded statement of hotel owner Umesh Suryavanshi and in the said statement also the above fact was revealed. On the date of trap names of customers in the hotel were not revealed. In the panchnama it is not mentioned whether there were windows or doors to the room in the hotel. It is apparent that deliberately the independent witnesses were not examined by the prosecution. PW-4 admitted that, the version of those witnesses supports the defence. It is apparent that the accused had visited the hotel in normal course. Thus the theory of presence of complainant and panch witness, demand and acceptance of the amount in the hotel is apparently concocted. It is not supported by any independent evidence. It is difficult to accept that the incident had occurred in hotel room. There is no witness from the hotel, who supports the prosecution case.

19. Thus, on analysis of evidence on record I am of the considered opinion that, the prosecution case suffers from serious doubt. The version of the witnesses is not trustworthy and the accused is entitled for benefit of doubt.

20. The defence has also challenged the power of PW-3 to issue sanction order. From the evidence of PW-3 it is evident that he was working as Additional Collector, Dist. Kolhapur. He was knowing

that accused was working as clerk in the office of Tahsildar Hatkanangale. Collector of the district is appointing and removing authority of accused. He was appointed by District Collector, Kolhapur vide order dated 18th March, 2008. The appointment order is marked as Exh.119. He further stated that, papers were received by the office of District Collector for according sanction to prosecute accused. He went through the papers and read the same. He found that the accused had accepted the bribe and he was satisfied about it. He accorded sanction. The sanction order was marked as Exh.120. He had not stated as to why he was required to issue sanction order when the documents were forwarded by Superintendent of Police ACB to District Collector, Kolhapur for according sanction and since the collector is the appointing and removing authority of accused. He has not mentioned as to which documents were read and sent for granting sanction were directed to him and who had forwarded the said documents to him. In cross examination he deposed that the post of Additional Collector is subordinate to Collector. Both are different posts. Unless the charge is given, the Additional Collector cannot work as Collector. At the relevant time Pravin Darade was collector of Kolhapur. Charge of Collector was with him. he cannot say whether he gave document of charge of Collector to ACB. He admitted that letter dated 4th October, 2007 was in the name of

Collector, Kolhapur. He did not recollect whether the statement of Tahsildar was in the documents of investigation papers. Number of documents received is mentioned in Exh.120. It is not mentioned as to which documents were read. He read statement of accused. He had not prepared notes. He has not put his signature on documents verified by him. He cannot tell the date on which he received the papers. The witness was re-examined by the prosecution. At that stage documents were filed with application Exh.121 and list Exh.122 by the prosecution. The witness then referred to confidential letter dated 4th October, 2007 of Superintendent of Police ACB given to District Collector, Kolhapur to accord sanction. It was marked as Exh.123. The certificate dated 11th April, 2008 about handing over the charge of District Collector, Kolhapur to the witness was produced before the Court. It is marked as Exh.124. Covering letter dated 16th April, 2008 sent to ACB along with sanction was produced. It was marked as Exh.125. He admitted that certificate of handing over the charge was prepared on 11th April, 2008. The period of leave of Pravin Darade was from 15th April, 2008 to 25th April, 2008.

21. The sanction for prosecution can be granted by the authority competent to remove person. The appointment authority was Collector. PW-4 was subordinate to Collector. He was working as

Additional Collector. The prosecution is relying upon the order handing over the charge to PW-4. The documents were produced on re-examination of the witness. The question which arises for consideration is that assuming that the charge was handed over to PW-4, on account of leave of District Collector, whether the charge of according sanction to prosecute the accused stands transferred to him. There is no satisfactory evidence on record to substantiate this fact. The approach of PW-4 appears to be casual. Learned counsel for the appellant has drawn my attention to some provisions of Maharashtra Civil Services Rules to bring home and contended that District Collector was appointing and removing authority.

22. It is submitted that, disciplinary authority cannot be inferior to the appointing authority. In the present case the collector being the appointing authority of the applicant, the additional collector did not have the power to remove him from service. Article 311 (1) of the constitution of India creates a safeguard where in no person who is a member of the Civil services of the Union or the state or an All Indian Service or a civil service or who holds a civil post under the union or State shall be removed by an authority sub ordinate to him. In the present case PW-3 at the relevant time was functioning as the Additional collector of Kolhapur. PW-3 in his examination in Chief makes a positive assertion that the Collector of

the District is the Appointing and the removing Authority of the Appellant/accused. The Appointment order of the Appellant was produced on record by the said witness and the same is at (Exh.119). The PW 3 admits in his cross examination that the Post of the Additional Collector and Collector are different. The onus of proving a valid sanction is on the prosecution and hence it was incumbent upon the prosecution to bring on record any documents which would demonstrate that the power of Appointment and the removal of the Appellant vested with the Additional Collector. The prosecution has not produced any documents in this regard. The aforesaid witness was re-examined by the prosecution and the documents at Exh.124 is a charge report dated 11th April, 2006. It can be seen that the Collector holding regular charge was proceedings on leave and hence the Additional Charge of the District was being handed over to the PW-3. In the aforesaid charge report it is no where mentioned that the PW-3 had the authority to remove the Appellant or persons of equivalent rank from service and hence (Exh.124) would not come to the aid and assistance of the prosecution. In fact Article 311 (1) does not permit such a delegation of powers and hence assuming without admitting that there was such a delegation, then the same would nonest in the eyes of law and the same would be in conflict with the constitutional safeguard created under Article 311 (1) of the

Constitution of India.

23. Learned Advocate relied upon decision of apex Court in the case of *KrishnaKumar Vs. Divisional Assistant Electrical Engineer,* (Supra). It is observed by apex Court that Article 311(1) of the Constitution of India provides that no person who is a member of civil service of the union or state shall be dismissed or removed by authority subordinate to that by which he was appointed. In the case of *Bhauro Manekar Vs. State of Maharashtra,* (Supra), it was observed that the Sub-divisional Officer being subordinate to Collctor cannot remove from service officer appointed by Collector. In the case of *Mohanlal Keshavlal Vs. State* (Supra), this Court has observed that appointing authority and removing authority is General Manager of Railway and sanction by traffic Superintendent is not valid. In the case of *Maruti Shinde Vs. State of Maharashtra* (Supra), it was observed that Sub-divisional Officer was not competent to accord sanction. The accused was appointed by Asst. Collector and sanction to prosecute was granted by S.D.O. The power to grant sanction to prosecute has to be exercised by person who is not subordinate to appointing authority. Similar view was taken in the case of *State of Maharashtra Vs. Bhikan S. Maniyar* (Supra) by this Court. I find force in the submission of learned counsel for

applicant. The prosecution has not satisfied that PW-3 has authority to accord sanction.

24. Apart from the infirmities in sanction order as stated above, the prosecution has failed to prove beyond reasonable doubt the demand and acceptance of the bribe amount.

25. In the case of *State of Punjab Vs. Madan Mohan Lal Verma* (Supra), the Supreme Court has observed that demand of illegal gratification to sine-qua-non for constituting an offence under PC Act. While invoking the provisions of Section 20 of the Act the Court is required to consider the explanation occurred by accused on the touchstone of preponderance of probability and not on proof beyond reasonable doubt. Before the accused is called upon to explain the finding of amount, the foundational fact must be established by the prosecution. The complainant is interested and partisan witness concerned with success of trap and his evidence must be tested in the same way as that of any other interested witness. In the case of *Panalal Damodar Rathi Vs. State of Maharashtra* (Supra) it was observed that, the complainant in a bribery case is not better position that accomplice or abettor. In the case of *Kashinath Ahire Vs. The State,* (Supra) this Court had observed that merely because tainted notes were recovered from the

accused, he cannot be convicted in the absence of proof of demand of bribe. In the case of *State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede* (Supra) it is observed that, the demand of illegal gratification is sine-qua-non for constituting of offence under the provisions of Act. For arriving at conclusion as to whether all ingredients of illegal gratification, viz. demand, acceptance and recovery have been satisfied or not, facts and circumstances brought on record must be considered in their entirety. Presumptive evidence under Section 20 must be considered, but the standard of burden of proof on the accused vis-a-vis standard of burden of proof on prosecution would differ. Even in case the charge on accused, prosecution must prove foundational fact. In *Khusalchand Yashwant Gaikwad Vs. The State of Maharashtra* (Supra) this Court has observed that mere possession and recovery of the currency notes from accused without proof of demand will not bring home the offence under Section 7 of the PC Act. In the case of *Laxman Nanabhau Bangar and Others Vs. State of Maharashtra*, (Supra) has observed that, the sanctioning authority was not vested with power to remove employees. The communication relied upon by the prosecution does not appears by the concerned authority. There were no allegations of power of appointing authority to accord sanction. In the case of *Bismillakha s/o Salarakha Pathan Vs. State of Maharashtra* (Supra) this Court has observed that, the statement of the accused recorded during investigation is required to be produced by prosecution for non-production and adverse inference can be drawn.

26. In view of the settled principles of law and applying the same in the present case, it is trite that prosecution has failed to prove its case beyond reasonable doubt and the accused deserves to be acquitted. Hence, I pass the following order:-

O R D E R

(i) Criminal appeal No. 453 of 2015 is allowed.

(ii) The Judgment and order dated 31st March, 2015 passed by learned Special Judge Ichalkaranji, Dist. Kolhapur in Special Case No.1 of 2008 convicting the appellant for the offence under Section 7 of Prevention of Corporation Act, 1988 and Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act is set aside and the appellant is acquitted.

(iii) The bail bond stands cancelled.

(iv) Fine amount if paid be refunded to the appellant.

(v) Criminal Appeal stands disposed of accordingly.

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

(PRAKASH D. NAIK, J.)