

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

CRIMINAL APPEAL NO. 744 of 2012

1 Sanjaysing Sursing Mulmule

Age 45 yrs, Occ. Motor Vehicle
Inspector, RTO Office,
Checkpoint Kagal, Tal. Kagal,
Dist:Kolhapur, Resident of
Vidyanagar Colony, Bhigwan
Road, Baramati, Dist - Pune

2 Chandrakant Parashram Jagtap

Age 32 yrs, Rajesh Apartment,
Flat No.10, Nemanath Nagar,
Vishram bagh, Sangli, Dist Sangli .. Appellant

Versus

The State of Maharashtra

(At the instance of Anti Corruption
Bureau, Kolhapur) .. Respondent

...

Mr. S.V. Marwadi with Ranjeet Pawar for appellant nos.1 and 2.
Mr.R.M. Pethe, APP for the State.

WITH

CRIMINAL APPEAL NO. 1219 of 2012

(For Enhancement of Sentence)

The State of Maharashtra .. Appellant

Versus

1 Sanjaysingh Sursing Mulmule

2 Chandrakant Parasharam Jagtap .. Respondents

Mr.R.M. Pethe for the appellant State.
Mr.Shyam Marwadi for respondent no.1.
Mr.Ranjeet Pawar for respondent no.2.

Tilak

CORAM : BHARATI DANGRE, J.
RESERVED : 17th MARCH 2021
PRONOUNCED : 28th APRIL 2021.

JUDGMENT:-

1 This Appeal is preferred by two appellants, the appellant no.1 being a Motor Vehicle Inspector, Regional Transport Office and posted at check post Kagal, District Kolhapur and the appellant no.2, his accomplice alleged to have been acting on behalf of appellant no.1, being aggrieved by the judgment dated 19/20th June 2012 passed in Special Case No. (ACB) 6 of 2008, by the Special Judge at Kolhapur. The appellant no.1 was charged and tried for offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (for short 'P.C. Act'), and on conviction under Section 7, has been sentenced to suffer RI for six months and fine of Rs.1,000/-, in default RI for one month, and on conviction under Section 13(1)(d) and 13(2) to suffer RI for one year and to pay fine of Rs.1,000/- in default to suffer RI for one month. The appellant no.2 is convicted under Section 12 of the P.C Act and sentenced to suffer for a term of six months and to pay fine of Rs.1,000/-, in default to suffer RI for one month. The substantive sentence against appellant no.1 is directed to run concurrently and sentence in default to run consecutively. On conviction, the appellants have deposited the fine amount and the substantive sentences imposed being suspended, they are presently on bail.

2 The prosecution case in nutshell is that the appellant no.1 (Accused no.1) a Motor Vehicle Inspector, in Kagal check post, is a public servant. Since there were complaints of bribe being often accepted and demanded from the drivers passing through Kagal check post, a trap was laid by PW 6, the complainant with the assistance of PW 2, the truck driver who was to clear Kagal check post on the date of incident, with the assistance of two panchas, one being PW 3. It is alleged that on 5th June 2007, A1 demanded Rs.500/- from the truck driver (PW 2), the bribe was agreed as Rs.200/-, which was paid on the direction of A1 to A2 who is alleged to have accepted the amount. On the panch (PW 3) giving signal of payment of bribe by PW 2 to A2, the raiding party arrived and apprehended the accused persons and in the process, amount of Rs.200/- was recovered from Accused no.2.

3 In the backdrop of the aforesaid prosecution case, the appellants were charged by the Special Judge initially on 4th August 2010 as under :-

“That on 05/06/2007 at about 5.30 p.m in the check post of R.T.O office, Kagal, you accused Nos.1 being a public servant working as Motor Vehicle Inspector in R.T.O. Office, Kolhapur, and accused No.2 being his punter, as per your earlier demand, accused no.2 Chandrakant accepted Rs.200/- from truck driver Chikkaswami Nagraju R/o Daar No.D-4, Post-Halgur, Tal: Malavili, District: Mandaya, Karnataka State, for

accused no.1 Sanjaysing as gratification other than legal remuneration as a reward for not filing complaint and thereby committed an offence punishable u/s.7 of Prevention of Corruption Act, 1988 and within my cognizance.

That on the above said date, time and place you accused Nos.1 being a public servant working as Motor Vehicle Inspector and accused No.2 working as his punter committed the offence of criminal misconduct by accepting accused No.2 at the behest of accused no.1, Rs.200/- from truck driver Chikkaswami Nagraju by corrupt means and thereby committed an offence punishable u/s.13(1)(d) read with Section 13(2) of the said Act and within my cognizance.

4 By order dated 18th June 2012, the charge came to be altered and added at the stage of the judgment, the modification, being the accused no.2, who is not a public servant, came to be charged only under Section 12 of the P.C.Act. The Accused no.1 came to be charged under Section 7 and Section 13(2) read with 13(1)(d) of P.C. Act in his capacity as a public servant for accepting gratification other then legal remuneration through accused no.2 as a motive or reward for doing or favoring to do any official act in exercise of the official function and for the act of commission of criminal misconduct by corrupt or illegal means by obtaining for himself a pecuniary advantage. Accused no.2 was charged for abetting an offence under Section 7 committed by Accused no.1 and thereby, charge was framed under Section 12 of

the P.C. Act. On the charge being altered, the prosecution and the accused were allowed to lead additional evidence in alteration of the charge, which opportunity was declined.

5 The trial proceeded on the basis of the charge framed and the prosecution relied upon six witnesses to prove its case which include the translator as PW 1, the driver Chikkaswami Nagraj (PW 2). PW 3 a panch witness, PW 4 – an acquaintance of accused no.2, PW 5 cashier at Kagal check post and PW 6 the complainant who lodged the complaint, resulting into an FIR.

Pertinent to note that PW 2 – the truck driver and PW 5 – the cashier turned hostile and therefore, prosecution has relied wholly on the testimony of the panch witness and the complainant (PW 6), who were part of the party which led the raid.

6 The learned counsel for the appellants Mr.Marwadi, drawing advantage from the aforesaid situation submit that there is no independent witness examined by the prosecution in support of its case and since it is a chance trap, Shri Marwadi would submit that there is no complaint brought on record to show that Officers at Kagal check post were demanding money for clearance of the transit pass for the vehicles and in absence of such an evidence on record, according to him, the case of the prosecution becomes doubtful. According to the learned counsel, the demand by the accused no.1 and the tender of the bribe by

PW 2 is not proved and further as far as accused no.2 is concerned, the submission is that the prosecution has failed to establish that accused no.1 told accused no.2 to accept amount of Rs.200/- from PW 2 and he accepted the said amount. Further, Mr.Marwadi state that there is inconsistency in the prosecution case, as PW 3 state that Anthracene powder was used and the bribe amount of Rs.200/- was smeared with the same whereas according to PW 6, it was not used even though the Manual proposes the use of Anthracene powder. Further, in light of the specific statement by PW 3 that there was no fault in the papers of the truck, the case of the prosecution becomes doubtful as to why PW 2 should bribe the accused no.1 through Accused no.2 when the truck driver has failed to support the case of the prosecution. Further, since the sanction is not proved by examining the author of the documents, based on the well known principle that contents of a document can only be proved by examining the scribe of the document, Mr.Marwadi would submit that the prosecution has failed to prove bring home the guilt of the accused persons and therefore, he urge that the appellants deserve an acquittal.

The learned APP Mr.R.M. Pethe support the impugned judgment and he would urge that the judgment be upheld since it is based on appreciation of evidence on record to establish that the accused no.1 has accepted amount of Rs.200/- from the truck driver as gratification other than legal

remuneration and he is also guilty of criminal misconduct, whereas accused no.2 is guilty of abetting the offence punishable under Section 7 committed by the accused no.1. The learned APP Mr.Pethe would urge that though PW 2 has turned hostile, the Special Court has established the credibility of the appellants on the basis of an inferential deduction from the evidence of other witnesses, which is permissible in law and he submit that in absence of PW 2, support the case of the prosecution, the demand has been proved by drawing inference from other evidence like the evidence of the panch witnesses and the circumstances which have been established by cogent evidence. He would further urge that the presumption under Section 20 of the Act could be drawn in the present case when the prosecution has succeeded in establishing the demand through the panch witness and he would rely on the decision of the Apex Court in case of N. Narsinga Rao Vs. State of Andhra Pradesh, 2001(1) SCC 691, which has held that presumption is an inference of certain fact drawn from other proved facts and the Court can draw an inference, by applying the process of intelligent reasoning which the mind of a prudent man would do under similar circumstances and such presumption would remain unless it is disproved or dispelled. Shri Pethe would submit that direct proof of demand may not be available in certain cases, particularly when the complainant is dead and could not be examined or the complainant turns hostile or if he could not be examined for any other reason and in all such cases where

the direct proof of demand may not be available but on the basis of other evidence, either in form of a panch witness, acceptance of money was proved, then by raising presumption under Section 20 of the Act, it is permissible to draw inference to prove the demand. According to the learned APP, the prosecution has proved both demand and acceptance of the bribe amount and the truck driver who, in any case, on turning hostile, do not shake the case of the prosecution, when it is proved by PW 3 and PW 6, speaking in sync with each other in establishing the demand and acceptance by way of illegal gratification. He would therefore, pray that the Appeal deserves a dismissal. The learned APP would also advance his submission on Criminal Appeal No.1219 of 2012 filed by the State of Maharashtra seeking enhancement of the sentence imposed on the appellant no.1 on his conviction.

The fate of the said case would depend upon the decision in case of Criminal Appeal No. 744 of 2012 and therefore, I do not advert to the said submissions, seeking enhancement of sentence, by the learned APP at this stage.

7 The trap which was laid by PW 6 – Dy. Superintendent of Police attached to the ACB, Kolhapur, is of the category known as ‘chance trap’ which is also sometimes referred to as ‘fishing trap’. The complainant on 4th June 2007 called two panchas for confidentiality purposes, which include PW 3. They were instructed to come to the ACB office at about 3.00 a.m on

5th June 2007 and they abided by the direction. The panchas were acquainted with the reason for laying the trap, since the employees of RTO were demanding bribe under the guise of, by stopping the vehicles on highway near Kagal and Chandgad toll post. The panchas were intimated that they were to carry a 'chance trap' on the officers at the check post. Accordingly, the complainant (PW 6) along with the panchas and the ACB staff approached Kognoli toll post by their vehicle and stopped one truck which would take them to Kagal check post to ascertain whether the bribe is demanded. The panchas were directed to accompany a truck driver who would approach the Officer for checking of documents and PW 3 was instructed to observe and pick up the conversation between the driver and the Officer of check post and was instructed to identify himself as a cleaner. If the bribe amount was to be accepted, PW 3 was instructed to give signal and two currency notes of Rs.100/- each was made over to the panchas after noting the description and serial number of the currency notes in the pre-trap panchnama. Pre-trap panchnama recorded is at Exhibit-33 and to bear signature of PW 6 and PW 2 along with other pancha.

8 At Kognoli post, one truck was stopped and the intention to stop him was made known to the driver of the truck (PW 2) and he was briefed of the background of the raid, being the Officers of RTO demanding bribe from truck drivers and

nobody is coming to lodge complaint against them. The driver of the truck (PW 2), Chikkaswami also admitted that he was always plying his truck on the said route and often Officers of RTO are accepting the bribe amount in the name of 'entry' and that he was ready to act as a complainant if the bribe is demanded by Officer. The amount of Rs.200/- was handed over to him and after recording the pre-trap panchnama, the raiding team approached Kagal RTO check post in the truck of PW 2 and reached at Kagal check post at 5.25 a.m. The accused no.1 is charged with raising a demand and accused no.2 is charged with accepting the demanded amount on behalf of accused no.1, as per his instructions, as a gratification other than legal remuneration as a motive or reward for doing or favouring to do an official act in exercise of his official function.

9 The essence of the charge under Section 7 of Prevention of Corruption Act, being acceptance of gratification other than legal remuneration in respect of an official act by a public servant and the necessary ingredient for establishing the said charge is the public servant accepting or obtaining, or agrees to accept or attempt to obtain from any person for himself, or any other person any gratification for showing or for bearing to show any favour or disfavour.

For establishing the culpability of the accused, it is essential to prove proof of demand of illegal gratification to

constitute an offence. Also, without proof of demand of bribe, the offence cannot be constituted against the accused. Mere possession and recovery of bribe amount from accused cannot establish the offence unless there is proof of demand of illegal gratification. Demand of bribe by accused is therefore, the *sine qua non* for conviction under the relevant sections, under which the accused is charged. In view of the panchnama, the raid was conducted and the Accused no.1 was alleged to have demand and accepted amount of Rs.200/- from PW 2, the driver of the truck, for allowing a clear passage of the vehicle. Accused No.2 is alleged to have accepted the bribe on instructions of Accused No.1, that in brief is the background of charges levelled against the accused, for which they came to be tried by Special Court.

10 The twin ingredient of Section 7 being demand of the bribe amount and acceptance of bribe amount. The case of the prosecution will, therefore, have to be tested on the aforesaid anvil. The witnesses relied upon by the prosecution to establish the demand are three in number and I will deal with them. Firstly, the truck driver (PW 2). PW 2 do not support the case of the prosecution and therefore, was permitted to be cross-examined after being declared as hostile. It is settled position of law that the whole of the evidence of a witness was turned hostile, shall not be discarded but the portion of the evidence which support the case of the prosecution can be relied upon. PW 2

depose that he know Kannada language and also know Hindi to some extent, but understand Marathi only 1%. The panch witness (PW 3) accompanied PW 2 in the truck and he continued to accompany him when PW 2 alighted from his vehicle along with his papers and approached the check-post for getting his papers scrutinized. PW 2, in his deposition, has referred to a person accompanying him to the Kognoli check post and of showing the consignment receipt to the Officers at the said post. He depose that the person with him gave an amount of Rs.200/- to one person who was standing at the corner of check post, but declined to identify the said person who accepted the amount. Since this witness failed to throw any light on the culpability of the accused persons, the prosecution therefore, rest its case on the testimony of PW 3 – the panch witness. PW 3 deposed that the Dy. Superintendent of Police had instructed him to accompany the truck driver (PW 2) and verify whether bribe is demanded at the check post. The driver was also instructed that if bribe amount is demanded, he should hand over the amount of Rs.200/- to the Officer demanding bribe. As per PW 3, when he along with raiding team proceeded towards Kagal RTO check post, he got down from the truck along with PW 2 who took the papers of the truck and the lorry receipt with him. As per PW 3, when they reached the check post, RTO Inspector, Mulmule (Accused No.1) was present and the driver of the truck showed the papers of the truck and lorry receipt to him. As per version of

PW 3, accused no.1 demanded the amount from PW 2 by saying that “*pachshe rupaye dya va te panchshe rupaye samor ubha aslelya isma kade dya*” (Give Rs.500 and give it to person standing ahead).

PW 2 responded by saying “*majhya kade 500 rupaye nahit, 200 rupaye aahe*”. (I do not have Rs.500/- but I have Rs.200/- with me). On this, A1 agreed to accept by saying “*thik aahe, 200 rupaye dya*”, (Alright, give Rs.200/-) and it is after this exchange of words in form of negotiations, amount of Rs.200/- was given by PW 2 to a person standing near the porch (A2) who, accepted the amount and kept it in left side front pocket. PW 3 thereafter came out of the porch and gave signal as directed and thereafter, the second panch and members of the team arrived in the booth. The Dy. Superintendent introduced himself to Accused no.1 and the second panch witness took search of accused no.2 and took out bribe amount from his left side front pocket which was mixed in the other amount. The bribe amount of Rs.200/- was verified with the help of numbers of currency notes noted in the pre-trap panchnama. The personal search of accused no.1 was also carried out and one mobile handset was seized which contain a call by name Chandu, which number was noted in the panchnama.

11 The said witness (PW 3) is cross-examined

extensively and in the cross-examination, he state that powder was applied to the two currency notes of Rs.100/- each and he was instructed in the pre-trap panchnama that if the policeman stop the truck, at that time, he should accompany the truck driver to the check post. In the cross-examination, he admit that when they were reaching Kagal check post, he did not see anybody stopping the vehicle and no one demanded papers. He specifically deposed as under:-

“When the truck driver reached near Kagal check post, the officers from Kagal check post did not stop the truck”.

He improved his version by deposing that the other person had stopped the truck by giving signal, which statement is not found either in his statement to the police recorded under Section 161 or in the post trap panchnama. PW 3 further deposed that the truck was stopped little ahead on the service road and when the officer inspected the papers of the vehicle, he did not point out any fault in the papers. The witness also admitted that the language in which the conversation took place is the same language which was recorded in post trap panchnama and he also deposed in the same language i.e. Marathi. The post trap panchnama which bears signature of PW 3 record that PW 3 accompanied the driver of the truck to the check post and the driver had carried the necessary papers and receipt. Since PW 3 gave a signal, the raiding party reached the check post and the amount of Rs.200/- was recovered from the pocket of accused

no.2. The post trap panchnama further record that the panchas were informed that the RTO officers often restrain the vehicles passing on the highway and demand papers and by raising trivial objections, threaten the driver with filing of false cases, and demand money. They were apprised that Complaints of the above nature have been received through anonymous letters and on telephone calls, and therefore, they were made to act as panchas in the 'chance trap'.

12 The post trap panchnama however, do not record about any demand raised by accused no.1 but only record that panch no.1 Shri Kamble came out of the check post and gave a signal, whereupon the raiding party ushered themselves in the booth as soon as amount was handed over, as PW 3 was instructed by PW 6.

Before the Court, PW 3 has deposed that in his presence, the driver (PW 2) was instructed to hand over the amount of Rs.200/-, if the bribe amount is demanded. This presupposes that the bribe amount was surely going to be Rs.200/- since it was only the amount of Rs.200/- which was handed over to the driver through PW 3. PW 3 categorically deposed that the papers of the truck and the lorry receipt were examined by the accused no.1 – RTO Inspector, however, no defect or error was pointed out in the said papers but it is alleged that demand was made of Rs.500/-. If there was no defect noted in the papers of

the truck driver, there was no reason for him to pay the bribe amount as the bribe amount as contemplated under Section 7 of the P.C. Act, 1988 is an amount accepted as a gratification other than legal remuneration, as a motive or reward for doing or forbearing to do any official act in the exercise of official duty or for rendering or attempting to render any service or disservice to any person. Nothing of this sort is seen to have occurred as per the prosecution, since papers displayed by PW 2 were found in order and no shortfall or lacunae, resulting in any argument is reported by PW 3 except the straight demand of Rs.500/- and that too, in Marathi language to which PW 2 responded in the same language and the further demand on negotiations responded to by the check post officer (A1), in the same language. The version of PW 2 is, he understand Marathi only 1% and therefore, the entire conversation taking place in Marathi language and the PW 3 admitting that the conversation took place in the same language in which the post trap panchnama was recorded i.e. in Marathi language, make the case of prosecution doubtful. PW 3 specifically admit that when the Officer inspected the papers of the vehicle, he did not notice any flaw coupled with his version, that their vehicle was not stopped at the check post but when they went ahead of the check post on the service road, they alighted and proceeded with the papers to the check post where no fault was found in the papers, on being inspected by the accused no.1 i.e. RTO Inspector, makes the prosecution case vacillate further.

Version of PW 3 who speak of Anthracene powder being applied to the bribe money but admit that at the check post, the pocket of the accused was not examined in ultra violet red light nor any glow of Anthracene powder was attempted to be detected on the hands and the pocket of accused no.2, make the version of PW 3 dubious and calls for corroboration from some other material and the version of PW 6 needs to be proved. PW 6 is the Dy.Superintendent of Police attached to ACB, Kolhapur who is the deviser of the trap, who state that since he had input through anonymous complaint and calls, atleast the Officers indulging themselves in accepting bribe, the trap was laid in form of a chance trap.

13 PW 6, who is the complainant has however failed to prove as to how the information was received, that the Officers and employees of RTO are demanding bribe by stopping the vehicle on highway since the chance trap was laid on the basis of the said information. According to PW 6, he had instructed PW 2 to pay the amount if demanded. Since the demand could not have been proved either of the two persons i.e. PW 2 or PW 3; PW 2 turning hostile, the evidence of PW 3 must be trustworthy and inspire confidence which, in my opinion, has clearly differed at the stage of cross-examination, as noted above. The absence of recording the manner in which demand was raised in the pre-trap panchnama and in the absence of any fault being noted in the

papers which would have prompted the Officers to demand the bribe amount or showing any favour, the theory of demand falls to its ground. Mere recovery of the amount from accused no.2 who has been only charged with abetment of offence under Section 7 committed by accused no.1 in absence of the demand being proved, the charge of abetment on accused no.2 must necessarily fail. The version of PW 2 about the bribe amount of Rs.500/- being demanded, though the papers were found in order, and the truck driver responding that he had only Rs.200/- which was directed to be paid to accused no.2, is only reiteration of the version of PW 3. In cross-examination, PW 6 has admitted that PW 2 was being questioned in Hindi and he was answering in Hindi, clearly indicating that he was not well versed or conversant in Marathi language since the answers given by him were translated in Marathi. PW 6 also deposed that the contents of the statement were explained to the said witness in Hindi language, he admitted its correctness and then signed. The conversation which has been referred to by PW 3 as alleged to have occurred between PW 2 and Accused No.1 is however, reported to have taken place in Marathi language whereas, the case of appellant no.1 is that he understand Marathi language to the extent of 1% and that is why his statement is recorded in Hindi and he has been explained about the same in Hindi.

14 Another serious lapse in the case of the prosecution become apparent in view of admission given by PW 6 where he deposed as under :-

“Before making pretrap panchnama we had decided to go to RTO office and after observation if it is transpired that bribe is accepted then trap is to be led. It is true that before laying trap I had not seen any vehicle going towards Kagal check-post and driver of the vehicle giving bribe. A fix time was not determined for laying trap. When I stopped driver P.W. 2 Chikkaswami and inquired about his willingness, at that time I could record the statement. I recorded statement of PW 2/ Chikkaswami after recording post trap panchnama. It is true that in pre-trap panchnama, instructions were given that if truck is caused to stop at Kagal check-post then the driver should enter in the check post. It is true that at Kagal check post, the truck in which I was sitting was not stopped, the truck went ahead of the Kagal check post and thereafter, driver and panch got down from truck and went towards Kagal check post.

The aforesaid sequence of events lead me to accept submission of Mr.Marwadi, that the prosecution has failed to prove the case of ‘Demand and Acceptance’.

15 The Special Court has fallen into an error in accepting the prosecution case as based on cogent evidence of PW 3 and PW 6 by recording that when the complainant/truck driver and PW 3 went in Kagal check post, members of trapping Party had

taken their positions within nearby vicinity. In fact, PW 6 is not a witness on the demand being raised and it was only when the signal was received by PW 3 – the raiding party went inside the cabin of the accused no.1. The mere acceptance of money is not sufficient to prove the offence under the P.C. Act as particularly, Section 7 contemplates the amount being accepted as a gratification as a motive or reward for showing some favours or disfavours or for rendering any service or dis-service to any person, in the capacity as a public servant. As far as Section 13 is concerned, a public servant is said to commit the offence of misconduct, if he while holding the office as a public servant obtains any pecuniary advantage for himself or for any other person by abusing his position as a public servant and this he does by any corrupt or illegal means. In the entire case of the prosecution, what is revealed is that the truck of PW 2 was not stopped at the check post, but the truck went ahead and the truck driver with the panch witness approached the accused who examined the papers but did not find or point out any fault or lacunae, which would have justified the accused no.1 granting any favours, for passing off the truck, by accepting any gratification. PW 3 and PW 6 both have admitted that there was no fault or imperfection in the papers, necessarily, there was no reason justifying the payment of bribe amount by the truck driver (PW 2) to the accused no.2 at the instance of accused no.1 who was standing at the check post discharging his duty as a Motor Vehicle

Inspector. The Special Court, however, has failed to consider the said aspect of the matter and failed to consider that in absence of demand being proved, mere recovery of the amount of Rs.200/- in the hands of accused no.2 does not establish the charge levelled.

16 Another aspect of the matter which is equally important is the trap being laid as a chance trap which, in fact, do not relate to any particular incident of demand of illegal gratification from any person or persons, or any particular public servant. The trap was laid in anticipation of a possible demand by some Officers/employees at the check post on the highway from some drivers, for permitting the vehicles to pass when the papers gaining through fare, at the check-post were not in order. The prosecution case is of a chance trap, or the complaints received by anonymous letters and telephone calls that the employees at the check post were regularly taking illegal gratification from the truck drivers passing through the highway by threatening them with prosecution.

The chance traps also known as 'fishing traps' is a justified method adopted, in detecting crime but the same is always looked at with a scornful eye and the methods have been at times deplored by the Courts but sometimes regretfully acknowledged the necessity of adopting such methods on the ground that otherwise it would be impossible or atleast difficult to

book corrupt public servants. In the particular case, the prosecution has failed to bring any material on record about the anonymous complaints or phone calls except making a mention of the same to the two panchas at the time when the pre-trap panchnama is prepared. Worth it to mention that PW 6 the Dy. Superintendent of Police, ACB Branch who headed the raiding team and led a trap also do not speak of source of his information, who preferred to resort to the method of chance trap without throwing any light on the complaints received and whether the complaint was qua a particular Officer of the RTO and in particular, in what shift the amount was being collected. The case of the prosecution is conspicuously silent on the said aspect.

17 The person, who offered the bribe money, i.e. the truck driver (PW 2), has not supported the case of the prosecution. The prosecution has merely relied upon the panch witness, who is allege to have accompanied PW 2, when the bribe was offered. It is difficult to rely upon the version of this witness (PW 3) whose testimony, on account of contradictions, cannot be completely relied upon. The type of trap led, being the chance trap, is a risky mechanism adopted by the investigation agency for collection of evidence. The testimony of PW 3, who is *participes criminis* in respect of the crime, his evidence of a *participes* or interested witness, who is concerned with the success of the trap and his evidence will have to be thus treated as that of an

interested witness, being tested by application of diverse considerations and would call for an independent corroboration before convicting the appellants for the charged offence. The Apex Court in the case of **State of Bihar V. Basawan Singh**¹ speaking through Hon'ble Mr. Justice Sudhanshu Kumar Das, observed as under :-

"12. We must advert here to two other aspects of that decision. It was observed there in clear and emphatic words that it is the duty of the police authorities to prevent crimes being committed; but it is no part of their business to provide the instruments of the offence. With these observations we are in agreement. In *Brannan v. Peek*, a police officer went inside a public house and made a bet on a horse, which act amounted to an offence. The motive in making that bet was to detect the offence under the Street Betting Act, 1906, which was being committed by the accused person in that case. In these circumstances, Goddard C. J. made the following observations: "I hope the day is far distant, when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone". We also express the same hope for our country, but must hasten to add that in the case before us no offence was committed by any of the three officers, Mukherji, Sahai and Misra, in order to get evidence against the respondent. This point was again emphasised in a later decision of this Court in Ramjanam Singh v. The State of Bihar. It was therein observed:

"The very best of men have moments of weakness and temptation, and even the worst, times when they repent of an evil thought and are given an inner strength to set Satan behind them and if they do, whether it is because of caution, or because of their better instincts, or because some other has shown them either the futility or the

1 AIR 1958 SC 500

wickedness of wrongdoing, it behoves society and the State to protect them and help them in their good resolve; not to place further temptation in their way and start afresh a train of criminal thought which had been finally set aside. This is the type of case to which the strictures of this Court in Shiv Bahadur Singh v. State of Vindhya Pradesh, A.I.R. 1954 S.C. 322 at p. 334 apply."

Further, in paragraph 14, the Constitution Bench observed as under :-

"14. In some of the cases which have been cited at the bar a distinction has been drawn between two kinds of 'traps'- legitimate and illegitimate-as In re M. S. Mohiddin, and in some other cases a distinction has been made between tainted evidence of an accomplice and interested testimony of a partisan witness and it has been said that the degree of corroboration necessary is higher in respect of tainted evidence than for partisan evidence (see Ram Chand Tolaram Khatri v. The, State). We think that for deciding the questions before us, such distinctions are somewhat artificial, and in the matter of assessment of the value of evidence and the degree of corroboration necessary to inspire confidence, no rigid formula can or should be laid down."

The evidence of PW 3, therefore, will have to be treated at par with *participes* or interested witness and it may be necessary to look for an independent corroboration, which is absent in the present case. The prosecution has, thus failed, to prove its case of demand and payment in furtherance of the demand. The case of the prosecution being doubtful on the said point, the appellants are entitled for benefit of doubt and would seek an acquittal, which in my considered opinion, deserve to be granted in light of

the aforesaid discussion and flaw in the case of the prosecution. Resultantly, the appeal deserve to be allowed.

Since the appeal of the appellants challenging their conviction and sentence deserve to be allowed, necessarily the companion appeal being Cri. Appeal No.1219 of 2012, seeking enhancement of sentence, filed by the State of Maharashtra, deserve a rejection.

18 Accordingly, Cri. Appeal No.744 of 2012 is allowed. The judgment and order dated 19/20th June, 2012 passed in ACB Special Case No.6 of 2008 by Special Judge at Kolhapur is set aside. The appellants are acquitted of the charge levelled against them. The bail bonds stand cancelled accordingly.

19 Cri.Appeal No.1219 of 2012 is dismissed.

SMT.BHARATI DANGRE, J