

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

CRIMINAL APPEAL NO.793 OF 2013

Anil Krishnarao Apashingkar

Age : 43 Yrs. Occ : Service.

R/o. Vidhyanagar, Karad, Taluka Karad,

Dist. Satara.

... Appellant

Versus

The State of Maharashtra

... Respondent

.....

Mr. Satyavrat P. Joshi, Advocate for the Appellant.

Mrs. A. A. Takalkar, APP for Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 8th JANUARY, 2021.

PRONOUNCED ON : 9th JUNE, 2021.

JUDGMENT :-

1. This appeal is preferred under Section 374 of Cr.P.C., challenging the Judgment and order dated 20th June, 2013 passed by the learned Special Judge and Additional Sessions Judge, Vaduj in Special Sessions Case No. 15 of 2010. The appellant is convicted for offence punishable under Section 7 of Prevention of Corruption Act, 1988, (hereinafter referred to as “PC Act”) and sentenced to suffer simple imprisonment for two years and to pay fine of Rs.3,000/-. In default of payment of fine he was sentenced to undergo simple imprisonment for two months. The appellant is also convicted for

offence under Section 13(1)(d) of PC Act punishable under Section 13(2) of PC Act and sentenced to suffer simple imprisonment for three years and to pay fine of Rs.5,000/-. In default of payment of fine he was directed to undergo simple imprisonment for 6 months.

2. The prosecution case can be briefly narrated as under:-

a) Complainant Jagannath Rajaram Mane is the resident of Rajache-Kurle, Taluka Khatav, Dist. Satara. He owns and possesses agricultural land bearing Gat No. 874 with a well situated therein. In 2001 he applied for electric connection to his well for operating electric motor. The application was submitted to M.S.E.D.C.L. at Pusesavali.

b) The complainant was working in Police department. He retired in November, 2009. He started cultivating his agricultural land.

c) On 3rd April, 2010, the complainant visited office of M.S.E.D.C.L. for inquiry about his application for electric connection. Accused was working as Sub-Engineer in the said office. The accused gave challan and informed the complainant to deposit Rs.2,900/- in the office of M.S.E.D.C.L. at Aundh.

d) Complainant deposited Rs. 2,885/- in the office of M.S.E.D.C.L. at Aundh on 12th April, 2010. Thereafter, he contacted

accused in his office and showed him the receipt of deposit. The complainant requested the accused for granting electric connection immediately. Accused demanded Rs.15,000/- as bribe. The accused informed complainant to shift the electric poles kept in the vicinity of Vadgaon High school and install them in his field for getting electric connection. The complainant shifted electric poles to his field and informed about it to the accused. The electric poles were erected at the instance of the accused in the field of complainant on 14th May, 2010.

e) On 16th May, 2010, the complainant informed the accused that the poles were erected in his field. The accused informed the complainant to visit his office with amount of Rs.15,000/- on 20th May, 2010. The complainant was reluctant to pay the said amount. He approached Anti-Corruption Bureau, (for short "ACB") Satara. Complaint was lodged with ACB. It was decided to lay trap.

f) On 20th May, 2010, panch witnesses were summoned by Dy.S.P. Shri. Borate. The complainant was introduced to panch witnesses. It was decided to verify the demand made by the accused with complainant. The raiding party went to Aundh rest house. Dy.S.P. Shri. Borate carried with him tape recorder and other articles.

Instructions were given to the complainant. They reached the guest house at about 13.00 hours. Complainant was instructed to record conversation between him and accused in the tape recorder and panch No.1-Dr. Hendre was instructed to hear the conversation.

g) Complainant and panch No.1 proceeded towards M.S.E.D.C.L. office At Pusesavali. Accused was not present in the office. He arrived in the office at about 2.30 p.m. The complainant and panch met the accused in his office. Accused reiterated his demand of Rs.15,000/- with complainant. The amount was negotiated to the sum of Rs. 14,000/-. Complainant told the accused that he would come in the office after some time for making payment. The aforesaid conversation was made in the presence of panch No.1 Dr. Hendre. Complainant and Dr. Hendre came to S.T. stand where the vehicle was parked. Complainant handed over the tape recorder to Investigating Officer Shri. Borate. They returned to Aundh rest house. Demand verification panchanama was prepared. Script of the conversation was prepared.

h) Complainant produced currency notes of Rs.14,000/-. Anthracene powder was applied to the currency notes. Tape recorder was handed over to the complainant. He was instructed to hand over the bribe amount to accused on specific demand to that effect. The

raiding party proceeded towards the office of the accused. Complainant and panch No.1 went to the office of the accused. Accused was present in the office. Two to three other persons were also present in the office. The accused inquired whether the complainant has brought the amount. Complainant took out currency notes and tendered the same to the accused. It was accepted by the accused. The raiding party rushed to the office of the accused. The accused was apprehended. He took out the currency notes from his pocket and placed them on the table. The amount was seized. All the required procedure was completed. First Information Report (herein after referred to as for short "FIR") was registered. Pre-trap Panchanama and post-trap Panchanama were recorded. Statement of witnesses were recorded. On completing investigation, charge-sheet was filed.

3. Charge was framed against the appellant vide order dated 17th December, 2011 for offences punishable under Section 7 r/w Section 13(2) of PC Act and Section 13(1)(d) r/w Section 13(2) of PC Act.

4. The prosecution examined 5 witnesses. PW-1, Jagannath Rajaram Mane is the original complainant. PW-2, Dr. Umesh Purushottam Hendre is the panch witness No.1. PW-3, Pradip

Manikrao Mate is the sanctioning authority. PW-4, Dipak Pandurang Mohite is the eye witness was present in the office of accused. PW-5, Laxman Mahadeo Borate is the Investigating Officer. The defence witness has examined Rahul Sharad Kadam as defence witness No.1. Statement of the accused was recorded under Section 313 of Cr.P.C. The accused submitted his written explanation under Section 313 of Cr.P.C.

5. The submissions urged on behalf of the appellant can be briefly summarized as under :-

i) The appellant has been falsely implicated in this case. The prosecution has failed to establish the charges beyond all reasonable doubt.

ii) The case of the prosecution is that, pursuant to the alleged demand of bribe, the complainant visited office of ACB, Satara on 20th May, 2010 and lodged the complaint. The complainant (PW-1) has admitted in the cross examination that he did not go to Satara on 20th May, 2010. Thus, there is reason to believe that the complaint is antedated. Its' contents are not proved beyond doubt. The documents are creation of prosecution. PW-1 has admitted that he did not execute any document at Satara on 20th May, 2010. He did not make signature on any document on 20th May, 2010. His version

in the examination-in-chief that he had visited Satara on 20th May, 2010 is incorrect. He also deposed that he gave evidence before the Court as per documents prepared by him to prove the charge under Sections 7 & 13 of the PC Act. The demand of bribe has to be proved. PW-3 has admitted that no work was pending in the office of accused. The evidence on record indicate that the accused had no power or authority to issue 3-phase connection. The question of demand of bribe by the appellant does not arise.

iii) The prosecution had allegedly conducted demand verification. Conversation of demand was allegedly recorded in audio cassette. The audio cassette was not played and proved in the proceeding. It was not produced in the Court. There is no FSL report to prove the audio recording. PW-1 has admitted that script of tape recording was prepared in his absence. Accused was not present when his voice sample was taken. He was not present when the voice sample of the accused was taken. Thus, the tape-recorded evidence and its script cannot be relied upon.

iv) The defence of the accused reflected in the statement recorded under Section 313 of Cr.PC. is that the complainant could not have been present at Satara on 20th May, 2010. He has relied upon the documents such as charge-sheet in C.R. No. 4 of 2010.

Panchnama dated 20th May, 2010 in C.R. No. 4 of 2010 and statement of complainant in C.R. No. 4 of 2010 registered with Aundh Police Station.

v) The Investigating Officer has admitted that there was no document in connection with giving electricity connection to the complainant found in the office of accused and all the papers were lying at Aundh. The prosecution has not proved the demand beyond doubt. The evidence of PW-2 would show that the accused never demanded any money with complainant and it was the complainant who was trying to voluntarily offering money without their being any demand.

vi) The accused has explained vide written statement under Section 313 of Cr.PC. that he had never accepted currency notes. The complainant entered into the office and threw currency notes on his table. ACB officials entered into the office and forced him to pick those notes from the table. Since the appellant refused to do so, they assaulted him. The appellant sustained injury to his eye. The post trap panchanama (Exh.28) records that there was scuffle and spectacle of the appellant fell down and broken. The appellant had sustained injury to his eye. Thus, the defence of the accused is probable.

vii) PW-1 has admitted that the accused did not demand any amount at the time of verification. He also admits that there was no demand at the time of trap.

viii) PW-4 is eye witness to the incident. He did not support the case of the prosecution. He deposed that the currency notes were thrown on the table. One person entered into the office and dropped the cash amount on the table. There was no conversation between the accused and said person. He also admitted that some persons caught hold of accused and they were forcing him to collect the amount dropped on the table.

ix) The appellant has examined defence witness. DW-1 admitted that PW-1 entered into the office and dropped currency notes on the table. There was no conversation between the accused and PW-1. He also stated that officials of ACB came inside the office of the accused. They caught hold of the accused and forced him to collect the currency notes. They assaulted the accused. The cross examination conducted by the prosecution failed to demolish the evidence of DW-1. It is the case of the prosecution that DW-1 was present at the office of the accused. His statement was recorded during investigation. He was listed as witness in the charge-sheet. He was not examined by the prosecution.

x) The appellant has rebutted the presumption under Section 20 of PC Act. He has tendered explanation. The prosecution has to establish the foundational facts for invoking presumption under Section 20 of the PC Act.

xi) The sanction is invalid. PW-3 is examined as sanctioning authority. His evidence would disclose that he was not empowered to grant sanction to prosecute the accused. He was not the appointing authority. He was not the removing authority. There is selection committee for appointing sub-engineers. Accused was appointed as per the second schedule and Service Regulation 2005. PW-3 has admitted that he was one of the members of selection committee and officers at Sr. Nos.1 to 4 were superior to him. Unless a candidate is recommended by selection committee, he cannot appoint the candidate. He admitted that removing authority cannot be inferior to appointing authority. The selection committee had appointed the accused and the selection committee could have accorded sanction for prosecution.

xii) Proper procedure to record the tape-recorded conversation and adducing evidence of tape-recorded conversation is not followed by the prosecution.

xiii) The evidence of witnesses examined by the prosecution

is doubtful and does not establish beyond reasonable doubt that the appellant had demanded the bribe amount and accepted the bribe amount.

xiv) PW-1 is retired Policemen. Prithviraj Ghorpade is member of raiding team. There was conversation between Ghorpade and PW No.1.

xv) Audio Cassette not played/produced and proved in evidence. FSL report not produced conversation not proved.

6. Learned APP submitted that there is no infirmity in the sanction order. The sanctioning authority was empowered to accord sanction. PW-3 is appointing authority. Sanction is valid. The cassettes regarding tape recorded conversation were deposited in the trial Court. Report of FSL was received on 13th January, 2013. PW-2 is independent witness. He has supported prosecution case. There is no reason to discard his evidence. The evidence of PW-1 has to be read with the evidence of PW-2. The prosecution has proved the complaint, pre-trap panchanama, post-trap panchanama, script of conversation. The prosecution has established that the appellant was working as an assistant engineer in the office of M.S.E.D.C.L. had demanded an amount of Rs.15,000/-. The amount was reduced to Rs.14,000/-. The script of conversation supports the demand by the

accused. The currency notes were found in the possession of the accused. Anthracene powder was applied to the currency notes. Anthracene powder was found on the clothes and hands of the accused. The acceptance of the bribe amount has been established by the prosecution. Thus, both the facts which constitutes the offences under Sections 7 & 13 of the PC Act were established by the prosecution. Some contradictions and minor discrepancies cannot affect the prosecution case. The presumption under Section 20 of the PC Act has not been rebutted by the defence. The trial Court has assigned reasons for convicting the appellant. The evidence of PW-1, PW-2, PW-3 and PW-5 is sufficient to convict the appellant. Hence, appeal may be dismissed and the conviction may be confirmed.

7. I have scrutinized the evidence of the witnesses. PW-1 is the complainant. He was working in Police department. He has deposed that he owns property and had applied for electrical connection. On his retirement he persuaded his application for electricity connection. According to him, he visited office of electricity department on 3rd April, 2010. He met accused. He deposited the amount towards electricity connection in the concerned department at Aundh on 12th April, 2010. The accused demanded the amount. He lodged the complaint on 20th May, 2010.

Trap was arranged. On instructions of ACB demand was verified. The conversation was tape recorded. Amount of Rs. 14,000/- was handed over by the complainant. Raiding party went to office of accused. PW-1 and PW-2 went inside the office of accused. Two to three persons were present in the office of the accused. Complainant handed over the amount which was accepted by the accused. Raiding party rushed to the office. Accused was apprehended. The tape recorder given to him by PW-5 at the time of trap was checked and it was found that conversation was not recorded, since he could not operate the tape recorder at the time of trap. Original application made by PW-1 for getting electricity connection in the year 2001 was not traced in the office of accused. In 2006 he made another application for electricity connection. In the cross examination he stated that Exh.19 (Application for supply of electricity) does not bear the date on which the application was made. There is endorsement on the application that it was received by the office on 20th April, 2006. On the date of complaint, he had gone to his field. Some persons were found committing theft of copper. The accused had appreciated the effort of complainant to apprehend thieves. The distance between his village Rajache-Kurle and Pusesavali is 5 km. The field where the incident had taken place was at the distance of about 3 km. from his house. Accused were taken to Police Station

and panchanama was prepared. Statement of complainant was recorded in the theft case. Thereafter, he went home. Ramchandra Mane and Sahebrao Mane had acted as panchas in theft case. He admitted that he did not go to Satara on 20th May, 2010. He did not sign any document on 20th May, 2010. His conversation in the examination-in-chief that he had been to Satara on 20th May, 2010 is incorrect. He gave evidence before the Court as per documents prepared by the prosecution. Script of tape was prepared in his absence. His voice sample was taken on 20th May, 2010. Accused was not present when sample of voice was taken. He was not present when the voice sample of accused was taken. When he entered into the office on 20th May, 2010, two to three persons were sitting in the office of the accused. He told the accused that he has brought the money as per demand and kept the currency notes on his table. He gave signal. Accused made no signal at the time of demand verification. Accused had not demanded bribe on 20th May, 2010 at the time trap and he himself put the amount on the table. Hands of the accused were not examined in his presence by ACB. He was annoyed since despite making application 10 years ago electricity connection was not given to him. Accused did not send letter for taking electricity poles from Vadgaon to Rajache-Kurle.

8. Thus, the conversation of the complainant (PW-1) reflected in examination-in-chief as well as in cross examination does not inspire confidence to believe the case of the prosecution. The case of the prosecution is that complainant was lodged on 20th May, 2010. The complainant has categorically denied that he has visited Satara on the day of lodging complaint. He has also stated that he has not signed the complaint or any other document on 20th May, 2010. He has also stated that accused did not make any demand at the time of trap. The conversation was not recorded, on account of failure in operating the tape recorder. The most serious discrepancy in the evidence is that PW-1 has admitted that accused did not demand the amount and he himself kept the amount on the table.

9. PW-2 is the panch witness. He has stated that he was accompanying PW-1. He has referred to verification panchanama and the script of conversation. His evidence is contradictory to PW-1. According to him he was summoned to act as panch witness. The second panch witness has not been examined. He deposed that, PW-5 had decided to verify the grievance of complainant. PW-1 and PW-2 went to Pusesavali. Instructions were given to him. Tape recorder was given to PW-1. They walked to the office of M.S.E.D.C.L. Accused was not present in the office. They waited. The

accused came to office. The complainant inquired with the accused about electricity supply. The complainant asked the accused to state exact figure of amount which he was supposed to give him. The accused told him to reduce the amount to Rs.14,000/-. The complainant promised that he would comply the demand. Thereafter, PW-1 & PW-2 returned to the rest house. Tape recorder was handed over to PW-5. Conversation was heard by PW-5. It was reduced to writing. Panchanama was prepared. Script was prepared. The amount was accepted by the accused and he kept it in his pocket. Tape recorder was given to the complainant. When they went to the office of the accused, they found that two other persons were sitting in the office. The accused inquired whether the complainant had brought the amount. The accused took the amount and kept it in his pocket. Signal was given to raiding party. Accused was apprehended. The accused took out currency notes from his pocket and kept the same on the table. He was apprehended. The notes were recovered. Post-trap panchanama was recorded. Shri. Mohite and Shri. Kadam were present at the office of the accused. In the cross examination he deposed that he was serving as medical officer in Civil Hospital at Satara. He is not facing any cases or departmental inquiry. He conducts post-mortem examination. News was published in the newspaper on 21st September, 2012 regarding post-mortem of Nilesh

Dhale. CBI inquiry was sought in that regard for giving report of cause of death of deceased Nilesh Dhale. PW-2 had conducted the post-mortem. The dead body was again examined by committee and they had given different opinion. He deposed that Shri. Mohite and Kadam were present at the office of the accused. After making entry in the office by the raiding party, the currency notes were taken out by the accused and kept on the table. Till then he was not detained. Shri. Kadam and Mohite were present in the office at the time of the above events. From the evidence of this witnesses it can be seen that he has referred to the presence of Kadam and Mohite. Dipak Mohite has been examined by the prosecution as PW-4. Rahul Kadam was not examined by the prosecution. He has been examined as defence witness by the accused. According to him the amount was kept on the table by the accused after raiding party had entered in the office. Thus, Dipak Mohite, Rahul Kadam are the alleged eye witnesses to the incident of demand and acceptance of the bribe. PW-2 has admitted that the entire incident had occurred in their presence. Their statements were recorded during investigation. PW-4 has not supported prosecution. Rahul Kadam has supported the defence. The question is whether the version of PW-2 can be accepted as gospel truth. The entire case of the prosecution lacks confidence. It is doubtful.

10. PW-4 Dipak Mohite was working as clerk in M.S.E.D.C.L. Undisputedly, he was present in the office of the accused at the time of incident. Thus, PW-4 is prosecution witness. He deposed that on 20th May, 2010 accused and Rahul Kadam were present in the office. Accused was sitting on the chair. He was sitting towards left side of the chair. One person entered into the office. He dropped the cash amount on the table of the accused and soon thereafter he left the office. It did not happen that there was conversation between that person and the accused. The theory of the amount being kept on the table is emanating from the evidence of PW-2, PW-4, PW-5 and DW-1. According to PW-2 the amount was removed from the pocket by the accused and kept it on the table. According to PW-4, the complainant kept the amount on the table. PW-5 stated that accused was frightened and he took out tainted currency notes from pocket and put the same on table. DW-1 deposed that complainant dropped the amount on the table. PW-4 was declared hostile and cross examined by the prosecution. In the cross examination he stated that the Rahul Kadam was sitting in the office. He denied all the suggestions of the prosecution and his evidence was consistent with his examination-in-chief. In the cross examination by the defence, he has stated that the accused was assaulted by raiding party. They were insisting he accused should collect the amount dropped on the table.

While assaulting his spectacle fell on the ground and he sustained injury to his eye. The accused collected the cash amount and handed over the same to the raiding party.

11. PW-3, Pradip Mate, was Chief General Manager. He had accorded sanction for the prosecution of the appellant. He admitted that there are various departments in the company i.e. Technical, General, Commercial, Distribution Section, Disciplinary Action Cell, Store section and Vigilance Section. Each department is headed by a separate officer. There is selection committee for appointing Sub-Engineers. Accused was appointed as per the second schedule, column No.(c) of M.S.E.D.C.L., Service Regulation, 2005. The members of selection committee are directors concerned who also act as chairman of committee. Executive director (H.R.) executive director (C.S.C.), Chief Engineer, C.G.M. personnel and C.G.M. Technical are the other members of selection committee. He was one of the member of the selection committee at Sr. No.7. Officers at Sr. Nos. 1 to 4 are superior officers than him. He cannot appoint a selected candidate unless he is recommended by selection committee. Removing authority cannot be inferior to appointing authority. Accused was selected in M.S.E.B. as Sub-Engineer. He is not aware of the Rules under which the accused was selected. He did

not feel it necessary to obtain the approval of selection committee before according sanction to prosecute accused. No work of complainant was pending in the office of accused till accused receives release order from Sub Division Office. Although he stated that there is document to the effect that; two poles were erected as per order issued by accused, he did not produce such document.

12. PW-5, Laxman Borate is the Investigating Officer. He has reiterated the version of the complainant and other witnesses. He stated that there were two persons inside the office and those were Kadam and Mohite. PW-2 narrated the event of acceptance of bribe. Accused removed money and kept in on table. Statements of Mohite and Kadam were recorded. Natural voice of the accused was taken. Natural voice of the complainant was recorded on 24th May, 2010. According to him, accused was trying to escape and in that attempt his spectacles fell down and eh suffered injury below his left eye. Kadam and Mohite were asked to leave the office. Accused disclosed that all relevant documents were sent by him to Aundh office. He sought sanction for prosecution of the accused. After obtaining sanction order, he filed charge-sheet. In the cross examination he stated that generally call details are collected from the same company in respect of conversation between accused and

complainant. In the charge sheet there is no letter sent by them seeking call details from the cell company. There was conversation between accused and complainant prior to the incident. He did not collect the call details about the said conversation. Demand verification panchanama was made on 20th May, 2010. It was typed on computer. The date is mentioned in the panchanama (Exh.25) with pen and handwriting. The demand verification panchanama was typed on computer. The date was wrongly mentioned earlier in Exh.25 and the whitener was applied on the date and thereafter, the date was corrected by pen. No initial of public servant is made at the place of correction. There is over writing in the FIR (Exh.15) regarding the date. The distance between ACB office Satara and Aundh is 30 km. The distance between Aundh to Pusesavali is 10 Km. The distance between Pusesavali to Rajache-Kurle is 3 km. Accused was medically examined. Certificate was issued by medical officer. Not a single paper regarding electrical connection of the accused was found in the office of accused and all those papers were lying at Aundh office. He collected those papers from Assistant Engineer from Aundh Office. It was not confirmed by him whether the complainant had any work in the office of the accused. It was not confirmed by him whether accused was empowered to give three-phase connection He was not aware whether accused was

empowered to give three phase connection. He made no such inquiry in the office of M.S.E.D.C.L. regarding procedure of giving 3-phase connection. Pruthviraj Ghorpade is serving in ACB as constable. He was member of raiding party. There was no trace of anthracene powder on the other articles of the accused. Table was not examined through ultra violet rays. Nothing was transpired from the examination of mobile handset of the accused.

13. The defence has examined DW-1 Rahul Kadam as defense witness. It is not disputed that he was present in the office of the accused at the time of raid. He is eye witness to the incident. His statement was recorded as witness by the Investigating Officer. He was not examined by the prosecution. He stated that he was present in the office of the accused. Mohite came in the office of the accused. The complainant came in the office of the accused. He dropped currency notes on the table of the accused. He was knowing PW-1. He came alone in the office of the accused. After dropping currency notes he left the office. There was no conversation between accused and complainant. Thereafter, 5 to 6 officials came inside the office of the accused. They caught the accused. They asked the accused to collect currency notes from the table. He refused to do so. He was assaulted. The spectacle of the accused was broken. He suffered

injury near eye. Accused was assaulted by fist blows. Accused collected the money from the table. He was cross examined by the prosecution. However, the cross examination could not demolish his version.

14. On scrutiny of the evidence as it can be seen that there are several discrepancies in the evidence of the prosecution. In the light of the nature of evidence it will have to be concluded that the prosecution has failed to prove this case beyond all reasonable doubt. The statement of the accused was recorded under Section 313 of Cr.P.C. He has also submitted written submission in support to his version under Section 313 of Cr.P.C. His defence is supported by the evidence on record. The complainant himself has stated that he did not visit Satara on 20th May, 2010. The complaint was lodged on 20th May, 2010. The complainant also stated that conversation could not be recorded in the tape recorder. It is also pertinent to note that audio cassette was not produced in the Court. The FSL report was not proved in evidence. There is discrepancy in collecting the voice sample of the accused and the complainant. It is difficult to rely upon the script of conversation. The law relating to the requirement of proving the demand of bribe is well settled. In the case of *State of Maharashtra V/s. Dnyaneshwar Laxman Rao Wankhede* 2010 (2) SCC

(Cri) 385, it is held that demand of illegal gratification is *sine qua non* to constitute offence under the PC 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 as laid down under Section 20 must also be considered, but in respect thereof, it is trite law that, standard of burden of proof on accused vis-a-vis standard of burden of proof on prosecution would differ. Even in case where burden is on accused, prosecution must prove foundational facts. Before calling an accused to explain as to how amount in question was found in his possession, foundational facts must be established. While invoking provisions of Section 20, explanation offered by accused, if any, is required to be considered only on touchstone of preponderance of probability, and not on proof beyond all reasonable doubt. This view has been reiterated in several decisions. It is not necessary to refer all the other decisions relied upon by the learned counsel for the appellant.

15. The discrepancies in the evidence which creates doubt about the authenticity of the prosecution case can be summarized as under :-

- a) The case of the prosecution is that, complaint of PW-1

was recorded by ACB on 20th May, 2010. However, PW-1 admitted that he had did not go to Satara on 20th May, 2010. The complaint was recorded at the office of ACB Satara. Apparently, complaint is antedated. It creates doubt about genuineness. PW-1 has admitted that not a single document was executed by him in Satara on 20th May, 2010. He did not make signature on any documents on 20th May, 2010. In the cross examination he stated that his conversation reflected in examination-in-chief that he had been to Satara on 20th May, 2010 is incorrect.

b) PW-3 states that there was no work pending in the office of the accused. His evidence gives an impression that accused did not possesses power or authority to issue three-phase connection. PW-1 has admitted that on the date of trap there was no work pending with the accused.

c) Prithviraj Ghorpade was the member of raiding party. There was conversation between PW-1 and Mr. Ghorpade. PW-1 has admitted that he spote to Mr. Ghorpade on 20th May, 2010. PW-1 furnished mobile number of Mr. Ghorpade. C.D.R. of PW-1 and Mr. Ghorpade was not collected. PW-1 was acquainted with Mr. Ghorpade and there is every possibility that he had influenced with ACB.

d) According to prosecution, it was decided to verify the demand made by the accused. The conversation of demand was recorded in audio cassette. The audio cassette was not played. It was not produced. It was not proved in evidence. FSL report is not on record. PW-1 admitted that script of the tape was prepared in his absence. He was not aware of the date on which the voice sample of the accused was taken. The accused was not present when the voice sample of PW-1 was taken and similar PW-1 was not present when the voice sample of the accused was taken.

e) Learned counsel for the appellant relied upon the decision of Supreme Court in the case of *Ram Sing and Others V/s. COL. Ram Sing* 1985 (Supp) SCC 611. In the said decision the Supreme Court has observed as follows :-

“32. Thus, so far as this Court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows :-

(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

(2) *The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence – direct or circumstantial.*

(3) *Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.*

(4) *The statement must be relevant according to the rules of Evidence Act.*

(5) *The recorded cassette must be carefully sealed and kept in safe or official custody.*

(6) *The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.”*

f) Reliance is also placed on the decision of this Court in the case *Devidas V/s. State of Maharashtra* 2020 SCC Online, BOM 1041 in Paragraph -25 of the said decision it was observed as follows :-

“25. Here in this case, though the CD’s were produced, voice sample of the accused was also taken and the certificate of the expert was also taken, yet, as aforesaid it cannot be said as complete evidence in the form of electronic record, as voice sample complainant and panch No.1 was not taken and was not got compared/verified from the expert. Further, the said conversation was not played in Court room at the relevant time during the proceedings. Mere production of the extract of the recorded version

or even such verification of voice of the accused only is not sufficient. Each time when the conversation has been reproduced, it is stated that it has been got verified from the recorded conversation, then even before the trial Court it ought to have been produced and proved by admissible mode.”

g) In *Ziyauddin Burhanuddin Bukhari V/s. Brijmohan Ramdas Mehta* (1976) 2 SCC 17 : AIR 1975 SC 1788 it was observed that the tape-records of speeches were ‘documents’, as defined by Section 3 of the Evidence Act and they were admissible in evidence on satisfying the ground that the voice of the person alleged to be speaking must be duly identified by the maker of the record or by other who know it. Accuracy of what was actually recorded has to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record. The subject matter relevancy recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.

h) The Court overlooked Rules for production, use and recording of the Tape-Recorded Evidence in Court incorporated in Criminal Manual issued by the High Court of Bombay which reads as follows :-

“24. The Honourable the Chief Justice and Judges, with the previous approval of the Governor under Article 227 of

the Constitution of India, are pleased to make the following rules regarding recording of the tape-recorded evidence in Court :

(1) These Rules may be called the Rules for the production, Use and Recording of the Tape-Record Evidence in Courts.

(2) These Rules came into force with effect from 1st August, 1978.

(3) The party producing the tape recorded evidence shall also produce the transcript of the tape record along with the tape.

(4) The Court or its authorised officer who is to accept the tape should accept only such tapes as are under the seal of the party producing them.

(5) Court or such officer shall hear the tape record in order to verify whether the transcript produced alongwith the tape is correct or not and endorse such verification on the transcript record under his signature with date.

(6) The tape shall be kept in safe custody in a cover under the seal of the Court. In case the tape is replayed or the seal is broken for any reason, the tape shall be re-sealed.

(7) The Notice of production of the tape together with the transcript shall be served on the other side through the Court.

(8) Any party to the proceeding may apply to the Court to hear the tape record.

(9) The tape-record would be played within the hearing and sight of an officer appointed by the Court for that purpose and as far as possible in the presence of the other side or its Advocate. The Court on receipt of application may grant the necessary permission. However, the tape shall ordinarily not be played on 3rd or 4th occasion, unless the Court specifically permits hearing of the same. The Court while granting such permission should bear in mind that repeated use and play of the tape may affect the tape and its audibility. The Court may also permit any party to record the voice on the tape, produced in Court, on another tape.

(10) Every Court shall maintain a record showing as to how, when and why the seal of the tape-record was opened and when the tape-record has been resealed. Such record shall be kept in the proceedings alongwith the tape record and its transcript.

(11) The tape in a sealed cover together with its transcript shall be given a separate exhibit.

(12) In Criminal cases where appeal lies to the High Court and when the tape record is not in English, either, wholly or in part, the transcript must be accompanied by an agreed or official English translation of the said transcript or part thereof, as the case may be.

(13) In case of discrepancy or doubt, the Court may direct the tape to be replayed and the transcript record shall be corrected if the Court so directs.

(14) While preparing the paper book for appeal to the High Court the Lower Court shall include therein the transcript in English under Rule 12, and a copy of record referred to in Rule 10 above.

(15) The rules as to the production, preservation and destruction of the Court record should mutatis mutandis apply to the tapes.

(16) The above rules (Rules Nos.1 to 15) are framed for guidance of the Courts and they should be followed as far as possible and subject to the provisions of the Evidence Act and Code of Civil Procedure.”

i) Considering the fact that neither tape-recorder nor cassettes, FSL Report was proved in the trial which indicate that the prosecution has suppressed genesis of the prosecution case and the evidence.

j) PW-5 has admitted that it had transpired during investigation that there was conversation between the accused and the complainant prior to the incident, however, he did not feel it necessary to collect call details of the conversation.

k) The Investigating Officer admit that not a single paper in connection with the granting electrical connection to complainant was found in the office of the accused and all the papers were lying at Aundh. It was not confirmed by him that the accused was

empowered to give three-phase connection.

l) The prosecution has not been able to prove the demand of bribe by the accused beyond all reasonable doubt. The evidence of witnesses would disclose that accused have not made any demand of money and the complainant was trying to offer money without their being demand. Learned counsel for the appellant has relied upon the Judgment of this Court in the case of *Ramesh Ramdas Vaidya V/s. State of Maharashtra* – 2004 ALL MR (Cri.) 611.

m) Reliance is also placed on the Judgment of the Supreme Court in the case of *Ramjanam Singh V/s. The State of Bihar* – AIR 1956 SC 643 and another decision of this Court in the case of *Yuvraj S/o. Chintaman Selokar V/s. State of Maharashtra* – 2012 ALL MR (Cri.) 2921. These decisions deals with the requirement of demand made by the accused to convict him for offences under the PC Act.

n) PW-1 in his cross examination admits that signatures of the panchas were taken on the panchanama on 22nd May, 2010. This has to be along with the evidence of PW-5, investigating officer, in his cross examination, admits that the date on demand verification panchanama was wrongly mentioned and hence, whitener was applied and thereafter, date was mentioned. He further admits that there was no initial of any public servant made at the time of

correction of the date. Thus, it is clear that demand verification panchanama seems to be a tampered document and possibility of the same being anti-dated document cannot be ruled out. Thus, verification panchanama was a very important document and the fact that it was tampered, as also the fact that the complainant admits that all panchanamas were signed on 22nd May, 2010 goes to the root of the matter. The prosecution has not been able to prove the case beyond reasonable doubt and hence, the appellant deserves to be acquitted.

o) That on the point of acceptance, the accused in his written statement recorded under Section 313 of the Criminal Procedure Code, has given a specific explanation and he has stated that he has never accepted notes and he categorically stated that the complainant entered into the office and threw currency notes on his table. ACB officials entered into the office and forced him to pick up those notes from the table. Since the Appellant refused to do so, they beat him as a result of which the Appellant sustained an injury to his eye. At this juncture, a useful reference can be made to the post trap panchanama, Exhibit, 28, the panchanama records that there was a scuffle in which spectacle of the Appellant fell down and broke as also the fact that he sustained an injury to his eye.

p) Thus, the defence of the accused seems to be probablized from the document which is relied upon by the prosecution and it was adduced in evidence by the prosecution. The complainant, PW-1 has admitted that the accused did not demand any amount at the time of verification and he also admits that there was no demand at the time of trap, but he himself put the notes on the table. PW-4 is an eye witness to the incident and he did not support the case of the prosecution. In fact, in his examination-in-chief, he stated that the notes were thrown on the table. He also states in his examination-in-chief that one person entered into the office and the said person dropped cash amount on the table of the accused and he left the office. He has stated in his examination-in-chief that it did not happen that there was conversation between the accused and that person. PW-4 was cross examined by the defence and in paragraph – 7 of his cross examination he has admitted that some persons caught hold of the accused and 3 to 4 persons asked the accused to collect the amount dropped on the table and to hand over the same.

q) The appellant has further stated that ACB officials forced him to collect the notes which were lying on table and upon his refusal, he sustained injury to his eye and his spectacle was broken.

The defence then examined Rahul Kadam as DW-1 and he, in his examination-in-chief has admitted that PW-1 entered into the office of the accused and dropped currency notes of denomination of Rs.500 on the table of the accused. He has further stated that there was no conversation between the accused and PW-1. He has also stated that 5 to 6 officials came inside the office of the accused, whom he later on came to know that those were persons of ACB. He categorically states that 2-3 officials caught hold of the accused and he was asked to collect the currency notes from the table and hand over the same. When the accused denied to collect those currency notes, they started beating the accused, as a result of the assault the spectacle of the accused was broken and he suffered an injury near his eye. The evidence of this witness, DW-1 remained unshattered in cross examination by the learned Additional Public Prosecutor and the evidence as regards the acceptance of money has gone unchallenged.

r) In the case of *Dudhnath Pandey V/s. State of U.P* (1981) 2 SCC 166 the Apex Court has held that,

“Defence witnesses are entitled to equal treatment with those of the prosecution. And, Courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often they tell lies but so do

the prosecution witnesses.”

s) That while invoking the provision of Section 20 of the PC Act, Court is required to consider the explanation offered by the accused on the touch-stone of preponderance of probability. However, before the accused is called upon to explain, foundational facts are required to be established by the prosecution. Herein, the present case, the prosecution has not be able to prove the demand beyond reasonable doubt. Moreover, the defence has raised not only probable defence through cross-examination of the witnesses and the documents relied upon by the prosecution; but also while leading positive evidence of (DW-1) to establish the fact that indeed, there was no acceptance of money.

t) That the bare perusal of Exh. 50 also records that there was a scuffle and the accused had sustained an injury and his spectacle fell down and was broken. Thus, there were two prosecution documents which record that there was scuffle as also the fact that the appellant sustained an injury and breaking of his spectacles.

16. In the light of the aforesaid facts, it cannot be said that the prosecution has proved its case beyond all reasonable doubt and hence, the conviction of the appellant is required to be set aside.

Validity of sanction is debatable issue. I am not adjudicating on it.
The applicant is otherwise entitled to be acquitted on merits of case.

17. Hence, I pass the following order :-

ORDER

- i) Criminal Appeal No. 793 of 2013 is allowed.
- ii) Impugned order dated 20th June, 2013 passed by the learned Special Judge and Additional Sessions Judge Vaduj, in Special Sessions Case No. 15 of 2010 convicting the appellant for the offence under Section 7 of PC Act and sentenced him to suffer imprisonment and fine as well as convicting him for offence under Section 13(1)(d) of PC Act punishable under Section 13(2) of the PC Act and sentencing him to imprisonment and fine is set aside and the appellant is acquitted for the said offences.
- iii) The appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)