

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

CRIMINAL APPEAL NO. 475 OF 2013

Nitin Nathu Wadile
Age : 34 Yrs. Occ : Service,
R/o. : Medha Taluka : Roha,
Dist. Raighdh,
Original R/o : Dondaicha
Taluka : Sindhkhed, Dist. Dhule.
(At present In Kolhapur Jail)

... Appellant

Versus

State of Maharashtra

... Respondent

.....

Mr. Prashant M. Nagargoje i/b Mr. Sunil S. Gosavi, Advocate for
the Appellant.
Mr. A. R. Kapadnis, APP for Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 9th DECEMBER, 2020.

PRONOUNCED ON : 5th MAY, 2021.

JUDGMENT :

1. This appeal preferred under Section 374 of Code of Criminal Procedure is directed against the impugned Judgment and order dated 18th April, 2013 passed by the learned Additional Sessions Judge & the Special Judge Mangaon –

Raigad in Special Case (A.C.B.) No.1 of 2009. The appellant is convicted for the offences punishable under Sections 7, 13(1) (d) r/w Section 13(2) of Prevention of Corruption Act, 1988 (for short “PC Act”) and sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.1,000/- for the offence under Section 7 of PC Act. The appellant is directed to suffer rigorous imprisonment for five years and to pay fine of Rs. 1,000/- for the offence punishable under Section 13(1)(d) r/w Section 13(2) of the PC Act.

2. The prosecution case in short is as follows:

a) Complainant Harishchandra Ushirkar is the resident of village Bhatsai, Taluka: Roha, Dist.Raigad. House No.185 situated at Village Bhatsai is owned by his wife Pramila Ushirkar. The house was in dilapidated condition and it was decided to reconstruct the house.

b) The complainant filed an application in the office of Range Forest Officer, Roha (for short “RFO”) with request to conduct panchnama in respect to wood utilized in the old house. In November, 2007 after demolishing the old house he

kept the wood used in the old house in a heap and started construction of the house which was completed up to plinth area.

c) In December, 2007 accused Nos.1 and 2 visited his house and conducted panchmana of the old wood in the house and obtained signature of his wife. At that time the complainant asked them whether he can start the brick work and at that time the accused No.1 told the complainant to meet officer in the office. The complainant was also informed that they accept Rs.1,500/- for such work. While the brick work was in progress, accused Nos.1 & 2 along with another employee visited the house of complainant on 24th January, 2008 and questioned him as to how the construction work was started without obtaining permission. Accused No.1 told complainant to meet the officer in the office and hush up the matter. The complainant met accused No.2 in the forest office at Medha on 26th January, 2008 along with his son Rajesh and made inquiry about permission. At that time accused No.2 demanded Rs.1,500/-. The complainant told that he will make arrangement within two days. Accused No.1 told the complainant that he will send

accused No.1 to accept the money and also informed him that accused No.1 will give permission letter to him. The complainant realized that the accused would not do the work of panchnama unless bribe amount of Rs.1,500/- was paid to them. Hence, he went to office of Anti Corruption Bureau (for short “ACB”) and lodged the complaint on 29th January, 2008.

d) The complaint was reduced into writing. It was decided to lay trap. Panch witnesses were called. They reached the office of ACB. They were told to visit the office of ACB on 29th January, 2008. The complainant and others reached the rest house at Roha on 29th January, 2008 at 9.30 a.m. Demand was verified. The accused reduced the amount of Rs.1,000/- and told the complainant to give the amount to accused No.1 by visiting his house or in his absence to his wife. Complainant informed accused No.2 that forest guard Patil was not in his house. Accused No.1 and his wife were not in his house and amount could not be tendered. Accused No.2 informed the complainant that he will send accused No.1 to his house.

e) Preparation was made for conducting trap and anthracene powder was applied to the currency notes.

Instructions were given to the complainant and panch witnesses. Pre-trap panchnama was recorded. The raiding party went to the house of complainant. Both the accused came to the house of complainant on motorcycle. The complainant had talk with accused No.2. As per demand of accused No.2, he tendered bribe amount which he accepted. Signal was given to raiding party and both the accused were arrested. Trap panchnama was prepared. Statements of witnesses were recorded. Sanction was obtained.

f) Charge was framed vide order dated 19th August, 2011 for the offences under Sections 7, 12, 13(1)(d) r/w Section 13(2) of PC Act.

3. The prosecution examined PW-1 Harishchandra Ushirkar (complainant). PW-2 Vaibhav Pandurang Kadam (Panch witness). PW-3 Kesarinath Vinayak Godbole, Range Forest Officer. PW-4 Chandrakant Thakaji Kende, panch witness for voice sample of accused No.2. PW-5 Bhagwan, Chief Conservator of Forest, Thane (Sanctioning Authority). PW-6 – Dy.S.P. Chandrakant Ghodke. PW-7 Police Inspector, Prabhakar Bhagwat- Investigating Officer.

4. Statement of the accused was recorded under Section 313 of Cr.P.C. The defence of the accused was denial. The trial Court convicted the appellant for the aforesaid offences, whereas accused No.1 Bhaskar Patil was acquitted.

5. The submissions of learned advocate for the appellant can be summarized as follows :-

i) The appellant has been falsely implicated in this case. The demand and acceptance of the bribe amount is not proved beyond reasonable doubt.

ii) The evidence of PW-1 suffers from material contradictions as well as improvements. PW-1 admitted that there was no demand of bribe from the accused till the panchnama of old wood was carried out. PW-1 has not specifically mentioned as to who made the demand of Rs.1,500/-.

iii) According to complainant he met appellant with his son to request him to reduce the bribe amount. However, evidence of PW-3 discloses that the accused was present at Roha Forest Office for function. PW-1 has not stated at what time he

met the appellant at his house for negotiation of the amount of bribe.

iv) The complainant was aware that the appellant had no authority to grant permission. Complainant was aware that prior permission of department is necessary for construction of house. He admitted that the accused can prepare panchanama which is to be submitted in Roha office and the Range Forest Officer was authorized to give permission.

v) Accused No.1 has been acquitted on the basis of same evidence on which the appellant has been convicted. The appellant is entitled for benefit of acquittal awarded to co-accused. The testimony of witnesses which was inseparable and indivisible was disbelieved in respect to some accused and used to convict the appellant. The charges against both the accused were identical. No appeal challenging acquittal is preferred by the state.

vi) Demand prior to trap was not proved. There is no independent corroboration. Presumption under Section 20 of the PC Act cannot be invoked.

vii) Complainant is an accomplice. His testimony cannot be believed without material corroboration.

viii) To draw the presumption under Section 20 of PC Act, the prosecution should prove foundational facts.

ix) The recorder was not produced before the Court. Contents of C.D. were not proved. Sanction was accorded without application of mind. PW-5 has admitted that he received draft proforma. There are mistakes about date on which Sanction Officer found it necessary to correct. Sanction Officer did not call for information about work pending before the appellant.

x) The complainant had started construction without prior permission of forest department. To avoid prosecution he has falsely implicated the appellant in this case.

xi) Demand of bribe has to be proved beyond reasonable doubt. Mere recovery of the amount is not sufficient to convict the accused in the absence of proof of demand.

xii) No work was pending with the appellant. PW-3 has stated that the accused submitted his report after drawing

panchanama. PW-1 has admitted that Range Forest Officer was authorized to give permission. Hence, the question of demanding the bribe amount with the complainant does not arise. C.D. was not exhibited in evidence. Report of Forensic Science Laboratory (for short "FSL") is not on record. Material witnesses were not examined. Conversation does not disclose that there was reduction of amount of bribe.

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

- i) *Dashrathsingh Chavan V/s CBI*, (2019) 17 SCC 509.
- ii) *Suraj Mal V/s State* (Delhi Administration), (1979) 4 SCC 725.
- iii) *Kashinath Ahire V/s State of Maharashtra* 2019 SCC online Bombay 5982.
- iv) *Pratap M. Ghadge V/s The State of Maharashtra*, (Unreported Judgment) in Criminal appeal No.898 of 2012.
- v) *Subhash Pandurang Jadhav V/s State of Maharashtra* (Unreported Judgment) in Criminal appeal No.690 of 2015.
- vi) *Panalal Damodar Rathi V/s State of Maharashtra*, (1979) 4 SCC 526.

- vii) *Yuvraj C/o Chintaman Selokar V/s The State of Maharashtra* 2012 SCC online Bombay 1110.
- viii) *State of Maharashtra V/s Dnyaneshwar Rao Wankhede*, 2009 15 SCC 200.
- ix) *G.V. Nangundiah V/s State of Maharashtra*, 1987 Supp. SCC 266.
- x) *V. Venkata Subbharao V/s State*, (2006) 13, SCC 305.
- xi) *Mukhtiar Sing V/s State of Punjab*, (2017) 8 SCC 136.
- xii) *Devidas V/s State of Maharashtra* 2020 SCC online Bombay 1041.
- xiii) *Rakesh Kapoor V/s State of Himachal Pradesh* (2012) 13 SCC 552.
- xiv) *Anuradha Anant Shitkande And Anr. V/s State of Maharashtra* 2016(2) Bom. C.R. (Cri.) 168.
- xv) *State of Maharashtra V/s Gopal Ambadas Gawali* 2020 SCC online Bombay 165.

7. Learned APP submitted that the demand and acceptance of bribe amount is proved. There is sufficient evidence to support the prosecution case. PW-1 and PW-2 corroborated each other. The accused have not explained as to how tainted amount came into his possession except denial of

charge. There is no explanation to rebut the presumption under Section 20 of the PC Act. No question was put to the witnesses suggested thrusting of bribe amount. The benefit of acquittal to the co-accused cannot be given to the appellant. There was no evidence that he demanded money. He had not accepted the money. The recorded conversation about demand was between complainant and the appellant. Benefit of doubt was given to accused No.1 considering that he was merely present with the appellant. Shadow witness was present with the complainant. He has corroborated version of complainant. Sanction is proper. Law does not prescribed any format for granting sanction. Work was pending with the accused. The prosecution has established foundational facts and hence the presumption under Section 20 of PC Act can be invoked in the present case. The accused have failed to rebut it. The decisions relied upon by the learned counsel for the appellant are not applicable in the present case.

8. The evidence of the witnesses and the documentary evidence on record is required to be assessed to ascertain whether the prosecution has established the offences against the appellant beyond reasonable doubt. I have scrutinized the

evidence on record.

9. PW-1 Harishchandra Ushirkar is the complainant. According to him his house at Bhatsai is in the name of his wife. It was in dilapidated condition and hence it was decided to demolish it and reconstruct it at the same place. The complainant applied for permission from forest department. He demolished the house. The wooden poles were kept at the place of work. Accused visited the site in 2008. They had visited one month after the date of the application submitted by the complainant. Appellant and the staff members visited the site for preparing panchanama. They took measurement of wooden poles. They permitted the complainant to start the construction work. Both the accused arrived at the spot and demanded Rs.1,500/- after questioning the complainant about commencement of reconstruction. The complainant went to Medha on 26th January, 2008 to meet accused No.2 (Appellant). Complainant told him that he is unable to fulfill the demand and requested for reduction the amount. The appellant insisted that he will have have to pay Rs. 1500/- The complainant replied that he will manage within 2/3 days. The complainant

approached ACB and lodged the complaint (Exh.22). He was instructed to visit office of ACB on the next day. He was requested to visit Roha rest house on the next day. The complainant reached rest house on 29th January, 2008 at about 9.30 a.m. Panchas were introduced to him. For verification of demand it was decided to contact accused No.2 from cellphone. D.V.R. was attached to the instrument. PW-1 contacted accused No.2 on cell phone and requested to reduce the amount. After negotiation the demand was reduced to Rs.1,000/-. He was told that the amount be paid to accused No.1. The conversation was recorded in D.V.R. He went to the house of accused No.1. It was closed. In the afternoon he again contacted accused No.2 on cell phone and told him that house of accused No.1 is closed. The accused No.2 told him that he would come in the evening. D.V.R. was kept on. Arrangement was made for trap. Anthracene powder was applied to the currency notes. Instructions were given to the panch witnesses. All of them went to the house of complainant. At about 6.50 p.m., both the accused came on motorcycle. The complainant requested the accused to reduce the amount. Accused No.2 was reluctant to reduce. He

demanded the amount. The tainted currency notes were handed over to accused No.2 which was accepted by him by his right hand and kept in the shirt pocket. Signal was given to raiding party. Both the accused were apprehended. Amount was recovered from Accused No.2 . Panchanama was recorded.

10. In the cross examination PW-1 has stated that the application was submitted by his wife. After submitting the application, old house was demolished. Two months thereafter both the accused came for drawing panchanama. The application was made in Range Forest Office, Roha. For reconstruction of house in forest area, the department has to prepare panchanama first and without permission reconstruction cannot be started. He preferred application in October, 2007 and started construction work. The application is to be filed in the office of Roha and then forwarded to the office of accused at Medha. The accused were empowered to prepare panchanama and submit it to Roha office and the Range Forest Officer was authorized to grant permission. The accused had visited the site in December, 2007, when the work of plinth was going on. After preparing panchanama accused was permitted

to carry out construction, on condition that the complainant shall pay Rs.1,500/-. Till completion of panchanama there was no talk of money. On 21st January, 2008 accused No.2 asked the complainant as to why he started work without permission. The complainant was told to visit office at Medha. On 26th January, 2008 he visited office at Medha in the afternoon and offered Rs.500/- to accused No.2. The accused refused to accept the amount and demanded to Rs.1,500/- on 28th January, 2008. He lodged the complaint to ACB. Accused No.2 contacted twice on phone. He admitted that he has not received permission till today.

11. PW-2 Vaibhav Pandurang Kadam is panch witness. According to him on 28th January, 2008 he visited office of ACB and contacted Mr. Ghodke along with another panch Mr. Gurav. They were instructed to visit on the next day. On 29th January, 2008 they visited rest house at Roha. Mr. Ghodke was present. Complainant was present. They verified the complaint and signed the same. Complainant was instructed to call accused No.2 on his cell phone to verify demand. Complainant had conversation with accused No.2. Speaker was kept on. They

heard the conversation. There was talk regarding money. The amount was negotiated to Rs.1,000/-. Thereafter, the recorded conversation was reviewed in the presence of panch witnesses. They came to know that, accused No.2 had demanded Rs.1,000/-. The appellant instructed complainant to pay the amount to accused No.1. Complainant again contacted accused No.2 (appellant) and told him that accused No.1 is not at home. The complainant requested him to collect money from his home. The conversation was recorded with the speaker of cell phone with the help of recorder. After hearing conversation, it was decided that accused No.2 will send accused No.1 to collect money at the place of complainant. Trap was arranged. Currency notes were kept with complainant. He was instructed to complainant to accompany him. They reached Bhatsai at 6.00 p.m. He went to the house of complainant. Others waited in front of the house of complainant. Both the accused came at the house of complainant. The accused No.2 was requested to reduce the amount by complainant. The accused No.2 was reluctant to reduce. The complainant was told to collect the documents on the next day and to pay the amount on that day.

The complainant offered Rs.1,000/- which was accepted by accused No.2 in his right hand and kept it in the shirt pocket. Signal was given to raiding party and both the accused were apprehended. Gurav took currency notes from the pocket of accused No.2. The right hand fingers of the accused No.2 were checked. They were having shining effect. On 30th January, 2008 he went to the office of ACB. He was shown panchanama. Digital voice recorder was viewed in connection with conversation between accused and complainant. It was recorded on C.D. with the help of computer. C.D. was sealed in envelop and signature was obtained. Panchanama was prepared. In the cross examination he stated that, on 29th January, 2008 he reached Roha rest house. Complainant met Mr. Ghodke. Till occupying chair accused did not make any demand of money. He do not remember whose hands were checked first under ultra violate rays. Dy.S.P Mr. Ghodake prepared panchanama of voice recorder. The verification panchanama was marked as Exh.25. It contains the script of conversation between complainant and accused No.2. The pre-trap panchanama was marked as Exh.26. It also contains the script of conversation

between complainant and accused No.2. The trap panchanama was marked as Exh.27. The script of conversation is recorded in the said panchanama. The panchanama relating to opening of envelope containing voice recorder were marked as Exh.29.

12. PW-3 Kesrinath Godbole is the Forest Officer. He stated that accused No.2 was forester and accused No.1 was forest guard. Village Bhatsai is within his jurisdiction. Accused No.2, being round officer of Medha and Bhatsai comes under his jurisdiction. If the wood in the existing house on its demolition is reused in the reconstruction prior permission from the Forest Officer is must. The owner has to seek permission from the forester through Range Forest Officer and then it is forwarded to forester for inquiry. During inquiry, forester has to see that the owner is using old wooden logs at the time of reconstruction of premises. He has to measure width and length of the logs and to ascertain whether new wooden log is included. Application of Pramila was received by the office. Inquiry was given to accused No.2. He has perused the panchanama prepared by accused No.2. It was not signed by him. There was no date mentioned by him on it. He recorded statement of Smt.

Ushirkar. It was not signed by him and no date was mentioned. Forester has enclosed the certificate along with papers that new wooden logs are not included therein. No date was mentioned in the certificate. He found some short falls and hence forwarded to forester to comply them. He made endorsement about shortfalls on the report forwarded by accused No.2 dated 16th January, 2008. Documents were exhibited as Exh.35 to 44. On 29th January, 2008 Mr. Ghodke informed him that the accused were taken in custody. As permission was not granted by him, the proposal was pending with accused No.2. Accused No.1 is expected to help accused No.2 being guard. In his cross examination he deposed that, RFO is empowered to grant permission. Forester is expected to present the report. Applicant came personally in the office with application on 15th November, 2008. Acknowledgment was given by office. After submitting report the work was not pending with him. He had informed the Investigating Officer that till the date of trap the proceedings were pending in the office, though it was given to the forest guard. The proceedings were handed over to forest guard for sending it to accused No.2. Till the trap it was not forwarded to

him. On 26th January, 2008 there was flag hoisting and it was public holiday. Both the accused were present at Roha Forest Office for flag hoisting. As the office had received the report of forester, work was not pending with him. On 29th January, 2008 for some time the accused was present in the office of Roha. He visited the office. It is not true that accused was not entrusted with the work to prepare panchanama.

13. PW-4 Chandrakant Kende was called for panchanama in ACB office on 5th March, 2008. According to him accused No.2 was present when he went to office. Dy.S.P. Ghodke viewed the digital voice recorder. He had gone through the contents of panchanama. Voice sample of accused No.2 was recorded. With the help of computer, C.D. was prepared. C.D. was viewed. In the cross examination he stated that, there were four persons in the room. After completing panchanama, Dy.S.P. obtained his signature. He was unable to tell how many windows were situated in the room. Recording was done with the help of computer. There may be computer or laptop for recording C.D. At the time of recording accused was present. C.D. was viewed in their presence. Panchanama was signed by

them. The voice sample panchanama was marked as Exh.46.

14. PW-5 Shri. Bhagwan was the Chief Conservator of Forest, Thane. He stated that the accused were serving as forest guard and forester in Medha circle of Roha office. He has powers to remove forester and forest guard from services. He received case papers on 12th January, 2009 from ACB. He stated that he had gone through FIR, verification Panchanama, script of the conversation between complainant and accused, pre-trap and post-trap panchana, statement of witnesses and other documents. He was satisfied that there is sufficient material against both the accused. He issued sanction order dated 3rd March, 2009. In the cross examination he deposed that he had received draft proforma of sanction order. Range Forest Officer is expected to grant permission after receiving panchanama from forester. He received papers from ACB Thane on 10th January, 2009. He did not call for papers from DFO. He called his report. The owner of the house has to file his application for seeking permission. He did not go through the panchanama of old used wood. On perusal of documents it is transpired that there is no motive behind crime. Sanction can be refused. He

had not collected information whether any offences are pending against complainant about theft of forest wood. In case of construction without permission of forest the owner can be prosecuted for offences under Sections 41, 45, 46, 47, 48 & 49 of Forest Act. In the first report submitted by him to RFO, there was no signature. He has not verified whether the report was reported to accused No.1 or not. Before granting sanction he had gone through copy of FIR, panchanama and other papers of investigation. On page of sanction date is mentioned as 3rd February, 2009 which was corrected by him as 3rd March, 2009. On the last page of sanction order he has not mentioned place where signature was made. He did not put date below his signature. He did not make any inquiry whether work was pending with forester on the day of trap. He called report of DFO. He did not call report of RFO before according sanction. The sanction order is marked as Exh.50.

15. PW-6 Chandrakant Ghodke was Dy.S.P. ACB, Raigad. He narrated the incident right from inception. He referred to the complaint of PW-1. Arrangement of trap, verification panchanama, pre-trap panchanama etc. He also referred to

recording in digital voice recorder. The execution of trap and recovery of tainted money from the accused, traces of anthracene powder were seen on the right palm and left shirt pocket of accused No.2. The panch No.2 was asked to take out the bribe amount from the pocket of accused No.2. The amount was examined in the ultra violet rays and shining was seen. Anthracene powder was noticed on the right palm and fingers of accused. On inquiry, accused No.2 stated that the papers relating to work of complainant were kept in office of Medha. All of them went to Medha by Jeep. He filed report with police station. Investigation proceeded. The D.V.R. was taken out and data was transmitted to C.D. with the help of computer. C.D. It was shown to panch witnesses. C.D. was played before the panch witnesses. C.D. was sealed. The data in the D.V.R. was deleted. The panchanama of preparation of C.D. was marked as Exh.29. On 15th January, 2008 the pending work of complainant was sent to R.F.O. Roha. The report was marked after completing work of complainant. He did not make any inquiry about complaint made by accused against complainant regarding theft of forest teak wood. During investigation it was

revealed that, accused No.2 had sent the work of complainant to R.F.O. He did not verify the register of R.F.O. as to whether he had sent the permission of complainant to the office of accused. He did not make inquiry with R.F.O. regarding pendency of permission of complainant. He did not receive copy of C.D.R. from the office of BSNL. The C.D. in respect of transcript is produced along with charge-sheet in the Court. From the evidence of this witnesses it can be seen that there was not defence of thrusting currency notes, put to this witnesses.

16. PW-7 Prabhakar Bhagwat was attached to ACB, Raigad in 2008. He received pre-trap panchanama, complaint, post-trap panchanama, verification panchanama and other documents. He recorded statement of complainant and panch witnesses. He recorded statements of Police officers in raiding team. On 5th March, 2008 he called panch witnesses from collector office for collecting voice sample of accused No.2. The script recorded on 29th January, 2008 was given to accused No.2 for reading. Accused No.2 read over the script in the presence of panch witnesses and the voice of accused was recorded in D.V.R. with the help of computer, C.D. was prepared about voice

sample from D.V.R. It was verified that in the C.D. the voice sample was recorded. Signatures of panch witnesses and accused No.2 were obtained. C.D. was sealed in envelope and signatures of panch witnesses were obtained. On the script signatures of panch witnesses were obtained. The data in D.V.R. was deleted. Panchanama of voice sample was prepared. On 27th March, 2008 C.D. was sent to FSL kalina. Papers were sent to Chief Conservator of Forest for sanction. On 17th February, 2009 sanction was received. Charge-sheet was filed. He recorded statement of R.F.O. Shri. Godbole. He seized the documents Exh.35 to 44 from Shri. Godbole. The report in respect to voice recording and C.D. is not received from FSL Kalina, Mumbai. In the cross examination he stated that he did not obtain permission of the Court while recording voice sample of accused No.2. The C.D. was in his custody till it was sent to FSL Kalina. No expert was called while obtaining voice sample. Mr. Ghodke handed over investigation to him. He did not record statements of neighbours of complainant. R.F.O. Godbole had sent back the proposal of complainant since some documents were lacking. He did not verify how many times work of complainant were

sent back to the office of accused. He did not investigate as to where the proposal of complainant was pending on 30th January, 2008. The log book of jeep and the record of rest house was not seized. No C.D.R. was called from BSNL.

17. On the basis of the evidence adduced by the prosecution, the appellant/accused No.2 was convicted and accused No.1 was acquitted. In paragraph-27 of the Judgment it was observed that the accused No.2 being the forester and public servant, so as to complete the work of preparation of panchanama and submission of report to the office of R.F.O. demanded and accepted bribe amount of Rs.1,000/- from complainant. However, accused No.1 cannot be said to have committed the offence under Section 12 of P.C. Act.

18. The scrutiny of evidence of PW-1 (complainant) reveals that, according to him his house bearing No.185 was in dilapidated condition and he decided to reconstruct the same. The house stands the name of his wife. He intended to use the old teak wood used in the house for the purpose of reconstruction and for that it was necessary to obtain permission from Range Forest Officer, Roha. Accordingly

application was submitted by complainant's wife on 23rd November, 2007. The Range Forest Officer forwarded application to accused No.2 (appellant) on 26th November, 2007. The evidence of PW-3 shows that the work in respect of preparation of panchanama of accused No.2, who is the forester and on receipt of report of forester, the Range Forest Officer is expected to issue the permission for reuse of the old wood. Although the deposition of complainant would indicate that, permission required for reconstruction of the house the primary issue was with regards to the permission for reuse of the old wood utilized in the house and it is reused for constructing new house.

19. The evidence on record discloses that, after submission of application for reuse of the wood, the appellant and the co-accused had been to the house of the complainant for taking measurement of old wood and obtained signature of his wife. According to complainant, he was allowed to start the construction work. According to him the accused again visited his house and questioned him as to how he started construction of house and demanded amount of Rs.1,500/-. On 26th January,

2008 the complainant went to Medha to meet appellant. At that time he had discussion with the accused and that accused had demanded Rs.1,500/- as bribe for completion of work. The complainant realized that accused would not do his work and hence, lodged this complaint to ACB. PW-6 recorded his complaint on 28th January, 2008. The complainant was called on 29th January, 2008 at the rest house. The complainant visited the rest house. He contacted accused No.2 on cell phone. Amount was reduced to Rs.1,000/-. The amount was to be paid to accused No.1 in the evening. The said conversation was tape recorded. The complainant went to house of accused No.1. He found that the door was closed. He contacted accused No.2 and informed about it. He was informed by accused No.2 that he would come in the evening. Accused Nos.1 & 2 came on motorcycle on 29th January, 2008 at about 6.50 p.m. The amount was accepted by the accused No.2 (appellant). He kept it in the shirt pocket. He was caught by the raiding party and taken to guest house. Further, procedure was followed. Pre-trap & post-trap panchanama are on record. The cross examination of complainant does not affect the core of his testimony about

demand and acceptance of bribe amount.

20. PW2- Vaibhav Kadam acted as panch witness. He has referred to the complaint, verification of demand and trap. He also stated that the conversation between accused and complainant was on record. It was heard. The voice recorder was viewed on 30th January, 2008. Conversation was transmitted into C.D. and it was sealed. Panchanama Exh.29 was prepared. The shadow panch witness was cross examined. He has corroborated the testimony of PW-1. The bribe amount was accepted in his presence. Although he was cross examined, there is nothing on record to doubt his testimony. The demand and acceptance of bribe amount is corroborated through his evidence.

21. PW-3 Kesarinath Godbole is the RFO. His evidence discloses that the permission is required for re-using the wood from old house. The application is forwarded to forester for inquiry. The forester has to see that the owner is using old wood in reconstruction and is required to ascertain if new wood is used. In that regard inquiry was conducted by the appellant and panchanama was prepared by him. The defence has strenuously

urged that no work was pending with the appellant and thus the question of demanding bribe amount from the complainant does not arise. The accused had already performed his duty by recording statement of the owner of the house, issuing certificate, recording panchanama of used wood and submitted the report to Range Forest Officer. Hence, no work was pending from the side of the appellant. It is also contended by the accused that PW-3 has admitted that no work was pending with appellant. The motive for falsely implicating the accused is that the complainant was apprehending action of law for commencement of reconstruction of house without permission. The defence has not established such motive.

22. It is pertinent to note that, Exh.35 to 44 are relating to the application of complainant's wife, inquiry conducted by the appellant and the report submitted to Range Forest Officer. Those documents were admitted by the accused and adduced in evidence as Exh.35 to 44. It is pertinent to note that, the evidence discloses that Range Forest Officer is authorized to issue permission for reuse of teak wood but for that purpose it is necessary that there should be report and the panchanama

submitted to him by forester working under him and only after receipt of the papers to that effect Range Forest Officer is in position to issue permission. Undisputedly, the appellant was working as forester with PW-3 and he was entrusted with the work of preparation of panchanama about the old wood and submission of the report to that effect. The wife of complainant Pramila submitted application on 23rd November, 2007 to PW-3 for permission to reuse the wood in reconstruction of the house. In view of order Exh.36 dated 26th November, 2007 Range Forest Officer directed the forester (appellant) to effect the inquiry about the old wood and prepare panchanama about the same and submit the report to that effect. In pursuant to that, appellant prepared panchanama and also measured the wood and recorded statement of Pramila Ushirkar and issued certificate. On 15th January, 2008 the appellant forwarded the above documents to PW-3 for issuing permission. On the report Exh.35, PW-3 endorsed remarks and re-forwarded the documents to appellant for necessary compliance since there was no date on panchanama, no date on the statement of Pramila and he did not put his signature to show that statement

was recorded in his presence. Certificate did not contained date. Thus, there were short falls as deposed by PW-3. The evidence of PW-3 in examination-in-chief categorically depicts that he had made endorsement about short falls on the report submitted by the appellant. The endorsement was made on 16th January, 2008. In the cross examination he admitted that Range Forest Officer is empowered to grant permission and forester is expected to present the report. Exh.35 is signed by appellant. However, PW-3 in his cross examination has stated that after submitting the report, the work was not pending with him. He had stated to Investigating Officer that till the date of trap the proceedings were pending in the office though it was given to forest guard. The proceeding is handed over to forest guard for sending it to accused No.2. Till trap it was not forwarded to him. The trial court aptly described the conduct of PW-3. From the examination-in-chief of said witness it is clear that, on 16th January, 2008 he had noted short falls in the report submitted by the appellant and it was to be complied by the appellant. However, in the cross examination he stated that the work was not pending with the appellant. In paragraph-19 of the

impugned Judgment of the trial Court has observed that PW-3 has wrongly admitted in cross that the office has not received the report, no work was pending qua forester. This admission was given by PW-3 to save the appellant. The evidence and noting by Range Forest Officer on the report (Exh.35) submitted by accused-appellant indicate that there are reasons to believe that the work with regards to preparation of panchanama and submission of the report was pending with accused. I have perused the note dated 16th January, 2008 which mentions that the panchanama does not contain the date, there is no endorsement on the statement by the accused that it is recorded in his presence and that on completing the inquiry the same may be placed for granting approval.

23. The prosecution is relying on the conversation between the accused and complainant. The voice samples of the accused were obtained and CD was prepared. This is evident from the deposition of PW-4. The evidence of PW-3 also discloses that voice recorded was viewed on 30th January, 2008 and the conversation was recorded on C.D. which was sealed. The documents such as complaint, pre-trap & post-trap

panchanama, panchanama relating voice samples of the accused were proved in evidence. It is contended that C.D. was not played in Court. PW Nos.6 & 7 discloses that the voice samples of the accused was collected. CD was sent to FSL. PW-7 has stated that the report was not received. Thus, FSL report do not support the prosecution case. However, only on that ground the prosecution cannot be discarded. Demand and acceptance of bribe amount has been proved beyond all reasonable doubt. The appellant has not been able to rebut the presumption under Section 20 of the PC Act.

24. The defence of the appellant is that the amount was thrust on his person. It is pertinent to note that such suggestion is not given to any of the witnesses during their cross examination at the instance of accused. While answering the questions put to the accused under Section 313, it was not stated by appellant that the amount was thrust on his person. For the first time while tendering the written notes of arguments by the appellant it was contended that the amount was thrust on his person. The defence of the accused is not plausible and cannot be accepted.

25. It is the case of the accused that since the permission to reconstruct was not granted and without such permission the complainant has reconstructed the house, he was apprehending action from the accused and falsely implicated him in the crime. There is nothing on record to show that any action regarding reconstruction was initiated by the accused or Range Forest Officer. There is no motive for the complainant to falsely implicate the accused. The accused gave suggestion that he came to inform complainant that they had come to the complainant to take permission from Range Forest Officer. Therefore, the accused admitted their visit on the day of trap. There is nothing on record to show that the permission is required for reconstruction and forest department is concerned about it. It is pertinent to note that the application was for reuse of old wood and to ascertain whether new wood is used.

26. It is also contended that the co-accused was prosecuted on the basis of the same evidence was acquitted by the trial Court and hence the benefit be given to the appellant. The court has disbelieved the evidence of witnesses qua acquitted accused. However, the benefit of doubt is given to the co-

accused. The prosecution has established demand and acceptance of the bribe amount qua the appellant. The conversation with regards to demand is between complainant and the appellant. The amount was accepted by the appellant. The amount with anthracene powder was recovered from the appellant. Hence, the said submission is devoid of merits.

27. Learned counsel for the appellant relied upon several decisions. I have perused the said decisions. The same are not applicable in the present case. The facts of this case are different.

28. It is also submitted that, sanction granted for prosecution is invalid. I have perused the evidence of sanctioning authority and the sanction order. Except minor discrepancy, I do not find that there was non application of mind on the part of the sanctioning authority. No fault can be found with the sanction order.

29. In view of the above observations, I do not find that the trial Court has committed an error in convicting the appellant. The prosecution has established its case beyond all

reasonable doubt. Hence, the appeal is devoid of merits and deserves to be dismissed.

ORDER

- i) Criminal Appeal No.475 of 2013 is dismissed.
- ii) The impugned Judgment and order 18th April, 2013 passed by the learned Additional Sessions Judge & the Special Judge Mangaon – Raigad in Special Case (A.C.B.) No.1 of 2009 for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988 is confirmed.
- iii) The appellant is granted time of twelve weeks to surrender before the trial Court.
- iv) Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)