IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 591 OF 2015
WITH
INTERIM APPLICATION NO.84 OF 2020

Satish Purshottam Wankhede .. Appellant

Vs.

The State Of Maharashtra .. Respondent

Mr.Aniket Ujjawal Nikam, Mr. Piyush Toshnival, Mr. Vivek Arote and Mr. Amit Icham i/b. Aashish Satpute, Advocate for Appellant.

Mrs. A. A. Takalkar, A.P.P. for the State-Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE OF RESERVATION : 6th JANUARY, 2021

DATE OF PRONOUNCEMENT: 9th JUNE, 2021

JUDGMENT.

1. The appellant is convicted vide judgment and order dated 30.04.2015 passed by the Special Judge, Nashik in Special Case (ACB) No.5 of 2010 for the offences punishable under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as PC Act 1988). The appellant has been sentenced to suffer rigorous imprisonment for six months and fine of Rs.2,000/- for the offence under punishable under Section 7 of P.C. Act, 1988. He is sentenced to suffer rigorous imprisonment for one year and fine of Rs.2,000/- for the offence punishable under Section 13 (1) (d) read with Section 13(2) of the P.C. Act, 1988. The substantive sentences were directed to run concurrently. This appeal has

been preferred under Section 374 of Code of Criminal Procedure (for short "Cr.P.C.") challenging the impugned Judgment and order convicting the appellant for the aforesaid offences.

2. The case of the prosecution is as under: -

(i) The complainant Sunil Nathhu Borase was appointed by the Government as Weights and Measures Repairer. His workshop "Borase Scale Traders" is situated at Vani, Taluka Dindori. Taluka Dindori, Peth and Surgana comes under the jurisdiction of the accused who was Inspector of Legal Metrology, Vani Division.

(ii) The weighing machines are handed over to the complainant by the businessmen for verification, renewal and stamping. The complainant repairs them and repaired instruments are submitted to Inspector of Legal Metrology, Vani Division for re-verification. The Inspector of Legal Metrology re-verify and inspect those machines. After re-verification the accused used to hand over them along with certificate to the complainant. On receiving the inspected weighing machines, the complainant used to hand over machines to the businessmen. The complainant recovers Government fees and deposits the same in State Bank of India, Dindori branch.

(iii) After re-verification and stamping, accused should return weighing machine along with certificate immediately. The accused was recovering amount of 45% out of repair fees from the complainant and other licence holders as bribe. After receiving the amount, the accused used to inspect the instruments. Many times without verification, accused used to stamp instruments. About 78 matters were pending for issuing certificates. The complainant had deposited Government fees of Rs.10,000/- on 14.05.2009 with the State Bank of India. On 11.05.2009 he deposited amount of Rs.10,000/- in State Bank of India. The accused did not issue certificates. 45% of the Government charges of weight, balance weight measurement and electronic balance was due. The complainant paid advance amount of Rs.5,000/- on 10.05.2009. Balance amount of Rs. 12,344/- was due. The transaction was unauthorized.

(iv) For pending 78 matters, it was agreed to pay Rs.10,000/- at the office of accused at Vani. The complainant was not willing to pay the amount to the accused. The complainant lodged the complaint with Anti-Corruption Bureau (for short "ACB"), Nashik.

(v) On receipt of the complaint, Deputy Superintendent of Police Bharatkumar Suryawanshi called two panch witnesses. The complainant was introduced to them. The complainant produced the amount of Rs.10,000/- to pay it as bribe. Instructions were given to panch witnesses. Raid was arranged. Anthracene powder was applied to the currency notes. Necessary instructions were given to panch witnesses.

(vi) Pre-trap panchnama was recorded. The trap party proceeded towards Vani by Government vehicle. They stopped near the office of Weights and Measures. The complainant and panch witnesses were instructed to meet the accused in his office. Accused was not in the office. Therefore, the complainant and panch witness returned to

Government vehicle. The accused went to Chopada Petrol Pump for stamping. The complainant was instructed to verify the fact by giving phone call to the accused on his cell phone. The complainant made phone call on the mobile phone of the accused. They proceeded towards Chopada Petrol Pump.

(vii) Complainant and panch witness Chintaman Thakare had talk with accused. The complainant handed over currency notes to accused. The raiding party rushed towards the spot. The currency notes were recovered from the accused. Accused was arrested. Charge-sheet was filed.

3. Charge was framed on 07.08.2010. The first charge is that since 08.11.1991 till 20.05.2009, accused was working as Inspector in the office of Weights and Measures at Dindori, Vani division, Nashik. Complainant had approached accused for the purpose of verification of the 78 annual proposals of repairs of weights and measures and for the said purpose, accused demanded amount of Rs. 12,375/- and in pursuance of demand. The accused demanded and accepted bribe amount of Rs.10,000/- on 20.05.2009 from the complainant near Chopda Petrol Pump in presence of Panch witness as motive or reward, for verification of the 78 proposals of repairs of weights and measures and by abusing position as public servant. The accused committed an offence under Section 7 of P.C. Act. Secondly, on the aforesaid day, date, time, place, the accused committed offence of criminal misconduct by corrupt and or illegal means by obtaining pecuniary advantage of Rs. 10,000/- from complainant by abusing position as public servant and committed offence under Section 13(1)(d) read with 13 (2) of P.C. Act, 1988. The

prosecution examined three witnesses. PW No.1 Sunil Nathhu Borase is the complainant. PW No.2 Chintaman Pandurang Thakare is the panch witness. PW No.3 Bharatkumar Suryawanshi is the investigating officer.

4. Learned counsel for the appellant submitted as follows: -

(a) The appellant has been falsely implicated in this case. There is no evidence to establish the charges against him.

(b) The complainant is not better than accomplice and without corroboration to the version of complainant, the accused should not be convicted.

(c) The earlier demand of bribe prior to filing of complaint is not proved. The demand of bribe is *sine qua non* for constituting the offence punishable under Section 7 of Prevention of Corruption Act, 1988. If the demand of bribe is not proved, the acceptance and recovery of bribe from the possession of the accused has no relevance.

(d) Acceptance has to be proved beyond doubt and if there are discrepancies in respect of demand of bribe and its acceptance, such evidence cannot be accepted.

(e) In the absence of proof of demand, the presumption under Section 20 of Prevention of Corruption Act cannot be drawn against the accused.

(f) Mere recovery of the bribe amount from the possession of accused is not sufficient to convict him.

(g) The defence of the accused has to be tested only on the touchstone of preponderance of probability.

(h) The complainant has alleged that the accused had demanded bribe amount for issuance of certificate of stamping. He used to demand such amount frequently. The complainant has never made any complaint to Legal Metrology Department or any other authority.

(i) The complainant has admitted that Mr.Gangurde was working in the office of the accused as Field Assistance and he was looking after the work of accepting the applications and handing over the certificates. The complaint is silent about the fact that he had met Mr.Gangurde and demanded certificate from him.

(j) Mr.Gangurde had produced the record before the investigating officer. It was verified. The spot panchnama mentioned that certificates were dated 15.05.2009, 16.05.2009 and 19.05.2009. The certificates were ready with Mr.Gangurde and the accused has no connection about handing over the certificates to the complainant.

(k) Except the evidence of the complainant, there is no evidence to corroborate the version of the complainant.

(l) There is no specific date of demand, no specific incident of demand and agreement of acceptance of bribe by the accused from the complainant.

(m) There is improvement/omission and contradiction in the evidence of complainant. The complainant is not credible witness.

(n) Complainant and panch witness were instructed to go to the office of the accused on the day of trap. Both of them went to the office of accused. After sometime, both of them returned. The Investigating Officer had instructed the complainant to make a call to the accused. The complainant has given telephonic call to the accused. The accused had informed the complainant to come at Petrol Pump. The post trap panchnama does not mention that the complainant had informed the accused that he had brought the amount and asked him that he should meet him. In the evidence, it is stated that the complainant told accused that he had brought the demanded amount and asked him where he should come. The evidence of complainant does not inspire confidence. The complainant does not state that the accused had demanded the amount from him. The panch could not hear the conversation between the complainant and accused. The complainant refers to amount of Rs.10,000/-. The panch refers to Rs.5,000/-.

(o) The complainant had motive to falsely implicate the appellant. Licence was issued to U.K. Scales Company by Controller of Legal Metrology. The business of the complainant was affected. The complainant was insisting that the accused should make the report of U.K. Scales to cancel licence of that company. Accused refused to do so. Hence, he was involved in false case.

(p) The complainant was collecting the Government Stamping charges from businessmen but he was not depositing the same in the office of accused. He was warned by the accused. Hence, accused was implicated in false case.

5. Learned APP submitted that the prosecution has proved its case by oral and documentary evidence. The evidence of complainant and the panch witness cannot be doubted. The accused have not rebutted the presumption under Section 20 of the Prevention of Corruption Act. The accused have accepted the amount of Rs.10,000/- from the complainant as bribe. The amount was recovered from his possession. Anthracene powder was applied to the currency notes. There is evidence to establish the demand of bribe by the accused. The prosecution has established that the accused had demanded and accepted the bribe. The evidence of panch witness on the point of acceptance of bribe amount is reliable. Minor discrepancies and contradictions in the evidence of witnesses are not fatal to the prosecution case. The accused had accepted bribe for issuance of certificate to the complainant.

6. As a part of his explanation/defense under Section 313 of Cr.P.C., the appellant has tendered written explanation. His defence is that he has never demanded and accepted the bribe amount from complainant; PW No.1 was recovering stamping charges from the vendors and not depositing them in the office of Legal metrology. The account was not settled since 2009. The complainant was recovering excess amount towards repairing and stamping charges from the vendors. He was not issuing receipt of the amount collected by him. The appellant had warned him that he would forward to the Controller of Legal Metrology in that regard. In the event the appellant submit such report to the department, the licence of complainant would have been cancelled. It was the duly of Field Assistant to issue certificate of repairs. Mr.Gangurde was working as Field Assistant. The

appellant had signed the verification certificate before the complaint was filed. The certificate were handed over to Mr.Gangurde for further process. The complainant had collected the certificate from the office, before filing the complaint. The Controller of Legal Metrology had allowed U.K. Scale Company to work in the whole State of Maharashtra as repairer. Licence was issued to the said company. The said company had started work in Nashik District. Hence, income and work of complainant had hampered. He was insisting upon appellant to send report against above company to the office of controller of Legal Metrology department so as to cancel the licence of said company. The appellant had refused to co-operate with complainant in that regard. Complainant was disappointed with appellant. For the aforesaid reason, complainant has falsely involved appellant in this case. On the day of incident, while appellant was conducting inspection at Chopda Petrol Pump, the employees of Petrol Pump were with him. The complainant tried to thrust, the amount in left hand of appellant. He resisted. He was accosted by some persons who were in civil uniform. They were officers of ACB.

7. PW No.1 Sunil Borse is the complainant. According to him, he is holding licence for repairing weigh bridge, platform machine, beam scale, electronics and weighing machine. His workshop comes under the jurisdiction of the Inspector of Legal Metrology, Vani. The accused was in-charge of Vani Division. The complainant repairs the instruments of businessmen and submit them to the Legal Metrology Department. The Inspector of Legal Metrology inspects the instruments and issue certificate. In April 2019, he had handed over 150 instruments to Inspector of Legal

Metrology. 78 Certificates were to be received. On 16.05.2019, he demanded certificates of inspected instruments from the accused. The accused demanded 45% of the Government charges of weigh balance measurement and Rs.200/- for each electronic weigh balance, total Rs.17,344/-. The complainant paid Rs. 5,000/- on 10.05.2009 to the accused. On 20.05.2009, there was phone conversation between him and accused. The accused inquired about his money. The complainant told him that he would pay Rs.10,000/-. The accused told him to pay Rs. 10,000/-. The complainant was not willing to pay the amount. Hence, on the same day he went to office of the ACB, Nashik. He lodged the complaint. Panchas were called. Arrangement was made for laying trap. Complainant produced Rs.10,000/-. Anthracene powder was applied to currency notes. All of them went to the office of accused. PW No.1 and panch (PW-2) approached the accused. They went inside the office of accused. The peon by name Gavali was present in the office. The accused was not in the office. Peon Gavali informed that accused had gone to petrol pump of M.R. Chopada for stamping. PW No.3 instructed applicant to contact accused on phone. The complainant contacted accused on phone. He told him that he had brought the demanded amount. The accused told him that he is at M.R. Chopada petrol pump and told him to come there. They went to the said petrol pump. PW No.1 and panch (PW-2) went to the petrol pump. The accused was inspecting the instruments of petrol pump. The complainant inquired about his certificates. The accused told him that the certificates are handed over to Mr.Gangurde. The accused inquired about their accounts. The complainant told him that he has brought Rs.10,000/- . The amount was given to the accused. He kept that amount in his left-pant pocket. Signal was given to the raiding party. The accused was caught. Panch No.2 was instructed to takeout bribe amount from the pant pocket of the accused. Notes were checked. They were to Vani Police Station along with accused.

8. PW No.1 was cross-examined by the defence. He stated that he had noted notes of complaint and after receiving the summons, he had gone through the notes. He admitted that the repairing charges and the stamping charges are different. He gets repairing charges and he has to credit stamping charges to the Government. He was recovering both the charges from the customers. He was issuing receipt for the charges to the customers. He used to deposit stamping charges in the bank by cash. The account of the stamping charges recovered by him and credited to the Government was not maintained in the office of accused. In case of breach of condition of licence, the licence can be cancelled. Supervision of breach of condition of licence was with the office of the accused. As per the condition of licence he was not required to submit monthly account to the office of accused. In case of breach of condition of licence, the same was liable to be cancelled. The supervision about breach of condition of his licence was with office of accused. In case the accused had reported breach of condition of licence by him, the same would have been liable for cancellation. He cannot say whether he has handed over 150 instruments in the office of the accused in April 2009. Stamping has to be done to every instrument and thereafter the certificate is issued. The stamping of the instruments handed over in April 2009 was already done. The office of the accused has maintained the register in respect of instruments received from him and the certificates issued in

respect of the instruments. He never signed any register after receipt of instruments with stamping and certificates. The complainant has not obtained signatures of the accused or any of the employees from his office after handing over instruments for stamping. He used to submit the accounts of the amount collected and credited by him on account of stamping to the office of the accused once in a year. It was necessary for him to deposit the stamping charges in the bank within 8 to 15 days from the collection. It was a rule that he should deposit the stamping charges along with the instruments in the office of the accused and obtain receipt in that respect. The ACB Inspector never demanded accounts for the period of January 2009 to April 2009 from him in respect of the stamping charges collected and credited by him. He only demanded details of amount to be credited by him. On 19.05.2009 he had narrated his complaint at ACB office. It was not written down. He had stated in his complaint that on 16.05.2009, he demanded certificates of inspected instruments from the accused but he did not receive those certificates and on his demand, the accused asked him to pay 45% of the Government charges balance totaling amount of Rs.17,344/-. However, this fact is not reflected in the complaint. On 20.05.2009, he went to ACB office. He had talk with the accused on mobile phone before filing complaint in respect of demand of Rs.10,000/-. He had stated in his compliant that on 20.05.2009 at about 08:00 a.m. the accused had demanded Rs.10,000/- on mobile phone and asked him to come to Vani Office with the said amount. He cannot assign any reason why this fact is not mentioned in his complaint. Licence was allotted to Uttamrao Jagtap. It was transferred to partnership firm namely U.K.Scales. Licence of UK Scales was extended for whole

Maharashtra. The complainant issued notice to the Controller (weights and measures) for cancelling licence of UK Scale Company. He filed Civil Suit. The notice and the suit were filed after the trap of present case. Mr. Gangurde was working in the office of accused as Field Assistant. He was looking after the work of accepting the applications and handing over certificates. He has stated in his statement that he met peon Gawali in the Office of the accused. He also stated that he made telephone call to the accused and informed him that he has brought the money demanded by him and where he should come. He also stated that members of trap party and Officer Mr. Suryavanshi were at the distance of 4 to 5 feet from him, when he gave signal. These facts are not mentioned in the statement. When he reached Petrol Pump, accused was taking inspection and 3-4 employees of Petrol Pump were present. The accused had told him that he would not co-operate with him for cancelling licence of UK Scales Company.

9. PW No.2 Chintaman Pandurang Thakare is the panch witness. He stated that on 20.05.2009 he was called at the ACB office at Nashik. He was requested to act as panch witness. He was appraised about the complaint filed by PW No.1. PW No.1 produced Rs.10,000/-. Anthracene powder was applied to notes. They proceeded to Vani. He went to the office of accused along with PW No.1. Accused was not in the office. He was at petrol pump. PW No.1 was instructed to make telephone call to accused. PW No.1 made call and informed that accused is at Petrol Pump and he is called at Petrol Pump. They went to petrol pump. There was talk between complainant and accused. He could not hear all the conversation due to chaos at the petrol pump. He could hear that complainant was saying about

Rs.5,000/- and the accused told him that only signatures are remained and he can collect the papers from the office. Thereafter, complainant handed over the amount to the accused. Accused accepted the amount. Signal was given to the raiding party. They rushed to the spot. Accused was accosted. Amount was recovered. They went to Vani Police Station. Anthracene powder was found on hands of panch and accused. He could not identify the notes seized by the ACB. He cannot identify the clothes of accused. Post trap panchnama was prerpared (Exh.19). They returned to ACB office at Nashik. At the time of recording panchnama at Vani, certified registered and documents of PW No.1 were called from office of Weights and Measures. The ACB officer inspected those documents. Nothing was done about those documents. ACB Officer never made any inquiry with him about the entire episode after returning from trap. His statement was not recorded. APP sought permission to put leading questions to the witness as he resiled from contents of panchnama. Permission was granted. In the cross-examination of learned APP, he deposed that before proceeding to Vani panchnama was prepared. It was read and signed by him. He identified pre-trap panchnama (Exh.20). On the next day of trap, the ACB officer asked him about the incident. His statement was type-written. He could not hear at petrol pump that the complainant asked accused about pending 78 certificates on which accused replied that he has signed those certificates and the complainant should collect the same from the office. He could not hear thereafter whether the accused asked the complainant about remaining amount. He was questioned by prosecutor whether complainant said to the accused that he already paid Rs.5,000/-and brought Rs.10,000/- as agreed on which accused told him to give the amount. He only heard amount of Rs.5,000/- from the conversation between the accused and the complainant. When the accused said to the complainant to give amount, the complainant gave the amount. He identified panchnama dated 21.05.2009 regarding verification of seats on the box (Exh.21). He admitted arrest panchnama (Exh.22). He attended Court on three dates. He had talk with accused on the day of recording his evidence. He denied he had deposed on the request of accused. In his cross-examination by advocate for accused, he stated that PW No.1 is present in the Court since morning. The complainant never stated to them about date of demand of money from him in his oral narration of his complaint. The complaint was not read by him and therefore he cannot say whether, the date of demand of money to the complainant was mentioned in it or not. The clerk who brought the documents from the office of weights and measures was Mr. Gangurde. He did not hear the conversation of the complainant when he made a mobile call after returning from the office of the accused. In the panchnama it is mentioned that the hands of Jagtap (panch) were tested under light of the lamp at the time of testing the hands and pant of the accused. He never stated this fact in his statement. Personal search of accused was taken by panch No.2 Jagtap. In his personal search, cash, mobile etc. were found. He do not remember whether those articles were also tested under the light of the lamp and then returned to accused. No markings were made on the pant where traces of powder were seen. They never signed on the pant.

10. PW No.3 Bharatkumar Suryavanshi is the Investigating Officer. He has narrated the details about investigation

conducted by him. He was the member of trap party. He deposed that the complainant had produced copy of licence. Challan of registration fee from traders recovered by him. Documents were marked as Exh.30 to 32. He recorded pre-trap and trap panchnama. Complainant produced amount of Rs.10,000/-. Anthracene powder was applied. Instruction were given to the complainant and panch (PW-2). After pre-trap panchnama they proceeded towards Vani. Complainant and panch No.1 proceeded to meet accused. After some time, they returned. They informed him that accused is not in the office and he went of Chopada Petrol Pump for stamping. Then they proceeded towards Chopada Petrol Pump for trap. It is pertinent to note that, according to PW No.1, (complainant) after he returned from office of accused, alongiwth PW No.2, he was instructed by PW No.3 to contact accused on phone and he immediately contacted accused on phone and told him that he had brought demanded amount and asked him where he should come. The accused told him that he is at M.R. Chopada Petrol Pump and asked him to come there. Thereafter, he went to Petrol Pump. PW No.3 has not stated that, after PW No.1 and PW No.2 had returned from office of accused, he told PW No.1 to give call to the accused. PW No.1 and PW No.2 told him that accused is at Chopada Petrol Pump. PW No.3 is not even aware what conversation PW No.1 had with accused. PW No.3 saw complainant and panch talking to unknown person and gave agreed signal. PW No.3 and others rushed to the spot. PW No.3 did not hear the conversation between PW No.1 and the accused. He did not see PW No.1 handing over amount or accused accepting the amount. He is silent in that regard. If he could see PW no.1 and PW No.2 talking to unknown person, it is not clear how he could see handing over bribe and its acceptance.

PW No.2 told him that unknown person is Inspector of Weights and Measures namely Wankhede (accused). PW No.2 also told him that, the accused told PW No.1 that certificate of complainant is ready and he should collect it from office and asked the complainant about remaining payment and PW No.1 told accused that he had paid Rs.5,000/- and brought Rs.10,000/- with him and thereafter bribe was handed over to accused, which was accepted by him. It is relevant to note, the conversation which PW No.2 had with PW No.3 as deposed by PW No.3 is not stated by PW No.2 in his evidence. Thus, there is contradiction in version of PW No.2 and PW No.3. Thereafter according to PW No.3 tainted notes were recovered. He told P.I. Kotkar to bring documents from office of accused. P.I. Kotkar brought the documents from Shri.Gangurde. Accused was arrested. Subsequently PW No.3 impoved his version in paragraph 16 of his evidence and stated that, he had instructed PW No.1 to verify the fact that accused is at Chopada Petrol Pump by giving call to him and accordingly PW No.1 made call to accused. He received call details. No evidence regarding CDR to establish calls between PW No.1 and accused has been proved in evidence. PW No.3 completed investigation. Sanction order was received and he filed charge-sheet. In the cross-examination, he stated that he did not make any inquiry as to how much amount was collected towards stamping charges and how much amount was deposited in the office of Weights and Measure from 01.04.2009 till the date of incident. He did not feel it necessary to make inquiry about the truthfulness in the allegations made in the complaint before laying the trap. He has not personally seen as to whom the complainant met in the office of the accused for the first time after he sent him to office. The employee and the officers of the HP company were at the petrol pump with accused. The activities of the accused and the complainant were visible to him. The certificate produced from the office of the accused were of different dates. The complainant had never stated in his complaint that on 16.05.2009 when he demanded certificates from the accused, he demanded 45% of Government charges of Weights balance measurement and Rs.200/- each for electronic weigh balance total amounting to Rs.17345/-. The complainant has never stated that on 20.05.2009, he made phone call to accused and the accused inquired about money and the complainant told him that he would pay of Rs.10,000/- on that day and hence he was called to office at Vani. The complainant did not visit ACB office on 19.05.2009 for making complaint. He recorded statement of complainant. The complainant did not state that he informed the accused on phone that he brought the amount and then the accused called him at petrol pump. He recorded statement of the persons who were present with the accused at petrol pump. He did not mention in his formal complaint that he had seen the complainant while talking to unknown person and handing over notes to said person at the petrol pump. In his formal complaint, he did not mention that the notes were taken out from the left side pocket of the accused and when those notes and hand of the accused were tested under ultra-violate lamp bluish while glaze was found on those notes and hands.

11. From the evidence of witnesses, it can be seen that the version of the complainant about demand is not corroborated by any other witness. The complainant (PW No.1) has stated that he had handed over 150 instruments to Inspector of Legal

metrology. 78 certificates were to be received from office of Legal Metrology. According to him on 16.05.2009 accused demanded 45% Government charges and Rs.200/- for each electronic weigh balance, total Rs.17,344/-. He paid Rs.5,000/- to accused. On 20.05.2009 PW No.1 contacted accused and he enquired about money. Accused told him to pay Rs.10,000/- in his office. Since he was not willing to pay he approached ACB office. Thus, demand was made on 16.05.2009. PW No.1 did not lodge complaint. He himself called accused on 20.05.2009. Again alleged demand was made. No time was fixed for payment of bribe. In examination in chief PW No.1 has stated that he had made inquiry on 19.05.2009, with ACB by visiting office. Complaint (Exh.13) is silent about his visit on 19.05.2009. PW No.3 has stated that complainant did not visit their office on 19.05.2009 for making complaint. In the cross-examination PW No.1 again stated that on 19.05.2009, he had narrated his complaint to ACB office. Exh.13 complaint is recorded on 20.05.2009. The complainant along with the raiding party and the panch witness had proceeded towards the office of the accused. Accused was not present in the office. PW No.1 made call to accused. According to him he told accused that he brought demanded amount and where he should come. Accused told him to come at Petrol Pump. Thereafter they went to Petrol Pump. This conversation between PW No.1 and accused is not corroborated by PW No.2 and PW No.3. It is difficult to believe that the accused would call the complainant at the petrol pump in the presence of other person to accept the bribe amount. The case of complainant is based on demand dated 16.05.2009. It was his sole testimony. It is pertinent to note that the alleged demand dated 16.05.2009 is an omission. The fact that complainant demanded certificates of inspected instruments from accused and he was told by accused to pay 45% Government charges and Rs.200/- for each electronic weigh balance total amounting to Rs.17,344/- is not reflected in his complaint. The second demand deposed by PW No.1 is dated 20.05.2009. He gave call to accused. During conversation accused enquired about his money and complainant told him that he would pay Rs.10,000/-. The complainant went to ACB office. The fact that on 20.05.2009 at 08:00 a.m. the accused demanded Rs.10,000/- is not mentioned in his complaint. The investigating officer believed the version of PW No.1 and arranged trap. There was no verification of demand. There was no tape-recording of conversation. PW No.1 has then stated that he gave call to accused, since he was not present in office and told him that he has brought demanded amount. There was no demand from accused. This version is not corroborated by PW No.2 and PW No.3. In the cross-examination it was put to him that the aforesaid fact was not reflected in his complaint. Thus, the alleged demand referred to by PW No.1 were omission. According to complainant he met accused at Petrol Pump. Accused told him that he has handed over certificates to Mr.Gangurde. accused asked him about his account. PW No.1 handed over Rs.10,000/- to accused. Assuming that the version of PW No.1 to be true, the accused had asked about account. Panch (PW No.2) stated that he could not hear conversation due to chaos at Petrol Pump. He heard complainant referring to Rs.5,000/- and accused telling him to collect papers. He did not hear demand or enquiry by accused about his accounts. PW No.3 did not hear conversation between accused and PW No.1 at Petrol Pump. Panch did not hear the conversation between PW No.1 and the accused. The investigating officer did not hear the conversation between complainant and the accused at the Petrol Pump. The complainant was collecting the amount towards repairs and Government charges from the vendors. He had submitted several instruments. The accounts were given to the office of the accused once in a year. The investigating officer did not conduct any investigation about how much amount was collected by the complainant, how many instruments certificates were issued, how much amount was collected for repairs of Government charges and where the clear account is submitted to the office of the Legal Metrology. The complainant has admitted that UK Scale Company was given license for whole Maharashtra. The complainant had written letter for cancellation of licence. His request was not considered. He filed the suit. This corroborate the defence of the accused that since there was no support/co-operation from the accused, there is every possibility of false implication of accused. The demand and acceptance are primarily based on the sole testimony of complainant. Considering the nature of evidence deposed by the complainant and discrepancies in his evidence, the motive can be attributed to him. It is difficult to base the conviction of the accused on doubtful testimony of complainant. There is no complaint in the past at the instance of the complainant against the accused with the Legal Metrology Department. Mr. Gangurde has issued certificates. The evidence disclosed that accused had informed the complainant that those certificates are ready and he should collect them from Mr. Gangurde. It is nowhere reflected that the complainant had demanded certificate from Mr. Gangurde. It is not clear whether the statement of Mr. Gangurde was recorded during the course of investigation. He would have thrown the light on the procedure followed while issuing certificate. Mr.Gangurde had produced on record the certificate. The documents were produced by him on 15.05.2009, 16.05.2009, 19.05.2009 and 20.05.2009. These documents show that the certificates were ready. The prosecution has not established specific date of demand. The complainant did not tell accused about money and where he should come. Before going to Petrol Pump, the complainant met the accused at Petrol Pump and accused told him that the certificates are with Mr. Gangurde. The accused inquired about his account and thereafter allegedly complainant gave money. The evidence of independent witness PW No.2 is contrary to the evidence of PW No.1. He did not hear conversation between complainant and the accused. The complainant referred to the demand of Rs.10,000/-. Pancha have referred to Rs.5,000/-.

12. PW No.1 has deposed that stamping and repairing charges are different. He was recovering both the charges from customers. He was issuing receipts to the customers. The amount of stamping charges was credited to the Government. He was required to submit monthly account to the office of the accused. Supervision about the breach of conditions of licence was with the office of the accused. The investigating officer never demanded account from him in respect to stamping charges collected and credited by him for a period from January 2009 to April 2009. The Investigating Officer did not demand specific amount from January 2009 up to the date of trap to him. He only demanded the details of the amount to be credited by him. It is pertinent to note that in case of demand of bribe, the complainant could have fixed the time with the accused about his visit to the office of the accused for making payment of bribe. However, when the complainant and the panch witness visited

the office, the fact that the accused was not at the office shows that there was no prior conversation about the demand of bribe between the accused and the complainant. The complainant has also admitted that he had issued notice to Controller for issuing cancellation of licence for U.K. Scale Company and he also filed the suit. The defence of the accused is that the accused thrust the currency notes in his left hand by saying that the he should accept the amount and settle the account. Admittedly, there are discrepancies about the charges collected by the complainant. Undisputedly, as he was collecting stamping charges as well as repairs charges from the vendor, he was supposed to credit the amount towards Government charges to the account of the Government. The complainant has stated that he has deposited the amount by cash. His evidence does not inspire the confidence. There is no clarity as to how much amount was collected and deposited towards the stamping charges. There was no attempt by the investigating officer to conduct investigation in that regard. The defence of the accused, therefore, appears to be probable. The investigating officer has admitted that he did not carry out the detailed investigation with regard to the account. The omissions were proved during cross-examination of the investigating officer.

13. The discrepancies/aspects which speaks volumes of doubt about authenticity of the prosecution due to which accused is entitled for benefit of doubt can be summarised as under:-

(a) PW No.1 referred to written notes on complaint before deposing his evidence.
(b) Repairing charges and stamping charges are different.
(c) PW No.1 gets repairing charges and he has to credit

stamping charges to the Government. He was recovering both charges from customers. The account of stamping charges recovered by him and credited to Government were not maintained in the office of accused.

(d) Supervision of breach of condition of licence was with office of accused.

(e) The stamping of instruments handed over in April 2009 was done.

(f) It was rule that complainant should deposit stamping charges alongwith instruments in the office of the accused and obtain receipt.

(g) ACB Inspector never demanded accounts for January 2009 to April 2009.

(h) Demand dated 16.05.2009 is an omission.

(i) Demand dated 20.05.2009 at 08:00 a.m. is an omission.

(j) Licence was issued to U.K.Scales to whole Maharashtra. PW No.1 wanted to cancel licence.

(k) Conversation of PW No.1 with accused after returning from office is omission.

(l) Accused had told complainant that he would not cooperate in cancellation of licence of U.K. Scales.

(m) PW No.1 was instructed by PW No.3 to call accused after he returned from office of accused. PW No.3 did not hear conversation between accused and complainant.

(n) PW No.2 did not hear talk between accused and PW No.1. He did not refer to any demand of bribe by accused.

(o) Contradiction in evidence of PW No.1 and PW No.2. PW No.1 refers to bribe of Rs.10,000/-. PW No.2 refers to amount of Rs.5,000/-.

(p) PW No.2 do not state that amount was handed over to accused on demand of bribe amount.
(q) PW No.2 was declared hostile.
(r) No marking on pant of accused. No signatures of panch witnesses on pant of accused.
(s) PW No.3 did not enquire about how much amount was collected towards stamping charges and amount deposited in office of metrology.
(t) Employees and officers of H.P. were present at Pump.
(u) Complainant states he visited ACB on 19.05.2009. PW No.3 stated PW No.1 not visited ACB on 19.01.2021.

14. Learned counsel for the appellant relied upon the judgement of the Supreme Court in the case of **Dashrath Singh Chauhan Vs. CBI (2019) 17 SCC 509.** In the said decision, the Apex Court has observed that it was necessary for the prosecution to prove the twin requirement of demand and the acceptance of bribe amount by the accused. Learned counsel relied upon the decision of this Court in the case of **Pratap Mahadev Moon Vs. Union of India and Anr.** delivered on 16.10.2020 in Criminal Appeal No.44 of 2013. In the said decision, it was observed that in view of discrepancies in the evidence of the prosecution, the accused is entitled of benefit of doubt. The demand of bribe has to be established by clinching evidence. Suspicion, however grave it may be, cannot take the place of proof and the prosecution cannot afford to rests its case in the realm “may be” true but has to upgrade it in the domain of “may be”, in order to steer clear of any possible surmise or conjuncture. If two views are possible, the benefit of doubt must be given to the accused. Reliance is also placed on another decision of this Court delivered in

Criminal Appeal No. 898 of 2012 vide judgment dated 09.07.2019. In the said decision this Court has referred to several decisions and observed that presumption raised under Section 20 for the offence under Section 7 is rebuttable and the burden placed on the accused is one of the preponderance of probability. Mere possession and recovery of currency notes from the accused without proof of demand will not bring home offence under Section 7.

15. In the light of the fact of this case and the legal principle enunciated in several decisions of the Apex Court as well as this Court, the accused/appellant is entitled to benefit of doubt. The prosecution has not established the charges beyond all reasonable doubt. Hence, the conviction is required to be set aside.

ORDER

(i) Criminal Appeal No. 591 of 2015 is allowed.

(ii) The impugned judgment and order dated 30.04.2015 passed by the Special Judge, Nashik in Special Case (ACB) No.5 of 2010 convicting the appellant for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of Prevention of Corruption Act and sentencing to suffer imprisonment and fine is set aside and the appellant is acquitted for all the charges.

(iii) Criminal Appeal No.591 of 2015 and Interim Application No.84 of 2020 stand disposed of.

(PRAKASH D. NAIK, J.)