

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

CRIMINAL APPEAL NO.879 OF 2015

1. Rajkumar Ramchandra Igawe, Age 47 years,
Occ.Service, r/o.Kegaon, Tal.North Solapur,
District Solapur.

2. Baburao Malku Walkunde, Age 37 years,
Occ.Service, r/o.61, Phata, Malshiras, District Solapur. Appellants
(Org.Accused nos.1 and 3)

versus

The State of Maharashtra through ACB,
Malshiras Police Station, Solapur. Respondent

**WITH
CRIMINAL APPEAL NO.249 OF 2018**

The State of Maharashtra Appellant

versus

1. Rajkumar Ramchandra Igawe
2. Baburao Malku Walkunde Respondents

Ms.Pooja Chavan with Mr.Sandeep Bhagwant Kulkarni, Advocate for appellants in Criminal Appeal No.879 of 2015 and for Respondents in Criminal Appeal No.249/2018.

Mrs.A.A.Takalkar, APP, for Respondent-State in Appeal No.879 of 2015 and for Appellant in Appeal No.249 of 2018.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 4th January 2021

Date of Pronouncing the Judgment : 9th June 2021

JUDGMENT :

1. Criminal Appeal No.879 of 2015 is preferred under Section 374 of Code of Criminal Procedure challenging the judgment and order dated 26th August 2015 passed by Additional Sessions Judge, Malshiras in Special Case No.4 of 2011 convicting appellant no.1 for offence u/s.7 of Prevention of Corruption Act ('PC Act') and sentencing him to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/- and u/s 13(1)(d) r/w Section 13(2) of PC Act and sentencing him to undergo rigorous imprisonment for two years and pay fine of Rs.5,000/-. Appellant no.2 is convicted for offence u/s 12 of PC Act and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/- and in default to suffer rigorous imprisonment for three months. Accused no.2 was acquitted. Appeal No.249 of 2018 is preferred by State seeking enhancement of punishment awarded by the Trial Court.

2. The appellants were arraigned as accused nos.1 and 3 before Trial Court proceedings.

3. Brief facts of the prosecution case are as follows :-

(i) On 10th March 2011 accused no.1 was working as Police Constable at Malshiras Police Station. Accused no.2 was also Police Constable attached to same police station. Accused no.3 was Home Guard working at Home Guard Office, Malshiras. All of them were public servants. Accused no.3 was on bandobast duty from 21st February to 11th March 2011 at Malshiras Police Station;

(ii) The complainant was residing as tenant in premises of Balu Aswale at Malshiras. One Ambadas Gazul was another tenant. On 7th March 2011 electric connection in the house of Gazul was off. He enquired with complainant. There was exchange of words between both of them. Gazul lodged complaint with police station and non-cognizable crime was registered against complainant and his wife on 9th March 2011;

(iii) Accused no.1 was directed to take preventive action against complainant. On the same day accused no.1 arrested original complainant u/s 151 of Cr.PC. Thereafter accused no.1 asked complainant whether he want to be released or want to go in jail. The complainant requested accused no.1 to release him on bail. Accused no.1 demanded Rs.5,000/- from the complainant. He was threatened that if he fail to pay the amount, he would be kept in jail. Accused no.1 demanded Rs.5,000/- for releasing complainant on bail. After negotiations, the amount was fixed to Rs.4,000/-. The complainant assured accused no.1 that amount would be given on 10th March 2011. On the assurance, complainant was produced before Executive Magistrate, Malshiras and he was released on bail;

(iv) On 10th March 2011 complainant approached ACB, Solapur and lodged complaint. The complaint was recorded. Panchas were called. The incident was narrated to them. Verification about the demand was conducted. The complainant was called at S.T.stand Malshiras for handing over bribe amount. It was decided to lay trap. Currency notes of Rs.4,000/- were marked by anthracene powder. Instructions were given to complainant and panch witnesses;

(v) The raiding team proceeded towards Malshiras. They reached at S.T. stand. The complainant and panch witness no.1 went near S.T. stand. Complainant gave phone call to accused no.1. The complainant was called at District Co-operative Bank. The complainant and panch no.1 went to said spot. Accused nos.1 and 3 met complainant. Accused no.1 spoke about bribe amount. He instructed the complainant to hand over the amount of bribe to accused no.3, however, complainant was reluctant to hand over the amount to accused no.3. Accused no.1 went to Police Station, Malshiras. He did not return. Complainant gave call to accused no.1. He did not come. Thereafter accused no.1 made call to complainant and informed him that he is sending Police Constable Gaikwad for collecting the money and hand over money to him. Accused nos.2 and 3 came on motorcycle towards complainant. Accused no.2 informed the complainant to give the money to pillion rider. Accordingly complainant handed over the anthracene powder marked currency notes to accused no.3. He accepted the amount and kept it in right side hip pocket. Accused nos.2 and 3 went to police station. Immediately raiding party reached the police station. They caught accused no.3. Accused no.2 ran away. The hands of accused and complainant were examined. The notes were recovered from the possession of accused no.3. Investigation proceeded. Pre-trap panchanama, post-trap panchanama were recorded. Voice samples were obtained. Panchanama in that regard was also recorded. The voice sample with conversation recorded were forwarded to Regional Forensic Science Laboratory, Mumbai. Report was obtained. On completing investigation charge sheet was filed.

4. Charge was framed by order dated 11th February 2013. Accused no.1 (appellant no.1) was charged for offences under Sections 7, 13(1)(d) and 13(2) of PC Act. Accused nos.2 and 3 were charged with offence punishable u/s 12 of PC Act.

5. The prosecution examined three witnesses. PW-1 Sachin Patil is the complainant. PW-2 Firoz Mujawar is panch witness. PW-3 Sanjay Sathe is Investigating Officer.

6. The statements of accused were recorded u/s 313 of Cr.P.C. The defense of the accused was of false implication. The defense of accused no.3 (appellant no.2) is that the complainant Sachin Patil owed money to him towards purchase of grocery articles. The amount was not illegal gratification.

7. PW-1 Sachin Patil is the complainant in this case. According to him, there was quarrel between him and one Gazul. The complainant was taken to police station. Gazul made complaint against him. Accused no.1 took the complainant to police station. He was assaulted. He was detained at police station through out the day. Accused no.1 demanded Rs.5,000/- for his release. Brother-in-law of the complainant visited police station. The complainant told him about the demand of accused no.1. His brother-in-law agreed to make payment of Rs.4,000/- to accused no.1. Accused no.1 was assured about the payment on the next day. The complainant was taken to Executive Magistrate by accused no.1. He executed surety bond. Tatya Bajare was his surety. On 10th March 2011 he went to ACB, Solapur and lodged the complaint about illegal demand of money. Since accused no.1 had threatened the complainant that he

will be booked in a false case if he does not pay the amount, he lodged the complaint with ACB. The accused no.1 had given his cell phone number. The complainant and his brother-in-law went to ACB for lodging the complaint. Written complaint was submitted by the complainant. It was marked as Exhibit-13. The panch witnesses were called. The complainant was introduced to them. Firoz Mujawar agreed to act as panch no.1. The officer took Rs.4,000/- from complainant. Anthracene powder was applied to the currency notes. Trap was arranged. At 7.00 pm, the complainant received call from accused no.1. He enquired about arrangement of money. The complainant and raiding team went near S.T. stand. The complainant and panch witness no.1 went towards S.T. stand. They were called near co-operative bank. They met accused no.1. He was told that complainant has brought money. Mean while, accused no.1 received a phone call,. Therefore, he went away. Accused no.1 gave call to complainant. The complainant went to S.T. stand. He was asked to give money to accused no.3. Accused nos.2 and 3 came together. The complainant was informed by accused no.1 that he has sent accused nos.2 and 3 to collect the amount. Accused no.2 told the complainant that he has been sent to collect the money. Accused no.3 was pillion rider on the motorcycle. Money was handed over to accused no.3. The amount was accepted by accused no.3. Both the accused sat on the motorcycle and proceeded towards police station. They were chased. They were apprehended at the police station. The amount with anthracene powder was recovered from accused no.3.

8. PW-2 Firoz Mujawar acted a panch witness. According to him, he along with other panchas were called by ACB. The complainant

was present. He narrated the complaint. It was decided to verify demand. Appropriate instructions were given to him and the complainant. PW-3 asked the complainant to give call to the complainant for confirmation of demand. The complainant refused to make phone call on the ground that accused no.1 will immediately call him. PW-3 had instructed the panch witness and the complainant to give signal if the bribe amount is accepted by the accused. All the required arrangements were made for conducting raid. Recorder was handed over to the complainant. Panch witness, complainant and raiding party proceeded towards Malshiras. Before proceeding to Malshiras, complainant received phone call of accused no.1. The call was taken by putting his mobile on speaker mode. Accused no.1 enquired about money. The complainant replied that he had collected the amount. Accused no.1 instructed the complainant to come at Malshiras. Note of conversation was prepared (Exh.14). Pre-trap panchanama was prepared (Exh.18). The team proceeded to Malshiras. On the way complainant received call from accused no.1. The complainant put on the speaker of his mobile. Accused no.1 asked the complainant about his whereabouts. He was told to come at S.T. stand, Malshiras. Conversation between them was reproduced in panchanama. The conversation was also recorded on tape recorder. Accused no.1 gave call to complainant and asked to come near bank. Talk took place between accused no.1 and the complainant. The conversation was recorded. Accused no.1 enquired whether amount was brought. The complainant told him that he has brought Rs.2,000/-. In the mean while, accused no.1 received phone call. He told the complainant to hand over amount to accused no.3. He was reluctant to hand over the amount. Accused no.1 received call and hence he left for police station.

Accused no.1 told the complainant that he is not in a position to come. This conversation is recorded. Accused no.1 told the complainant that he is sending one police Naik. Accused nos.2 and 3 came there on motorcycle. The currency notes were handed over to accused no.3. The notes were accepted. Signal was given to the raiding party. Accused were caught. Currency notes were recovered. Anthracene powder was noticed on the currency notes and at the hands of accused. Post-trap panchanama was recorded.

9. PW-3 conducted investigation. According to him, the complainant had approached ACB. The complaint was recorded. Panch witnesses were called. Arrangements were made to conduct raid. The complainant was instructed to give call to accused no.1 for confirmation of payment. Pursuant to that the raiding team made preparations for conducting raid. Anthracene powder was applied to currency notes. Instructions were given to the complainant and panch witnesses. Panch no.1 was instructed to be with complainant. Trap was laid down. He recorded conversation between accused no.1 and PW-1 on piece of paper. The bribe amount was accepted by accused no.3. Accused no.2 had fled the place. Accused no.1 had returned to police station. Statements of witnesses were recorded. Voice samples of the accused and the complainant were obtained. Same were forwarded to the forensic expert for examination and report. Sanction for prosecution was obtained. On receipt of sanction charge sheet was filed.

10. Learned advocate for appellants in Appeal No.879 of 2015 as submitted as under :-

(a) The appellants are falsely implicated in this case. The prosecution has failed to establish the charge levelled against appellants;

(b) The prosecution has not proved that amount of Rs.4,000/- was demanded and accepted as a bribe. The demand by accused no.1 and acceptance of amount as bribe by accused no.3 at the instance of accused no.1 is not proved beyond reasonable doubt;

(c) The amount of Rs.4,000/- which was accepted by accused no.3 cannot be termed as bribe within the provisions of PC Act. The complainant has admitted that he was supposed to pay dues of Rs.4,000/- to accused no.3;

(d) The complainant has suppressed vital facts in the complaint/statement recorded by ACB . The fact that accused no.3 was at the Police and that the amount towards grossery was admitted by him to be paid to accused no.3, is not reflected in his complaint;

(e) The presumption u/s 20 of PC Act can be rebutted. The evidence on record falsifies the case of prosecution. The complainant has falsely implicated the accused out of vendetta since action u/s 151 of Cr.PC was initiated against him by accused no.1 and to avoid payment of legitimate dues of accused no.3;

(f) The accused no.2 was prosecuted as an abettor by invoking Section 12 of PC Act. He has been acquitted for lack of evidence;

(g) There are serious omissions and contradictions in the evidence of PW-1 and PW-3;

(h) The brother-in-law of the complainant who had allegedly visited police station and had agreed to make arrangement for payment of Rs.4,000/-, has not been examined by the prosecution;

(i) The forensic report with regards to the voice of accused does not support the prosecution case. The conversation relied upon by the prosecution, which was between accused no.1 and the complainant, is devoid of corroboration to establish that voice in the tape recorded conversation is that of the accused no.1;

(j) The complainant has admitted in the evidence that accused no.1 told him to pay the amount to Walkunde (accused no.3). Thus, it is established that amount of Rs.4,000/- was paid towards dues of accused no.3. Accused no.1 has not accepted the amount;

(k) The proceedings u/s.151 of Cr.PC initiated against the complainant were over as bail bond was executed by complainant. The question of demanding bribe does not arise;

(l) The sanction issued by the sanctioning authority suffers from non application of mind.

11. Learned counsel for appellants-accused has relied upon several decisions in support of her submissions. Reference can be made to the following decisions :

- (i) AIR-2002-SC-486 (Punjabrao Vs. State of Maharashtra);
- (ii) 1988-Mh.L.J.-936 (Ashok Sadashiv Astikar Vs. State of Maharashtra);
- (iii) 1988-Mh.L.J-913 (Chiman Keshavdas Bhatia Vs. State of Maharashtra).

12. Learned APP appearing for the Respondent-State in Appeal No.879 of 2015 and for the appellant-State in Appeal No.249 of 2018 submitted that there is sufficient evidence on record to establish the charge against appellants. The demand was made by accused no.1. The complainant and the panch witness has established the demand. The amount was accepted by accused no.3 at the instance of accused no.1, which has been proved through evidence of PW Nos.1, 2 and 3. PW-2 is an independent person. He has corroborated evidence of PW-1. The complaint, trap panchanama, panchanama of conversation etc were the documents which were proved in evidence, which has supported the ocular evidence of PW Nos.1 to 3. The accused no.1 had threatened the complainant of false implication in another case and thus the demand of Rs.5,000/- which was reduced to Rs.4,000/-, was made by him. The accused have admitted that amount of Rs.4,000/- was accepted by accused no.3. Thus, the prosecution has established foundational facts to invoke presumption u/s 20 of PC Act. The accused have not rebutted the presumption. There was no reason for the complainant to falsely implicate the accused. Sanction was granted with application of mind. The document was admitted by defense. There is no infirmity in the sanction order. The accused have not offered any explanation u/s 313 of Cr.PC. There is no

rebuttal to the evidence of demand and acceptance of bribe amount. The offence is of serious nature. Both the accused were public servants. The Trial Court has awarded lesser sentence. Considering the nature of offence, the sentence of imprisonment be enhanced on confirming the judgment of conviction passed by the Trial Court.

13. On analyzing the evidence lead by the prosecution before the Trial Court it can be gathered that evidence of PW-1/complainant refers to quarrel with one Mr.Gazul. Both were residing at the adjoining premises as tenants. Gazul was working as Clerk in Malshiras Court. According to the complainant, the quarrel had occurred on 8th March 2011. The complainant was working as a servant in shop drawing salary of Rs.4,500/- p.m. Head Constable Igawe (accused no.1) visited the residence of complainant on 9th March 2021. He was called at Police Station for enquiry in relation to the complaint lodged by Gazul. He was taken to police station. He was assaulted and made to sit at police station. Brother-in-law of the complainant Tatya Bajare came to the police station to enquire about the reason for detaining the complainant. The complainant was informed about the action u/s.151 of Cr.PC initiated against him. Accused no.1 demanded Rs.5,000/- for his release. The brother-in-law of the complainant agreed to pay Rs.4,000/-. The complainant assured accused no.1 that payment would be made on the next day. The complainant was taken before Executive Magistrate by accused no.1 and he submitted bail bond. Tatya Bajare was his surety. From the version of complainant as stated hereinabove, it is apparent that proceedings u/s.151 of Cr.PC were initiated and completed on the same day. Although amount of Rs.5,000/- was demanded by accused no.1 as alleged by the complainant, bail bond was executed before

the Magistrate. The complainant, however, lodged the complaint with ACB on 10th March 2021. It is pertinent to note that Taty Bajare stood as surety to the complainant and who had allegedly agreed to make payment of Rs.4,000/-, has not been examined by prosecution, although he was cited as one of the witness by the prosecution. After registration of the complaint (Exhibit-13), trap was arranged. The raiding party proceeded to Malshiras. While on the way to Malshiras, PW-1 had received call from accused no.1. He enquired about money. According to complainant, the conversation was heard by raiding party as he spoke on speaker. The conversation which had allegedly ensued between PW-1 and accused no.1 was reduced into writing by Mr.Tathe. The said writing has been produced in evidence vide Exhibit-14. It is relevant to note that conversation was not recorded in the tape recorder or in the cell phone. It is difficult to accept that conversation between accused and the complainant could be recorded simultaneously on a paper. Thereafter according to the complainant, the raiding party reached at Malshiras. PW-1 and PW-3 (panch) met accused no.1 at DCC Bank. According to PW-1, accused no.1 spoke to him and enquired with him as to how much amount is brought by him. The complainant told him that he has brought Rs.4,000/-. Accused no.1 received a phone call and he left. It is surprising that although the accused no.1 had demanded Rs.4,000/- from the complainant, he left the place after meeting him without accepting the amount. After some time accused no.1 gave a call and called the complainant at the S.T. stand. The accused no.1 did not meet them at S.T. stand. However, he informed PW-1 telephonically that he is sending accused nos.2 and 3 to collect the amount. Thereafter accused nos.2 and 3 came to the spot. Accused no.2 disclosed him that accused no.1 has sent them to

collect the money and that the amount is to be given to accused no.3. PW-2 took the amount and handed over the same to accused no.3. The amount was accepted by accused no.3 and both the accused left the place on motorcycle. The raiding party then went to police station and apprehended the accused persons. The amount was recovered from accused no.3. It is relevant to note that the version of PW-1 depicts accused no.3 as a stranger. He did not disclose that he knows accused no.3. He did not state that he owed any amount to accused no.3. The conduct of PW-1, therefore, creates suspicion.

14. During cross-examination of PW-1 he stated that he is resident of Malshiras since last fifteen years. He was arrested and released on bail. There was no possibility of re-arrest. Accused no.3 is resident of Malshiras. He is acquainted with him since long. Accused no.3 is Home Guard at Malshiras Police Station. Accused no.3 has agricultural land at Malshiras. PW-1 was purchasing grossery from accused no.3. On 9th March 2011 accused no.3 was at the police station when accused no.1 took him at the police station. At that time accused no.3 had demanded his Rs.4,000/- from PW-1. He was to pay him Rs.4,000/-. He assured him to pay Rs.4,000/-. Thus, the complainant in his evidence has accepted that he owed money to accused no.3. The fact that accused no.3 was at the police station and complainant accepted his liability of making payment to him when he was taken to police station on 9th March 2011, has been suppressed by him in his complaint (Exhibit-13). Thus, the case of prosecution that amount of Rs.4,000/- was demanded by accused no.1 as a bribe for releasing him on bail bond in the proceedings u/s 151 of Cr.P.C, is surrounded by shadow of doubt. The defense has been able to rebut the presumption. The accused cannot be convicted on the basis of doubtful version of star witness of the

prosecution. It is pertinent to note that in the complaint, however, PW-1 has stated that accused no.1 has threatened him of false prosecution in a new case in the event demand is not fulfilled. Apparently in his evidence before the Court he has not referred to such fact. It is also pertinent to note that PW-1 further admitted that when accused no.1 met him near DCC Bank at Malshiras, he asked him to pay amount to Walgunde (accused no.3). Thus, the amount was due to be paid to accused no.3 was directed to be paid to him. It is also required to be noted that accused no.1 did not accept money and accused no.3 accepted the money. The evidence of PW-1 also suffers from omissions. The fact that he told his brother-in-law that accused no.1 is demanding amount is not reflected in the complaint. The brother-in-law was ready to pay Rs.4,000/-, PW-1 told ACB that when he received call at 7.00 pm, accused no.1 asked him whether he has arranged the money, were proved as omissions. The statement before ACB did not refer to his conversation with accused no.1.

15. The prosecution has relied upon evidence of PW-2 Firoz Mujawar. He had acted as panch witness. According to him, he had signed the complaint as panch. ACB Officer Tathe had explained his role in raid. ACB officer Tathe had asked the complainant to give a call to accused no.1 for the purpose of verifying the demand. However, he did not make the call. However, PW-1 refused to give call to accused no.1. PW-1 did not state in his evidence that he had attempted to verify the demand by giving call to accused no.1. ACB officer had handed over portable recorded to PW-1. The evidence of PW-1 is silent in that regard. According to PW-2, the conversation between PW-1 and accused no.1 was noted by officer Tathe on a piece of paper. It is not clear as to why said conversation was not

tape recorded. The pre-trap panchanama, trap panchanama and transcript of conversation was brought on record. The evidence of PW-1 and PW-2 is apparently contradictory to each other. There was no attempt on the part of raiding party to verify the demand of bribe at the instance of accused no.1. The call which was purportedly made by accused no.1 to complainant, was being relied upon as a demand. Considering the manner in which the said conversation was recorded on a piece of paper, speaks volumes of doubt about such demand.

16. PW-3 Sanjay Tathe is the Investigating Officer. He has reiterated the conversation of PW-1 and PW-2. He deposed that after receipt of call detail reports, it was revealed that cell number given by accused no.1 was registered in the name of accused no.3. However, that cell number was in use of accused no.1. He had obtained the voice sample of accused no.1. He recorded statement of complainant and other witnesses. He obtained CDR. He arrested accused. He obtained voice sample of accused no.2. He set the recorded cassette along with voice sample of accused nos.1 and 2 to regional forensic science laboratory. It appears that voice sample of complainant was not obtained. The letter forwarding voice sample was marked as Exhibit-41. In the cross-examination he stated that brother-in-law of the complainant did not accompany the complainant. No conversation was found in recording that accused no.2 had asked the complainant to hand over money to accused no.3. While giving complaint the complainant did not tell him that he has informed his brother-in-law that accused no.2 is demanding money. Complainant did not inform him that his brother-in-law was ready to pay Rs.4,000/- to accused no.1 against his will. During the statement PW-1 did not state that while they were on the way to

Malshiras at about 7.00 p.m accused no.1 had asked him whether he has arranged for money. It is not mentioned in the statement of PW-1 that there was talk between PW-1 and accused at ACB Office while recording pre-trap panchanama.

17. The Chemical Analyzer report with regards to the voice samples is on record. The Directorate of Forensic Science Lab had forwarded the said report dated 27th May 2014 to Deputy Superintendent of Police, ACB, Solapur. The examination report indicate that there were four sealed envelopes containing following :

Exhibit-1 : An audio cassette containing speech recording in an envelope marked as Exhibit-A;

Exhibit 2 : An audio cassette containing speech recording in an envelope marked as Exhibit-B;

Exhibit-3 : An audio cassette containing speech recording in an envelope marked as Exhibit-C;

Exhibit-4 : An audio cassette containing speech recording in an envelope marked Exhibit-D.

The purpose of examination was to examine whether the questioned voice exhibit of the speaker marked Exhibit-1 is similar to the specimen voice exhibits of speaker marked Exhibit-2 and Exhibit-3; and to examine whether the questioned voice exhibit of the speaker marked Exhibit-1 is similar to the specimen voice exhibit of speaker marked Exhibit-4. The result of analysis is as follows :

“The auditory analysis of recorded questioned voice exhibit of speaker marked Exhibit-1 and specimen voice exhibit of speaker marked Exhibit-2 and Exhibit-3 revealed that the questioned voice exhibit of speaker marked Exhibit-1 is found noisy ----

The auditory analysis of recorded questioned voice exhibit of speaker marked Exhibit-1 and specimen voice exhibit of speaker marked Exhibit-4 revealed that the questioned voice exhibit of speaker marked Exhibit-1 is found insufficient for voice analysis. Hence, spectrographic test could not be conducted.”

18. Thus, there is no corroborative evidence in the form of report of voice analysis to support the prosecution case.

19. The infirmities in the evidence of witnesses as stated above and the doubtful version of complainant indicate that there is lack of evidence to establish the charges against appellants. The Supreme Court in the case of Panjabrao Vs. State of Maharashtra (supra) relied upon by the learned advocate for applicant, has observed that it is well settled that in case where accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. The accused is not required to establish his defense by proving beyond reasonable doubt as the prosecution but can establish the same by preponderance of probability. In the case of Ashok Sadashiv Astikar (supra) this Court has observed that burden of proof lying upon the accused under Section 4(1) of the PC Act will be satisfied, if he establishes his case by a preponderance of probability as is done by a parts in civil proceedings and that it is not necessary that he should establish his case by the lest of proof beyond a reasonable doubt. In the case of Chiman Keshavdas Bhatia (supra), this Court had observed that it is enough if the defence is reasonable and probable.

20. In the present case the prosecution has failed to establish foundational facts to draw presumption u/s 20 of PC Act. In any case, the defense of the accused is that amount of Rs.4,000/- was due to be paid to accused no.3. the evidence of PW-1 establishes the said fact. In the circumstances neither the accused no.1 nor accused no.3 could be convicted for the alleged offence. In order to bring home the guilt of offence u/s 7 of PC Act, the prosecution would have to prove that the appellant had accepted or obtained or agreed to accept or attempted to obtain any gratification other than legal remuneration as a motive or reward for doing an official act. To bring home the conviction under Section 13(1)(d) of the Act, the prosecution would have to prove that the appellant by corrupt or illegal means or by abusing his position obtained for himself any available things or advantage. It is well settled law that degree and character of the burden of proof on the accused to rebut the presumption cannot be equated with the degree and character of proof on the prosecution. The material on record in the present case, the evidence on record adduced by the prosecution itself establishes innocence of the accused. Hence, I am of the considered opinion that prosecution has failed to prove its case against accused beyond reasonable doubt. Hence, the judgment of conviction deserves to be set aside. The appeal for enhancement preferred by the State is devoid of merits since the judgment and order convicting the appellants is being set aside.

21. Hence, I pass following order :

ORDER

(i) Criminal Appeal No.879 of 2015 is allowed and disposed;

(ii) The judgment and order dated 26th August 2015 passed by the Additional Sessions Judge, Malshiras in Special Case No.4 of 2011 convicting Appellant no.1 for the offence under Section 7 of PC Act, 1988 and under Section 13(1)(d) r/w Section 13(2) of PC Act, 1988 and sentencing him to suffer imprisonment and pay fine as well as conviction of Accused no.3 (Appellant no.2) for the offence under Section 12 of PC Act, 1988 and sentencing him to suffer imprisonment and pay fine, is quashed and set aside, and both the Appellants are acquitted;

(iii) Criminal Appeal No.249 of 2018 is dismissed and disposed of as such.

(PRAKASH D. NAIK, J.)

MST