IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.684 OF 2016

Subhash Gajanan Koli, Age 50 years,
Occ.Service, R/o.Hanuman Galli,
Hanuman Mandir area, Kasba Bawda,
Kolhapur. Appellant
versus
The State of Maharashtra Respondent

Mr.Satyavrat Joshi, Advocate, i/by Mr.Tejas Hilage, Advocate, for appellant.
Mr.Y.Y.Dabake, APP, for State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 7th July 2021
Date of Pronouncing the Judgment : 31st August 2021

JUDGMENT :

1. The appellant is convicted for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.5,000/-. He is also convicted for the offence under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (`P.C Act' for short) and sentenced to suffer rigorous imprisonment for one year and fine of Rs.5,000/-.

2. The case of prosecution is as follows :-

(i) The complainant was owner of a plot admeasuring 675 square meter. He mortgaged the agricultural land with UTI Bank, Branch Islampur and obtained loan of Rs.5.45 lakh. The said loan was repaid to the bank. Presently he was in need of Rs.20 lakh for construction of cattle shelter under NABARD scheme. Loan was sanctioned from Bank of India, Vadgaon Branch and loan amount was deposited into his bank account. The complainant had withdrawn Rs.15 lakh out of the loan amount and Rs.5 lakh were to be withdrawn. For that purpose he was in need of 7/12 extract after recording encumbrance of the loan amount;

(ii) The complainant demanded 7/12 extract with the accused on 29th May 2012. The accused demanded bribe of Rs.2,500/-. The accused was not ready to give 7/12 extract without payment of bribe. The accused told the complainant that on 1st June 2012 he should collect the 7/12 extract from Talathi, Village Bhadole. The complainant was told to make arrangement for money;

(iii) The complainant submitted wardi to Talathi and obtained acknowledgement. The complainant had no desire to pay the bribe to the accused. He lodged complaint with Anti Corruption Bureau, Kolhapur (`ACB' for short) on 30th May 2012;

(iv) On receipt of complaint, the Investigating Officer called two panchas. The panchas were sent by concerned office and they visited the office of ACB, Kolhapur. The staff from ACB were introduced to the panchas. The complainant narrated his oral complaint to the panchas. The panchas were instructed that they should visit ACB, Kolhapur office on 1st June 2012;

(v) On 1st June 2012 panchas and complainant had been to ACB, Kolhapur at 12 noon. It was decided to verify the demand of bribe. At 12.30 pm, they departed from the office of ACB, Kolhapur. The complainant and panch no.1 were instructed that the complainant should make enquiry of his work and panch be introduced as his friend. They were also instructed that if bribe is demanded, they should seek some time for payment. The panch no.1 was instructed to accompany the complainant and to watch the conversation and events between the complainant and accused. The voice recorder was kept in shirt of complainant. The complainant and panch no.1 proceeded to the office of accused;

(vi) When the complainant and panch no.1 reached the office of accused, the complainant was asked the purpose of his visit. The complainant told him that for taking the entry of encumbrance to the 7/12 extract of land Gat No.1467 and plot no.2810, he has visited the office. The accused called the complainant out of office and enquired about bribe amount. The accused demanded Rs.2,500/- as bribe to the complainant. Panch no.1 was accompanying the complainant;

(vii) The complainant told the accused that within 15 minutes he would come with money after withdrawing it from the bank. The complainant and panch no.1 came back to Maruti Chowk where vehicle was parked. The voice recorder was taken from complainant. Enquiry was made with panch no.1. He narrated the events which took place in the office of accused. Enquiry was also made with complainant and he stated that accused has demanded Rs.2,500/- as bribe. He also stated that Rs.10,000/- was demanded as advance for further work of complainant. The recorded conversation was heard. Script was prepared and thereafter CD was prepared. It was sealed in an envelope. Demand verification panchanama was executed. The demand of bribe of Rs.2,500/- was confirmed. It was decided to make arrangement for pre-trap panchanama. Thereafter amount was collected from the complainant. Instructions were given to the complainant and the panch witnesses. Anthracene powder was applied to the currency notes;

(viii) The complainant was instructed that till demand is made by the accused, the currency notes should not be touched. On demand by accused, the notes should be handed over to him. Panch no.1 was instructed to accompany the complainant to watch the movements of accused and complainant. Panch no.2 was instructed to remain with raiding party and to watch the events. Voice recorder was kept inside the shirt of complainant;

(ix) The complainant and panch no.1 proceeded to the office of accused. Other members of raiding party followed them. Accused enquired whether the bribe amount is brought. The complainant gave amount to the accused which was accepted by him and kept inside his shirt pocket. The complainant came out and gave signal to the raiding party. The Investigating Officer and other staff members visited the office of accused. The accused was caught. Voice recorder was taken out from the complainant. Two persons present in the office of accused told their names as Shamrao Avaghade and Rajaram Avaghade, who were from same village. The tainted notes were found in the shirt pocket of accused. The notes were seized.

The conversation in the voice recorder was heard. The script was prepared. CD was prepared. It was seized and sealed. FIR was lodged in writing. The accused was arrested. Papers were forwarded for obtaining sanction. After obtaining sanction the charge sheet was submitted to the Court.

3. Charge was framed against appellant-accused on 9th January 2015. The accused pleaded not guilty and claimed to be tried.

4. The prosecution has examined complainant Narayan Maruti Patil (PW-1), panch witness Sandip Subhash Muley (PW-2), sanctioning authority Tushar Eknath Thombare (PW-3) and Investigating Officer Udaysingh Shamrao Patil (PW-4).

5. PW-1 Narayan Patil is the complainant. According to him, he is the owner of agricultural land. He had obtained loan of Rs.5.45 lakh from UTI Bank which was repaid and encumbrance was deleted from 7/12 extract of the agricultural land. He also took loan of Rs.20 lakh from Bank of India and Rs.15 lakh were credited to his account. The agricultural land and plot was mortgaged for the loan. This encumbrance was to be entered into 7/12 extract. On 29th May 2012 he submitted application to Talathi to that effect and met the accused who was Talathi. For noting encumbrance, the accused demanded Rs.2,500/-. The complainant submitted two wardi reports to Talathi. On 30th May 2012 he visited the office of ACB for lodging the complaint. The bribe amount was to be given to the accused on 1st June 2012. His complaint was recorded. Along with complaint he had enclosed bank statement and 7/12 extract. On 1st June 2012 he visited the office of ACB, Kolhapur. The panchas were called. PW-1 and panch no.1 Sandip Muley visited the office of

accused. The complainant told him that he has to make enquiry of encumbrance. The accused called the complainant outside office and enquired about bribe amount. He demanded Rs.2,500/- as bribe. The conversation was recorded. CD and script was prepared. Panchanama was recorded. The complainant informed the accused that he would come with money. The complainant and panch no.1 approached the officers of ACB. Preparations were made for trap. The conversation was heard. Trap panchanama was executed. Currency notes were arranged for trap. The complainant and panch no.1 again visited the office of accused. The amount was accepted. Accused was apprehended with tainted currency notes.

PW-1 was cross-examined. He stated that unless Circle Officer certifies that entry, Talathi has no right to enter their name in 7/12 extract. 15 days waiting period is to be given for receiving any objection about entry. Circle Officer used to see whether any objection is received or not and thereafter certify the entry. Whenever he used to go to Talathi, they used to collect flag fund. In the office of Talathi (accused) there were two servants from his village. Kotwal used to prepare receipts. On 29th May 2012 he did not go to ACB, Kolhapur. On the day of lodging the complaint to ACB, Kolhapur he did not go to accused. Bribe was demanded by accused one day before lodging the complaint. He did not tell the police that when he along with accused came out of office, panch no.1 was with him. The accused was talking from his mobile phone. He has stated this fact to Police but the said fact is absent in his statement. It is not true to say that he did not tell police that after completion of talk with accused, the accused called him out of his office. The said fact is not mentioned in his statement. It is not true that he did not tell police that accused demanded bribe amount when he came out of his office. No reason is assigned as to why it is not mentioned in his statement. When he came out of office of the accused he went up to 40 to 50 feet out from the office of accused i.e. towards temple side. At that time accused did not tell him to wait till fifteen days. He did not tell police the portion marked “C” in his statement. He cannot assign any reason as to why the said fact is not mentioned in his statement.

6. PW-2 Sandip Muley had acted as panch no.1 in the proceedings. He stated that he was called in the office of ACB on 30th May 2012. He along with panch no.1 visited the office of ACB. He was told to visit the office of ACB on 1st June 2012. He was instructed to accompany the complainant. He visited the office of accused along with complainant. The complainant met accused. He was with the complainant at that time. Thereafter he along with complainant and accused went near one temple which is at the back side of office of Talathi. There were discussions between the complainant and the accused. In the beginning accused told the complainant that whatever amount he would like to give, he can give. The complainant insisted for the amount. The accused demanded Rs.2,500/-. The complainant told the accused that he would withdraw the amount and come again. Script of the conversation was prepared. CD was prepared, verification demand panchanama was prepared. Trap was arranged. Tape recorde3r was fixed at the person of complainant. PW-2 and the complainant again visited the office of accused. They met the accused. The accused enquired whether complainant has brought the amount. The complainant gave the amount to the accused. Complainant enquired

whether extract is prepared. The accused told him that he is preparing. The amount was accepted by accused. The complainant came out of the office and gave signal to the raiding party. The raiding party visited the office and apprehended the accused. Currency notes were seized. Further proceedings were completed. Voice recorder was verified. CD was prepared.

In the cross-examination he deposed that police did not record his statement at the time of demand verification and pre-trap panchanama and after the arrest of accused. Outside the shirt pocket of accused there was shining of anthracene powder. The marking is not on the outer portion of shirt pocket and it is found only at the inner side of shirt pocket. On perusal of the complaint it was noticed that demand was made for giving 7/12 extract after taking entry of encumbrance on it. The complaint shown to him was dated 29th May 2012. It was in the handwriting. The office of accused is a separate room. There was arrangement of three tables and chairs. Other persons were also there for their work. The accused was talking on his mobile phone for about five minutes. Prior to asking by Police, he did not state the facts which had occurred in the office of accused. He did not recollect whether cassette was shown to him. He has not seen name of company of recorder. He did not remember whether the cassette was inserted in it. He did not recollect whether he had stated to police in his statement that he has signed the panchanama. He cannot assign any reason as to why it is missing in his statement. He did not recollect whether ACB prepared the map of spot in his presence. At the time of trap, other customers were found inside the office of accused. There were about two to three persons. He did not recollect whether Investigating Officer had recorded their statement.

7. PW-3 Tushar Thombre is the Sanctioning Authority. He deposed that he was Sub Divisional Officer at Ichalkaranji from 13th August 2010 to 17th October 2013. The SDO is the appointing and removing authority of a person holding the post of Talathi. Bhadole Sajja, Taluka Hatkanangle was under his jurisdiction. He knows the accused. He was working as Talathi at Bhadole. On 7th February 2012 he received papers of trap against accused. He had perused all the papers. He issued sanction to the concerned office for the prosecution against accused. In the cross-examination he stated that papers forwarded to him did not include papers pertaining to appointment of accused. On showing the appointment order he deposed that as per the order the accused was appointed by Collector on 4th December 1983. The selection list of Talathi is prepared by board. Collector is the chairman of board. The appointment to the persons whose names are figured in the list, is prepared by Collector and appointment order is issued to them. The SDO has no right to interfere in the said list about selection of Talathis. He did not know that on one of the plot, without permission of Collector, a hut was constructed. If the construction is made on agricultural land, the revenue for non-agriculture is required to be paid. He did not make any enquiry about that. He did not see that since 2006 the complainant did not pay the cess about the use of agricultural plot. He did not know that Rs.2,448/- was due from the complainant for non-agriculture use. He received letter from ACB, Pune He was required to see whether sections are applicable or not and confirm under what section the offence is committed. In the sanction order he has not mentioned the sections of Act. He did not mention the sections under which the sanction has been accorded. The sanction order has not been addressed to anybody.

8. PW-4 Udaysingh Patil has conducted investigation. He stated that complainant had visited ACB on 30th May 2012. His complaint was typed on computer as per his say. It is Exhibit-15. He had annexed report submitted to Talathi and 7/12 extract of the field. The panchas were called by him. Instructions were given to the panchas and complainant. Demand was verified. Pre-trap panchanama was recorded. Conversation between the accused and complainant were recorded. CD was prepared. The accused had accepted bribe amount. Trap panchanama was recorded. Sanction was received from the sanctioning authority. Charge sheet was filed against accused. In the cross-examination he stated that he had deposed in the Court on perusing the notes prepared by him after reading the papers. On receipt of application for mutation, there is breathing period of 15 days and then the mutation entry is effected. He did not record statement of any person on the point of 7/12 extract which was not signed by the accused. He did not know that 7/12 extract is not in the handwriting of accused. He did not know that it is in the handwriting of Kotwal. He did record statement of Kotwal but not pertaining to the subject 7/12 extract. No enquiry was made with Kotwal as to which papers he had prepared pertaining to this case. He did not make independent enquiry whether the complainant has to pay revenue for non-agriculture purpose. 7/12 extract was in the handwriting of Kotwal. Tape recorder was not used during the entire procedure of trap. The seized property was forthwith produced before Court. There was no specific reason to keep the Muddemal with him till 4th June 2013. He did not make any correspondence with sanctioning authority. Correspondence was made by ACB, Pune. The copy of

correspondence is sent to his office. Independent investigation about correspondence was not made by him. He did not collect papers pertaining to appointment order of accused. He had no difficulty to collect those papers. The offence took place in the office of Talathi at Bhadole. He did not record statement of concerned Clerk who wrote the date of this receipt as 29th May 2012. The signatures of panchas were not obtained on the statements written on papers. Those are not seized and produced with charge sheet. Whenever the complainant and panch no.1 visited the office of accused, their independent statements were not recorded. There was no anthracene powder trace outside the shirt pocket of accused. In the panchanama it is mentioned that outside pocket of the accused, anthracene powder was traced. It was traced on the edges of shirt pocket but that has not been specifically mentioned. He did not recollect that marking was on the chest or on the shirt pocket of accused. The accused has stated that amount has been forcibly threshed in his pocket. The complainant on his own did not state that, when the witnesses and panch no.1 had been to the office of accused, he asked him as to for what purpose he was there and that he told him that for getting entry of encumbrance in the 7/12 extract of Gat No.1462 he was there. The omissions spelt out in the evidence of witnesses were proved through the evidence of Investigating Officer.

9. Learned counsel for appellant submitted as follows :-

(i) The Trial Court has committed an error in convicting the appellant;

(ii) The appellant is appointed by order of Collector on 4th

December 1983. The Sub Divisional Officer has no authority to accord sanction for prosecution. The sanction accorded by SDO is invalid. The sanction order was not addressed to anybody. Sanction order does not mention for what provision of P.C.Act sanction is accorded. There is total non application of mind while according sanction. Deputy Collector/SDO being an inferior authority to the Collector, did not have the authority to remove accused from service. Article 311(1) of Constitution of India creates a safeguard wherein no person holds a civil post under the Union or State shall be removed by an authority subordinate to the person who appointed the person. Deputy Collector/SDO is subordinate to the Collector. PW-3 has not produced any document purporting to show the delegation of power by the Collector. Power of sanction cannot be delegated.

(iii) The Trial Court has overlooked the fact that 7/12 extract alleged to have been produced by the Investigating Officer does not bear the handwriting of appellant. It was in the handwriting of Avaghade. The said witness has not been examined deliberately. Non-agriculture tax of Rs.2,448/- was due from the informant. The informant had told the accused that he would pay the amount on 1st June 2012. Accordingly the accused had instructed Kotwal to prepare the receipt for the same and issue the receipt and the said receipt was sanctioned by appellant. The said receipt has been deliberately suppressed from record;

(iv) The procedure regarding entry of 7/12 extract was brought on record. The Trial Court has ignored the same. If the name is recorded or deleted, the entry is to be taken in the concerned register. 15 days waiting period is to be given for receiving objections about entry. The Circle Officer has to see whether any objection is received or not and thereafter the Circle Officer has to certify that entry. Unless Circle Officer certifies the entry, the Talathi has no right to enter name in the 7/12 extract or to do the mutation entry. In these circumstances the complainant visited the office of accused. He was asked about purpose of his visit since there was 15 days waiting period. However, the complainant wet on insisting that he was in urgent need of 7/12 extract which indicate that entire case has been concocted by the complainant;

(v) As regards the place/spot of incident where the alleged incident of bribe amount had occurred, there is variance in the statements of complainant and panch no.1. This fact is overlooked by the Trial Court. Panch no.1 no where states that he along with complainant came out of office and complainant gave the bribe signal;

(vi) The Investigating Officer called two panchas on 29th May 2012. The letter of endorsement is dated 29th May 2012. Thus, the said letter was duly received on 29th May 2012. Thus, the fact that panchas were called on 30th May 2012 is false. The handwritten complaint of 29th May 2012 is not produced before the Court. The entire investigation from the inception is goofed up false and concocted;

(vii) Non payment of agricultural land tax receipt is on record. However, the said fact has not been considered by the Trial Court. The evidence of witnesses examined by the prosecution do not inspire confidence. The demand is brought on record by way of omission. The presence of panch no.1 is doubtful. The omissions in the evidence of witnesses are proved through Investigating Officer. Independent witnesses were not examined. The evidence of conversation, script and CD is doubtful and cannot be accepted. The conversation was not heard in Court. The contents of alleged CD were not verified by the Court. Certificate under Section 65(3) of the Evidence Act is not produced. CD of conversation was prepared and thereafter the conversation was deleted from digital recorder. Electronic evidence was not in conformity with the Rules for production, use and recording of tape recorded evidence as prescribed by High Court under Article 227 of Constitution of India. The opinion of expert relating to voice of accused is not placed before Trial Court. The prosecution has failed to establish the demand and acceptance of the amount beyond reasonable doubt.

10. Learned counsel for appellant has relied upon following decisions :

1.	State of Punjab Vs. Madan Mohan Lal Verma (2013)14-SCC-153
2.	Panalal Damodar Rathi Vs. State of Maharashtra (1979)4-SCC-526
3.	Suraj Mal Vs. State (Delhi Administration) (1979)4-SCC-725
4.	Devidas Harischandra Bhaskar Vs. State of Maharashtra 2020-SCC Online-BOM-1041
5.	Anil K. Apshingkar Vs. State of Maharashtra Criminal Appeal No.793 of 2013 (Bombay High Court)

6.	Satish G. Suryavanshi Vs. State of Maharashtra 2021-ALL MR (Cri.)-21
7.	Raju Shantaram Kakphale Vs. State of Maharashtra Criminal Appeal No.535 of 2016 (Bombay High Court)
8.	Laxman s/o.Nanabhau Bangar and another Vs. The State of Maharashtra – 2019-ALLMR (Cri.)-2523
9.	State of Maharashtra Vs. Bhikan Bismlla Maniyar delivered by Bombay High Court vide order dated 16th December 2019.

11. Learned APP submitted that there is cogent evidence of demand and acceptance. PW-1 and PW-2 have specifically deposed about demand of bribe by the accused. Conversation between accused and complainant was recorded. PW-2 was accompanying the complainant. He has corroborated the version of complainant. The demand of bribe has been proved by prosecution witnesses. The demand was verified by investigating agency. Pre-trap panchanama was recorded, trap was arranged and accused accepted the tainted currency notes. The said fact is evident from evidence of PW nos.1 and 2. The raiding party had raided and apprehended the accused. The accused was found in possession of currency notes. The trap panchanama was recorded. Conversation between accused and complainant which was recorded, was verified. Script was prepared. CD was prepared. Panchanama in that regard was recorded. Assuming that there is defect in sanction, that by itself would not be enough to set aside the judgment of conviction, as the accused is required to show prejudice caused to him. There is sufficient evidence on record which indicate that demand and acceptance of

bribe amount has been proved beyond doubt and hence there is no reason to interfere in the judgment of conviction.

12. I have perused the evidence on record. PW-1 is the complainant, PW-2 is the panch witness. The said witnesses were examined to prove alleged demand and acceptance. It is alleged that prosecution has verified the demand made by accused. PW-2 (panch no.1) has stated that in the office of ACB the handwritten complaint of PW-1 was shown to him. The said complaint was dated 29th May 2012. The handwritten complaint was not produced before Court. The complaint Exhibit-15 is dated 30th May 2012 and it is not handwritten. PW-1 has admitted that he made a phone call to the accused when he came outside office of ACB, Kolhapur and the said call was made on the instructions of PW-4. PW-4 has denied about any call being made to the accused by complainant on his instructions. PW-1 states that appellant had demanded Rs.2,500/-for entering encumbrance on 7/12 extract. PW-1 has stated that when he and PW-2 had been to the office of accused, the accused asked him as to for what purpose he was there. He told him that for taking entry of encumbrance to the 7/12 extract of land Gat No.1467 and plot No.2810, he has visited the office of accused. He further deposed that accused called him out of office and made enquiry about bribe amount and he demanded Rs.2,500/- as bribe. PW-2 have not mentioned the purpose of demand. He stated that demand was made near temple which was behind the office. PW-1 is silent as regards to the fact of going near temple. PW-2 has deposed that when he, complainant and accused went near one temple which is to the back side of the office of Talathi, there was discussion between complainant and the accused. Accused told the complainant that

whatever amount he would like to give, he can give. The complainant told him to get the amount. The accused told the complainant to give Rs.2,500/-. Complainant stated that encumbrance of loan transaction be entered into 7/12 extract and it may be given to him. The evidence of PW-1 disclosed that he did not tell the Police that when he along with accused came out of his office, at that time, panch no.1 was with him. PW-1 could not state the reason as to why the said fact was absent in the statement before Police. This omission has been proved by the Investigating Officer. Thus, presence of panch PW-2 with appellant at the time of demand verification is doubtful. There is no independent corroboration to demand of accused at the time of verification of demand.

13. The complainant has denied the portions marked A, B and C of his statement and these portions were proved through PW-4. In the cross-examination he stated that he has knowledge about the procedure as to how name is to be recorded in 7/12 extract, record of right and in other revenue records. He admitted that if the name is recorded or deleted, then it's entry is to be taken in the concerned register. Unless Circle certifies that entry, the Talathi has no right to enter that name in 7/12 extract or to the mutation entry. He further admitted that on one plot he had constructed cattle shed. It was constructed before one month. The said plot was non agricultural. He is unable to state whether tax for agricultural purposes was paid or not. He admitted that the accused told him to pay non agriculture purpose tax. That amount was Rs.2,448/-. The cross-examination of PW-1 reveal that he was aware of the procedure to be followed for entering name in 7/12 extract. He admitted that 15 days waiting period is required to be given for receiving objections. He also

admitted that Circle Officer used to see the objections. He also admitted that on 29th May 2012 he had visited office of accused for entering encumbrance. The agricultural land and plot was mortgaged for loan. This encumbrance was to be entered in 7/12 extract. On 29th May 2012 he submitted application to Talathi to that effect and met the accused. 15 days had not lapsed and hence there was no occasion to demand any amount and thus the prosecution case is difficult to be believed that accused had made demand of bribe.

14. PW-4 has stated that he had deposed on perusing the notes which were prepared on seeing the papers. He knows the procedure as to how names are to be recorded in 7/12 extract pertaining to mutation entry. On receipt of application for mutation, there is breathing period of 15 days and then mutation is effected. He did not record statement of any person specifically on the point of 7/12 extract which is signed by accused. He do know that 7/12 extract is not in handwriting of accused. He do not know that it is in the handwriting of Kotwal. He did record statement of Kotwal but not pertaining to this 7/12 extract. He admitted that no enquiry was made from Kotwal as to which papers he has prepared pertaining to this case. He did not make independent enquiry whether the complainant has to pay revenue for non agriculture purpose. He stated that 7/12 extract was in the handwriting of Kotwal.

15. PW-1 has stated that it is not true to say that he did not tell Police that after completion of talk with accused, the accused called him out of his office. No reason is assigned as to why it is mentioned in his statement. He further stated that it is not true to say that he did not tell Police that accused demanded bribe amount when he

came out of his office. No reason is assigned as to why it is not mentioned in his statement.

16. PW-1 in examination-in-chief, has stated that the alleged exchange of currency took place outside the office. PW-2 panch witness has stated that the incident of exchange of tainted currency notes took place inside the office. Thus, there is material variance between the evidence of these two witnesses.

17. PW-2 in his cross-examination has admitted that in the vehicle of ACB, there was laptop. On the laptop typing work was done and he read it on the laptop. He did not recollect whether he has stated to Police in the statement that he has signed the panchanama. No reason is assigned as to why it is missing in his statement. On the day of trap at about 6 to 6.30 pm, he went to ACB, Kolhapur. The prints of typed material were taken from printer. The panchas have signed it. The evidence thus indicate that panchanamas were prepared and signed by panchas mechanically and hence contents of panchanamas were not proved beyond reasonable doubt. The pancha has not maintained the fact regarding signing of panchanama in his statement. The cross-examination of PW-2 indicate that he has not deposed in conformity with the panchanama. He has admitted that there was no instruction given about Talathi Gujjar. It was not instructed that if Talathi Gujjar asked about panch no.1, then he should be introduced as relative of complainant. PW-2 further states that he did not recall as to why there is reference to Gujjar in his statement. No person by name Gujjar was ever having any connection with this case.

18. Two persons named Shamrao Avghade and Rajaram Avghade were not examined by prosecution though they were listed as witnesses. Presence of two persons in the office was admitted by PW-1. Presence of two persons was also mentioned in the trap panchanama. Presence of two persons namely Shamrao Avaghade and Rajaram Avaghade is also reflected in the FIR. Other independent witnesses who were available and present at the place of trap, were not examined before Trial Court. PW-4 was questioned about enquiry with Avghade. He stated that he did not enquire with Kotwal Avghade as to which papers were prepared by him. He did not make enquiry whether PW-1 has has to pay revenue of non-agricultural purpose. He did not seize the receipt.

19. The voice recording was not played in the Court. The voice conversation report in relation to voice recording was never produced before the Trial Court. In the case of Devidas Bhaskar (supra), it was observed that conversation was not played in Court during proceedings. Mere production of extract of recorded conversation is not sufficient. In the case of **Anil Apshingkar (supra)**, this Court referred to various decisions on issue of tape recorded evidence and reproduced the rules for production, use and recording of tape recorded evidence in Court incorporated in Criminal Manual issued by High Court and observed that neither tape recorder cassettes, nor FSL report was proved in the trial which indicate that prosecution has suppressed genesis of prosecution case and evidence. In the case of **Raju Kakphale (supra)**, it was observed that to prove secondary evidence, certificate under Section 65-B of Evidence Act was not produced.

20. The appellant had submitted detailed explanation in terms of Section 313 of Cr.P.C. Along with his written explanation he has produced receipt provided by Avaghade for Rs.2,448/-. The defense of appellant in the written application under Section 313 of Cr.P.C is that he was appointed as Talathi by Collector. The S.D.O has no authority to grant sanction for prosecution. The accused produced 7/12 extract without his signature. The said document was prepared by Kotwal Avghade. The said person was not examined by prosecution deliberately. The said person resides in village of complainant. He would have explained as to when and why the said 7/12 extract was prepared. The complainant was required to deposit amount of Rs.2,448/- towards use of unauthorized non-agricultural land. The appellant had repeatedly told the complainant to deposit the amount. The complainant had stated that he would deposit the amount on 1st June 2012 and hence Kotwal was instructed to prepare receipt in that regard. The receipt is in handwriting of Kotwal. Two persons were present on the date of trap. They were not examined.

21. The sanction order was issued by PW-3 Tushar Thombre who was Deputy Collector, Satara. In the cross-examination he has admitted that in the papers received by him no paper pertaining to appointment of accused were received. He admitted that appellant was appointed by Collector on 4th December 1983. It is apparent that appellant could not have been removed from service by order of Deputy Collector/SDO. PW-3 had no authority to accord sanction to prosecute the accused. In the case of **Satish G. Suryavanshi Vs. State of Maharashtra (supra),** this Court has relied upon number of decisions of the Supreme Court as well as this Court. The sanction

was held to be invalid on the ground that sanctioning authority was not empowered to grant sanction. In the case of **Laxman Nanabhau Bangar and another (supra)** similar view was taken by this Court. It was held that appointing authority and officer on the higher rank above than the appointing authority can only remove the appointed employee. In the case of **State of Maharashtra Vs. Bhikan Maniyar (supra)**, the prosecution sanction was accorded by SDO who was subordinate officer in rank than Assistant Collector i.e. appointing authority of the accused. The sanction was held invalid. In this case, the sanction order also reflects non application of mind on the part of PW-3. In the present case, the Deputy Collector/SDO was subordinate to the Collector and he did not have authority to remove appellant from the services. Article 311(1) of the Constitution of India creates a safeguard wherein no person who holds a civil post under the Union or State, shall be removed by an authority subordinate to the person who appoints the person. PW-3 was functioning as Deputy Collector. It is admitted that appellant was appointed by Collector. It is not disputed that the Deputy Collector is subordinate to Collector. The sanction accorded by PW-3 is bad in law. Thus, the sanction order is held to be invalid.

22. Apart from the infirmity in the sanction order, the evidence on record adduced by prosecution does not inspire confidence to convict the appellant on the basis of such evidence. There are omissions and contradictions. There are several infirmities in the evidence. The demand of bribe has not been proved beyond doubt. There are serious doubts in evidence of witnesses to disbelieve the case of prosecution with regards to demand and acceptance of bribe. The law is well settled that demand of illegal gratification is sine-qua-non

for constituting the offence under P.C.Act. In the case of State of Punjab Vs. Madan Mohan Lal Verma (supra), it is held that mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable. Mere receipt of amount by the accused is not sufficient to fasten guilt in the absence of any evidence with regard to demand and acceptance. While invoking presumption of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, on the touchstone of preponderance of probability. Similar view is expressed in the case of Pannalal Rathi (supra) and Suraj Mal (supra). Applying the ratio of these decisions to the facts of this case, I am of the considered opinion that prosecution has not been able to prove its case beyond all reasonable doubt and hence the judgment of conviction deserves to be set aside.

23. Hence, I pass following order :

ORDER

(i) Criminal Appeal No.684 of 2016 is allowed and disposed of;

(ii) The impugned judgment and order dated 29th June 2016 passed by Special Judge, Kolhapur in Special Case No.3 of 2013 convicting the Appellant, is set aside and the Appellant is acquitted of all the charges;

(iii) The fine amount, if any, paid by the Appellant, be refunded to him.

(**PRAKASH D. NAIK, J**.)

MST