IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.235 OF 2017

Shri Amresh Kumar Singh s/o
Jagjeevan Singh, Aged about
53 years, Occupation-Service,
R/o. Punwat, Taq. Wani,
District-Yavatmal and also at
R-8, Utkarsh Nagar, Katol Road,
Nagpur. ... Appellant

.. Versus ..

Central Bureau of Investigation,
through CBI/ACB, Nagpur,
District-Nagpur. ... Respondent

....

Shri M.B. Naidu with Shri Prakash Naidu, Advocates for the appellant,
Mrs. Mugdha Chandurkar, Advocate for the respondent.

....

CORAM : N.B. SURYAWANSHI, J.
RESERVED ON : 23.02.2021.
PRONOUNCED ON : 20.04.2021.

JUDGMENT

1. The appellant was convicted by the learned Special Judge and Additional Sessions Judge, Kelapur in Special (ACB)

Case No.7/2011 under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1000/- with default clause. The appellant has challenged his conviction in this appeal.

2. The prosecution case, in nutshell, is that one B.K. Singh lodged a complaint with Anti-Corruption Bureau. The accused was working as a Senior Manager (Civil) in Niljai Sub Area, Western Coalfield Limited at Wani under the Ministry of Coal, Government of India, New Delhi. Therefore, the accused was a public servant. The complainant was authorized signatory of M/s. Shivshakti Enterprises and was a contractor of civil work. The complainant alleged that the accused demanded bribe of Rs.15,000/- in his office for processing the pending financial bill of the civil work done by the complainant. The accused gave threat that if the bribe amount was not paid, it will be deducted from the bills receivable by the complainant. As the informant did not pay the bribe amount, the accused malafidely deducted an amount of Rs.5,000/- from the bill of the informant relating to repair work of sewerage pipeline in WCL Colliery, Ghugus,

District-Chandrapur. On 23.4.2011, informant again visited the accused in respect of his another pending bill. At that time, the accused repeated his demand of bribe of Rs.15,000/- and threatened him about the consequences of non payment of bribe. On 25.4.2011, the informant lodged written report with Superintendent of Police, CBI, ACB, Nagpur against the accused. Accordingly, criminal case was registered. The panchanama of verification of demand was carried out in the presence of independent panch witness, vide panchanama dated 26.4.2011. It was *prima facie* established that accused demanded the bribe and he agreed to accept Rs.10,000/- as a part payment out of Rs.15,000/- from the informant. On 26.4.2011, the accused was caught red-handed near Naigaon Check Post ahead of Wardha river bridge, District-Yavatmal while demanding and accepting the bribe amount of Rs.10,000/- from informant in the presence of independent panch witness, which is noted in the post trap panchamama dated 26.4.2011. At the time of accepting bribe of Rs.10,000/- the accused assured informant to adjust amount of Rs.5,000/- earlier deducted on another occasion. After completion of investigation, the chargesheet was filed.

3. The charge under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 was framed against the accused. He denied the same. His defence was of total denial. The learned Trial Court, after recording the evidence, found the appellant guilty and convicted him as aforestated. Hence, the present appeal.

4. Heard the learned advocate for the appellant and the learned advocate for the respondent.

5. The learned advocate for the appellant assailed the conviction by submitting that the prosecution has failed to prove initial demand. It has come on record that the bills of informant PW-1 were already cleared on 31.3.2011. Therefore, the demand cannot be believed. According to him, the allegation of PW-1 informant that for non-payment of bribe amount, Rs.5,000/- was deducted from his bill, is also not acceptable, in view of admissions given by PW-5. The verification of alleged demand is not proved. There is no certificate under Section 65-B of the Evidence Act on record. The tape recorder was never placed before the Court, therefore, no reliance can be placed on

the said evidence. He further submitted that the appellant, at no point of time, has disputed recovery of Rs.10,000/- but he has given an explanation that the said amount was received from PW-1 informant towards the payment of hand loan of Rs.15,000/- taken by informant from DW-1 Shailesh Thakare. It has come in the evidence of PW-2 Gendlai Somkuwar that the appellant informed the CBI Officer, at the time of raid, that this amount belonged to Shri Thakre and Shri B.K. Singh had obtained a loan from Shri Thakre with the mediation of the appellant. He argued that the appellant has therefore successfully rebutted the presumption under Section 20 of the Act, during the cross-examination of the prosecution witnesses as well as by examining the defence witness. He therefore submitted that the prosecution has failed to prove the demand and acceptance of bribe of the amount and, therefore, conviction recorded by the learned Trial Court is unsustainable and the same is liable to be quashed and set aside. Hence, the appeal deserves to be allowed. In support of his submissions, he relied upon the following decisions :

1. C.M. Girish Babu .vs. CBI Cochin, AIR 2009 SC 2022.

2. Punjabrao .vs. State of Maharashtra, AIR 2002 SC 486.

3. Mukhtiar Singh .vs. State of Punjab, AIR 2017 SC 3382.

4. P. Satyanarayana Murthy .vs. The Dist. Inspector of Police and another, AIR 2015 SC 3549.

5. K.M. Mallaiah .vs. State of Karnataka, 2015 ALL SCR 1799.

6. Ravindra Narayan Joshi .vs. State of Maharashtra, 2015 ALL MR (Cri) 4563.

7. Chandrakant Hanumantrao Sugare .vs. The State of Maharashtra, 2016 ALL MR (Cri) 5013.

8. Nivrutti s/o Ganpati Sadekar .vs. State of Maharashtra, 2019 ALL MR (Cri) 4299.

9. Sheel Bhadra s/o Latoori Lal .vs. State of Chhattisgarh, CRA No.138 of 2003, Chhattisgarh High Court.

10. State of Maharashtra .vs. Gajanan Shankarrao Phalke, 2017 ALL MR (Cri) 3278.

11. Surgani Vyankatesh s/o Raju Naidu .vs. The State of Maharashtra, 2018 ALL MR (Cri) 875.

12. The State of Maharashtra .vs. Ramesh Tukaram Wagh, 2020 ALL MR (Cri) 3509.

13. Mr. Sudhir Arjun Keer .vs. CBI, ACB, Mumbai and others, 2019 ALL MR (Cri) 4984.

14. Yashwant s/o Sambhaji Dadmal .vs. State of Maharashtra, 2012 ALL MR (Cri) 2966.

15. Deputy Superintendent of Police, Anti Corruption Bureau, Chandrapur .vs. Vithoba Ganpati Pidurkar,

2011 (8) RCR(Cri) 1645.

16. Dattatraya s/o Rajaram Thaokar .vs. The State of Maharashtra, 2017 ALL MR (Cri) 4184.

17. Arjun Panditrao Khotkar .vs. Kailash Kushanrao Gorantyal and others, (2020) 7 SCC 1.

6. The learned advocate for the respondent, on the other hand, supported the judgment of conviction passed by the learned Trial Court. She submitted that there is no receipt of hand loan placed on record. The hand loan is not proved by the appellant. It is stated in the FIR that the bill of the informant PW-1 was already passed on 31.3.2011. The first demand was raised by the appellant on 31.3.2011. The panchanama Exh.51 and the evidence of PW Nos.1, 2 and 7 proves the demand. She submitted that the guilty conscience of the appellant is clear from the record, as at the time of trap he tried to run away from the spot. If at all, it was the amount of Shri Thakre, then he had no reason to flee away from the spot. She submitted that the raiding party was required to chase the vehicle of the appellant and intercept it. He has accepted that he had taken bribe during the raid. The evidence of PW-6 Mahendra Bhagat corroborates the fact of appellant running away. According to her, the

prosecution, by examining 11 witnesses, proved the demand and acceptance on record. Admittedly Rs.5,000/- was deducted by the appellant from the informant's bill. She, therefore, submitted that the prosecution has proved the demand and acceptance beyond reasonable doubt. The Trial Court has properly appreciated the evidence. Therefore, no case is made out by the appellant to interfere in the conviction recorded by the learned Trial Court. The appeal is without merit and the same may be dismissed. In support of her submissions, she relied upon the following decisions :

1. Manikrao Abaji Thonge .vs. State of Maharashtra, 1993 (2) Mh.L.J. 1221.

2. C.M. Sharma .vs. State of Andhra Pradesh, (2010) 15 SCC 1.

3. M. Narsinga Rao .vs. State of A.P. (2001) 1 SCC 691.

4. Mukut Bihari and another .vs. State of Rajasthan, (2012) 11 SCC 642.

5. Neeraj Dutta .vs. State (NCT of Delhi), (2019) 14 SCC 311.

6. Ranghothan Rao .vs. State of A.P. 2005 Cri.L.J. 3650.

7. It is necessary to appreciate the evidence led by the prosecution. In support of its case, the prosecution has examined 11 witnesses. PW-1 Brij Kishor Singh is the de-facto complainant. He deposed that his wife was the proprietor of Shivshakti Enterprises. The firm was engaged in civil works of WCL and he used to look after the work of this firm. The power of attorney was executed in his favour by his wife. After completion of work, the measurements were recorded in the measurement book. The employee in the office used to prepare the bills on the basis of measurement. After preparation of bill, it used to be signed by the contractor (PW-1), the appellant and Dipak Hepat. The bill was then forwarded to Sub-Area Manager and after it was passed by Sub-Area Manager, it was forwarded to accounts section. He had completed his work before March-2011. The bill was prepared and passed. Thereafter, the said bill was sent to accounts section. Thereafter, for passing the said bill, the appellant demanded Rs.15,000/- from him, but he could not pay the amount. He identified the tender and bill in the file Exh.3. During that period, he was also given the work of sewerage pipeline, which was supervised by Shri Dipak Hepat and appellant. He completed the work, which was worth

Rs.22,000/- to Rs.23,000/-. Thereafter, appellant and Shri Dipak Hepat took measurement of the work of sewerage line. Thereafter, the bill was prepared and informant, appellant and Shri Dipak Hepat signed the bill. Exh.33 was the file of that work. He used to visit the appellant for the bill of this sewerage pipeline. The appellant asked him for the bribe amount of Rs.15,000/- without which the bill would not be passed. The appellant also informed that if the bribe amount was not paid, he would deduct the amount from the subsequent bills. The appellant deducted Rs.5,000/- from the bill of sewerage pipeline. No explanation was given to the informant why that amount was deducted. He received the bill amount, after deducting of Rs.5,000/-.

8. Then on 25.4.2011 he visited CBI office and lodged a written complaint about the demand of bribe by the appellant. A verification of demand was carried out in the presence of panchas and the same was recorded in the voice recorder. The informant stated that as soon as he met the appellant, the appellant demanded Rs.15,000/-. The informant told him that he did not have the amount of Rs.15,000/- but he would pay

Rs.10,000/-. The appellant asked him to pay the amount then and there, but the informant told that he would have to withdraw the amount from the bank. The appellant thereafter told him that he was going to Tadali GM Office and would meet the informant at his house while returning back. The voice recorder was played and the conversation was transcribed on the paper in the presence of panchas. Thereafter, the trap was laid and the tainted notes were given to the informant. The raiding party along with informant waited on the road. The vehicle of appellant was seen coming which was stopped on the road. The driver of appellant's vehicle Shri Dhakate came to the informant car and told him that he was called by the appellant. The informant along with panch Somkuwar went to appellant's car. He started the tape recorder in his pocket. He had a talk with appellant about demand of money. The appellant asked him to pay the money. The informant asked him as to how the amount of Rs.5,000/- which was deducted from his bill, could be released. The appellant told him that it would be seen afterwards and it would be adjusted in the next bill. Thereafter, the informant took out the currency notes from the envelope by right hand and paid it to the appellant. The appellant received the amount by his right hand and he counted the notes by both hands and kept the amount in his shirt pocket. Thereafter, the informant gave the signal. At that time Shri Patil, the surveyor was sitting in the vehicle of appellant. The officers of CBI tried to stop the vehicle of the appellant, but the vehicle did not stop and it proceeded towards Niljai. The CBI Officer chased the vehicle and it was stopped near Naigaon turning. Thereafter, the appellant was interrogated by the investigating officer. The appellant had kept the bribe amount in a cloth used for cleaning the vehicle and kept it at the back side of seat of vehicle, when the CBI Officer was chasing the vehicle. The said amount was recovered and the numbers of the tainted notes were tallied. Thus, according to PW-1, the trap was successful and tainted notes were recovered from the appellant.

In the cross-examination, PW-1 stated that since 17 to 18 years, he was working as a contractor in WCL. His wife was the proprietor of 'Shivshakti Enterprises'. She had given him authority about every work to submit tender, to execute the work, to submit bills and to receive payment. He knew all the procedure relating to the tender. When a tender is allotted to a person, WCL used to issue letter of work award in his name. The contractor had to commence the work within the stipulated time. According to the said letter, he had to submit security deposit amount within stipulated time. After depositing security amount in the department, the work order was issued in the name of the contractor. For preparation of bill and for passing of bill, work order must be available. He admitted that without work order, bill could not be prepared and could not be sanctioned. The work done was to be measured by the Junior Engineer of WCL. After the measurement, the tender committee had to sign the said measurement. The tender committee comprised of three members, one Junior Engineer, second Engineer incharge and third Sub-Area Manager of WCL. After the tender committee signed the measurement, the Junior Engineer had to prepare the bill or the contractor had to submit the bill. After submission of bill, Engineer incharge had to pass it. Welfare committee was in effect in WCL. Prior to passing of bill, the report of Welfare Committee was called. After receipt of the report of Welfare Committee, the Engineer incharge used to pass the bill. After passing of the bill by Engineer incharge, approval of Sub-Area Manager was required. Thereafter, through Civil Department, the bill was to be forwarded to finance department. After passing of the bill, finance department used to make the payment. The task of bill passing authority was over after passing of the bill. The finance department, after completion of formalities, used to pay the bill amount to the contractor. In financial year 2010-11, five different contract works were allotted to him. The accused was Engineer Incharge of those five works. He admitted that as per the work order no.135/1, dated 6.2.2011, the work of supplying and spreading murum in Niljai Open Cast Mine was allotted to him. He completed the said work and on 9.2.2011 the measurement of the said work was completed. Dipak Hepat had verified and measured the said work. The accused also verified the said work along with Dipak Hepat and Sub-Area Manager. The measurements were recorded in the measurement book on 9.2.2011. At that time, in the office of the accused, typist namely Kutemate was working. After measurement, he prepared the bill. Thereafter, after preparation of bill by Kutemate, PW-1 brought that bill to the appellant for passing. He further stated that, that bill was passed, but he did not recollect the date of its passing. He was not sure that the bill was passed on 11.2.2011. He was confronted with Exh.31 which contained the bill passed by the accused on 11.2.2011 and Sub-Area Manager had passed it on 18.2.2011. Then on 24.2.2011, the bill was sent to finance department. The payment of that bill was received by him on 3.3.2011.

He further admitted that on 29.12.2009 he was allotted the work of sewerage pipeline in quarter nos.B-43, B-44 and B-45. The work was to be completed within 15 days. It was necessary for him to submit security deposit before issuance of the work order. He admitted that he submitted the security deposit of that work on 4.3.2011. He knew Shri Bharne, who used to reside in Quarter No.B-43. He denied that Shri Bharne had complained to WCL that the work of his quarter was not done properly. He further denied that WCL had informed him that they had received the complaint. He further denied that the accused directed him to complete the work of Bhane's quarter properly. He further denied that the accused sent him a letter in that regard on 20.5.2010 (Exh.42). He volunteered that he did not receive the said letter. He was not aware as to whether there was departmental enquiry in respect of the said work against the accused. He, however, admitted that his evidence was recorded in vigilance department at Nagpur in WCL. He denied that one Bhaskar Mandal, contractor of WCL, was allotted the work of repairs and rectification of sewerage pipeline of Quarter No.B-43, as he did not do it. He denied that Bhaskar Mandal completed the work of Quarter No.B-43 and its bill of approximately Rs.10,000/- was passed by the accused on 29.3.2011. He admitted that work order of SW pipeline was issued to him on 29.3.2011 and its bill was prepared and passed on 31.3.2011. He did not know that while passing the bill, the accused had prepared deduction statement by deducting amount of Rs.5,000/- from his bill. He denied that the said amount was deducted in his presence. He admitted that the bill was also signed by him. He claimed that when he saw the said bill in account section, at that time, he came to know that amount of Rs.5,000/- was deducted from his bill. He did not make any complaint about the deduction to superior officer of WCL. He did not sent a letter or notice to the accused about the deduction. He admitted that penalty can be imposed on any contractor if the work is not done by him properly and if the work is left incomplete by him.

He was knowing Shri S.N. Thakare, who was the member of Welfare Committee. He also admitted that the work of removal of waste material, debris, slug domestic wastage from Sundarnagar Township of Niljai area was allotted to him. That work was allotted for one year and it was to be commenced on 18.6.2010. After completion of the work, the measurement was done and the bill was prepared and it was sent to the accused for approval. The bill was passed by the accused on 30.3.2011. He denied that in the first week of December-2010, there was agitation by the labours before the office of the accused, as the amount of their salary was not paid by him. He did not recollect that the work which was allotted to him in 2010-11, the payment in respect of those work was made to him after February-2011. He admitted that he received the payment of murum supply work on 3.3.2011. He further admitted that on 12.5.2011 he received payment of work in respect of SW pipeline.

He admitted that on 23.4.2011 he visited the office of WCL for payment of SW pipeline work. The accused was present in his office on that day. He admitted that head office of WCL was in Nagpur and he had visited that office. There was a gate at the head office and security guard used to be there. A person visiting had to enter his name in the visitors' register, the date and time of visiting office was to be noted in that register. He denied that on 23.4.2011 he had not visited the accused in his office in Niljai Sub Area. He also denied that the accused was on that day at Nagpur headquarter of WCL.

He admitted that he had visited CBI office along with a written complaint. He admitted that on 26.4.2011 at about 11.25 am, he reached near the office of accused along with CBI team. Thereafter, he and shadow witness Shri Somkuwar started going in the office and during that time, digital tape recorder in his pocket was switched on. He denied that he contacted the accused on mobile phone from his cell phone. He denied that he contacted the accused on mobile phone at 11.30 am and the conversation went on for 20 seconds. He also denied that during the conversation, he told the accused that he was visiting the accused for making repayment of Shri Thakare's amount. He admitted that within 5 to 7 minutes, he and Somkuwar had returned back to CBI team. He further stated that after coming back to CBI team, the digital tape recorder was played and it was heard by the CBI team officers. He also personally heard the tape recorded conversation at that time. The transcript of the said conversation was prepared on a paper by CBI Officer. He denied that the conversation was relating to repayment of amount of Shri Thakare. He denied that second time when he along with Somkuwar met the accused, the accused was leaving the office. He denied that since there was already a talk about payment of Shri Thakare's amount, the accused asked him as to whether he was paying the amount. He denied that he assured the accused that he was not paying the amount of Rs.15,000/- but he would pay Rs.10,000/- by withdrawing from the bank and then the accused told him that whatever amount was to be paid to Shri Thakare, he would pay that amount. Thereafter, they returned to home and the accused went to his GM office.

On third time, when the accused returned back to GM office, he paid him Rs.10,000/-. He admitted that at that time the accused asked him whether he was paying Rs.15,000/-. At that time, he answered ..No, it was Rs.10,000/-. He denied that at that time the accused asked him as to when he would pay the remaining amount of Rs.5,000/-. He told the accused that he would pay the remaining amount lateron. He denied that at that time the accused told him “usne bhi bahot pareshan kar diya hai”. He admitted that the said amount of Rs.10,000/- was not seized by CBI from the person of the accused, but it was seized from the seat of the vehicle. He further admitted that the statement of the accused was recorded at that time. He stated that the accused might have stated to CBI officers that this amount was paid for making payment to Shri Thakare, but that statement was not made by the accused in his presence. He denied the suggestion that the accused disclosed CBI Oficers that Shri Thakare had given hand loan to him and for repayment of hand loan of Rs.15,000/-, that amount was paid by him to the accused and that accused had already passed his bill on 31.3.2011.

During his cross-examination, the following omissions were proved :

* After passing of my bill it was sent to account section and then accused demanded me Rs.15,000/-;

* Accused had informed me that unless I pay Rs.15,000/- to him, my bill will not be passed;

* CBI had given me instructions that after demand by A.K. Singh those currency notes be delivered to A.K. Singh.

He admitted that he did not make following statements in his police statement;

* A.K. Singh was saying me that if the amount is not paid then he will make deduction in subsequent bills;

* Rishi Saheb read over my complaint to both panch witnesses Somkuwar and Gupte;

* After application of powder to currency notes, those currency notes had been kept in envelope;

* He admitted that word ‘envelope’ was not stated by him and it was not mentioned in his police statement.

He admitted that he was knowing Silvaraju very well. He stated that Silvaraju had not lodged report against him at the Police Station in respect of giving him threats and abuses. He stated that there was no offence registered against him and one other person in respect of theft of electric energy from WCL. He admitted that between 2005 to 2012 offence was registered against him in Ghugus Police Station. After 2012 till that date, again offence was registered against him. He did not know how many offences were pending in his name from 2005 till that date. He admitted that offence u/s 395 of IPC was registered against him. He further admitted that his name was blacklisted in WCL Wani area for the period of one year. In September-2014, his wife's firm was blacklisted for one year. He further admitted that in 2013 work of cleaning the grass and jungle and removal of rubbish was allotted to him. For that work, he deposited the security amount and since he did not perform the work, his security amount had been forfeited.

He stated that in 2005 in Niljai sub area of WCL Mr. Arunkumar Singh was Sub Area Manager. Under his supervision also he had worked as a contractor. He denied that Mr.

Arunkumar Singh had imposed penalty of Rs.5106/- on him. He admitted that he had given a report to CBI against Shri Arunkumar Singh that he demanded 1% of the bill amount from him. On the basis of his report, CBI instituted a case against Shri Arunkumar Singh. In the said case, his evidence was recorded and Shri Arunkumar Singh was acquitted by the Trial Court. He did not recollect whether it was correctly mentioned in his previous deposition in the case of Shri Arunkumar Singh that as per the recommendation of Mr. Arunkumar Singh, penalty of Rs.5106/- was imposed on him. He was confronted with the certified copy of the deposition Exh.45. He admitted that he had correctly stated in the deposition that previously he was prosecuted along with other persons in a criminal case of theft of electricity of WCL. He also admitted that externment proceeding was pending against him. The certified copies of FIR Exh.46, 47 and 48 were shown to him. He admitted that those offences were registered against him. He further admitted that in the departmental enquiry, when he gave his evidence, he had stated that an amount of Rs.5,000/- was deducted from his bill in his presence. He also stated that he had not done repairing works of SW pipeline. The department had informed him about the leakage. He denied that at no point of time the accused demanded bribe amount from him and the amount paid by him was towards the repayment of hand loan to Mr. Thakare.

9. PW-2 Gendlai Somkuwar is the shadow panch. He was present at the time when the procedure was explained to PW-1 and other panchas and he acted as a shadow witness at the time of raid. He deposed that for verification purpose of demand, he along with PW-1 went to the office of appellant, but the appellant was not present. After some time, they again went to the office of appellant. They saw one jeep coming out of the gate of the office of appellant. PW-1 stopped the jeep. Three persons were in the jeep, one driver and two others. PW-1 greeted the persons sitting by the side of the driver. He asked PW-1 'Mal Laya Kya". At that time, PW-1 told him that he could pay only Rs.10,000/-, then that person demanded the amount of Rs.10,000/-. PW-1 told him that he did not have the cash amount with him, but he would withdraw from the bank and then pay him. That persons told PW-1 that he was going to the GM Office and while returning back, he would collect the amount from the house of PW-1. Thereafter, he returned back

to the CBI office and verification panchanama (Exh.52) was prepared. Then again the procedure of trap was explained to them and the pre-trap panchanama Exh.53 was prepared. Thereafter, they all proceeded towards the house of the complainant. One person visited the house of complainant and knocked the entrance door. The complainant opened the door. That person told the complainant that appellant was sitting in a vehicle outside on the road and he had called PW-1. PW-1, thereafter, went towards the vehicle in which appellant was sitting. He also accompanied PW-1. The members of CBI team also came out of the premises. They saw the person who had called. PW-1 was standing near the jeep on road. One more person also was standing near the jeep. The appellant was sitting inside the jeep. At that time, PW-1 took out cash and handed it over to the appellant and appellant accepted that amount by his right hand and counted. He then put that amount in left pocket of his shirt. At that time, PW-1 gave signal by removing his spectacle from the hands. At that time, the driver of jeep started his jeep and proceeded on the road. The CBI members tried to stop the jeep, but the driver of the jeep did not stop. Then the investigating officer (PW-7) took a lift on the motorcycle passing on the road and chased the jeep. Another member of the raiding party also followed and chased the jeep on the motorcycle. The jeep of appellant was stopped near Naigaon check post. Then, when identity of the appellant was asked, he told his name as Patil. On repeated asking he disclosed his name as A.K. Singh. On being questioned about the bribe money, the appellant denied having accepted it. After repeated questionings, the appellant accepted that he had taken bribe. Thereafter, the bribe amount was recovered from him. After following the proper procedure, the post trap panchanama (Exh.54) was prepared.

In the cross-examination, PW-2 stated that he was directed by his Superior Officer to visit the office of CBI and if he did not depose as per the documents signed by him, in this case, then he would be liable for departmental action. He admitted that he did not hear the talks between the complainant PW-1 and the appellant before making payment of bribe amount. He did not hear the accused demanding bribe from PW-1. In his presence, PW-1 and appellant did not talk about passing of bill. The appellant did not demand bribe to PW-1 in his presence for passing bill. In his presence there was no official talk between the appellant and PW-1. He further admitted that the appellant was telling CBI Officers after the raid that the amount recovered from him was the amount of Shri Thakare and it was not his amount. The appellant was telling the CBI officers that PW-1 obtained loan from Shri Thakare through the appellant and this amount was handed over for making payment to Shri Thakare. He did not recollect whether he stated in his statement to CBI officer that in file no.1 the voice recorder was blank. As the file no.1 was blank, no transcription of the contents of that file was prepared. He denied the suggestion that verification panchanama Exh.52, pre-trap panchanama Exh.53, recovery memo of the bribe amount Exh.54, personal search memo of appellant Exh.57 and post trap conversation transcription Exh.58 were prepared at Guest House by CBI officer.

10. PW-3 Nirmal Jha is the sanctioning authority, who proved the sanction order (Exh.77). He stated in his cross-examination that he had perused the statement of Mr. Thakare and Mr. Patil and contents of the portion mark 'A' and 'B' were perused by him from the original statement of Mr. Thakare, Those were mentioned in his statement. He also confirmed

portion mark 'A' from the statement of Mr. Patil. After perusal of statement of Shri Dhanraj Meshram, he confirmed that portion mark 'A' from his statement was stated by him. He admitted that names of these witnesses have not been referred in his sanction order. He has not referred the contents of statements of these persons in his sanction order. He stated that as per record, it is clear that till 31.3.2011, the appellant had already passed and processed all the pending bills and papers in respect of work of compliance.

11. PW-4 Balkrushna Bhongale was working in WCL as Engineer Assistant (Civil). He was junior to the appellant. He stated that after completion of the work, the appellant used to check work quality and after his satisfaction, he used to direct them to prepare bill. He stated that work of removal of garbage was allotted to M/s. Shivshakti Enterprises. He, appellant and contractor personally went and visited the work and, thereafter, its bill was prepared. An amount of Rs.74,594/- was recommended to be paid to the contractor.

In the cross-examination, he admitted that inspection of the spot was held by him and appellant on 30.3.2011 and on the same day, measurements were carried out and bill was prepared. On the same day, the appellant approved and signed that bill. In the final bill, he recommended payment of Rs.71,412/- to the contractor.

12. PW-5 Dipak Hepat was working as Overseer in Niljai Sub Area in WCL under the appellant. His duty was to supervise the work and to prepare the bill. After preparation of bill he used to forward it to the appellant. He was aware of M/s. Shivshakti Enterprises. PW-1 was the proprietor of the same. He was taking contracts of WCL. The work of supply of laying murum was allotted to M/s. Shivshakti Enterprises. He had visited the site for measurement and for supervision. He along with appellant visited the site on 3.2.2011. Thereafter, he completed the measurement and then prepared bill of Rs.74,643/-. The work of repairing FW pipe in the premises was also allotted to PW-1. He visited the premises on 21.1.2010. According to him, the task was properly completed. The bill of that work was not prepared. After sanction of its work order, the bill of Rs.17,797.93 was prepared. Rs.5,000/- was deducted

from that bill by the appellant.

In the cross-examination, he admitted that there was no delay in passing the bill in respect of murum work. He stated that PW-1 had completed the task of FW pipeline repairing. Till the work order was issued, bill of that work was not possible. For issuing work order, the contractor has to credit performance security deposit. The contractor (PW-1) deposited this amount belatedly after about 14 months. Therefore, the bill of that work was prepared late. After completion of any work by the contractor, he is liable to carry out the repairing of the said work for six months. One Mr. Bharne had lodged a complaint that there was leakage of pipeline in his quarter No.B43. The said complaint was lodged after about two and half months from completion of work. Thereafter, the appellant directed PW-1 to carry out the repairs of the leakage, but PW-1 did not do the repair work for next four months. Therefore, their department prepared separate estimate for the said repair work and that work was allotted by the appellant to one Bhaskar Mandal in the month of March-2011. He was also a contractor working with WCL. Bhaskar Mandal completed the repairing work between

10.3.2011 to 14.3.2011. PW-5 carried out measurement and after work order, bill of Bhaskar Mandal was prepared and passed by the appellant on 29.3.2011. An amount of Rs.9,565.19 was paid to Bhaskar Mandal for the said work. He further admitted that as the payment was made to Bhaskar Mandal and since the work done by PW-1 was of inferior quality, the appellant thought that it is necessary to impose penalty on PW-1. Thereafter, he and the appellant decided to deduct an amount of Rs.5,000/- from the bill of PW-1. Accordingly, the appellant deducted Rs.5,000/- from the bill of PW-1. The deduction was made in the presence of PW-1. The appellant was empowered to impose penalty on any contractor, if the contractor failed to perform the work, as per terms and conditions of contract. He further stated that if any person visits WCL head quarter office, Nagpur, then he has to enter his arrival in the register kept at the main gate. In that register date, time, name of person and name of officer to whom he has to visit is required to be mentioned.

13. PW-6 Mahendra Bhagat was working as a Fitter at Kailash Nagar WCL. He was proceeding to Wani from Kailash

Nagar at about 3.00 pm on 26.4.2011 on his bike. One person asked him to give lift on the road. He was the CBI officer and he wanted to catch a vehicle. He, therefore, gave lift to the said person and near the check post, the vehicle was caught. The appellant was travelling in that jeep.

In the cross-examination, he stated that when CBI officer asked for lift, the jeep was at some remote distance at that time. When CBI officer asked the jeep driver to stop the jeep, it was stopped.

14. PW-7 Rajivkumar Rishi is the Investigation Officer. According to him, at the time of trap, the appellant denied having accepted the bribe. The accused also tried to hide his identity, but he disclosed his identity and accepted that he had taken the bribe amount.

During his cross-examination, he admitted that in Exh.51 the transcription of conversation did not contain any talk between appellant and PW-1 regarding passing or processing of any bill of work. It was not mentioned that the appellant asked the complainant to pay Rs.15,000/- and the complainant stated

"Pandhara Nahi Hai, Das Hai". He admitted that the appellant told the complainant as "Do Na Jo Dena Hai Hum to De Denge". He further admitted in Exh.58 that the appellant stated to the complainant that "bahut hi pareshan kar diya hai". He denied that those words stated by the appellant were in respect of Shri Thakare. He admitted that at the time of first attempt by the complainant to search appellant, the conversation was recorded in DVR, but the transcription of that conversation was not prepared. He denied that conversation was in respect of payment of money to Mr. Thakare through the appellant, therefore, he did not prepare the transcription of that conversation. He did not remember whether he had stated before the investigating officer that in this first DVR file no.1, there was not any material conversation. He denied the suggestion that there was no demand and acceptance. He proved FIR Exh.58. He admitted that he did not record the statement of appellant.

15. PW-8 Dhnaneshwar Barde was the Senior Clerk in Niljai Open Cast Mine in Civil Department. He was doing duty of inward outward records and papers and used to maintain the

file of the documents. He proved the production memo, the voice identification panchanama Exh.63, the transcript of that file no.3 Exh.64 and the panchanama Exh.65 of the process carried out while identifying the voice.

During the cross-examination, he stated that CBI officers told him that CD was prepared from the file of SD card. He did not hear original sound in SD card. Specimen counter recording of voice of appellant was not heard by him at that time. CBI Officer did not show him any certificate of a person who recorded the voice in SD card and in CD.

16. PW-9 Chandrashekhar Aparajit was working in the Personal Department of WCL as Office Superintendent. His duty was to maintain profile record of officers in WCL. He handed over the service book of the appellant to the investigating officer.

17. PW-10 Dr. Subrat Choudhury was the Senior Scientific Officer, Grade-II. He subjected the audio recording and specimen recordings to auditory and spectrographic examination and prepared a report Exh.7. According to him, voices marked

Exhibits J02 (B) and J03 (B) were probable voices of the appellant.

In the cross-examination he admitted that none of the articles forwarded to him were accompanied with certificate of the person, who claimed to have recorded the articles. He denied that he prepared the report mechanically.

18. PW-11 Vinodkumar Sharma is the investigation officer, who has explained the steps taken during the course of investigation.

During the cross-examination, he admitted that previous bills of PW-1 were already cleared by the appellant before 31.3.2011 and after clearances from the table of appellant, appellant had no concern with the bill of PW-1. He also admitted that on the date of alleged incident, there was no pending bill of PW-1. He had no knowledge that three audio files were prepared at the time of verification panchanama and voice file no.MIC00001 was not transcripted. He had no personal knowledge as to whether that audio file is presented in the matter. He denied that he heard the audio file and in that audio file, there was conversation between appellant and PW-1 regarding loan transaction. He had recorded the statement of Mr. Umakant Gajanan Patil. Whenever he recorded the statements of witnesses, he noted down their mobile numbers in those statements. He stated that he had also called CDR records of appellant. He further admitted that he did not scrutinize those CDR papers. He did not recollect as to whether he investigated the matter in order to ascertain in respect of loan transactions between PW-1 and Thakare, as per the say of the appellant. He admitted that he had recorded the statement of Shri Thakare. He did not collect any document from Shri Thakare. He was shown Exh.83, the document from the bank addressed to him about the details of bank statement of Shri Thakare. The documents Exh.84 to 87 were accompanied with Exh.83. He stated that he called those documents to ascertain the say of the appellant, but he did not remember, as to whether, the witnesses had stated before him during investigation that Shri Thakare lent to Rs.15,000/- to PW-1, as per the say of the appellant. He admitted that Shri Thakare stated before him that he had lent Rs.15,000/- to PW-1 on the say of the appellant. He denied that after receiving Rs.10,000/- from PW-1, the appellant had contacted Shri Thakare on phone and stated that appellant had received Rs.10,000/-. He further stated that for verifying the call of PW-1, he had demanded CDR of mobile phone of appellant, but he did not scrutinize the said call details statement. He did not scrutinize the bank statement of Shri Thakare. He admitted that he did not present any certificate of a person who recorded and copied the voice by way of electronic instruments and the numbers of SD cards and computer system used in this case for recording of voice have not been mentioned anywhere in any of the document. He stated that PW-1 did not state in his statement that after passing of his bill, it was sent to account section and then accused demanded Rs.15,000/- from him and that appellant had informed him that unless he pays Rs.15,000/- to him, his bill would not be passed.

In his re-examination, he stated that after clearance of the bill from the table of appellant, the complainant was paid the amount in May-2011. After passing of the bill by the appellant, the complainant had no knowledge about passing of bill.

In cross-examination, he stated that nobody had stated in their statements during investigation that after passing of bill by appellant, he had authority to stop the payment of bill.

19. The appellant, in his defence, has examined Shailendra Thakare as DW-1. He deposed that he knew the appellant, who was head of Civil Department in WCL. He used to represent the union of workers in WCL and used to work for welfares of employees of WCL. In 2010, he visited the office of appellant. At that time, he saw that there was crowd of labours in appellant's office. He went in the office of appellant and asked, as to why, the labours had gathered there. At that time, appellant and PW-1 were present in the office. The appellant explained him that PW-1 did not pay the labour charges, therefore, the labours had gathered there and PW-1 was called on that behalf. The appellant asked him whether he could help in that matter. The appellant asked him to pay Rs.20,000/- to PW-1 for that purpose. The appellant also told him that since PW-1 had not paid labour charges, therefore, he should extend financial help to PW-1 for making payment of wages of the labours. The appellant also told him that if PW-1 fails to repay amount, then appellant would repay it. He was having

Rs.15,000/- cash with him. He paid that amount to PW-1. He had withdrawn that amount from Central Bank of India from Account No.2392351832. In the next month i.e. February, the appellant asked for the repayment of the amount. The appellant told him that after the withdrawal of bill of PW-1, amount would be repaid and he will have to wait for sometime. On 26.4.2011 at 2.50 pm, he had received phone call from the appellant. Appellant told him that he had received Rs.10,000/- from PW-1 towards repayment of his amount and the appellant would bring that amount to him, but he did not receive his amount. Later-on he came to know that appellant was caught by CBI officers. His statement was recorded by the CBI officers.

In the cross-examination, he admitted that amount of Rs.15,000/- was a huge amount. There was no documentary proof that he paid that amount to appellant or PW-1. He stated that amount was paid by him as a hand loan. He did not know that he had to inform his office, if he wanted to lend money to anybody else. He did not intimate about the same to his office. He orally informed his Manager about hand loan. He had no financial transaction previously with PW-1.

20. The evidence on record reveals that the appellant has not denied the trap and the recovery of amount of Rs.10,000/- from him, but his specific defence is that the said amount was accepted towards the repayment of loan amount given by DW-1 to informant PW-1 at his instance. It is his specific case that immediately on receipt of the amount, he called DW-1 and told him that he had received his amount of Rs.10,000/-.

21. Evaluation of evidence of PW-1 indicates that all his bills were already passed by the appellant and he was aware of the said fact. Taking into consideration admissions given by him during the cross-examination and his criminal record, his evidence does not inspire confidence. He was required to admit the fact that Rs.5,000/- was deducted from his bill amount by way of punishment, as he did not do the repair work of quarter no.B.43 though he was asked to do it. In the departmental enquiry proceedings he admitted that the said deduction was done in his presence and his signature was there on the bill. Therefore, there was no occasion to return that amount to him. The tenor of deposition of this witness shows that he is not

telling truth before the court and he does not appear to be a reliable witness. Previously he was involved in theft of electricity energy from WCL. Various offences were pending against him and police had initiated externment proceeding against him. He had falsely implicated Mr. Arunkumar Singh, Sub-Area Manager, who had imposed penalty of Rs.5106/- on him. Initially he denied that the said penalty was not imposed, but when confronted with his deposition (Exh.45) before the court, his falsehood was exposed.

22. The shadow witness PW-2 has admitted in his cross-examination that he had not heard the talk between the complainant and the appellant before making the payment of amount by complainant to the appellant. He further admitted that he did not hear the appellant demanding bribe to the complainant. His further admission that the appellant was talking with CBI Officers after the raid that the amount which was given to him was the amount of Shri Thakare and it was not his amount. The appellant also told that the complainant obtained loan from Shri Thakare through him and that amount (bribe amount) was handed over to him for making payment to

Shri Thakare. These facts and admissions indicate that the defence is probable. These admissions coupled with the evidence of defence witness Mr. Thakare, supports the defence version and the defence of the appellant is acceptable.

23. PW-7, the officer who laid the trap, has admitted that Exh.51, the transcription of conversation between PW-1 complainant and the appellant did not contain any talk regarding passing or processing any bill of work. Exh.51 is the transcription of the conversion between PW-1 and the appellant does not show that the appellant demanded Rs.15,000/- from PW-1. In Exh.51, when the complainant called the appellant, following are the excerpts of the conversation between them :-

Appellant	*:*	*De raha hai mal | Nahi de raha hai ?.*
Complainant	*:*	*Ha bhai |*
Appellant	*:*	*De rahe hai |*
Complainant	*:*	*Pandhra nahi hai das hai |*
Appellant	*:*	*Do na jo dena hai do ne hum to de denge |*

24. In transcription Exh.58, the appellant has told the complainant “bahut hi pareshan kar diya ha”. These statements support the case of defence that out of the amount of

Rs.15,000/- lend by Mr. Thakare-DW-1, amount of Rs.10,000/- was paid by the complainant to the appellant and the appellant told the complainant that he would hand over the amount to Mr. Thakre. The prosecution has failed to examine Mr. Meshram to prove call details.

25. The defence of the appellant that he had accepted amount of Rs.10,000/- towards the repayment of loan given by Shri Thakare to PW-1 is supported by the evidence of PW-2. PW-2 has admitted that after the raid, the appellant was talking to CBI officers that the said amount belonged to Shri Thakare and not him. The appellant explained to CBI officers that PW-1 had obtained loan from Shri Thakare through the appellant and that amount was handed over to the appellant for making payment to Shri Thakare. PW-3, the sanctioning authority, has also admitted that he had perused the contents of portion mark 'A' and 'B' from Shri Thakare's statement. The portion mark 'A' is to the effect that Shri Thakare stated about his visit to the office of appellant and non-payment of wages of the labours by PW-1, the appellant had asked Shri Thakare to lend an amount of Rs.15,000/- from PW-1 and in case PW-1 failed to repay the

amount, the appellant would repay it. Portion mark ‘B’ is to the effect that since PW-1 failed to repay the amount up to January-2011, therefore, in the month of February-2011, Shri Thakare had requested to appellant to get his amount from PW-1 and on that, the appellant told him that he would do the needful. Since the appellant did nothing, he brought that issue to the notice of Senior Manager and asked him to intervene. PW-3 has also admitted portion mark ‘A’ from the statement of Shri Umakant Patil to the effect that “after receipt of the amount of Rs.10,000/-, the appellant called on mobile phone of Shri Thakre and told him that he had collected amount of Rs.10,000/- out of Rs.15,000/- and was coming to him. All these aspects probablise the defence of appellant. It is necessary to mention here that PW-7, the officer who laid the trap, has accepted the presence of Shri Umakant Patil.

DW-1 Shri Thakare has stated in his evidence that at the instance of the appellant, he had paid Rs.15,000/- to PW-1 as a hand loan, as PW-1 was to pay the dues of the labourers. He has given the bank account number from where he had withdrawn that amount. The evidence of DW-1 could not be shattered in the cross-examination.

26. The investigating officer PW-11 admitted that he had recorded the statement of Shri Thakare. He also admitted that Exh.83, the bank statement of Shri Thakare was collected by him during investigation. He further admitted that Shri Thakare stated in his statement that he lent Rs.15,000/- to PW-1 on the say of the appellant. He denied the suggestion that immediately on receipt of Rs.10,000/-, the appellant called Shri Thakare and told him that the amount of Rs.10,000/- was received by the appellant and the appellant was going to hand it over to him. It is pertinent to note that PW-11 though called CDR record of the appellant, he did not scrutinize the CDR papers. He admitted that he did not scrutinize the call details. He did not scrutinize the bank statements of Shri Thakare. The investigation officer also failed to produce on record the call details of the appellant, for which adverse inference u/s 114 (g) of the Indian Evidence Act, 1872 needs to be drawn against the prosecution. The investigating officer has also failed to produce the tape recorder of the conversations and certificate under Section 65-B of the Evidence Act. The investigating officer also did not

recollect whether he investigated the matter in order to ascertain in respect of loan transaction between PW-1 and Shri Thakare. PW-11 has categorically admitted in his cross-examination that previous bills of the PW-1 were already cleared from the side of the appellant before 31.3.2011. After clearance from his table the appellant had no concern with the bill of the complainant PW-1 and on the date of alleged incident, no bill of complainant was pending in the hands of the appellant. To verify the say of the appellant that at his instance Shri Thakare had given loan of Rs.15,000/- to PW-1, he called the bank statements and he received documents Exh.84 to 87 along with the letter of bank Exh.83. The evidence of PW-11 also probabalises the defence of the appellant that the amount of Rs.10,000/- was accepted by him towards the payment of loan of DW-1 Shri Thakare. It is settled legal position that the accused is not required to establish his defence by proving beyond reasonable doubt like that of prosecution, but the accused can establish the same by preponderance of probability.

27. In **Punjabrao .vs. State of Maharashtra** (supra), the Hon'ble Apex Court held that the accused had taken defence in

his statement under Section 313 of the Cr.P.C. that he collected the amount as loan. This fact was not disclosed to investigating officer, that itself, is not sufficient to throw away explanation offered by the accused.

28. In **Mukhtiar Singh** (supra), the accused had demanded Rs.2,000/- to help the complainant in a criminal case. On appointed day when the complainant entered room of accused on which accused asked him whether he brought the money. On that the complainant handed over currency notes of Rs.2,000/- to accused. The Hon'ble Supreme Court held that this does not amount to demand and set aside the conviction.

29. In **K.M. Mallaiah** (supra), the Hon'ble Supreme Court acquitted the accused, as shadow witness stated that he did not hear the conversion at the time of trap. Tape recorder was not produced on the record. Tainted currency notes were lost and were not produced before the trial court.

30. In the present case, the appellant has come with a specific defence that the tainted amount was accepted by him

towards the repayment of loan which the complainant had obtained from Shri Thakare through the mediation of appellant. The shadow witness has given admission that he did not hear the conversation and that immediately after the tainted amount was recovered, the appellant disclosed the officers and panchas that he had accepted the amount of Mr. Thakare, which the complainant owed to him.

31. In **Ravindra Narayan Joshi and another** (supra), the learned Single Judge of this Court has held that when there was no demand at the time of acceptance, mere recovery of money divorced from circumstances under which it was paid would not be sufficient to convict the accused and the demand is sine qua non for acceptance. In that case also, the accused had taken a defence that the amount was accepted by them as return of hand loan taken by complainant. That explanation was proved by substantive evidence by giving that explanation instantaneously. Therefore, this Court held that the accused has rebutted presumption to be drawn under Section 20 of the Prevention of Corruption Act.

32. In the case in hand also, there is instantaneous explanation by the appellant about the loan transaction and acceptance of money towards the repayment of loan of Mr. Thakre. There is no cogent and convincing proof of any demand of gratification, as shadow witness has also not supported the case of prosecution that there was demand on the part of the appellant. In these circumstances, the only conclusion can be drawn is that the prosecution has failed to establish its case that there was a demand of gratification and that tainted amount was accepted by the appellant, as a bribe. The appellant has successfully proved his defence during the cross-examination of the prosecution witnesses as well as by examining the defence witness and has rebutted presumption under Section 20 of the Prevention of Corruption Act. There is cogent and convincing evidence led by the appellant to establish preponderance of probability in which he has been implicated in the present matter.

33. It is now necessary to consider the judgments relied upon by the learned advocate for the respondent. In **Manikrao Abaji Thonge** (supra), the ingredients of the offence were proved

by the prosecution. The public servant had received the amount by corrupt or illegal means by abusing his position. Hence, this Court held that the offence was proved by the prosecution.

34. In **C.M. Sharma** (supra), the Hon'ble Supreme Court reiterated the settled legal position that the complainant is not an accomplice and hence when his evidence is found to be reliable, there is no need of corroboration.

35. In the case in hand, admittedly all the bills of PW-1 were cleared from the table of the appellant. He had a history of falsely roping the officers. The appellant had deducted an amount of Rs.5,000/- from his earlier bill by way of punishment. Therefore, he had a grudge against the appellant and hence from the material on record, it appears that he had falsely roped in the appellant.

36. In **M. Narsinga Rao** (supra), the Hon'ble Supreme Court held that presumption under Section 20 (1) of the Prevention of Corruption Act is a legal or compulsory presumption. The Hon'ble Supreme Court, in that case,

explained meaning of presumption under Section 20 (1) and further the expression “may presume” and “shall presume” as defined in Section 4 of the Evidence Act. It was held that the presumption under Section 20 (1) of the Act is a legal presumption and it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc. However, in the facts of the present case, it can be said that the appellant has successfully rebutted the presumption.

37. In **Mukut Bihari and another** (supra), the Hon’ble Supreme Court dealt with the standard of proof and corroboration in Anti-Corruption cases in terms of Section 20, after the foundational facts are established by the prosecution. It was held that while invoking provisions of Section 20, court is required to consider explanation offered by the accused, if any, only on touchstone of preponderance of probability and not on touchstone of proof beyond all reasonable doubt.

In the case in hand, it is held that the appellant has successfully rebutted presumption and his explanation is probable and acceptable.

38. In **Neeraj Dutta** (supra), the Hon'ble Supreme Court referred the matter to the larger Bench on "The question whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution."

39. The submission of the learned Advocate for the respondent that at the time of raid the appellant fled away in the vehicle, though CBI officers asked him to stop shows his guilty intention, does not appeal to me. The CBI officers were in the plain cloths. The appellant had no knowledge that the persons asking to stop the vehicle were CBI officers. PW-6 has admitted that when the vehicle was chased and was asked to stop, it was stopped. If at all, the appellant wanted to run away from the spot, he could have very well done it, as he was

travelling in a four wheeler, but that was not done by him. Therefore, I am unable to accept the contention of the respondent that since the appellant did not stop, it reflects on his guilty mind.

40. In my view, the learned Trial Court has failed to consider the evidence on record in the proper perspective. It has failed to appreciate the admissions given by the prosecution witnesses and the vital aspect of the instantaneous disclosure by the appellant at the time of trap that, the amount did not belong to him and it belonged to Mr. Thakare. The learned Trial Court has erred in coming to the conclusion that the prosecution witnesses have supported the prosecution case properly and the discrepancies in their evidence were minor and were not sufficient to discard the whole prosecution evidence. The learned Trial Court has failed to consider that the appellant has proved his defence by preponderance of probability.

41. The scrutiny of the prosecution evidence makes it clear that the prosecution has failed to prove the demand and acceptance. The prosecution has failed to produce the tape

recorder on which the conversation of demand and acceptance was recorded. The admissions given by the prosecution witnesses create serious doubt about the demand and acceptance of bribe amount by the appellant. Therefore, I am of the considered view that the prosecution has failed to prove its case beyond reasonable doubt and the defence of the appellant is probable and is acceptable, he therefore deserves to be acquitted by giving benefit of doubt. Impugned conviction recorded by the learned Trial Court is therefore unsustainable.

42. For the aforestated reasons, the appeal deserves to be allowed. Hence, the following order :

O R D E R

1. Criminal Appeal No.235/2017 is hereby **allowed.**

2. The impugned judgment and order of conviction passed by the learned Special Judge and Additional Sessions Judge, Kelapur in Special (ACB) Case No.7/2011 thereby convicting the appellant under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 is hereby quashed

and set aside.

3. The appellant is acquitted of all the charges.

4. His bail bonds stand cancelled.

5. Fine amount, if any, deposited by the appellant be refunded to him.

6. The appellant to execute P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount, before the Trial Court, in terms of Section 437-A of the Code of Criminal Procedure.

(N.B. Suryawanshi, J.)

Gulande