**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 22 OF 2005

The State of Maharashtra,
At the instance of Shri Pradip
Bapurao Khairnar, Dy. S.P.,
Anti Corruption Bureau, Dhule .. Appellant

Versus

Dhananjay Prabhakarrao Doifode
Age : 34 years, Occu. : Service,
R/o. Mayur Colony, Deopur, Dhule,
Tq. & Dist. Dhule .. Respondent

Mr. Y. G. Gujarathi, A.P.P. for the Appellant.
Mr. R. M. Deshmukh, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 18th October, 2022.

Date on which judgment pronounced : 21st December, 2022.

JUDGMENT :-

1. This is an appeal filed by the State challenging the judgment and order dated 08.10.2004 passed by the learned Additional Sessions Judge (Special Judge), Dhule in Special Case No. 42/2000. The learned Special Judge by way of impugned judgment held that the prosecution has not proved the guilt of the accused and acquitted the accused of the offence punishable under Sections 7 and 13 (1) (d) r/w Section 13 (2) of the Prevention of Corruption Act, 1988. The State

Government being aggrieved has approached this Court.

2. It is the story of the prosecution that one Vivek Pandit Shardul lodged a report on 15.03.1999 in the office of Deputy Superintendent of Police, Anti Corruption Bureau, Dhule. It is stated in the complaint that, the complainant has established a Patsanstha namely Vishwakarma Gramin Sahakari Pat Sanstha Maryadit, Kusumba in the year 1998 having 251 members. The complainant was the chief promoter of the said proposed society. After registration of the said society, an application was made in the office of Deputy Registrar Co-operative Society, Dhule. Certain queries were raised and were communicated to the society by communications dated 12.01.1999 and 01.02.1999. The complainant met the accused on 12.03.1999 and requested for a registration certificate stating that all the deficiencies are complied with. It is alleged that, the accused at that time asked for Rs. 5,000/- (Rs. Five Thousand only). The complainant thereafter requested that his society is not in a position to pay this much amount as the society is newly established society. On the request, the amount was settled to Rs. 3,000/- (Rs. Three Thousand only). The complainant was called with an amount of Rs. 3,000/- (Rs. Three Thousand only) on Monday. The complainant, therefore, approached the office of A.C.B. He produced on record the copy of proposal to register the society and

letter dated 01.02.1999 received by the office of the Registrar pointing out the deficiencies.

3. In support of prosecution, the prosecution examined total five witnesses. The first was the complainant. In the chief, he deposed as per the complaint. In the deposition, he stated that, he lodged an oral complaint with the A.C.B. office on 18.03.1989. It appears that, it should have been 15.03.1999. There he met Mr. Khairnar. However, he again stated that he gave oral complaint and Shri. Khairnar, I.O. registered the same in writing as per the say of the complainant. A specific question was asked as to whether he put any signature on the complaint. The answer is that he did not put any signature on the complaint. He was shown the complaint and he identified it to be his signature saying that he signed on the same on 15.03.1999. He deposed that, after giving the complaint, he was called on the next day in the office of A.C.B. where he was given written understanding to remain present on the next day. It has further come in his deposition that on 15.03.1999 after demonstration of anthracene powder they went towards office of the accused from A.C.B. office. There they learnt that the accused had gone to Nasik and therefore panch and complainant returned back to the office of A.C.B. The amount was kept in a sealed envelope. On the next day, i.e. on 16.03.1999 at about

10.00 a.m. he again went to A.C.B. office. Both the panch witnesses and raiding party were present. At about 11.35 a.m., the complainant and panch No. 1 entered in the cabin of accused. The accused asked his subordinate to affix the office seal on the papers and after that he demanded the amount to complainant. The complainant gave envelope containing the amount of bribe. He again stated that, he took the amount from pocket and gave it to the accused. The accused accepted the amount and kept the same in his pocket of the pant and handed over file to the complainant. After taking the file he came out of the cabin with panch Mr. Patil and from there the signal was given. Then, raiding party came in the cabin and caught hold the accused. On the next day, the complainant was called to A.C.B. office where his statement came to be recorded. His personal search however was not taken.

4. In the cross-examination, he has accepted that there were already four co-operative societies functioning in the village Kusumba. He has submitted the application in the year 1998. His statement was recorded by the Co-operative Officer, First Class. The said statement was in respect of compliance made towards for removing deficiencies. He accepted that after 22.01.1999 till 09.03.1999 he met one Mr. Sudhakar Sangale in connection of his file. Mr. Sudhakar Sangale

used to tell the complainant that, certificate in respect of registration was ready, however, the complainant did not file required affidavits and therefore, his certificate could not be issued. On 15.03.1999, when the complainant along with panch No. 1 went to the office of Deputy Registrar, Co-operative Society, they learnt that the accused had gone to Nasik. On that day, Shri Sangale gave the complainant typed stamp paper and asked him to bring four xerox copies of the said stamp paper. He accepted that on the date of trap Shri Sangale brought the file containing documents bearing Ex. 32/1 to 32/56. Shri Sangale also brought the original registration certificate which was having office seal. He accepted that the accused thereafter, asked about money. Further suggestion was given that the complainant was told to purchase Indira Vikas Patra in order to get the society registered. It has further come in the cross that the complainant had promised the accused that after registration of the society and after its flourishment, he will purchase Indira Vikas Patra on behalf of society. He was aware that he will have to purchase Indira Vikas Patra from the office of the accused, but it was after registration and establishment of the society. He proved the portion marked 'A' in his statement recorded by the police. This complainant proved the complaint dated 15.03.1999 and the certificate of registration.

5. PW-2 is one Shri Vasant Patil who was working as Junior Clerk in the Medium Project, Division No. 2 at Dhule. He and another panch namely Vivek Puranik were called by the office of A.C.B. on 15.03.1999 by Mr. Khairnar. He requested them to work as panch. He deposed that the amount was kept in a sealed envelope on 15.03.1999. The same was to be given to the complainant. This panch and complainant went to the office of the accused. The accused was present in his cabin, however, there were some other persons also present in the cabin. Therefore, they waited outside the cabin. At about 12.55 p.m. after other persons left the complainant and this witness entered the cabin of the accused. The accused enquired with the complainant as to whether he has brought the amount. The complainant answered in affirmative. The accused rang a bell and asked peon to call Shri Sangale. Shri Sangale came in the cabin and the accused asked him to bring the file of Vishwakarma Co-operative Society. Accordingly, Shri Sangale brought the said file. Shri Sangale handed over the file to the accused and went away. Thereafter, the accused told complainant to give the amount. The complainant took out the amount from his left pocket by his right hand and gave the same to the accused. The accused accepted it and kept the same in watch pocket of the pant. Thereafter, the accused gave the said file to the complainant who took the said file and kept it on a chair which was on the right hand side and went in the

Varandah and gave signal to the raiding party. The raiding party with another panch namely Shri Puranik i.e. PW-5 came and took out the amount from the watch pocket of the accused. This witness told panch No. 2 namely Shri Puranik that accused has kept the amount in the watch pocket of his pant. Panch No. 2 took out the search of the watch pocket of the accused and took out the amount and kept it on the table. The currency notes taken out from the watch pocket of accused were tallied with the numbers mentioned in panchnama No. 1 and those were the similar notes.

6. In the cross-examination, it has come that the currency notes with anthracene powder were handed over by Police Constable, Pardeshi to the complainant. The complainant kept the same in his left pocket of shirt. After entering the cabin of the accused he sat on first chair, on the right hand side chair of the complainant. After handing over the file accused asked the complainant that how much amount the complainant has brought. The complainant replied that he has brought Rs. 3,000/-. He accepted that the accused did not ask the complainant to bring Rs. 5,000/- and why he has brought Rs. 3,000/- only and the complainant told him that he could collect only Rs. 3,000/-. He accepted that the accused handed over the concerned file and the certificate of registration to the complainant. The complainant took the

file from the accused with his left hand and kept the same on a chair and went outside the cabin and gave signal on which the raiding party came there. He accepted that the accused admitted before Shri Khairnar that, he has accepted the amount of Rs. 3,000/- from PW-1 and he further told that he has accepted the said amount for investing the same in Indira Vikas Patra. He also stated that, the accused gave his written statement to Mr. Khairnar in the presence of the witnesses. It has also further come in his evidence that after the trap, the file and registration certificate were tested under ultra violet light, however, no shining was seen on the file and certificate. This panch proved the panchanama Exhibit-38 that is post trap panchanama dated 16.09.1999.

7. The prosecution witness PW-3 is Vivek Puranik who acted as panch No. 2. He deposed that, this witness along with another panch went to the office of A.C.B. at about 10 a.m. where again instructions were given to the panchas in writing. The same bears the signature of PW-2 and other other panch. At about 12.40 p.m. PW-1 and PW-2 went to office of Deputy Registrar with this witness. The I.O. and others followed them. The complainant and panch entered the office of the Deputy Registrar situated on the first floor. Other members were waiting near staircase. At about 1.30 p.m. the complainant came out of

the office and near the staircase and gave signal. After the signal, Shri Khairnar asked this witness and other members of raiding party to follow him. They all went on first floor and entered the hall and thereafter, they went in a small room. In the said room, they found that there was a table and one person was sitting in a chair and on other side of the table, three chairs were kept. PW-2 – Vasant was sitting on one of the chairs. Mr. Khairnar made an enquiry with PW-2 – Vasant as to who has accepted the amount of bribe from the complainant and where the amount is kept. The panch told that the person sitting on the chair has accepted the amount from the complainant and has kept the same in the watch pocket of the pant. He identified the accused in the Court. He further stated about testing of notes under ultra violet lamp and stated that there was bluish shining seen on the notes.

8. In the cross-examination, this witness stated that the I.O. had instructed to give the amount to the accused only on his demand, however, he could not give any reason as to why it is not mentioned in the statement. He accepted that portion marked 'A' in his statement dated 17.03.1999 is not correct and some part is missing. He could not give any reason for the same. The major change he accepted that does not find place in the statement dated 17.03.1999 that PW-2 Vasant told

him that PW-1 made enquiry with accused about certificate of registration, on which, accused told that the certificate is ready. However, he could not give any reason as to why this is not mentioned in the statement. He also accepted that the accused has immediately given his say in writing.

9. Next witness is PW-4 namely Rajiv Agrawal, a sanctioning authority who was working as Secretary, Government of Maharashtra for Co-operation and Textile Department at the relevant time. He deposed that he received investigation papers containing complaint given by the complainant and panchanama. He went through the said documents, investigation papers etc. On going through the same he was satisfied and accorded sanction. He proved the sanction order dated 30.05.2000. In the cross-examination, this witness stated that he prepared sanction order Exhibit-46 on the basis of draft sanction and recorded his conclusions. He deposed that he did not remember whether LCB had supplied him a summary of the investigation. He accepted that he accorded sanction for the prosecution of the accused in the name of Governor and after taking leave from the Chief Minister. He accepted that the powers are not delegated by the Governor to sign the sanction order. He accepted that in paragraph No. 3 of the sanction order words “application of mind” are absent.

10. Last witness is PW-5, I. O. Mr. Khairnar. He deposed about receipt of complaint in the office and laying of a trap. In the cross-examination, he accepted that he has recorded statement of Dr. Jogdand, District Registrar of Co-operative Societies who was immediate superior of the accused on 24.11.1999. He accepted that, Dr. Jogdant and Mr. Sangale are cited as prosecution witnesses in the charge-sheet. He accepted that immediately on the spot the accused gave his statement in writing. He stated that he does not remember whether the accused has immediately given oral explanation that the amount was accepted towards investment in Indira Vikas Patra. The amount of gratification accepted by the accused was kept in his watch pocket of pant and it was taken from that pocket. He proved the immediate explanation offered by the accused in writing Exhibit-60.

11. After recording of this evidence, the learned Sessions Judge held that the payment and acceptance of the amount appears to be suspicious and the accused has made out his defence probable by giving immediate explanation that the amount was taken for investing it in Indira Vikas Patra. It is also held that, there was no repeated demand by the accused. The work was already done and the file and registration certificate was ready and as such there was no question of payment of any amount. The amount was demanded by the accused

on Monday as mentioned in the complaint Exhibit-30. Thus, 16.03.1999 was not a date fixed for acceptance of the amount.

12. Learned A.P.P. submitted that, in this case, demand is clearly proved as both the witnesses PW-1 and PW-2 are consistent on the point of demand. Both these witnesses have categorically stated that in the cabin of the accused, the accused told Mr. Sangale to put a seal on the file and when Mr. Sangale went out of the cabin he demanded the amount. He further submitted that the recovery is also proved at the time of bribe. There are no material contradictions. The only contradiction is that, as per PW-1 the amount was kept in the pocket of the pant by the accused and as per the version of PW-2 it was kept in the watch pocket of the pant. Merely, that work was already done is no reason to conclude that there was no demand. He submits that immediately at the time of handing over of the file the amount was asked. So, every preparation was done and the certificate was to be handed over only after the amount was paid to the accused. Anthracene powder was seen on the hands and pocket of the pant which shows that the accused accepted the bribe amount.

13. Learned advocate for respondent/original accused submitted that, the learned Trial Court has rightly held that the demand and acceptance of the bribe amount is not proved. The defence of the

accused is probable. He has also offered immediate explanation in writing that is Exhibit-60 in which he has clearly stated that there was target given for collecting investments in the small saving schemes. He has specifically mentioned in the explanation that, on the date of alleged trap, he handed over the file and the certificate of registration and at that time he made enquiry about the investment in Indira Vikas Patra. The complainant shown willingness to deposit Rs. 3,000/- in the small saving scheme. The amount was taken for depositing the same in Indira Vikas Patra. He submitted that document No. 5 in Exhibit-17 be considered.

14. On going through the judgment, it is seen that, it is a specific case that there were targets given to collect the amount in small saving scheme.

15. Learned advocate for the respondent/accused submitted that this is an appeal against acquittal and therefore, stands on a different footings than the appeal against conviction. By acquittal of the accused, his innocence is already fortified and no interference is required. The learned advocate for respondent relies upon the following judgments.

(I) <u>**V. D. Jhingan Vs. State of Uttarpradesh**</u> reported in <u>**AIR 1968 Supreme Court 1762**</u>.

(II) <u>**Trilok Chand Jain Vs. State of Delhi**</u> reported in <u>**AIR 1977 Supreme Court 666**</u>.

(III) <u>**Harbeer Singh Vs. Sheeshpal & Ors. with State of Rajastan Vs. Sheeshpal & Ors.**</u> reported in (2016) <u>**16 Supreme Court Cases 418.**</u>

16. In a case of <u>**V. D. Jhingan**</u> (supra), the Hon'ble Apex Court has held that the burden of proof lying upon the accused in the corruption case is only to make out the case of preponderance of probability and it is not necessary that he should establish his case by raising proof beyond reasonable doubt. It is also held that the presumption under Section 4 (1) of the old act, it is necessary to prove that there is gratification other than legal remuneration. Mere receipt of money is not sufficient.

17. In a case of <u>**Trilok Chand Jain**</u> (supra), the Hon'ble Apex Court has held that to rebut the presumption under the Act cannot be equated with the degree and character of proof which is required under Section 101 of the Evidence Act. The accused may rebut the presumption by showing a mere preponderance of probability in his favour and it is not necessary for him to establish his case beyond a

reasonable doubt.

18. In a case of **Harbeer Singh Vs. Sheeshpal and others** (supra), the Hon'ble Apex Court has held that though it was a case under Article 136, the Hon’ble Apex Court will not interfere with the judgment unless the same is clearly unreasonable or perverse or manifestly illegal or grossly unjust. It is also held that merely because another view is possible on the basis of evidence on record is not a ground for reversing an order of acquittal. The Hon'ble Apex Court has also laid down the cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. It is for the benefit to reproduce paragraph No. 11 of the judgment.

> “11. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.”

19. Thus, considering the above judgments and the principles laid down by the Hon'ble Apex Court in the cases of appeal against acquittal, it is clear that the finding of acquittal need not be interfered with merely because another view is possible. Secondly, unless the

judgment of acquittal is totally perverse it need not be interfered. Coming to the case in hand, from the record it is seen that a target was given to the Government officers to collect the amount for depositing the said in the National Saving Scheme or Indira Vikas Patra of the postal department. The District Deputy Registrar, Co-operative Society, Dhule had issued a communication dated 25.11.1998 which is on record in which displeasure is expressed that till end of October 1998 no sufficient investment is collected. A target was given for Dhule Taluka was Rs. One Hundred Lakh only. Thus, the accused was directed to complete the target and to collect Rs. One Hundred Lakh only in the small saving scheme. A communication dated 13.10.1998 issued by District Deputy Registrar, Co-operative Society, Dhule that it was directed to collect the amount from the co-operative societies for investment in Indira Vikas Patra.

20. The most important fact taken into consideration by the learned Sessions Judge is the explanation offered by the accused in writing immediately after the trap dated 16.03.1999. It has come that the complainant wanted to establish a Credit Co-operative Society and he had submitted the proposal in the office of the Registrar, Co-operative Society, Dhule. The permission was granted to open a bank account in the name of proposed society. Thereafter, the proposal was submitted

for registration of the society. For that work he met the accused on 2-3 occasions. He told the complainant that there is a target of Rs. One Crore only to be invested in the Indira Vikas Patra. The complainant therefore, was requested to invest at least amount of Rs. 5,000/-. That time the complainant told that he will deposit some amount and he will also deposit further amount after the society is registered. On the date of trap, he requested that the registration certificate of the society be given at the hands of the accused and therefore, this accused asked Shri Sangale to bring the file and certificate. After the registration, certificate and file was handed over. The accused made enquiry about the amount to be deposited on which the complainant said that he would deposit only Rs. 3,000/-. It is for that the amount was given. The complainant told that, he is going out of station for some days and therefore, he handed over the amount of Rs. 3,000/- and requested the accused to invest the amount in the name of the society. The complainant would collect the certificate after he comes back. This explanation assumes importance for the reason that this explanation is offered immediately at the time of trap and cannot be said to be after thought. Coming to the statement under Section 313 of the Cr.P.C. of the accused, it is seen that his statement under Section 313 of the Cr.P.C. is consistent with the immediate explanation.

21. There is no manner of doubt that at the relevant time there was a target given for collection of the amount for depositing it in Indira Vikas Patra. There was a letter issued by the superiors of the accused giving a target. The accused was working as Registrar, Co-operative Society, Dhule wherein the target given was of Rs. One Crore. From the communication of the superiors, it is seen that the officers were instructed to promote the small saving scheme and collect the amount from the societies in the Taluka.

22. Taking into consideration all these aspects, the accused has made out a probable case of defence and the same is accepted by the learned Trial Court. It is trite law that the Appellate Court need not interfere with the findings in the appeal merely because some other view is possible. In this case, this Court does not find any perversity or illegality in the findings recorded by the learned Trial Court. Thus, no interference is required. The appeal is therefore dismissed.

(KISHORE C. SANT, J.)

P.S.B.