

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

CRIMINAL APPEAL NO.34 OF 2016

Sanjay s/o Bhagwanrao Rasane,
Age 44 years, Occu. Government Service
R/o Devkhar Road, Shrirampur,
Tq. Shrirampur, Dist.Ahmednagar ... **APPELLANT**

VERSUS

1. The State of Maharashtra,
through Deputy Superintendent of Police,
Anti-Corruption Bureau, Ahmednagar,
District Ahmednagar
(Copy to be served on Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad)
2. Anil s/o Baburao Garud,
Age 45 years, Occu. Private Service,
R/o Sonari, Tq. Kopargaon,
District Ahmednagar ... **RESPONDENTS**

.....
Shri B.G. Sagade Patil, Advocate for appellant
Mrs. G.L. Deshpande, A.P.P. for respondent No.1.
Shri A.S. Gandhi, Advocate for respondent No.2.
.....

WITH

CRIMINAL APPEAL NO.39 OF 2016

Anil s/o Baburao Garud,
Age 47 years, Occu. Nil
R/o Sonari, Tq. Kopargaon,
District Ahmednagar ... **APPELLANT**

VERSUS

1. The State of Maharashtra,
through Deputy Superintendent of Police,

Anti-Corruption Bureau, Ahmednagar,
District Ahmednagar
(Copy to be served on Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad)

2. Sanjay s/o Bhagwanrao Rasane,
Age 44 years, Occu. Circle Officer
R/o Devkhar Road, Shrirampur,
Tq. Shrirampur, Dist.Ahmednagar ... **RESPONDENTS**

.....
Shri A.S. Gandhi, Advocate for appellant
Mrs. G.L. Deshpande, A.P.P. for respondent No.1.
Mr. B.G. Sagade Patil, advocate for respondent No.2.

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 16th March, 2022

Date of pronouncing judgment : 18th October, 2022

J U D G M E N T :

Both these appeals are being decided by this common judgment since they are interconnected. The challenge in both these appeals is to an order of conviction and sentence dated 12/1/2016, passed by Additional Sessions Judge, Kopergaon in Special Case No.117/2014, convicting the appellant Sanjay Bhagwanrao Rasane (in Criminal Appeal No.34/2016) for the offence punishable under Sections 7 and under Section 13(12)(d) read with 13(2) of the Prevention of Corruption Act and sentencing to suffer rigorous imprisonment

for two years and to pay fine of Rs.3000/- on both counts, in default to suffer simple imprisonment for three months. Both the substantive sentences imposed against appellant Sanjay Rasane have been directed to run concurrently.

While the appellant Anil Baburao Garud (in Criminal Appeal No.39/2016) is convicted for the offence punishable under section 12 of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2000/-, in default to suffer simple imprisonment for three months.

2. The facts giving rise to the present appeal are as follows :-

P.W.1 Dada Vitekar (complainant) was resident of village Ekrukhe, Taluka Rahata, District Ahmednagar. Land in Gut No.401, situated at village Ekrukhe belonged to the complainant's mother-in-law – Gayabai. She executed a Will, bequeathing the said land to the complainant and his wife – Anusaya. The complainant had, therefore, moved an application for recording their names in the revenue record of the said land on the demise of testatrix. The Village Talathi made a mutation entry to that effect and put up the same

before the Circle Officer for certification. One of the relations of Gayabai raised objection for certification of the mutation entry. A proceeding was, therefore, pending before the Circle Officer, Rahata. One Shri Warule was the then Circle Officer. He recorded the statements of all the concerned persons. He, however, retired a month before the trap in question.

3. The appellant Sanjay Rasane was Awal Karkoon in Tahsil Office, Rahata. The Tahsildar gave the appellant Rasane additional charge of Rahata Circle. As such, it was he before whom the proceedings of certification of mutation were pending. The complainant, therefore, met the appellant Rasane on 3/2/2014 and requested him to certify the entry. The appellant allegedly made a demand of Rs.5000/- to do favour. The complainant since did not wish to pay bribe, approached Anti-Corruption Bureau (A.C.B.), Ahmednagar. P.W.3 Ashok Deore, investigating officer (I.O.) was the officer In-charge of A.C.B., Ahmednagar. He recorded complaint (Exh.11) lodged by the complainant. P.W.3 Deore decided to first verify the demand and then lay a trap. He, therefore, secured presence of two State Government employees to act as panch witnesses. P.W.3 Deore, accompanied by two panchas and his staff, went to complainant's residence on the

following morning. The complainant and P.W.2 Vishal Bondade (shadow witness) were asked to first meet the appellant Rasane. A taperecorder was concealed on the person of the complainant. Accordingly, both of them first went to Circle Office. As the appellant Rasane was not there, they went to Panchayat Samiti Office, wherein the Naib Tahsildar's Cabin was. The appellant was learnt to have been there. Both, the complainant and shadow witness met the appellant Rasane there. They went to a Canteen for tea. The appellant Rasane made a demand of Rs.5000/-. On negotiations, it was reduced to 4000/- rupees. The complainant assured the appellant Rasane that he would be back with money in a short while. Both, the complainant and the shadow witness came back. P.W.3 Deore prepared demand verification panchanama (Exh.21). He heard the taperecorded conversation. A transcript thereof was prepared. Then he gave all the concerned necessary instructions. Currency notes worth Rs.4000/- were applied with anthracine powder. The complainant and the shadow witness then again went to Panchayat Samiti office to meet the appellant Rasane there, as he was not at Circle office. Both of them met the appellant Rasane there. The complainant told the appellant Rasane to have brought the

money. The appellant Rasane told him to go to Circle Office and that he would be following them. He also told the complainant that if he did not come there within a specified time, the complainant shall pay the money to his Assistant Shri Garud (appellant in Criminal Appeal No.39/2016). Accordingly, both, the complainant and shadow witness went to Circle Office. The trap party followed them. The complainant paid the bribe money to appellant Garud and immediately gave a pre-determined signal. P.W.3 Deore and the members of his team arrived immediately. The bribe money came to be recovered from appellant Garud. The appellant Rasane was brought to Circle Office. Post-trap panchanama was drawn. The appellants were arrested. Their voice samples were obtained. P.W.3 Deore lodged the First Information Report (F.I.R. - Exh.37) on behalf of the State. All the papers of investigation were submitted to the District Collector, Ahmednagar. P.W.4 Anil Kavde, the Collector, Ahmednagar accorded sanction (Exh.50) for prosecution of the appellant Rasane. The charge sheet thus came to be laid against both the appellants.

Charge (Exh.3) was framed. The appellants pleaded not guilty. Their defence was of false implication.

4. The prosecution examined four witnesses and produced in evidence some documents to establish the charge. The trial Court, on appreciation of the evidence before it, convicted and sentenced the appellants as stated above.

5. Heard. Learned counsel for the appellant Rasane would submit that, there is no reliable evidence to indicate the appellant Rasane had made a demand of illegal gratification. The appellant has not received any amount nor did he instruct his Assistant to receive the amount on his behalf. The complainant had a reason to falsely implicate the appellant Rasane only with a view to get his work done immediately. The appellant Rasane was not a regular Circle officer. In addition to his regular duties, the charge of Circle Office, Rahata was given to him. The concerned file had even in fact not been received by him. The learned counsel took this Court through the evidence of the witnesses to submit that the offence has not been proved beyond reasonable doubt. The learned counsel would further submit that, the taperecorded conversation was not played before the Court nor did the transcript thereof was made on the directions of the Court and then proved in evidence. The trial Court has

observed the taperecorded conversation to have not been relied on by the prosecution since it was not referred to the complainant and shadow witness. The learned counsel would further submit that, the taperecorded conversation on record was in the nature of an electronic document. Certificate under Section 65-B of the Evidence Act was not placed on record. The rules as regards the taperecorded evidence have not been followed. According to the learned counsel, the findings recorded by the trial Court were based on surmises and conjectures. The trial Court simply believed the uncorroborated testimony of the complainant. Relying on the judgment in the case of Pannalal Vs. State of Maharashtra [AIR 1979 SC 1191], learned counsel submitted that, the evidence of the complainant is that of an accomplice. Hence, there is necessity to insist for corroboration on material particulars. The learned counsel ultimately urged for allowing the appeal.

6. Learned counsel for the appellant Garud would submit that, there was no evidence to indicate this appellant to have received the amount knowing it to be a bribe. He too took this Court through the relevant evidence on record to ultimately urge for setting aside the impugned order.

7. The learned A.P.P. would, on the other hand, submit that, the investigating officer seized the file of disputed mutation entry. The same indicates that the complainant's work was pending with the appellant Rasane at the relevant time. The complainant had no reason to falsely implicate the appellant Rasane. The demand of bribe was duly verified. While the demand was made, an independent witness P.W.2 Vishal Bondade, was present. The conversation came to be taperecorded. The transcript thereof reinforces the prosecution case. According to learned A.P.P., the applicability of procedural requirement under Section 65-B of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In support of her contention, she relied on the judgment of the Apex Court in case of **Shafi Mohammad Vs. The State of Himachal Pradesh – [S.L.P. (Crl.) No.2302/2017 etc.]**. The learned A.P.P. took this Court through the evidence on record particularly that of the complainant and shadow witness, and urged for dismissal of the appeals. According to her, the trial Court has given reasoned judgment with which no interference is warranted in

these appeals.

8. Considered the submissions advanced. Perused the evidence relied on. Let us advert thereto and appreciate the same.

The District Collector (P.W.4 Anil Kavde) accorded sanction for prosecution of the appellant Rasane. The sanction has not been taken exception to before this Court. Admittedly, the appellant Rasane was serving as Awal Karkoon in the Tahsil Office, Rahata. There is Circle Office at Rahata. It was headed by a Circle Officer Shri Warule. It is not in dispute that, the complainant had applied for recording names of his wife and himself in the revenue record of land Gut No.401 as legatees under the Will executed by his mother-in-law – Gayabai. The application was made about ten months before 3rd February 2014. The Village Talathi had made a mutation entry recording their names and placed the same before the Circle Officer Shri Warule for certification. Since one of the relations of Gayabai raised dispute, it became a disputed entry, for certification of which quasi-judicial proceedings are held. One Shri Borade, Advocate was representing the complainant in the said proceedings. Shri Warule had recorded the statements of parties to the

proceedings. He, however, retired before 3/2/2014. Admittedly, the appellant Rasane was given additional charge of Circle Officer, Rahata. There is evidence on record to indicate that, the concerned file of the complainant was pending before the appellant Rasane for certification of mutation entry. The complainant, therefore, met the appellant Rasane on 3/2/2014 and requested to do the needful.

9. The complainant in his evidence testified that, on his request for certification of mutation entry, the appellant Rasane made him a demand of Rs.5000/-. He expressed his inability to pay that much amount. He went to appellant Rasane on the following day and told that he would pay him money immediately. The appellant Rasane then went to A.C.B. Office, Ahmednagar. P.W.3 Ashok Deore recorded his complaint (Exh.11). It was decided to lay a trap on the following day. Shri Warule secured presence of two State Government employees to act as panch witnesses. The complaint (Exh.11) was read over to them. On the following day, P.W.3 Deore accompanied by both the panchas and some of A.C.B. officials first went to the house of the complainant. P.W.3 Deore gave all the concerned necessary instructions. It

was a demand verification exercise. A taperecorder was, therefore, concealed on the person of the complainant. As per the evidence of the complainant, both, the shadow witness and he himself, first went to Circle Office. The appellant Rasane was not present there. He was at Panchayat Samiti Office. Both of them, therefore, went there. They met the appellant Rasane at Naib Tahsildar's Office. They along with the appellant Rasane went to the Canteen for tea. It is further in his evidence that, the appellant Rasane made a demand of Rs.5000/-. The complainant requested him to reduce the amount. Advocate Borade came there. He requested the appellant Rasane to reduce the amount by Rs.1000/- as the complainant was poor. The complainant and the shadow witness then left the office to come with bribe money as the appellant Rasane had asked him to bring money immediately.

10. It is further in the evidence of the complainant that, both of them came back to his house. The taperecorded conversation was heard by Shri Deore and all the present there. A transcript thereof was prepared. Currency notes of Rs.4000/- were applied with anthracine powder. Then, both, the complainant and the shadow witness again first went to

the Circle Office to find the appellant Rasane was not there. The trap party was following them. Both of them then went to the Panchayat Samiti office. They met the appellant Rasane there. The complainant told the Circle officer to have brought the money. The appellant Rasane, in turn, asked him to go to the Circle Office and assured to follow them there. He also instructed the complainant that, if he did not come within a certain time, he shall pay the amount to his Assistant – appellant Garud. Accordingly, both of them went to the Circle Office. The complainant, after some discussion with the appellant Garud, came out of the office. Garud followed him. The complainant paid him the bribe money. The complainant then gave a pre-determined signal. The trap party arrived. The bribe money came to be recovered from the appellant Garud. Trap panchanama was drawn.

11. Almost on the same lines is the evidence of the shadow witness P.W.2 Vishal Bondade. His evidence in examination-in-chief is, therefore, not adverted to in extenso. A reference thereto would, however, be made at appropriate stage while appreciating the evidence in the case.

12. Both, the complainant and the shadow witness were subjected to a searching cross-examination. Replies

thereto are material to decide the fate of this appeal.

13. Admittedly, when the complainant had met the appellant Rasane on 3/2/2014, nobody was with him. As such, the complainant's evidence that the appellant Rasane made a demand of Rs.5000/- on 3/2/2014 remained uncorroborated. In view of this Court, the evidence of the complainant is not such as to rely on his sole testimony. It is in his evidence that, since he did not wish to pay the appellant Rasane bribe, he approached the A.C.B., Ahmednagar same day. It is only in his cross-examination he admits that, his grandson had accompanied him to the Circle Office and both of them gave the complaint (Exh.11). P.W.3 Deore, who recorded the complaint, however, denies that, the complainant was accompanied by anyone else. According to P.W.3 Deore, it was the complainant who had come to his office and he recorded his complaint as per his (complainant's) narration. The grandson of the complainant has not been examined in the case. Admittedly, about ten months before 3/2/2014, the complainant had moved an application for recording of his name in the revenue record. The appellant Rasane has, therefore, every reason to feel that a false complaint was lodged to have the work of the complainant done at the

earliest. The complainant has admitted in his oral evidence that the mutation entry came to be certified within a month post the appellant Rasane was trapped.

14. P.W.3 Deore had decided to have the demand verified. A taperecorder was, therefore, concealed on the person of the complainant. Both, the complainant and shadow witness first went to Circle office. The appellant Rasane was not there. They, therefore, went to Naib Tahsildar's Office. They met the appellant Rasane there. All of them went to Canteen for tea. One Advocate Borade, representing the complainant in the mutation entry proceedings had admittedly joined them. It is the case of the complainant that, on his request, the appellant Rasane reduced the demand from Rs.5000/- to 4000 rupees. P.W.3 Deore recorded Advocate Borade's statement. He (Advocate Borade), however, has not been examined as a witness. It is the specific case of the complainant that, during meeting in the Canteen, the appellant Rasane made a demand for Rs.5000/- for certification of the mutation entry. Whereas the evidence of the shadow witness is to the effect that, during discussion in the Canteen, the appellant Rasane told the complainant that, his work would be done, but five-five will be

required. The complainant, in turn, expressed his inability to pay that much. He said that, he can pay four. It is also in the evidence of the shadow witness that, on negotiations between the two, the figure was reduced to four. It is in the evidence of the shadow witness that, then the complainant told the appellant Rasane that he would come with the money immediately. They then left that place.

15. Admittedly, the conversation that took place between the complainant and the appellant Rasane in the canteen has been taperecorded. For the reasons best known to the investigating officer, the taperecorded conversation was not played before the Court nor the transcript thereof was prepared on the intervention of the Court. Whatever transcript was prepared was neither shown to the complainant nor to the shadow witness in proof of the exact the reproduction of the taperecorded conversation. There is evidence to indicate that, unwanted conversation in the taperecorded matter has been erased. The transcript, recording of voice sample of both, the appellant Rasane and the complainant, came to be simply marked with Exhibit number on the basis of evidence of the investigating officer. The trial Court was therefore, justified in observing that the

taperecorded conversation has not been relied on by the prosecution. Needless to mention that, mere exhibiting a document does not amount to proof of contents thereof. A useful reference in this regard can be had to the judgment of this Court in case of Anil Krishnarao Apshingkar Vs. State of Maharashtra [2022(2) Mh.L.J. 264], wherein it has been observed in paragraph No.15 that :

“15)
.....

e) Learned counsel for the appellant relied upon the decision of Supreme Court in the case of Ram Sing and Others V/s. COL. Ram Sing 1985 (Supp) SCC 611. In the said decision the Supreme Court has observed as follows :-

"32. Thus, so far as this Court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows :-

(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

(2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory

evidence - direct or circumstantial.

(3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances."

f) Reliance is also placed on the decision of this Court in the case *Devidas V/s. State of Maharashtra* 2020 SCC Online, BOM 1041 in Paragraph -25 of the said decision it was observed as follows :-

"25. Here in this case, though the CD's were produced, voice sample of the accused was also taken and the certificate of the expert was also taken, yet, as aforesaid it cannot be said as complete evidence in the form of electronic record, as voice sample complainant and panch No.1 was not taken and was not got compared/verified from the expert. Further, the said conversation was not played in Court room at the relevant time during the proceedings. Mere production of the extract of the recorded version or even such verification of voice of the accused only is not sufficient. Each time when the conversation has been reproduced, it is stated that it has been got verified from the recorded conversation, then even before the trial Court it ought to have been produced and proved by admissible mode."

g) In *Ziyauddin Burhanuddin Bukhari V/s.*

Brijmohan Ramdas Mehta (1976) 2 SCC 17 : AIR 1975 SC 1788 it was observed that the tape-records of speeches were 'documents', as defined by Section 3 of the Evidence Act and they were admissible in evidence on satisfying the ground that the voice of the person alleged to be speaking must be duly identified by the maker of the record or by other who know it. Accuracy of what was actually recorded has to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record. The subject matter relevancy recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.

h) The Court overlooked Rules for production, use and recording of the Tape-Recorded Evidence in Court incorporated in Criminal Manual issued by the High Court of Bombay which reads as follows :-

"24. The Honourable the Chief Justice and Judges, with the previous approval of the Governor under Article 227 of the Constitution of India, are pleased to make the following rules regarding recording of the tape-recorded evidence in Court :

(1) These Rules may be called the Rules for the production, Use and Recording of the Tape-Record Evidence in Courts.

(2) These Rules came into force with effect from 1 st August, 1978.

(3) The party producing the tape recorded evidence shall also produce the transcript of the tape record along with the tape.

(4) The Court or its authorised officer who is to accept the tape should accept only such tapes as are under the seal of the party producing them.

(5) Court or such officer shall hear the tape record in order to verify whether the transcript produced alongwith the tape is correct or not and endorse such verification on the transcript record under his signature with date.

(6) The tape shall be kept in safe custody in a cover under the seal of the Court. In case the tape is replayed or the seal is broken for any reason, the tape shall be re-sealed.

(7) The Notice of production of the tape together with the transcript shall be served on the other side through the Court.

(8) Any party to the proceeding may apply to the Court to hear the tape record.

(9) The tape-record would be played within the hearing and sight of an officer appointed by the Court for that purpose and as far as possible in the presence of the other side or its Advocate. The Court on receipt of application may grant the necessary permission. However, the tape shall ordinarily not be played on 3rd or 4th occasion, unless the Court specifically permits hearing of the same. The Court while granting such permission should bear in mind that repeated use and play of the tape may affect the tape and its audibility. The Court may also permit any party to record the voice on the tape, produced in Court, on another tape.

(10) Every Court shall maintain a record showing as to how, when and why the seal of the tape-record was opened and when the tape-record has been resealed. Such record shall be kept in the proceedings alongwith the tape record and its transcript.

(11) The tape in a sealed cover together with its transcript shall be given a separate exhibit.

(12) In Criminal cases where appeal lies to the High Court and when the tape record is not in English, either,

wholly or in part, the transcript must be accompanied by an agreed or official English translation of the said transcript or part thereof, as the case may be.

(13) In case of discrepancy or doubt, the Court may direct the tape to be replayed and the transcript record shall be corrected if the Court so directs.

(14) While preparing the paper book for appeal to the High Court the Lower Court shall include therein the transcript in English under Rule 12, and a copy of record referred to in Rule 10 above.

(15) The rules as to the production, preservation and destruction of the Court record should mutatis mutandis apply to the tapes.

(16) The above rules (Rules Nos.1 to 15) are framed for guidance of the Courts and they should be followed as far as possible and subject to the provisions of the Evidence Act and Code of Civil Procedure."

16. It is reiterated that, the aforesaid rules have not been complied with in the present case. This Court has reason to say so, since the taperecorded conversation was not played before the Court, the so called transcript thereof was neither shown to the complainant nor to the shadow witness to get it duly proved. As such, the exercise of verification of demand by use of taperecorder failed.

17. The shadow witness admittedly accompanied the complainant for demand verification. It is in his evidence

that, both of them along with the appellant went to the Canteen for tea. The appellant Garud was also in their company. The appellant Rasane told the complainant that his work would be carried out, but five-five will be required. The complainant told him his inability to pay that much amount. He further told that, he could pay four. It is reiterated that, the taperecorded conversation has not been duly proved. The complainant should have stated in verbatim what the appellant had stated to him, particularly the matter, "Your work would be carried, five-five will require". According to the shadow witness, four means Rs.4000/-. He may be correct, but 'may be' and not 'must be'. As such, the evidence of the complainant and shadow witness has inconsistency inter-se. According to the complainant, the appellant Rasane made a demand of Rs.5000/- and reduced it to Rs.4000/-. While as per the testimony of the shadow witness, the appellant said five-five will require.

Acceptance of bribe money

18. According to the complainant, he accompanied by the shadow witness, left the Canteen since the appellant had asked him to bring money immediately. The shadow witness also reiterated the same. Both of them, however, admitted to

have not stated in their respective statements that the appellant Rasane had asked the complainant to bring the money immediately. As such, it is a material omission, amounting to contradiction. While the complainant accompanied by the shadow witness with the bribe money for being paid to the appellant Rasane, it is the complainant who on his own told the appellant Rasane to have brought the money and offered the same. On the same lines is the evidence of shadow witness. The complainant tried to improve his version, contending that the appellant had enquired with him as to whether the money had been brought. The complainant has, however, admitted to have had not stated the same in his statement. As such, the evidence of the complainant that the appellant asked him as to whether the amount is brought, is an improvement over his police statement. For want of corroboration thereto, the same is required to be not relied on.

19. It is in the evidence of the complainant that, while he offered the money, the appellant asked him to go to Circle Office and he would follow them. If he did not come within a specified time, the appellant Rasane asked him to pay the money to his Assistant (appellant Garud). It is also the case

of the complainant that, the appellant Rasane made telephonic call to appellant Garud in his presence and asked him to accept the money. There is no evidence in the nature of Call Data Record to reinforce the same. The shadow witness does not speak anything in this regard to reinforce the complainant's statement. It is in the evidence of both, the complainant and the shadow witness that, while they went back to the appellant, he did not accept the money. It is also in their evidence that the appellant was busy in office work. There was crowd around him. The fact remains that, in spite of the amount having been offered by the complainant, the appellant did not receive the same. Both, the complainant and the shadow witness came to Circle Office. It is in their evidence that, the appellant Garud was present in the office. Some other persons were also there. The complainant told him that, he was in hurry since some guests have come to his residence. Appellant Garud, therefore, came out of the office. The complainant held the currency notes. Appellant Garud accepted the same. The complainant does not state in his evidence that the appellant Garud made a demand for money. The shadow witness tried to improve the prosecution case. He stated that, the appellant Garud asked for money. It is his case that, the appellant Garud was present in the Canteen at

the time of demand verification. He, therefore, knew that, the amount was demanded by appellant Rasane and the same was to be received. The shadow witness, in his cross-examination, has admitted that, P.W.3 Deore, I.O. had instructed them to pay the amount to appellant Garud even if appellant Rasane did not demand and accept the same. True, P.W.3 Deore has denied the suggestion in this regard. The complainant did not state that, appellant Garud was present along with them in the Canteen at the time of demand verification. The trial Court simply jumped to the conclusion that the appellant Garud was present in the meeting at the Canteen, he knew that, what he accepted was a bribe money. The shadow witness has stated that, the complainant had again requested the appellant to receive the money when there was no response from the appellant to his first such request. The witness tried to give an explanation thereto that, non-acceptance of money was due to presence of some other persons along with the appellant Rasane. It is his inference.

20. The fact remains that, on return of the complainant along with the shadow witness, to pay the appellant bribe, the appellant did not make demand thereof.

The evidence as regards of such demand was first time deposed to before the Court. The same does not find place in the statements of both the witnesses recorded by P.W.3 Deore. The evidence further indicates that, the appellant did not accept/ receive the money in spite of the complainant offered the same twice. The shadow witness testified that, at Circle Office, it was the complainant who requested the appellant Garud to take money. The complainant also told him that, he was in hurry since there were guests at his house. Thereafter only the appellant Garud came out of the office and received the money. The shadow witness voluntarily stated that, the appellant Garud had told them to have received a phone call of appellant Rasane. It is reiterated that, C.D.R. in that regard is not there to reinforce the same.

21. Close scrutiny of the judgment of the trial Court would indicate, it has simply relied on the testimony of the complainant and then accepted the case of the prosecution. The reasons given by the trial Court appear to be based on surmises and conjectures since there was no concrete evidence to indicate that the appellant Garud was present in the meeting at the Canteen.

22. In short, the complainant had moved an application for mutation of his name in the revenue record ten months before the tap was laid. He was not in the know how to lodge complaint with police. According to him, his grandson was in the know thereof. The grandson had, therefore, accompanied him to Anti-Corruption Bureau. Both of them lodged the report. The A.C.B. officials deny the same. As such, the evidence indicates that, there was intervention of the complainant's son. While the demand was made for the first time, nobody was with the complainant. During verification of the demand, the appellant Rasane told five-five will require. The complainant did not give exact words uttered by the appellant Rasane. It was the inference drawn by him and the shadow witness that five-five means Rs.5000/-. It was scaled down to four on intervention of Advocate Borade. Although his statement was recorded, he has not been examined. Although the talk that was held during the meeting came to be taperecorded, the same has not been duly proved. Some recorded matter has been erased. It was an electronic device that was used for recording of the conversation. The device was in the control of the complainant and/or P.W.3 Deore, I.O. Section 65-B

Certificate, therefore, ought to have been there, issued by P.W.3 Deore or the complainant. Since both of them were in control of the said device, they are to be stated to have been in a position to produce the certificate under Section 65-B of the Evidence Act. The reliance on the judgment of Apex Court in case of Shafi Mohammad (supra) would, therefore, be of no assistance to the prosecution.

23. On the question of acceptance of bribe money, both the witnesses have improved their version. Statements of both of them are silent to mention that, the appellant had asked the complainant to bring money immediately. Even on their return to the appellant Rasane, it was the complainant who offered the appellant money twice. The appellant Rasane did not receive the same. There is evidence to indicate that, the appellant Rasane was busy. There was crowd around him. Both the complainant and the shadow witness, therefore, came to the Circle Office. As stated above, the complainant paid money to appellant Garud. There is no evidence indicating communication between appellant Rasane to have asked appellant Garud to receive the money. It is reiterated that, the complainant was instructed to pay the money to appellant Garud even if the appellant Garud did not make

demand therefor. Both, the complainant and the shadow witness, therefore, could not be termed to be sterling witnesses to rely on. In view of this Court, the evidence on record fell short to prove the guilt of both the appellants beyond reasonable doubt. This Court is not at one with the findings recorded by the trial Court. The appeals, therefore, succeed. Hence the order :

ORDER

- (i) Both the Criminal Appeals are allowed.
- (ii) The order of conviction and sentence dated 12/1/2016, passed by Additional Sessions Judge, Kopergaon in Special Case No.117/2014 is set aside.
- (iii) The appellant Sanjay Bhagwanrao Rasane is acquitted of the offences punishable under Sections 7 and under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act. Fine amount, if paid, be refunded to him. His bail bonds are cancelled.
- (iv) The appellant Anil Baburao Garud is acquitted of the

offence punishable under Section 12 of the Prevention of Corruption Act. Fine amount, if paid, be refunded to him. His bail bonds are cancelled.

(R. G. AVACHAT, J.)

fmp/-