

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

CRIMINAL APPEAL NO.755 OF 2019

Vinayak s/o. Vanji Baisane,
Age. 38 years, Occ. Service,
R/o. Gut No.176, Plot No.76,
Wagh Nagar, Jalgaon,
Taluka & District : Jalgaon.

.. **Appellant**
[original accused]

Versus

The State of Maharashtra
through Police Inspector,
Anti Corruption Bureau,
Jalgaon.

.. **Respondent**
[original informant]

Mr.M.A. Tandale, Advocate for the appellant.
Mrs.G.L. Deshpande, APP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	21.09.2022
PRONOUNCED ON	:	21.10.2022

J U D G M E N T :-

01. This appeal arises out of judgment and order passed by the learned Additional Sessions Judge, Jalgaon dated 24.07.2019 in Special (ACB) Case No.6 of 2016. The appellant is held guilty of the offences punishable under sections 7, 13 (1)(d) read with section 13(2) of the

Prevention of Corruption Act. The sentence awarded is rigorous imprisonment for three years and fine of Rs.1,000/-, in default to suffer imprisonment for two months and four years rigorous imprisonment and fine of Rs.1,000/- in default to suffer imprisonment of two months respectively for the offences stated above.

02. Story of the prosecution, in short, is that when the accused-appellant was working as a Senior Assistant, Primary Education Department, Zilla Parishad, Jalgaon, he demanded an amount of Rs.1000/- from one Prabhakar Abhiman Kate, a de-facto complainant, for cancellation of an entry from his service book. That was wrongly taken. The complainant, therefore, approached the Anti-corruption Bureau with complaint against the accused. The complainant was working as a Kendra Pramukh (Centre Incharge) at Zilla Parishad School, Varkhedi, Tal. Pachora. He stood retired on 31.05.2015. There was an entry in his service book about a scam in purchase of uniform in the year 2010-2011. The complainant was not getting pension because of this entry and therefore he wanted to get deleted this entry and thus approached the accused wherein demand of amount was made. For that purpose an application was made on 15.09.2015 by the complainant. When the amount

was demanded on 19.09.2015, complaint was lodged with the Anti-corruption Bureau Office. On the basis of the complaint, trap was arranged by calling two panch witnesses from the Government Office. A trap was arranged on 21.09.2015. Thereupon, necessary investigation was carried out. Statements of witnesses were recorded and charge-sheet came to be filed. In trial the prosecution examined total four witnesses to prove the case.

03. It is defence of the accused that there was no demand by the accused. When the accused was busy in his work, the amount was kept on the table by the complainant. So far as the evidence of voice recording is concerned, it is submitted that the recording was not played in the Court, so as to ascertain the correctness of the transcription. There is no identification of voice recorded and therefore it could not have been relied. It is case of the defence that the prosecution has utterly failed to prove the demand and acceptance. There was no work pending with the accused. There is no record produced by the prosecution to show that there was in-fact any work pending with the appellant. It is also case of the defence that there is no proper sanction accorded by the authority.

04. After the evidence, the accused-appellant came to be convicted. It is, thus, the appeal is filed in this Court. In view of the submissions and evidence on record, this case needs to be considered.

05. First witness examined by the prosecution is Prabhakar Abhiman Kate, who is complainant, at Exh.9. He stated in his evidence that since there was an entry wrongly made in his service book recording that he has involved in the scam of purchasing of uniform in the year 2010-2011, therefore, he was not getting pension. It was necessary for him to get the entry deleted from the service book. It is for this reason, he had approached the accused, who was working as a Senior Assistant. He stated that the demand verification was made. He was given a voice recorder with one memory card inserted in it. As 12.30 p.m. the complainant and one panch witness PW-2-Ankush Gavai went to the Education Department, Zilla Parishad, Jalgaon. There he discussed about his case with the accused whereupon accused told that we will have to send a proposal to the superiors for cancellation of the entry and the complainant will have to pay Rs.1000/- after completion of the work. Both these witnesses came back to the office of the Anti-corruption Bureau. The conversation recorded in the recorder was heard and the same was reduced in

to writing and voice verification panchanama was prepared. After demonstrating anthracene power examination, it was decided to lay actual trap. At around 3.30 p.m. the squad proceeded towards Zilla Parishad. The complainant and panch PW-2 entered the Primary Education section. The accused demanded amount. The complainant paid the amount to the accused. The accused told to put the amount on the table. From there, the complainant gave signal by making phone call on the cell phone of PI Nikam. The raiding party rushed towards accused. Thereafter, panchanama was drawn etc.

06. In the cross-examination, the complainant stated that against the entry in the service book, he did not file any appeal before the Commissioner. He did not even tell as to when he noticed the entry in his service book. He could not state exact date of the application made to the Zilla Parishad for deleting his entry. This witness in the cross-examination could not give exact date on which he had been to Anti-corruption Bureau office prior to 19.09.2015. He accepted that there were 5-6 employees and officer present in the office, where the accused was working. At the time of incident, he had a talk with two persons, one accused and another one Surve madam.

07. Next witness is PW-2-Ankush Gavai, who was serving as a Clerk in the House Taxes Department, Municipal Corporation, Jalgaon. He stated that on 21.09.2015, he was called at Anti-corruption Bureau office. He was told to act as shadow witness, panch No.1. About the actual incident, he stated that he went to the Primary Education Department, Zilla Parishad, where Baisane (accused) was sitting in his office. Some discussion in respect of the work took place. The accused demanded bribe amount of Rs.1000/- at that time and an amount of Rs.1000/- after completion of the work. The complainant took out bribe amount and held it before the accused, who accepted the said amount with his right hand and kept it in his left pocket of the shirt. On this the complainant made a phone call and immediately raiding party came and trap was successful. Thereafter, the PI told Baisane (accused) to bring the proceedings in respect of deletion of the entry taken in service book of scam of school uniform. Accused produced the said proceeding from the table of Section Officer. Same was taken into custody by the PI. Thereafter, panchanama was drawn by examining notes under ultra-violet lamp.

08. Next witness is PW-3-Astikkumar Pandye, the sanctioning

authority, who was working as the CEO, Zilla Parishad, Jalgaon. He stated that he received proposal for sanction from the Anti-corruption Bureau, Nashik. He perused the papers. He applied his mind and thereafter accorded sanction. He proved sanction order at Exh.33.

09. In the cross-examination, he accepted that he had not seen the proceedings in respect of application given by Prabhakar Kate in the office of the accused. He stated that in the uniform scam, departmental enquiry against 77 Head Masters was conducted and action was taken against them and increments of those Head Masters including the informant were stayed.

10. The Investigating Officer – Prabhakar Karbhari Nikam has deposed on behalf of the prosecution as PW-4. He stated about pre-trap panchanama, actual raid conducted, thereafter post-trap panchanama and investigation. He proved the report received from Forensic Science Lab in respect of the voice sample at Exh.46, which he received after filing of the charge-sheet. The IO has proved voice recording sample and its transcription. Thus, on the basis of this evidence, the accused is held guilty.

11. Learned Advocate Mr.Tandale for the appellant has made his submissions. From the evidence of PW-1 by taking through paras 25 to 28, he pointed out that there is no demand from the accused. Accused-Baisane had allegedly asked to keep the amount on table and thereafter complainant kept the bribe amount on the table and made phone call to PI-Nikam. The raiding party members rushed to the accused. PI asked shadow witness as to who had accepted the bribe amount and as to where it was kept. At that time the shadow witness told the PI that accused asked the complainant to keep bribe amount on the table and the amount was taken from the table. From cross-examination paras 35-36, he pointed out wherein witness stated that notices were issued to them by Zilla Parishad in respect of scam. He accepted that he has not filed any appeal before the Commissioner against the said entry. He could not give exact date of the application, he had filed for deletion of the entry. From his cross-examination, it is brought on record that the complainant had not come to Jalgaon on 15.09.2015, the date on which it is stated, that he had been to ACB Office and filed complaint. He accepted that till 19.09.2015 he had not been to the office of Zilla Parishad. It is, thus, submitted that there is no question of making any demand. Further he pointed out from record that on the relevant date, file was not with the

accused and the proposal was already submitted to the superior officer which was to be examined by the superior officer. Thus, he submits that there was no question of demand. He submitted that the evidence on the point of demand is not corroborated by PW-2 in material particulars. He pointed out that the complainant could not give any particulars about recording/typing of the complaint in the Anti-corruption Bureau Office. Further, vital admission is taken on record from the complainant that the accused did not demand money on 21.09.2015. Thus, there is no incriminating statement in the entire evidence of de-facto witness as per the statement of the accused. Further, omission is brought on record about keeping bribe amount on table. The statement that accused asked to keep the amount on table does not find place in the statement before the police.

12. About evidence of PW-2, Mr. Tandale, learned Advocate for the appellant submitted that his evidence is totally contrary to the evidence of the complainant, by inviting attention to para 18 of his evidence. This witness stated that the accused demanded bribe amount of Rs.1000/- on that day and Rs.1000/- after completion of work, which does not find place in the statement of the complainant. There is further contradiction in the statement

of these two witnesses. PW-1 stated that he kept the amount on the table as per the say of the accused, whereas PW-2 states that the amount was directly handed over to the accused. This witness in cross-examination accepted that he did not hear as to what conversation took place between the de-facto complainant and the accused in the office. The conversation lasted for about 15 minutes and took place between those two persons only. He was standing at a distance of 10 ft and therefore he did not hear conversation clearly. Thus, he submitted that the evidence of PW-1 and 2 contradicts each other in material particulars.

13. Next witness is PW-3-Sanctioning Authority. From his cross-examination he submitted that the sanctioning authority has not properly applied his mind. From the cross-examination, he pointed out that the sanctioning authority did not personally see the entry taken in the service book of the complainant. He did not remember as to whether copy of service book of the complainant was provided to him or not. He accepted that there is remedy of filing appeal to the Commissioner against the entry and he did not remember whether the accused has filed any appeal or not. He also could not say as to whether in the investigation papers received by him, there was

statement of Primary Education Officer or not. The defence is that the sanctioning authority had not applied mind properly. Entire material for granting sanction was placed before the sanctioning authority.

14. From the evidence of PW-4 – Investigating Officer (IO) it is pointed out that there were no written orders received by him for investigating the complaint of de-facto complainant by the Dy. Superintendent of Police. There is statement that the transcription is not proved as it is not played in the Court and secondly the Scientific Officer, who issued report of voice sample, is not examined in the Court and therefore the voice sample or the transcription could not be read in the evidence, in view of section 294 of the Cr.P.C. The voice sample could not have been accepted without examining the person who issued a report. Thus, the entire conversation recorded in the transcription on the basis of voice recording done in the voice recorder does not carry any weightage and same could not be relied upon.

15. The learned APP supports the judgment. She submits that all the ingredients to prove the offence under sections 7 and 13 (1)(d) read with section 13(2) are present in this case and the same are satisfactorily proved by

the prosecution. She submits that in this case there is previous demand and acceptance pursuant to the said and therefore offence is proved. She submitted that there can be a demand even for the work which is already done. Though the accused was not final authority to take decision, however, it was he who has to forward the proposal. He did not forward the proposal and kept it with him till the amount was paid. The demand verification panchanama is properly proved by PW-2. He has also proved voice recorder panchanama and the conversation that is transcribed. This recording shows that there was discussion about the work on the said discussion. It does not appear that the accused told the complainant that his proposal is already forwarded. She submits that in such circumstances, presumption under section 20 is rightly invoked, in view of the previous demand and acceptance of the amount. She invited attention to the actual transcription. She pointed out that Scientific Officer report shows that the voice recorded is of the complainant and the accused. She submitted that money was found from the pocket of the shirt of the accused and thus recovery is also properly proved.

16. The learned Advocate for the appellant has relied upon following judgments :-

- (1) Ram Singh and Ors. Vs. Col. Ram Singh, 1985 (supp) SCC 611, in respect of laying down conditions for accepting evidence of voice recording.
- (2) K. Shanthamma Vs. State of Telangana (2022) 2 SCC (Cri) 193.
- (3) B. Jayaraj Vs.State of Andhra Pradesh (2014) 13 SCC 55, on the point, there has to be voluntary demand made, followed by acceptance knowing it to be amount of bribe.
- (4) P. Satyanarayana Murthy Vs. Dist. Inspector of Police and Anr., AIR 2015 SC 3549. It laid down as to what are the requirements to prove the case under the Prevention of Corruption Act.
- (5) M.K. Harshan Vs. State of Kerala, (1996) 11 SCC 720.
- (6) C.B.I. Vs. Ashok Kumar Aggarwal, AIR 2014 SC 827.
- (7) Mohd. Iqbal Ahmed Vs. State of AP, AIR 1979 SC 677.
- (8) State of Maharashtra Through CBI Vs. Mahesh G. Jain, 2014 ALL SCR 177.
- (9) Ram Prakash Arora Vs.State of Punjab, AIR 1973 SC 498.

17. The learned APP for the respondent has relied upon Vishambahar Isiah Vs. State of Himachal Pradesh, Criminal Revision No.277 of 2020.

18. In the case of Ram Singh (Supra), the Hon'ble Apex Court has considered the evidentiary value of the recorded conversation and has laid down the conditions as to how the voice recording is to be read is evidence. Para 32 of the case has laid down conditions for admissibility of tape-recorded statement. Even though it is in respect of type-recorded conversation, it is equally applicable to any voice recording recorded mechanically, magnetically or in this case in digital form. Para 32 reads as under :-

“32. Thus, so far as this Court is concerned the conditions for admissibility of a tape-recorded statement maybe 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.”

19. Thus, care needs to be taken to see that the recording is accurate. It needs to ensure that the voice is of the speaker and is duly identified by the maker of the recorder or other who recognized his voice. There is no tampering done or erasure of a part of a tape-recorded statement be made out. The statement must be relevant according to the Evidence Act. The device must be carefully sealed and kept in official custody. The voice should be clearly audible and not lost or disturbed of other sounds. This also needs to be considered in this case.

20. The judgment in the case of **K. Shanthamma (Supra)** is mostly on the facts of the case. Hence, not discussed here.

21. In the case of **B. Jayaraj (Supra)** in paras 7 and 8, it is held that it is settled position in law that demand of illegal gratification is sine qua non to constitute an offence and mere recovery of currency notes cannot constitute an offence under section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The submission of the applicant in the present case is also that there is no proof beyond reasonable doubt to show that the appellant has demanded amount as

an amount knowing it to be a bribe.

22. Considering the facts and the evidence in this case in the light of judgments which are already dismissed needs to be considered. This court holds that the prosecution has failed to establish that there was a demand by the accused. The prosecution also failed to prove that acceptance of the amount was pursuant to any demand of bribe. Whereas accused has made out probable defense that the amount was kept on the table of the accused without there being any demand by the accused. Coming to the point of sanction, the prosecution has failed to show that the entire material was placed before the sanctioning authority. From the evidence of the sanctioning authority, it is not clear as to what material made him to come to conclusion that sanction needs to be accorded. Even the first demand on 15-09-2015 is under doubt in view of evidence of panch witnesses who stated in cross-examination that till 19-09-2015 he had not been to the office of the Zilla Parishad. Further the complainant could not give any particulars of recording /typing of the complaint in the office of the Anti Corruption Bureau. Coming to the evidence of voice recording same is not proved by the prosecution in view of the judgment in the case of Ramsing (supra).

23. In the case of P. Satyanarayana Murthy (Supra), relying upon earlier judgment, it is held that proof of demand is an indispensable essentiality and of permeating mandate for an offence under sections 7 and 13 and not those under section 13 (1)(d) (I) and (ii) of the Act. The proof of acceptance could follow only if there is proof of demand thus in absence of proof of demand, no presumption under section 20 of the Act would arise. It is further settled that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused. This observations is on the basis of a judgment in the case of Sujit Biswas Vs. State of Assam (2013) 12 SCC 406.

24. Learned Counsel for the appellant further relies on a judgment in the case of M.K. Harshan (Supra). Though it is under old Act of 1047, still the principles are same which requires in the evidence of trap witness. It is held that in a trap case it is necessary to see that the evidence is corroborated. Thus, it can safely be said that if there is variance in the testimony of witnesses, complainant and other witnesses like panch and if the same is

contradictory then the accused would be entitled to benefit of doubt and in such case the accused needs to be acquitted.

25. Further in the case of **CBI Vs. Ashok Kumar Aggarwal (Supra)**, the Hon'ble Supreme Court has held that grant of sanction is not a mere formality. The prosecution has to establish that the sanction was duly accorded by applying mind. The entire material is placed before the sanctioning authority etc. In this case there is no evidence to show that entire material required to be placed was in fact placed before sanctioning authority. Undisputedly, in this case report of voice sample was received after filing of a charge-sheet. Naturally the same was not before the sanctioning authority while according a sanction.

26. In the case of **Mohd. Iqbal Ahmed (Supra)**, it is held that it is well settled in a criminal case that no Court should ordinarily direct fresh evidence to fill up a lacuna deliberately left by the prosecution. It is held that the sanctioning authority necessarily has to record as to on what basis it arrived at a satisfaction that sanction is required. It is further held that prosecution does not arise automatically but only on proof. It is also held that case without

proper sanction must fail as the same is manifest defect in the care of prosecution.

27. In the case of **Mahesh G. Jain (Supra)**, the Hon'ble Apex Court has in para 13 culled out principles by discussing various authorities as below :-

“13. From the aforesaid authorities the following principles can be culled out: -

- a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
- b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.
- c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.
- d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
- e) The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.
- f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.
- g) The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity.”

. It is held that grant of sanction to the prosecution is a sacrosanct act.

28. The last judgment cited by learned Advocate for the appellant is

in the case of Ram Prakash Arora (Supra), which emphasizes that corroboration is required.

29. Learned APP on the strength of the judgment in the case of Vishambahar (Supra) relies upon report under section 293 of the Cr.P.C. that in this case report of the voice recording is given by the Forensic Lab needs to be accepted as it is. She submits that the report is signed by the Scientific Officer and with the aid of Section 293, same can be accepted without formal proof. Thus judgment is delivered mainly relying upon judgment reported in 1990 Cri.L.J.2392 in the case of Abdul Matlib Vs. State of Assam. It is held in the said case that even the accused did not make any attempt to call for the expert for examination in the Court. Therefore, voice recording is proved. Learned APP, thereafter invited attention to the transcription, which in her submission clearly shows that there was demand from the accused for the amount towards bribe. Thus, the prosecution has proved the demand. In view of earlier discussion I do not find any force in this submission.

30. Having regard to the material on record and considering the submissions, it is found that the prosecution has not proved the guilt of the

accused beyond reasonable doubt and therefore in this case the prosecution has failed to prove the demand by the accused. There is nothing to show that the accused has accepted the amount towards bribe. Hence, following order :-

ORDER

- a] The appeal is allowed.
- b] The impugned judgment and order dated 24-07-2022 passed by the learned Special Judge, Jalgaon in Special (ACB) No. 6/2016 convicting the appellant for the offences punishable under Sections 7, 13 (1)(d) of the Prevention of Corruption Act is quashed and set aside.
- c] The appellant is acquitted of the offences punishable under Sections 7, 13 (1)(d) of the Prevention of Corruption Act.
- d] Fine amount be refunded to the appellant. The bail bonds stands canceled.
- e] The appellant to furnish fresh bail for the purpose under Section 437-A of the Code of Criminal Procedure.

[KISHORE C. SANT, J.]