

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

CRIMINAL APPEAL NO.801 OF 2015

Ravindra Gurbhej Singh Guruditta,
Age : 40 years, Occ. Business,
r/o. Row House No.A-28, Atharva Classic,
Beed by Pass Road, Aurangabad ..Appellant

Vs.

The State of Maharashtra ..Respondent

AND

CRIMINAL APPEAL NO.809 OF 2015

Baban s/o. Bhausahab Awsarmal,
Age : 45 years, Occ. Service,
r/o. Plot No.216-B, Bhakti Nagar,
N-1, CIDCO, Aurangabad ..Appellant

Vs.

The State of Maharashtra ..Respondent

Mr.N.S.Ghanekar, Advocate i/b. Mr.Joydeep Chatterji, Advocate for
appellant in Cri. Appeal No.801 of 2015

Mr.R.N.Dhorde, Senior Advocate i/b. Mr.V.R.Dhorde, Advocate for
appellant in Cri. Appeal No.809 of 2015

Mr.A.G.Talhar, A.S.G. assisted by Mr.Madhur Golegaonkar, Advocate for
C.B.I.

Mr.S.P.Sonpawale, APP for respondent – State

**CORAM : R.G.AVACHAT, J.
RESERVED ON : APRIL 19, 2022
PRONOUNCED ON : NOVEMBER 21, 2022**

JUDGMENT :-

Both these appeals from conviction are being decided by this common judgment since the challenge therein is to the order of conviction and sentence dated 09.10.2015 passed by learned Special Judge (C.B.I.), Aurangabad, in Special Case No.1 of 2010. Vide the impugned judgment and order, the appellants have been convicted and consequentially sentenced, as stated below:-

Criminal Appeal No.	Name of appellant	Section	Sentence of imprisonment
801 of 2015	Ravindra Gurbhej Singh Guruditta (Orig. accused no.2)	8 of Prevention of Corruption Act, 1988	R.I. for two years and to pay fine of Rs.25,000/-, in default, S.I. for six months
809 of 2015	Baban s/o. Bhausahab Awsarmal (Orig. accused no.1)	7 of Prevention of Corruption Act, 1988	R.I. for two years and to pay fine of Rs.25,000/-, in default, S.I. for six months
		13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988	R.I. for two years and to pay fine of Rs.25,000/-, in default, S.I. for three months

2. For the sake of convenience, the parties to the appeals are referred to as appellant no.1 and appellant no.2 (i.e. appellants in Criminal Appeal Nos.801 of 2015 and 809 of 2015, respectively).

3. The facts giving rise to the present appeals are as

under:-

Appellant no.2 was serving as a Stenographer to the Senior Regional Manager, Hindustan Petroleum Corporation Ltd., (H.P.C.L.), Chikalthana, Aurangabad. Wife of appellant no.1 was a dealer of H.P.C.L.'s LPG Gas agency at Khultabad. H.P.C.L. and two other petroleum corporations had issued a common advertisement for grant of LPG distribution dealerships for various places in the State of Maharashtra. PW 1 – Srichand Jagiasi (complainant) had filed four applications for grant of LPG dealership for Aurangabad. As per the procedure for grant of dealership, the complainant and other applicants were interviewed. The result was declared on H.P.C.L. website on 18.06.2009. The selection committee selected three candidates. The complainant was at serial no.2. He had secured 97 marks. One Smt.Devyani Patil was at serial no.1. She had secured 98 marks. The complainant thought that something amiss had happened in the selection process. On the day of declaration of the result, he, therefore, made oral protest with the office of Regional Manager, H.P.C.L. He had also filed an application under the Right to Information Act for obtaining certain documents.

4. It is the case of the complainant that appellant no.1

contacted him on cell phone on 27.06.2009. He, therefore, met appellant no.1 at Kranti Chowk, Aurangabad. He told the complainant that declaration of the result was not final. Further selection procedure was in the hands of the local Officers of H.P.C.L. He asked the complainant that if he (complainant) could cough-up Rs.Five Lakhs, LPG dealership would be granted to him.

5. Appellant no.1 told the complainant the procedure and lacunae in the application of the first empanelled candidate, Smt.Devyani Patil. Appellant no.1 further informed the complainant that the amount is to be paid to appellant no.2 and he, in turn, would manage everything. The complainant, since did not want to pay illegal gratification, approached the Anti Corruption Bureau Wing (A.C.B.) of the Central Bureau of Investigation (C.B.I.) on cell phone. Ms.Vidya Kulkarni, Superintendent of Police, A.C.B., C.B.I., recorded the First Information Report (FIR - Exh.67) lodged by the complainant on 02.07.2009. She, in turn, told the complainant that her Officers would be visiting Aurangabad on the following day. Accordingly, C.B.I. team came to Aurangabad. The complainant lodged with them a written complaint (Exh.42).

6. PW 7 - Nagesh Parab, who was working as C.B.I.

Inspector, first decided to verify the demand and then to lay a trap. Presence of two nationalised bank officials was secured to act as panch witnesses. A phone call was made to appellant no.1 in their presence. The conversation between the complainant and appellant no.1 was recorded in micro SD card and transcript thereof was prepared. From the talks, Shri Parab, C.B.I. Inspector, confirmed it to be a case of demand of illegal gratification. During the talks itself, appellant no.1 had told the complainant that he would visit his residence next day. It was, therefore, decided to lay a trap. The complainant withdrew a sum of Rs.5 Lakhs from his bank. A pre-trap panchnama (Exh.76) and demand verification panchnama was also drawn (Exh.75). All the concerned were given due instructions. Accordingly, the C.B.I. team came to the residence of the complainant on 04.07.2009. The C.B.I. Officers remained at the upstairs premises.

7. PW 2 – Upendra was asked to act as a shadow witness. He was instructed to remain with the complainant. Appellant no.1 came along with his friend at the residence of the complainant by little past 1.30 p.m. Having seen PW 2 – shadow witness around, he became uncomfortable. The complainant, therefore, asked PW 2 - shadow witness and the friend of appellant no.1 to go out of the

drawing room. They went out. PW 2 – shadow witness remained near a window of the drawing room. From the window, he could view and hear all the happenings in the room. After a brief discussion, appellant no.1 made demand of Rs.5 Lakhs by gestures. The complainant went inside his house and came out with Rs.5 Lakhs (five bundles) smeared with anthracene powder. He paid the money to appellant no.1. For assurance of the work, the complainant asked appellant no.1 to make a phone call to appellant no.2. Accordingly, phone call was made. Appellant no.2 assured to do the needful. Thereafter, the complainant gave a call to his son saying, “Niki Niki”, as a pre-determined signal. The C.B.I. Officers immediately came down. A sum of Rs.5 Lakhs received by appellant no.1 came to be seized. A panchnama in that regard (Exh.77) was drawn. As planned, all the happenings that took place between the complainant, appellant no.1 and appellant no.2 came to be recorded in micro SD card. The transcript thereof was prepared in the presence of panch witness and Court official. Voice samples of both the appellants were obtained. The recorded conversation along with the voice samples were submitted to C.F.S.L. for analysis and report. The expert's report is positive.

8. The statements of the persons acquainted with the facts

and circumstances were recorded. The Calls Data Record (CDR) and other details regarding the cell phones used in the commission of the offence came to be obtained from the concerned cellular companies. On completion of the investigation, both the appellants were proceeded against by filing charge sheet.

9. Learned Judge of the trial Court framed Charge (Exh.11). The appellants pleaded not guilty. The defence version of the appellants would be referred to later on.

10. The prosecution examined eight witnesses and produced in evidence certain documents. The appellants also examined two witnesses in their defence. The trial Court, on appreciation of the evidence in the case, convicted and sentenced the appellants, as stated above.

11. Heard learned counsel for the parties.

12. Mr.N.S.Ghanekar, learned counsel i/b. Mr.Joydeep Chatterji, learned counsel for appellant no.1 (i.e. appellant in Criminal Appeal No.801 of 2015), would submit that the complainant was a practicing Advocate. He could not do any kind of business during practicing the profession of advocacy. The complainant

obtained experience certificate of doing same business for four years during practicing advocacy. Same indicates that a false certificate was obtained by him. There is evidence to indicate the complainant, during the early days of declaration of the result as to allotment of dealership, had made telephonic calls to C.B.I., at Mumbai office. The evidence indicates that he thought something amiss had happened in the selection process. He felt to have been ditched by H.P.C.L. Officers. He also felt that Smt.Devyani Patil was given extra edge over his claim. H.P.C.L. Officers had favoured her out of the way. Learned counsel also brought to the notice of this Court glaring inconsistencies *inter-se* the examination-in-chief of the complainant and the cross-examination. According to learned counsel, the evidence of the complainant on material points, was proved to be untrue. He would further submit that the C.D.Rs. could not be read in evidence for want of certificate under Section 65-B of the Evidence Act. He would further submit that the shadow witness was not present when the alleged bribe money was paid. There was no evidence to indicate that from the place whereat the shadow witness was present, all the happenings in the drawing room of the complainant's residence, were visible and audible as well.

He would further submit that appellant no.1 would

respect the complainant. He was complainant's client as well. Wives of both of them were related to each other. Appellant no.1's wife holds LPG distribution agency. The complainant wanted to set up his son in the business. He, therefore, requested appellant no.1 to let his son be a partner in his LPG agency. A sum of Rs.5,70,000/- was outstanding, i.e. his wife owed that much amount to H.P.C.L. Unless the dues were cleared, the H.P.C.L. was not going allow the complainant's son to enter into the partnership. The amount that was received by appellant no.1 was towards the share in the capital of the partnership business. The amount was paid by the complainant for being, in turn, deposited with H.P.C.L. The complainant did everything with a view to teach H.P.C.L. authorities a lesson, since his so called legitimate claim for grant of LPG partnership, was defeated by the H.P.C.L. authorities.

13. Mr.R.N.Dhorde, learned senior counsel for appellant no.2 (i.e. appellant in Criminal Appeal No.809 of 2015), would, on the other hand, submit that there were no direct talks between appellant no.2 and the complainant, making alleged demand of illegal gratification. Appellant no.2 was a Stenographer. He did not have any authority either to grant or interfere with the procedure of

allotment of LPG dealership. The case propounded by the prosecution was illogical. Appellant no.2's wife had made a joint application with the empanelled candidate, Devyani Patil, for grant of LPG dealership. Appellant no.2, therefore, even could not have thought of defeating the claim of Devyani Patil. According to learned senior counsel, whatever conversation allegedly took place between both the appellants and the complainant on the phone, would, in no way, suggest appellant no.2 to have had made a demand of illegal gratification through appellant no.1 and even accepted the same. According to learned senior counsel, at least, benefit of doubt must go to appellant no.2. Relying on the Apex Court authorities, learned senior counsel would submit that for conviction for the offence under Section 7 of Prevention of Corruption Act, proof of demand of illegal gratification is *sine qua non*. He would further submit that no presumption could be drawn unless proof of acceptance of illegal gratification pursuant to such demand, is proved. He relied on the following citations:-

- (i) N. Sunkanna Vs. State of Andhra Pradesh, (2016)1 SCC 713;
- (ii) T.K. Ramesh Kumar Vs. State Through Police Inspector, Bangalore, (2015)15 SCC 629;

- (iii) P. Satyanarayana Murthy Vs. Dist. Inspector of Police and anr., AIR 2015 SCW 5263;
- (iv) Prabhat Kumar Gupta Vs. State of Maharashtra and anr., (2014)14 SCC 516;
- (v) State of Kerala and anr. Vs. C.P. Rao, (2011)6 SCC 450;
- (vi) B. Jayaraj Vs. State of Andhra Pradesh, (2014)13 SCC 55;
- (vii) C.M. Girish Babu Vs. CBI, Cochin, (2009)3 SCC 779;
- (viii) Judgment of Bombay High Court (Aurangabad Bench) in the case of Devidas s/o. Harichandra Bhaskar, Jalgaon, Tq. and Dist.Jalgaon Vs. The State of Maharashtra, through Police Inspector, Anti Corruption Bureau, Jalgaon, Dist. Jalgaon, (Criminal Appeal No.918 of 2015 dated 06.10.2020;
- (ix) Anvar P.V. Vs. P.K.Basheer and ors., (2014)10 SCC 473;
- (x) Mahesh Ramesh Jadhav Vs. State of Maharashtra, 2019 All MR (Cri) 4056;

14. Learned counsel for the appellants in both the appeals, ultimately, urged for allowing the appeals.

15. Mr.Talhar, learned A.S.G., would, on the other hand, submit that on appreciation of the entire evidence in the case, the trial Court has rightly convicted both the appellants. He has placed on record his written submissions along with the authorities relied

on.

16. Considered the submissions advanced. Perused the evidence relied on.

17. Let us appreciate the evidence in the case to find, whether the trial court was justified to convict the appellants herein. Although eight witnesses have been examined in proof of the Charge, for deciding the present appeals, relevant evidence would be that of the complainant, shadow witness and the Investigating Officer. The sanction (Exh.92) accorded for prosecution of appellant no.2 has not been taken exception to before this Court. The evidence of the officials of the cellular companies (PW 3 and PW 4) is also not adverted to, since the C.D.R. produced by them and admitted in evidence, were not supported by the certificate under Section 65-B of the Evidence Act.

18. The complainant had, admittedly, applied for H.P.C.L.'s LPG gas agency for Aurangabad. As per the advertisement, he had filed four applications for grant of one and the same dealership. The complainant was, admittedly, a practicing Advocate of long standing. For grant of LPG dealership, the complainant and other applicants were interviewed by the selection committee. The result thereof was

declared on H.P.C.L.'s website on 18.06.2009. The complainant was at serial no.2. He had secured 97 marks. One Smt.Devyani Patil was at serial no.1 by securing 98 marks. Admittedly, the complainant thought something wrong might have happened with the selection procedure. He felt that his case was better than the claim of Devyani Patil. The complainant, therefore, admittedly, registered oral protest with the Regional Manager of H.P.C.L. on the next day itself. He had even applied under R.T.I. Act for certain documents.

19. It is in the evidence of the complainant that on 27.06.2009, he received a phone call of appellant no.1. He, therefore, met him at Kranti Chowk, Aurangabad. Appellant no.1 told him that though result is declared, still the distribution selection procedure was in the hands of local Officers. He was also informed that the result could still be tilted in his favour. The complainant was informed by appellant no.1 that there were monetary dealing between Devyani Patil and appellant no.2. Devyani Patil had promised appellant no.2 to pay him certain amount as illegal gratification. Half of the amount was even paid in advance. On declaration of the result, Devyani Patil showed no inclination to pay appellant no.2 the balance amount. He (appellant no.2), therefore,

wanted to teach her lesson. He was, therefore, ready to help the complainant. The complainant was even informed that there were defects in the application of Devyani Patil. The site proposed by her for godown and showroom, was not in accordance with the prescribed norms. The field committee of H.P.C.L., on visit of the site, would certainly reject the same. It is further in the evidence of the complainant that he asked appellant no.1 to make a phone call to appellant no.2 in confirmation thereof. Accordingly, call was made. The phone was kept on loudspeaker mode. The complainant heard the talks and realised that appellant no.2 would do his work. The complainant, therefore, became ready to pay a sum of Rs.5 Lakhs, as demanded by appellant no.1. It was also informed to the complainant that the amount was to be paid to appellant no.2, who agreed to manage the officers of H.P.C.L. involved in the selection for grant of LPG dealership.

20. It is further in the evidence of the complainant that he had gone to Baroda for marriage of one of his relations. He was on his way back from Baroda on 02.07.2009. He contacted Superintendent of Police, C.B.I., A.C.B. Wing, Pune. Ms.Vidya Kulkarni, S.P., received the call. He made her complaint (FIR –

Exh.67). Ms.Vidya Kulkarni, S.P., told him that she would be visiting Aurangabad with with her staff on the following day. She asked the complainant to keep ready the amount of Rs.5 Lakhs with him. The C.B.I. Officers came to Aurangabad next day. The complainant met them at M.S.E.B. Guest House, Aurangabad. Shri.Parab (PW 7) was one of the members of C.B.I. team. He secured presence of two bank officials to act as panch witnesses. The complainant again made a written complainant (Exh.42) to Shri.Parab. The same was shown to both the panchas. Shri.Parab then gave them demonstration of digital recorder. He decided first to have demand of illegal gratification verified. The complainant, therefore, made a phone call to appellant no.1 by 11.15 a.m. The call was not responded to. After a few seconds, appellant no.1 sent him SMS, informing to have been in H.P.C.L. meeting. Until 3.00 p.m., no call was received by appellant no.1. The complainant, therefore, again made him a phone call. Again, there was no response. A message was, however, sent by appellant no.1 asking to wait for 15 minutes. A cellphone call was received after a while. It was made by appellant no.1. The digital voice recorder was placed into service, as planned. The cellphone was placed on loudspeaker mode. It was about 4.00 p.m. The call made by appellant no.1 to the complainant

lasted for 4 minutes and 32 seconds. The conversation came to be recorded in digital voice recorder. After the call was over, the recorded conversation was again played. Shri.Parab was satisfied that it was a case of demand of illegal gratification. He, therefore, prepared the demand verification panchnama (Exh.75). During conversation, appellant no.1 told the complainant that the work of selection of the complainant for LPG dealership is in progress. He further told that Shri. Sanjay Adsul, Senior Regional Manager, H.P.C.L., was out of station and after his return to Aurangabad, the date of meeting of the coordination committee will be held. The complainant asked appellant no.1 the names of the members of the co-ordination committee. He told that Sanjay Adsul will be one of the members and he did not know the names of other two members. He further told the complainant that appellant no.2 will manage all the members of the co-ordination committee. The complainant asked appellant no.1 as to whom the bribe of Rs.5,00,000/- will be paid and whether it can be reduced. Appellant no.1 told that the amount of demanded bribe cannot be reduced or increased. Appellant no.1 told that the entire amount was to be paid to appellant no.2. The complainant asked appellant no.1, as to whether after payment of the amount, his work will be done or not.

Thereon, appellant no.1 assured the complainant that his work will be done after payment of the demanded amount. The complainant asked appellant no.1 for arranging his meeting with appellant no.2. The appellant no.1 told that he will talk with appellant no.2 and will again make phone call to the complainant after 06.00 p.m._

21. It is further in the evidence of the complainant that until 8.20 p.m. of 03.07.2009, no further call was received from appellant no.1. He, therefore, made him a cellphone call. Appellant no.1 did not receive the call. He however sent the complainant an SMS that he would visit his residence by 11.30 a.m. on the following day. Shri.Parab, therefore, decided to arrange for a trap at the complainant's residence. A pre-trap panchnama was drawn. Anthracene powder was applied to the currency notes. The complainant and the shadow witness were duly instructed. As planned, the C.B.I. team along with the panchas went to the residence of the complainant the following morning. PW 2 (shadow witness) remained in the company of the complainant. Appellant no.1 did not come for long. The complainant had to make him a phone call, but he did not respond. The complainant, however, received his SMS - "coming within ten minutes". The micro SD card

was, therefore, inserted in the voice recorder. It was switched on. Appellant no.1 and his friend came to the complainant's residence at 1.30 p.m. The complainant switched on the voice recorder. He greeted appellant no.1. It is in the evidence of the complainant that on having seen the shadow witness, appellant no.1 became uncomfortable. The complainant, therefore, asked PW 2 – shadow witness and the friend of appellant no.1 to sit outside. Both of them obliged. The shadow witness remained at the window of the drawing room, wherefrom the conversation and the happenings in the drawing room were visible and audible as well. It is further in the evidence of the complainant that appellant no.1 started talks in relation to H.P.C.L. dealership. He asked the complainant to continue with the objection, which he had raised with H.P.C.L. authority, on declaration of the result. Appellant no.1 also told him that the committee comprising Sanjay Adsul (Senior Regional Manager of H.P.C.L.) will look into his claim and remove the first empanelled candidate – Devyani Patil. Same will weigh for grant of dealership in his favour. It is further in his evidence that appellant no.1, thereafter, made demand of bribe money by giving gestures of five fingers. The complainant then went inside of his bedroom and came with an envelope of five bundles of currency notes amounting

to Rs.5 Lakhs. He paid the amount to appellant no.1. It is further in his evidence that he told the appellant no.1 that since huge amount was paid to him, he should make call to appellant no.2 as assurance for the work. Appellant no.1, accordingly, made a phone call to appellant no.2. The conversation between the two could be heard by him. He recognised the voice of appellant no.2. He was told by appellant no.1 to have received the sum of Rs.5 Lakhs. Appellant no.2 confirmed the figure of Rs.5 Lakhs. He also asked appellant no.1 to keep the amount with him and when he need the amount, he will call him. The complainant then intervened the talks. He told appellant no.2 that the amount is for seeking H.P.C.L. gas agency for Aurangabad city. Appellant no.2 replied that his job would be done. Thereafter, for two minutes, there was some other talk. The complainant then gave the pre-determined determined signal with loudly calling the name of his son as "Niki Niki". The C.B.I. team immediately came downstairs. The sum of Rs.5 Lakhs came to be seized from appellant no.1. Trap panchnama was drawn then and there. The recorded conversation was played. It is in the evidence of the complainant that on 17.11.2009, he visited the M.S.E.B. Guest House. Transcript of the conversation recorded on both 3rd and 4th July was prepared there in the presence of the panchas in

that regard (Exh.57).

22. The recorded conversation in the S.D. card was also played before the trial Court. The trial Court has observed that the voice in the recorded conversation was clear and audible as well.

23. The complainant was subjected to searching cross-examination. In response to the questions put to him during cross-examination, it has come on record that appellant no.1 had a long acquaintance with the complainant. He had complete confidence in the complainant. Appellant no.1's wife held LPG dealership at Khultabad. The complainant had, therefore, visited the same. It is the complainant's explanation that his visit was with a view to have know-how of the business since he had applied for LPG dealership. On the day on which the result was declared, the complainant felt that something wrong was done by H.P.C.L. officers. He also thought that the officers of H.P.C.L. helped Devyani Patil out of the way. He felt to have been ditched. He, however, denied to have annoyed with the H.P.C.L. officers and therefore, decided to teach them a lesson. Admittedly, he had registered oral protest on 19.06.2009 itself. He was in the know that Devyani Patil had furnished false experience certificate. One Shri.Kakade of Venkatesh

Gas Agency, issued her the experience certificate. Shri.Kakade had met the complainant and told him the same. It was known to him before the results were declared. He, however, did not make any complaint in that regard before declaration of the result. Devyani Patil had political background. Her husband was a Member of Legislative Assembly and her father-in-law was a Member of Parliament. He had made a communication with I.E.M. (Independent External Monitor, H.P.C.L.). The Hon'ble Chief Justice (Retd.) was the head thereof. The complainant had even preferred Writ Petition, seeking direction to H.P.C.L. officers to act on his complaint. His evidence indicates that on account of his such steps, LPG dealership had not been granted to Devyani Patil.

24. It is further in the evidence of the complainant that though cellphone no.9822095082 was in the name of his wife, the same was being used by him. It is further in his evidence that his father and brother were in judiciary. One has resigned and the other has taken voluntary retirement. It is further in his evidence that his conversation with appellant no.1 dated 27.06.2009 has not been recorded. No third person was present during his meeting with appellant no.1 at Kranti Chowk on that day. Except his oral version,

there is no evidence in corroboration of his meeting and the conversation during the same. He was candid enough to admit that during the talks on cellphone dated 27.06.2009, appellant no.1 did not speak about the bribe money. He, however, denied to have had not met the appellant no.1 at Kranti Chowk on 27.06.2009. He also denied to have had made any cellphone call to C.B.I. office at Mumbai on 19.06.2009. In the FIR lodged by him on cellphone, he did not name appellant no.2. He was candid enough to admit that appellant no.2 did not directly make demand of Rs.5 Lakhs. He has categorically denied the defence version that the amount was paid by him for being paid to H.P.C.L. towards appellant no.1's dues, since his proposal to enter into the partnership to run the existing LPG agency in the name of appellant no.1's wife, could not have been processed without such payment. All the suggestions in that regard have been denied by him. He also denied that he was determined to take revenge of H.P.C.L. officers through appellant no.1, as he was a man of confidence. He was also confronted with his written complaint Exh.67. The matter which has been deposed to by him in the examination-in-chief namely, marks D1 to D11 were not part of his written complaint. He has admitted that before 27.06.2009, there was no demand of bribe from any of the

appellants. He had no acquaintance with C.B.I. officers before 27.06.2009. It was only post 27.06.2009, he had reason to get cellphone and telephone numbers of C.B.I. officers. He denied to have had made call on the landline of C.B.I. office at Mumbai on 19.06.2009. The C.D.R., however, indicates that such call was made by him. He had filed work experience certificate for the years 1984 to 1986, during which he was a practicing Advocate.

25. The complainant stated to the Superintendent of Police, C.B.I. that appellant no.1 had told him that though the results were declared, the dealership selection procedure was in the hands of the local officers of H.P.C.L. and the result can be tilted in his favour. It is the portion marked as 'D-9' in his examination-in-chief. These facts were not communicated by him to the S.P., C.B.I., Pune, when he had filed the written compliant. When the complainant filed the written complaint dated 02.07.2009, he had stated that appellant no.1 met him at Kranti Chowk on 27.06.2009 at about 12.30 p.m. and told that there were monetary dealing between appellant no.2 and the first empanelled candidate. He also stated that appellant no.1 had told that the first empanelled candidate – Devyani had paid 50% amount of the monetary dealing to appellant no.2 and the

remaining 50% amount was to be received by appellant no.2 after declaration of result of her selection. Appellant no.1 also told the complainant that after declaration of the result, Smt.Devyani had refused to pay the remaining 50% amount to appellant no.2 and for teaching a lesson to Smt.Devyani, appellant no.2 was ready to help the complainant. He stated that all these facts were not mentioned by him in his written complaint to S.P., C.B.I., Pune.

26. In the cross-examination, the complainant also stated that he apprised the S.P., C.B.I., Pune, on telephone that he was not satisfied on the information given by appellant no.1 and therefore, he had told appellant no.1 to explain as to how appellant no.2 can change result of the selection process. Thereafter, appellant no.1 told that appellant no.2 was related to Smt. Devyani Patil and he knows the defects in her application and that the site proposed by her for godown and showroom, was not according to the norms of H.P.C.L. Her experience certificate was also false. The complainant stated that all these facts were not mentioned in his written complaint.

The complainant also communicated to S.P., C.B.I., Pune, that appellant no.1 told that if the complainant would pay the

amount of Rs.5 Lakhs to appellant no.2, he would influence the co-ordination committee members to get result of the selection process in favour of the complainant. The complaint told appellant no.1 that he is going to Baroda and will pay the amount to appellant no.2 after returning back to Aurangabad. Appellant no.1 made phone call to appellant no.2 and kept the same on loudspeaker mode. Appellant no.1 informed appellant no.2 that the complainant was ready to pay the amount of Rs.5 Lakhs and he should proceed ahead with the work of the complainant's selection for the dealership. Appellant no.2 gave assurance. The complainant recognised the voice of appellant no.2 and convinced that the demand for the amount was from him. All these facts were not mentioned by the complainant in his written complaint. He also stated to have not remembered as to whether he had mentioned in his complaint that on 27.06.2009, appellant no.1 had kept his cell phone on loudspeaker mode so as to enable him to listen the talks between both the appellants.

27. PW 2 – Upendra Sondoule, shadow witness, testified that on the directions of his Officer, he appeared before C.B.I. officers on 03.07.2004 at M.S.E.B. Guest House, Aurangabad. He was the Chief

Manager of Bank of Maharashtra, City Branch, Aurangabad. One Prakash Tribhuwan, another bank official working with him had also accompanied him to act as panch witness. It is further in his evidence that the complainant was present there. The C.B.I. Officer Shri Parab was very much there. The contents of the written complaint (Exh.42) lodged by the complainant were verified. It was decided to make verification of the demand of illegal gratification. The complainant, therefore, made appellant no.1 phone call by 11.50 a.m. There was no response. However, appellant no.1 sent SMS to the complainant that he was busy in meeting and will call lateron. Till 3.00 p.m., there was no phone call from appellant no.1. At 3.00 p.m., the complainant again made phone call to appellant no.1 but it was not received by him. Appellant no.1, however, sent another SMS - "15 minutes". It was decided to record the call on voice recorded. Shri.Parab gave demonstration of recording. This witness along with another panch witness signed the S.D. card and kept the same in the voice recorder. It was decided to keep the mobile phone of the complainant on loudspeaker mode whenever there would be call from appellant no.1.

28. It is further in the evidence PW 2 – Upendra, shadow

witness, that by 04.00 p.m., the complainant received a phone call of appellant no.1. The phone was kept on loudspeaker mode. Arrangement for recording of call was in place. He heard the conversation. It was as under:-

“..... It was like that your Gas Agency work is in process. Regional Manager had gone out of station. After he returns back, there will be a meeting of co-ordination committee. Thereafter, Shri Jagiasi asked him as to who will be the members in the said co-ordination committee. Thereupon, Shri Guruditta said that he is not aware about the same. Then, Shri Jagiasi asked him, to whom money is to be paid. Thereupon, he said that money is to be paid to Shri Babanrao Awasarmal and rest of the things he will manage. Shri Jagiasi told him that he had returned from Baroda only yesterday and he will not be available in the next 15 days. Therefore, he told him that he was ready to pay the money to him immediately. Shri Jagiasi told him that he should inform about the place where they will have to meet so that money can be paid to him. He replied that after consulting, he will inform about the same to him. Besides the above, there were many other talks between the two and thereafter the call ended.”

29. It is further in the evidence of PW 2 – Upendra that by 08.20 p.m., the complainant received S.M.S. of appellant no.1, informing that he would be visiting his residence by 11.30 on the following morning. This witness went on to depose that the panchnama of the entire happenings was prepared. S.D. card containing recorded conversation was sealed. He signed the

panchnama. The currency notes were applied anthracene powder. Pre-trap panchnama (Exh.76) was prepared. It is further in his evidence that on the following day, i.e. on 04.07.2009, he went to M.S.E.B. Guest House. He accompanied the C.B.I. team to the residence of the complainant. He remained in the company of the complainant in the drawing room of his residence. The C.B.I. team remained on up-stair premises. Appellant no.1 did not come. The complainant, therefore, made him a phone call by 12.15 p.m. The call was not received. Appellant no.1, however, sent S.M.S. informing to have been coming within 10 minutes. It is further in his evidence that appellant no.1 came along with his friend by 01.00 p.m. The complainant asked this witness and the companion of appellant no.1 to go outside of the drawing room. He, therefore, went out. He kept himself at the window of the drawing room. All the happenings in the drawing room were audible and visible to him. It is further in his evidence that there were talks between the complainant and appellant no.1. Appellant no.1 then showed the complainant five fingers of his hand. The complainant then went inside the bed room and came back with bribe money. He handed over the same to appellant no.1. Further deposition of this witness as under :-

“6.....Thereafter, Shri. Guruditta kept the said bribe amount in the said plastic bag. Shri Jagiasi told Shri Guruditta that now he had received the amount, therefore, he should inform to Shri. Awasarmal about receipt of the same. Then, Shri Guruditta made a phone call from his mobile on the mobile of Shri. Awasarmal and told him that he had received the bribe amount, so the work should be done and at that time, the mobile phone of Shri Guruditta was on speaker mode, therefore, we could hear the conversation. During the said phone call, Shri Jagiasi also had a talk with Shri Awasarmal on the said mobile. He told Shri Awasarmal that the work of LPG Gas Agency should be done. Thereupon, Shri Awasarmal said that it will be done.....”

30. PW 2 – Upendra, shadow witness, further deposed that the complainant then gave the predetermined signal by calling in the name of his son “Niki Niki”. The C.B.I. officers immediately came down. A sum of Rs.5 Lakhs received by appellant no.1 came to be seized. A panchnama in that regard (Exh.77) was drawn. As planned, all the talk that took place between the complainant, appellant no.1 and appellant no.2 came to be recorded in micro SD card. The transcript thereof was prepared in the presence of this witness (PW 2 - Upendra) and another panch witness. Voice samples of both the appellants were obtained. The recorded conversation along with the voice samples were submitted to C.F.S.L. for analysis

and report.

31. A panchnama of seizure of the bribe money was drawn. He signed the panchnama. The S.D. card containing conversation was played. The same was also taken charge of under post trap panchnama (Exh.77). It is further in his evidence that on 17.11.2009, he and another panch went to the M.S.E.B. Guest House. The transcript of the conversation in the S.D. card was prepared in their presence. The voice samples of the complainant and both the appellants were obtained. The recorded conversation was played. The voice therein was identified. The panchnama in that regard was made vide Exh.79.

32. PW 2 – Upendra was subjected to searching cross-examination. It has come in his evidence that it was for the first time, he visited the house of the complainant. Shri.Parab had instructed him to remain in the drawing room itself. In spite of the instructions of Shri.Parab, on asking by the complainant, he went out of the drawing room. He was behaving as per the situation. He did not remember as to whether the window at which he was present, had open grills. No demonstration was made to see that the happenings in the drawing room were audible and visible by a

person standing outside at the window of the drawing room. During telephonic conversation between the complainant and appellant no.1, there was no reference of appellant no.2. Even, in the talks, there was no mention about LPG dealership. The complainant did not introduce himself to appellant no.2 during the talks. After the complainant said something to appellant no.2 on cellphone, appellant no.1 did not have further talks with appellant no.2. This witness admitted that before the complainant had talk with appellant no.2 on cellphone, the talk between both the appellants was over. He denied that all the panchnamas were prepared in one go at the M.S.E.B. Guest House. It has also come in the evidence that one Shri.Gupta, Deputy Superintendent of Police, C.B.I., was also one of the members of the trap party.

33. As stated above, the evidence of PW 5 – C. Ramkrishnan is not referred to, since the sanction (Exh.92) granted by him for prosecution of appellant no.2, is not taken exception to before this Court.

34. PW 6 – Sanjay Adsul was Regional Manager, H.P.C.L., Aurangabad. In his evidence, he has given procedure of the selection for grant of LPG dealership. His evidence is also of little

consequence either for the prosecution or even defence. It is in his evidence that he had not received any complaint against appellant no.2 therefore, as he was superior of appellant no.2.

35. PW 3 – Sachin and PW 4 – Chandrakant, Nodal Officers of Idea and Reliance Cellular companies, respectively, tendered in evidence the C.D.Rs. It is reiterated that for want of certificate under Section 65-B of the Evidence Act, the C.D.Rs. are not being looked into.

36. Then there is evidence of PW 7 – Shri.Parab, Investigating Officer. It is in his evidence that on the direction of his superior, he had come to Aurangabad on 02.07.2009. An FIR (Exh.67) was registered on the cell phone call made by the complainant. He was assigned investigation of the crime registered pursuant to the FIR (Exh.67). He decided to lay a trap on the next date at Aurangabad. He, therefore, secured presence of two bank officials to act as panch witnesses. He first went for verification of demand of illegal gratification. He, therefore, asked the complainant to make cellphone call to the complainant on 03.09.2009. The evidence of this witness as regards demand verification and pre-trap panchnama is very much consistent with the evidence of the

complainant and the shadow witness. Only with a view to avoid repetition, the same is not reiterated. Based on the evidence of this witness, pre-trap panchnama (Exh.76), trap panchnama (Exh.77) and transcript panchnama (Exh.78) were admitted in evidence. He gave the details of procedure he undertook from the stage of demand verification to filing of the charge sheet. His evidence indicates that he obtained voice samples of the complainant and both the appellants. Transcript thereof was also prepared by him in the presence of the panchas and Court official as well, for which he had obtained permission of the Special Court. The recorded conversation along with the voice samples were submitted to C.F.S.L. He received report in that regard. His evidence further indicates that he made some extra investigation to find that the case of the complainant for grant of LPG agency was better than Devyani Patil. He paid visit to the proposed site offered by Devyani Patil for godown and showroom. According to him, a high-tension line was passing overhead the said land. Same was, therefore, not fit for LPG dealership.

37. During the cross-examination of PW 7 - Shri.Parab, C.B.I. Officer, it has come on record that there was no record to

indicate appellant no.1 to have made any phone call to the complainant on 27.06.2009. He did not make any investigation as regards the allegations made in the FIR (Exh.67) and the written complaint (Exh.42) about the incident of demand in June, 2009. He found no phone calls between both the appellants to have been made on 27.06.2009. The time of the meeting of the complainant and appellant no.1 was to be decided after appellant no.1 had talk with appellant no.2. He did not come across any phone call between both the appellants post demand verification panchnama was prepared. The transcript panchnama (Exh.78) was referred to him to elicit his response that during the conversation between appellant no.2 and the complainant, they did neither talk about the dealership nor there was reference of appellant no.2. He found appellant no.2 to have no power to do favour to the complainant in his work. He denied that appellant no.2 did not have any concern with the work of the complainant.

APPRECIATION OF EVIDENCE:-

38. Perused all the authorities relied on by learned Senior Counsel. The demand and acceptance of illegal gratification is a question of fact. The same has to be addressed to on the basis of

the evidence obtainable in the case.

39. Admittedly, the complainant had made an application for grant of H.P.C.L. LPG dealership. In the list of the selected candidates, he stood at serial no.2. Smt.Devyani Patil was at serial no.1. The evidence on record indicates that the field committee of H.P.C.L. pays visit to the site offered by the concerned candidates for godown and showroom of the agency. If such site is found to be in consonance with the norms prescribed and approved by the committee, then and then only, even the candidate at serial no.1 would get the dealership. The Investigating Officer had paid visit to the proposed site, to find that a high-tension wire was passing overhead. It is true that the evidence indicates that the complainant was very much interested to bag the dealership. He, being practicing advocate, may not have been entitled to run the business simultaneously with practicing advocacy. He also furnished the experience certificate of four years. The appellants had, therefore, every reason to contend that a false certificate was obtained and furnished along with the application. There is also evidence to indicate that the complainant, within days of declaration of the result, had made a phone call to the A.C.B., C.B.I., Mumbai, although he denied to have made such a call. The same indicates

that he wanted to make a complaint. He had admitted in no uncertain terms that he felt to have been ditched by H.P.C.L. officers. He also felt that Devyani Patil has been unduly favoured. There is also no evidence, sans the complainant's words that appellant no.1 had made him a phone call on 27.06.2009 and both met at Kranti Chowk. The evidence of the Investigating Officer indicates that the C.D.R. inspected by him did not reveal any call between the two. It needs no mention that the principle *falsus in uno, falsus in omnibus* has no application in India.

40. Admittedly, appellant no.2 had not made any phone call to the complainant or met him to make demand of illegal gratification. The case of the prosecution is that appellant no.2 made such demand through appellant no.1 and even accepted the bribe money through him. As such, there is no direct evidence indicating involvement of appellant no.2. In the FIR (Exh.67) lodged by the complainant on telephone, appellant no.2 has not been alleged to have had made any demand of illegal gratification. Admittedly, on registration of the FIR, C.B.I. Officers came down to Aurangabad. Presence of nationalised bank officials was secured to act as panch witnesses. PW 2 – shadow witness was a high ranking

bank officer. There is no reason to doubt his evidence. Admittedly, the exercise to get the demand verified was carried out. The cellphone call made by the complainant to appellant no.1 came to be recorded. A transcript thereof was prepared in the presence of panchas and even the Court official. Whatever talk took place between the complainant and appellant no.1, has been deposed to by the complainant himself, the shadow witness and the Investigating Officer – Shri.Parab, as well. The gist of the talks between the two, was as under:-

During conversation, appellant no.1 told the complainant that the work of selection of the complainant for LPG dealership is in progress. He further told that Shri. Sanjay Adsul, Senior Regional Manager, H.P.C.L., was out of station and after his return to Aurangabad, the date of meeting of the coordination committee will be held. The complainant asked appellant no.1 the names of the members of the co-ordination committee. He told that Sanjay Adsul will be one of the members and he did not know the names of other two members. He further told the complainant that appellant no.2 will manage all the members of the co-ordination committee. The complainant asked appellant no.1 as to whom the bribe of Rs.5,00,000/- will be paid and whether it can be reduced. Appellant no.1 told that the amount of

demanded bribe cannot be reduced or increased. Appellant no.1 told that the entire amount was to be paid to appellant no.2. The complainant asked appellant no.1, as to whether after payment of the amount, his work will be done or not. Thereon, appellant no.1 assured the complainant that his work will be done after payment of the demanded amount. The complainant asked appellant no.1 for arranging his meeting with appellant no.2. The appellant no.1 told that he will talk with appellant no.2 and will again make phone call to the complainant after 06.00 p.m.

41. The demand verification panchnama is at Exh.75. It is true that there is no evidence to indicate the phone call between both the appellants for fixing time of the meeting between the complainant and appellant no.1. The aforesaid conversation, undoubtedly, indicates that it was in relation to the demand and payment of illegal gratification but everything was between appellant no.1 and the complainant. During verification of the demand, there was no talk between the complainant and appellant no.2. The transcript of the said conversation is at Exh.78.

42. The evidence in no uncertain terms suggests that appellant no.1 had told the complainant that he would be visiting his

residence by 11:00 in the morning on the following day. A pre-trap panchnama was, therefore, drawn. The C.B.I. officers remained at the upstairs premises. The complainant accompanied by PW 2 – shadow witness remained in the drawing room of the complainant's residence. Since appellant no.1 did not come by the given time, the complainant had to make him a phone call. Admittedly, appellant no.1 came to the complainant's residence little past 1.00 p.m. He was accompanied by his friend. As per the evidence of the complainant, appellant no.1 having seen PW 2 – shadow witness, became uncomfortable. The complainant, therefore, asked both shadow witness and the companion of appellant no.1 to go outside. They went. It is after initial talks, appellant no.1 made demand for bribe money with gestures. The talks between the two came to be recorded. Both the recorded conversations were played before the trial Court. The trial Court found the voice therein clear and audible. A transcript of the said conversation was also prepared in the presence of panchas and the Court official. The transcript is at Exh.78. The complainant paid appellant no.1 bribe money. Appellant no.1 has admitted receipt of the amount of Rs.5 Lakhs. The very amount came to be seized from him under panchnama. Appellant no.2 also has admitted that by that time, he had received phone call

of appellant no.1. Said call was made at the insistence of the complainant to get confirmed that the work would be done. It was the complainant's case that since a huge amount came to be paid to appellant no.1, he asked him to make a call to appellant no.2. The transcript of the conversation indicates appellant no.1 to have informed appellant no.2 to have received the amount. The conversation further indicates that appellant no.2 asked appellant no.1 to keep the money with him. He assured that the work would be done. The complainant intervened and spoke with appellant no.2 that it was the work related to the dealership. Appellant no.2 assured "काम हो जाएगा". Then the complainant gave a predetermined signal and rest followed.

43. The voice samples of both the appellants were obtained in the presence of the panchas. The conversation recorded in micro S.D. card and the voice samples were submitted to C.F.S.L. The report thereof is at Exh.109. The same is as under:-

Hence, the voice marked exhibits Q-1(I)(A) & Q-1(II)(A) are the probable voice of the person **(Shri.Ravindra Gurditta @ Babal)** whose specimen voice is marked exhibit S-1(A).

Hence, the voice marked exhibit Q-1(II)(B) is the probable voice of the person **(Shr.Baban Awsarmal)**

whose specimen voice is marked exhibit S-2(A).

44. The conversations between the three indicate that it was the talk in relation to H.P.C.L. dealership and a sum of Rs.5 Lakhs was received by appellant no.1. Appellant no.2 assured that the work of the complainant would be done and he asked appellant no.1 to keep the money with him. Appellant no.2 had specifically asked appellant no.1 in following words:-

मि.बबल	(accused no 2) :	हॅलो.
अवसरमल	(accused no 1) :	हं
मि.बबल	:	हं सर रवींद्र बात कर रहा हू
अवसरमल	:	हं. बोलो.
मि.बबल	:	सर, ओ कॅश पेमेंट आ गया है, मेरे पास वो कॅश लेकर रख दिया है मैंने
अवसरमल	:	हा
मि.बबल	:	ओ कॅश लेके रख लिया मैंने
अवसरमल	:	कितने है
मि.बबल	:	पाच
अवसरमल	:	सात
मि.बबल	:	पाच ले लिया ना
अवसरमल	:	हं हं आपना प्रोसेस चालू है काम हो जायेगा
एँड.जग्यासी (complainant) :		काम होना, काम हो जाना
मि.बबल	:	काम हो जाना सर अपन ने भी commitment ले लिया है और कॅश मेरे पास ले रखी है
अवसरमल	:	हा, तुम्हारे पास रख लो, आपून कैसे है, जो भी उन्होनेच बोला है जबतक काम होता है तबतक पैसे को हाथ नही लगाना है और तुम्हारे पास रख लो, काम हो जायेगा

He also assured the complainant saying, "काम हो जाएगा". It was in

response to the complainant informing him that it was the dealership work. The aforesaid conversation undoubtedly indicates that appellant no.1 must have had appellant no.2's nod to make the demand of Rs.5 Lakhs. Same was received by appellant no.1 for the work of grant of dealership to the complainant. Appellant no.2 agreed to receive the amount from appellant no.1 once the work is done. Till then, he asked him to keep the amount with him. The conversation also indicates appellant no.2 to have verified, whether it was Rs.7 Lakhs or Rs.5 Lakhs that was received by appellant no.1.

45. Now, the question is, whether the amount received, was not as illegal gratification, as is sought to be made out in the defence. Both the appellants examined one witness each in their defence. It is the case of appellant no.1 that his wife has, in her name, H.P.C.L.'s LPG gas agency. The complainant wanted to set up his son in the business. He, therefore, requested appellant no.1 to take his son as a partner in the business of said LPG gas agency. It is his case that a sum of Rs.5,73,000/- was due to H.P.C.L. Unless that was cleared H.P.C.L. authorities would not have allowed the complainant's son to enter into the partnership. Except the bare versions of both the appellants, there is no shred of material in

support of the defence version.

46. The Court is conscious that the accused can make out their defence on preponderance of probabilities. Here, both complainant and appellant no.1 are from business community. If such was the case, for entering into a partnership, there would have been something in writing. When the amount was to be paid towards part of share as contribution in the partnership, the complainant would have paid such amount either by cheque, demand draft or other mode, the evidence whereof would have been retained. It is reiterated that although the defence sought to be made out is intelligent one, there would not be any takers thereto, at least, the Court.

47. In short, this Court found no reason to disbelieve the version of the complainant in material particulars. Same has been reinforced by the shadow witness and the Investigating Officer as well. The demand verification undoubtedly indicates that appellant no.1 had made demand of illegal gratification to be paid to appellant no.2. Although appellant no.2 was not in picture, there is every reason to believe that he was behind the curtain. His role in the

offence is surfaced during telephonic conversations between the trio, i.e., the complainant and both the appellants. The same is reproduced herein above. Appellant no.2, in his defence evidence, admitted receipt of the phone call. The conversations were recorded. Their transcripts were prepared in the presence of panchas and the Court official as well. The recorded conversations were played before the trial Court. The defence version is found to be unacceptable.

48. In view of the above, this Court finds no reason to interfere with the judgment impugned in these appeals. In the result, the appeals fail. The same are dismissed.

[R.G. AVACHAT, J.]

49. After pronouncement of judgment, on oral prayer made by learned counsel for the appellant in both the appeals, the appellants are granted eight weeks' time for surrender.

[R.G. AVACHAT, J.]

KBP