

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

CRIMINAL APPEAL NO. 858 OF 2015

Gokul Pralhadsing Girase Age.35 years, Occ. Service, R/o. Plot No.82, Swami Samarth Nagar, Korit Road, Nandurbar.	..	Appellant [original accused]
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Versus

State of Maharashtra	..	Respondent
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Mr.Joydeep Chatterji, Advocate for the appellant.
Mr.Y.G. Gujarati, APP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	17.10.2022
PRONOUNCED ON	:	21.12.2022

J U D G M E N T :-

01. The appellant/original accused has approached this Court challenging the judgment and order dated 02.11.2015 in Special Case No.23 of 2012, recording conviction for the offences punishable under section 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act [hereinafter referred to as “the Act”], by learned Additional Sessions Judge (Special Judge), Shahada. The sentence awarded is as below :-

. For section 7 of the Act, rigorous imprisonment for one year

and to pay fine of Rs.3000/-, in default, to undergo simple imprisonment for two months.

. For offence punishable under section 13(1)(d) r/w 13(2) of the Act, rigorous imprisonment for one year and to pay fine of Rs.3000/-, in default, to undergo simple imprisonment for two months.

02. The prosecution story in short is that the appellant was working in Co-operative Department at the relevant time at Akkalkuwa. The appellant was prosecuted by the prosecution on the allegation that he had demanded and accepted an amount of Rs.4000/- from the complainant, Chairman of Shantidhan Nagri Sahkari Pat Sanstha [hereinafter referred to as the "Patsanstha"]. For inspection purpose the appellant visited the office of Patsanstha on 02.06.2012. He found that new chairs in large quantity were brought in the office of Patsanstha. On asking the manager of the Patsanstha informed that there was a resolution passed by the Patsanstha and it was decided to distribute these easy chairs to the members of Patsanstha from the profit earned by the Patsanstha. This appellant again at 05.00 p.m. went to the office of the Patsanstha and gave notice asking the Chairman calling for explanation within seven days. The Chairman, therefore, went to the office of

the appellant on 05.06.2012 and gave a letter requesting for permission to distribute said easy chairs to its members of Patsanstha. However, the appellant asked for Rs.4000/- for grant of such permission.

03. It is further case of the prosecution that on 28.06.2012 on telephone the appellant asked the complainant to come on 29.06.2012. The complainant lodged a complaint with the ACB. Pursuant to the complaint a trap was arranged. In the trap, conversation is also recorded. The Anti-corruption Bureau (ACB) lodged prosecution against the appellant. The prosecution examined four witnesses in its support. The prosecution also produced on record a notice issued by the appellant, reply for permission by the Chairman, Sanction Order, complaint etc. The learned Special Judge, after the trial and recording evidence held the appellant guilty and convicted the appellant as stated above.

04. The prosecution examined the complainant as PW-1-Praveen Ranulal Jain. This witness in his evidence has stated that he was working as a Chairman of the Patsanstha having about 525 members. Out of profit of the Patsanstha it was decided to distribute easy chairs to all its members from the

amount of profit for the year 2009-2010 and 2010-2011. A resolution was passed to that effect. The chairs were also brought and were kept in the office of the Patsanstha. On 02.06.2012 this appellant visited the office of Patsanstha at 05.00 p.m. and gave notice Exh.6. Pursuant to this, this witness gave a letter and sought permission. However, no permission was granted and therefore he telephoned on 28.06.2012 to the appellant asking about permission to distribute the easy chairs, on which the appellant told that he would visit office on 29.06.2012. PW.1 thought that permission would be granted, if some payment is made to the appellant. He lodged complaint with the ACB on 28.06.2012. On complaint, the ACB decided to lay a trap. Even voice recorder was given to the complainant. The complainant and shadow witness went to the office of the Assistant Registrar, Co-operative Societies. There the appellant was present. There was discussion about the permission. The appellant in the said discussion demanded an amount of Rs.4000/-. The complainant then went back to his house. The recording from the voice recorder was played and the recording was taken on CD and same was sealed. Thereafter, PW-1, both panchas of the raiding party proceeded towards the office of Assistant Registrar by preparing panchanama. The complainant and panch No.1 went to the office. Remaining members of the raiding party were

outside the office. The voice recorder was again started. It was informed that appellant had gone to Akkalkuwa. So, the raiding party went back to the office of ACB.

05. After coming back to the office of ACB, the complainant called the Assistant Registrar, who directed him to come to Akkalkuwa. The raiding party, therefore, went to Akkalkuwa. After reaching Akkalkuwa call was made to the appellant. The appellant came to bus stand of Akkalkuwa, there the complainant started talking to the appellant. They went to hotel for a tea. After having tea the appellant demanded the amount. The complainant gave Rs.4000/- to the appellant who accepted the amount. Under the pretext of giving tea bill, the complainant went to the counter for payment of the tea and from there gave signal to the raiding party. Immediately, the raiding party came and the raid was successful. The raiding party caught hold the appellant. Since, some people gathered near the hotel, the officer of ACB took the complainant along with the appellant to the police station. On next day, this complainant was called at the office of the ACB. His specimen voice was taken and CD was prepared. It was confirmed that sound already recorded was of the complainant. This witness said that he did not remember the

numbers of currency notes, but he stated that eight currency notes of Rs.500/- were shown to him and he identified the same.

06. This witness in the cross-examination has accepted that the Patsanstha received notice from the office of the Assistant Registrar. To a specific question as to whether he replied the show-cause notice, he accepted that the notice was replied after issuance of show-cause notice. He accepted that the application dated 05.06.2012 is application given to the Assistant Registrar, Taloda. He stated that he was not aware that permission is required from the office of Assistant Registrar for distribution of 'Sahnugruh Anudan'. Before receiving show-cause notice, no permission was obtained from the office of Assistant Registrar for distribution of Chairs. He accepted that the authority for taking permission is Deputy Registrar and he had not made any application to the said authority. He accepted that in the police statement, it is not recorded that the appellant had demanded the amount of Rs.4000/- in the hotel at Akkalkuwa. The suggestion was given that because the accused said that the complainant does not have authority to grant permission for distribution, enraged the complainant and therefore he filed a false report.

07. Certain omissions are brought on record from this evidence.

From the complaint it is seen that this witness proved notice dated 02.06.2012 Exh.6, which clearly shows that it is informed that for distributing gifts it is necessary to get prior approval. From the complaint lodged by this witness dated 26.08.2012, it is clearly seen that it was this witness who was asking time and again as to how much amount is required to pay to him and every time this accused avoided to answer the question. Even he said that he will speak to this witness in a personal visit. In complaint it is written that this complainant believed that unless bribe is paid, the Patsanstha will not get any permission. The complaint is proved and exhibited as Exh.8.

08. PW-2 is one Gautam Bhalerao, who was serving as Joint Registrar at the relevant time and accorded sanction to prosecute the accused. He stated that he received proposal for sanction along with investigation papers. After perusing the papers, he formed an opinion that this is a fit case to accord sanction and he had the authority to appoint and remove the accused.

09. In cross-examination, PW-2 accepted that the accused was serving as Grade-I employee in the office of Assistant Registrar, Co-operative Societies. The post of Assistant Registrar, Co-operative Societies, Taloda was vacant. In

the cross-examination he accepted that there is no provision in the Co-operative Societies Act of granting permission to the Co-operative Societies to distribute gifts to its members. He further accepted that in the sanction order he has not given details regarding documents those were perused by him while granting sanction. He denied that draft sanction order was sent to him and he has signed the same.

10. Next witness is PW-3-Jayesh Padvi, who acted as panch in the trap. He was called in the office of the ACB. He was explained the procedure of trap. He deposed that from Nandurbar they were asked to go to Taloda. Accordingly, the staff persons of the ACB, Nandurbar along with this witness and the complainant went to Taloda. He went along with accused to the office of the accused. They found that the accused was not present and therefore they returned back to the house of the complainant. He stated that when this witness went to the office of the accused, there was meeting with the accused. That time there was conversation between the informant and the accused, where accused made demand of Rs.4000/- from the complainant. Said conversation was recorded in the office recorder. The recording was thereafter recorded in the CD and same was seized. Thus, pre-trap

verification was done and the panchanama was prepared.

11. After verification, the demonstration of anthracene powder was given. Pre-trap panchanama was prepared. As decided, the raiding party again started proceeding towards office of the accused. The informant called the accused on cell phone, wherein he was informed to come to Akkalkuwa as the accused was at Akkalkuwa till 05.00 pm. Because of this communication of the members of the raiding party went to Akkalkuwa towards bus stand and stopped there. The informant again called the accused who was told that the accused was coming towards bus-stand. After that again voice recorder was fixed to the baniyan of the informant. After coming to the accused, the informant requested the accused to come towards tea stall to have tea. Other members of the raiding party were around this panch and the informant; hiding themselves conveniently. After having a tea, the informant took out amount from the pocket of his shirt and handed over it in the right hand of the accused. The informant after coming out, gave signal, upon which the raiding party came there. The Investigating Officer disclosed his identity to the accused. This witness was asked by the Investigating Officer for what this amount is given, upon which he told that amount was given of Rs.4000/- for

the work of Patpedhi. The accused was caught hold by the raiding party. Some people gathered there. Kaccha panchanama was prepared at the spot and from there all persons went to Akkalkuwa police station. He deposed about conducting of the test under ultraviolet lamp and deposed that the shining was noticed on the fingers of the accused. The CD was prepared by taking recording on the CD from the voice recorder. The CD was seized and same is identified.

12. On 01.07.2012 this panch was again called in the office of ACB, Nandurbar, wherein the specimen of the voice of the informant and the accused were recorded and detailed panchanama was prepared. This panchanama is proved by this witness. In the cross-examination he deposed that on 29.06.2012, he was not called by the ACB, Nandurbar. Firstly, he went along with the complainant to the office of Assistant Registrar, Taloda and at that time the accused was not present in the said office and he saw the accused for the first time in the Akkalkuwa. He accepted that after reaching Akkalkuwa and after getting down at Bus stand, they went to the office of Panchayat Samiti, Akkalkuwa, which is located about half a km. away. He accepted that accused asked the informant as to whether he has brought reply

to the notice that was sent to the complainant. He stated that there were two currency notes of Rs.1000/- and four currency notes of Rs.500/- denomination, kept by the informant in the pocket of his pant. In his presence, accused asked the informant as to why they are distributing articles illegally. He specifically accepted that in his presence there was no demand of amount by the accused. He further accepted that they had not gone to cold-drink stall or tea stall in Akkalkuwa. He proved pre-trap panchanama. It does appear from the transcription that there was a talk about payment of Rs.4000/-, however, no work is specifically referred to. No expert is examined to prove whether the voice recording from the voice recorder is of the complainant or the accused.

13. Next witness is PW-4 Investigating Officer Anil Vadnere, who in the examination-in-chief has deposed in detail about recording of complaint, arranging of trap, drawing of panchanma, investigation etc.

14. In the cross-examination, he accepted that he does not have certified knowledge of electronic communication. He accepted that the complainant had not specifically stated before him while lodging the

complaint that accused has demanded bribe amount of Rs.4000/-. He further accepted that even in the statement it is not specifically recorded that there was demand of Rs.4000/- by the complainant. The complainant has not given reply to the show-cause notice issued by the accused. In the further cross-examination, he deposed that he cannot tell exact company of the voice recorder. He had not prepared panchanama of the blank CD. He could not tell as to how conversation from the voice recorder was taken on the laptop. He could not tell name of the software that was downloaded in the laptop. He denied suggestion that he deposed falsely that the complainant gave eight currency notes of Rs.500/-.

15. Thus, in view of this evidence, the learned Advocate for the appellant made following submissions that there is variance between the depositions of PW-1 and PW-2. There is no specific demand by the accused even in the pre-trap verification panchanama. In the evidence of the complainant, he does not say about bribe amount. From this evidence itself he stated that inspite of repeatedly asking about bribe amount, the accused did not respond by saying that he will discuss in the personal visit, it was for that reason, it was decided to go for verification. From the transcription it is

seen that it is the complainant who was asking repeatedly as how much amount he needs to pay. The only answer from the accused was 'four'. Exhibit-6 is not a notice at all. It is the complainant who himself felt that unless amount is paid, his work would not be done. Even from the complaint this fact is clear. In the complaint, there is no mention that the accused has demanded any amount. Though the letter seeking permission was issued, but it has come in the evidence of sanctioning authority that there is no such requirement of obtaining permission for distributing gifts. He mentioned that there are omissions in para 17 of the evidence of PW-2 etc.

16. Learned APP supports case of the prosecution and the judgment. He submitted that the learned Trial Court has rightly arrived at the conclusion and recorded conviction. He submits that from the transcript of the recording it is clear that specifically amount of Rs.4000/- was demanded. He submits that omission is not material. PW-3-Panch has proved demand verification panchanama before trap. Thus, there is demand prior to the trap and also at the time of trap followed by acceptance of the amount. Thus, he submits that all the ingredients required to be proved are proved by the prosecution. In respect of demand, he submitted that these are stray admissions and does not

affect the case of the prosecution. Learned APP submitted that explanation offered in statement under section 313 of Cr.P.C. is different than the immediate explanation offered by the accused and thus the case of the accused is falsified by his own statement and thus accused has not successfully rebut the burden and section 20 of the Act can rightly be invoked in this case.

17. Considering all these submissions it needs to be seen that whether there is any demand and acceptance by the accused. It also needs to be seen that whether sanction is properly granted by the authority by applying its mind.

18. Learned Advocate for the appellant has relied upon following judgments :-

- i) Shri Govinda s/o. Ramaji Dhurve Vs. State of Maharashtra, 2007 ALL MR (Cri.) 594.
- ii) Shridhar Chavan Vs. The State of Maharashtra, 2016 All MR (Cri) 88.
- iii) Shashikant Sitaram Masdekar & Anr. Vs. State of Maharashtra, 2016 ALL MR (Cri) 3775.
- iv) Ramdas Waman Tadge Vs. State of Maharashtra, 2019 ALL MR (Cri) 1833.
- v) Ashok Kumar Bhagchand Wardhani Vs. State of Maharashtra, 2003 ALL MR (Cri) 88.

Learned APP also relied upon following judgments :-

- i) Anand Gopal Gurve Vs. State of Maharashtra, 1992 CRI.L.J. 3064.
- ii) S.C. Goel Vs. State through Central Bureau of Investigation, 2016 AIR (SC) (Supp) 231.
- iii) Indra Vijay Alok Vs. State of Madhya Pradesh, 2015 AIR (SC) 3681.

19. In the judgment of Shri Govinda (Supra), this Court has considered that the prosecution has to prove (i) demand of bribe as gratification and (ii) acceptance of bribe amount by the accused person. Thus, the Court has held that it is duty of the prosecution to prove the charge beyond reasonable doubt. The accused should be considered innocent till it is established otherwise by proper proof of acceptance of illegal gratification. The prosecution has to prove the vital ingredients necessary to establish to procure the conviction for the offences under consideration.

20. Next judgment relied upon is in the case of Shridhar Chavan(Supra). Para 35 of the said judgment is reproduced below :-

35. Judicial pronouncement have also recognized that there are various types of complaints. The one whose complaint is not valid or justifiable, and is not in compliance with the established or accepted rules and standards, is believed to be, often having ulterior intentions in levelling corruption charges

against a public servant. Courts have taken great caution in ascertaining the nature and type of the complainant, in deciding whether an accused is guilty in a given case. The one who mischievously sets bait to one or more public servants and then, traps them after they have acted on the luring of such complainant, is recognized as a 'fishing complainant'. Such traps are deprecated as practically amounting to the abetment of an offence, and artificially creating a crime. In such cases, it would be the duty of the Court to properly scrutinize the evidence of the complainant to ascertain the validity/reliability of his claims and to unmask his ulterior intentions. The appreciation of the evidence of the complainant in a trap case, is required to be done by keeping in mind the type of the complainant."

. Thus, in the present case the complaint itself is lodged under impression that unless money is paid, the work of the complainant would not be done and it is under this impression the complainant followed the accused. It is clear that it is this complainant who was asking time and again as to how much money was to be paid to the accused. Secondly, if at all there was demand by the accused, he would have decided the place or called the complainant in his office or some other place in Taloda itself. In this case, it is clear that on the first occasion when the panch and the complainant went to the office of the accused, he was absent. It is, thereafter, the accused was contacted who was then at Akkalkuwa. So the raiding party went to Akkalkuwa. Thus, it needs to be inferred that the complainant and the raiding party wanted to any how make the trap successful. Therefore, they went on

following the accused.

21. In the case of **Shashikant Sitaram Masdekar (Supra)**, this Court held that merely because defence is found to be false, itself would not establish prosecution case. In that case the Special Judge has subjected the defence to very minute and careful scrutiny and discussed in greater depth than the prosecution evidence and discarded the same. It would be necessary to reproduce some portion from para No.19 of the said judgment.

“19. xxxxxxxxx The learned Special Judge has subjected this defence to a very minute and careful scrutiny, discussed it in greater depth than the prosecution evidence, and discarded the same. In holding the prosecution case as proved, he was greatly influenced by his opinion that the defence was false. In my opinion, the learned Judge was not right in doing so. In the first place, falsity of the defence by itself would not establish the case of the prosecution. It would only be one circumstance that would add strength to the prosecution case. When the prosecution case is basically weak, not supported by satisfactory evidence and suffering from obvious infirmities, it cannot be held as proved merely because the defence is believed to be false. xxxxxxxxx ”

. Thus, the prosecution has to prove that there was voluntary demand made by the accused. In this case it is not story of the prosecution that the complainant on his own has demanded the amount. As is already discussed that it was the complainant, who got impression that unless amount

is paid, his work will not be done and under this impression, he started asking the accused about money to be paid.

22. In the case of Ramdas Waman Tadge (Supra) this Court after discussing various judgments has held that the explanation offered soon after the trap carries weightage and it stands on higher footing. In this case, there was immediate explanation offered, which assumes importance.

23. In the case of Ashok Kumar (Supra) also similar view is reiterated that disclosure of defence at an early point of time gives a ring of truth. In that case also the accused was acquitted by the Court in the appeal.

24. Coming to the judgments cited by learned APP, first case relied upon by him is in the case of Anand Gopal Gurve (Supra). Nagpur Bench of this Court based on judgment in the case of Mohd Iqbal Ahmed Vs. State of Ahdhra Pradesh, AIR 1979 SC 677, held in para 22 as under :-

22. In a case of Mohd. Iqbal Ahmed v. State of Andhra Pradesh, AIR 1979 SC 677 : (1979 Cri. L.J.633), Their Lordships held that (para 3)

"The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which

affords protection to Government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned."

Their Lordships therefore, observed that (para 3)

"It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, and (2) by adducing evidence aliunde to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. What the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same; any subsequent fact which may come into existence after the grant of sanction is wholly irrelevant."

Thus, the Court has held in para 25 of said judgment as under :-

"25. Similarly, in the case in hand, there is no evidence to show what material was placed before Shri Sathe, Conservator of Forest, and there is also no evidence to show that what material has been considered by Shri Sathe while granting sanction for prosecution of the appellant/accused. Therefore, the alleged sanction Exh. 236 is bad in law. The prosecution of the appellant/accused, therefore, being without a valid sanction, without compliance of the Section 6 of the Act, the entire trial including the conviction and sentence recorded against him, is void ab initio."

25. Next judgment cited by learned APP is in the case of S.C. Goel

(Supra). In the said case the Hon'ble Supreme Court confirmed judgment of conviction of the accused. In para 5 of the said judgment it is held as under :-

“5. Insofar as recovery is concerned admittedly the marked currency notes of the denomination of 1,000/-, 500/- and 100/- (amounting to L 10,000/-) were recovered from the left pocket of the jacket of the accused. PW-9 (panch witness) had proved the aforesaid recovery and also the test conducted by dipping the fingers of the accused in chemical of Sodium Bicarbonate. Though in the statement made under Section 313 Cr.P.C., the accused had claimed that the sample of Sodium Bicarbonate was not taken in his presence, there is no cross examination of PW-9 on the said point.”

. The Hon'ble Apex Court considered that defence of accused does not find place in cross-examination of the witness on the said point. It appears that the Court by considering this had confirmed the conviction and also by considering other facts and evidence, rejected the appeal.

26. Next judgment cited by learned APP is in the case of **Indra Vijay Alok (Supra)**. The Hon'ble Apex Court had confirmed the conviction by drawing presumption under section 20 of the Act. Para No.8 of the said judgment is as under :-

“8. We are of the opinion that merely for the reason that DW-6 Sahir has not supported prosecution case, the ring of truth in the prosecution case is not shaken in the present case, particularly, when the statements of remaining witnesses are credible and

trustworthy. It is also pointed out by learned counsel for the appellant that the Investigating Officer R.S. Parihar was not examined by the prosecution. This, in our opinion, has no legs for the reason that it has come on the record that the Investigating Officer R.S. Parihar had died when the prosecution evidence was recorded. Lastly, it is submitted on behalf of the appellant that Bhagobai, mother of the complainant, from whom demand was allegedly made, was not examined, as such it cannot be said that the amount so recovered from the appellant has anything to do with the mutation.”

. Thus, there was evidence laid by the prosecution to prove guilt of the accused. The presumption is drawn after satisfaction that the pre-conditions are fulfilled.

27. Thus, considering the present case it is seen that, the authority who accorded sanction though has stated in the chief that after perusing the documents carefully along with investigation papers sent to him and the material that was produced before him, he came to the conclusion that it was necessary to accord sanction to prosecute the accused. Same witness in para 4 admitted that he had personal knowledge as to why the accused was prosecuted by the ACB, Nandurbar and the case arises out of grant of permission to the Co-operative Society, where the complainant was Chairman for distribution of gift to its members. He further admitted that there is no provision in the Co-operative Societies Act regarding granting permission to

the Co-operative Societies to distribute gifts to its members. Thus, the admission that he has not given details in sanction order as to which document he has perused while according sanction itself is shaken. Thus, relying upon judgment of in the case of Anand Goel (supra), it was necessary for the prosecution to give evidence through this witness to show that entire material was placed before the sanctioning authority and same was considered by the authority. In the said judgment, the decision by Hon'ble Apex Court reported in AIR 1979 SC 677 was considered by the Court.

28. As to the point of demand, the complainant in his examination-in-chief had stated that he himself, panch No.1 and accused started talking and while talking they went towards tea stall/hotel for having tea. They had a tea there. Thereafter, the accused demanded amount and at that time he gave Rs.4000/-. The amount was taken out from the pant and handed it over to the accused by the complainant. However, in the statement before police this material fact is not stated and thus this evidence cannot be considered. Considering evidence of PW-3 i.e. panch, he stated that the informant requested accused to come towards tea stall for having tea. Other members of the raiding party were around them by concealing themselves. After placing

order for tea the informant took the amount from the pocket of his shirt and handed over the same in the right hand of the accused. Thus, there is absence of statement in the evidence as regards demand in the evidence of panch witness and there is variance in the evidence of PW-1 and PW-3. PW-1 stated that complainant took out amount from the pocket of pant and PW-3 stated that the complainant took out amount from the pocket of the shirt. Further admission given in the evidence by PW-3, where he specifically stated that in his presence accused did not demand amount from the complainant. In his examination-in-chief also he has stated nothing about demand by the accused. Thus, it can safely be said that there is no evidence as regards demand of bribe amount by the accused.

29. There is further inconsistency between the evidence of the complainant and panch about denomination of the notes. The complainant had said that there were eight currency notes of Rs.500/- denomination whereas PW-3 stated that there were two currency notes of Rs.1000/- denomination and four currency notes of Rs.500/- denomination.

30. Further as regards submission that voice recording appears to be

extremely doubtful from the evidence of PW-3, in examination-in-chief he had stated that he had gone with the informant to the office of accused for demand verification; whereas in the cross-examination he accepted that he saw accused for the first time at Akkalkuwa, where trap had taken place. So, the evidence of pre-trap verification is falsified by his admission. This witness has further stated that there was call on 01.07.2012 in the office of ACB, Nandurbar for taking specimen of voice. At that time specimen of voice of the informant was recorded and panchanama was drawn. However, in the cross-examination he accepted that after 29.06.2012 he was not called by ACB Officer at their office at Nandurbar. Giving about prompt explanation by the accused, he stated that he had asked the complainant as to on what basis he has distributed gift items and also issued a letter to society. The Chairman got annoyed because of the letter and it was this Chairman, who was calling consistently to the accused for two days and was telling that he is ready to pay the amount and it was following accused. This explanation appears to be probable as from the conversation already recorded and as per the evidence it has come on record that it was the complainant who was trying to follow the accused to somehow rope the accused in the offence. This explanation is proved through evidence of panch PW-3. The role of the complainant in this

case was not less than an abetter. Thus, considering the case of Ramdas Waman Tadge (Supra), this explanation needs to be accepted.

31. In this case it has already come on record that the accused had issued letter asking the complainant to show cause within seven days of the said notice as to on what basis gifts are distributed to the members. It was further stated that permission is necessary before distributing gifts. The complainant has, however, not submitted any explanation but only sought permission by the letter dated 05.06.2012.

32. Coming to the evidence of PW-4 i.e. Investigating Officer, in cross-examination, he admitted that the complainant had not specifically stated before him while lodging complaint that there was demand from the accused of the amount of Rs.4000/-, nor the complainant stated this in the statement. It has also come in the evidence that before receiving show-cause notice from the office of Assistant Registrar, no permission was obtained by the Patsanstha for distribution of the gifts. Thus, all these discussions show that the prosecution has failed to prove guilt of the accused beyond reasonable doubt. This Court, therefore, comes to the conclusion that the appeal deserves to be

allowed and the conviction recorded by Additional Sessions Judge, Shahada (Special Judge) deserves to be quashed and set aside. Hence, following order :-

ORDER

- (i) Appeal allowed.
- (ii) The judgment and order of conviction and sentence dated 02.11.2015 passed in Special Case No.23 of 2012 by Additional Sessions Judge, Shahada (Special Judge) is quashed and set aside.
- (iii) The appellant is acquitted from the offences punishable under sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act.
- (iv) Fine amount, if any, be refunded to the Appellant.
- (v) His bail bond stands cancelled.
- (iv) Appellant to furnish fresh bail bond with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

[KISHORE C. SANT, J.]