

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 369 OF 1998

Gujjar Chinayya Rajmouli
Age : 52 Yrs. Occ : Service,
R/o. Room No.73,
Esmail Ibrahim Bldg. No.35/34,
N.M. Joshi Marg, Bombay, 400 013. ...Appellant

Versus

The State Of Maharashtra ...Respondent

....

Mr. Niranjan Mundargi a/w Mr. Jayant Bardeskar, Advocate for the
Appellant.

Mr. R. M. Pethe, APP for the Respondent – State.

CORAM	:	PRAKASH D. NAIK, J.
JUDGMENT RESERVED ON	:	11th AUGUST, 2021.
APPEAL LISTED FOR DIRECTIONS AND		
CLOSED FOR JUDGMENT ON	:	29th APRIL, 2022.
JUDGMENT PRONOUNCED ON	:	6th MAY, 2022.

JUDGMENT :

1. This appeal is preferred under Section 374 of Code of Criminal Procedure (for short “Cr.P.C.”) challenging the judgment and order dated 16th December, 1997 passed by the Special Judge, Greater Bombay, in Special Case No.33 of 1990, convicting the appellant for offences punishable under Sections 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short

“PC Act”) and sentenced him to suffer rigorous imprisonment for two years and to pay fine of Rs.2,000/-.

2. The brief facts of the prosecution case are as under :-

i. The accused was working as an Associate in the Bombay High Court. The complainant is hotelier by business. He was also secretary of Pant Nagar Shankar Sadan Co-operative Housing Society, Ghatkopar.

ii. In the year – 1988, three occupants in the society extended balconies of their respective flats in the open space of the society without seeking permission for extension and alteration in their respective flats.

iii. Notices were sent to those flat owners/occupiers and complaint/application was filed against them before Deputy Registrar of Co-operative societies, N-ward, Navi Mumbai.

iv. On 22nd August, 1989, the complaints filed by the society were dismissed for default.

v. The society challenged the orders passed by the Deputy Registrar of Co-operative Societies, N- ward by preferring three Writ Petitions in the Bombay High Court. These Petitions were filed on 12th September, 1989. Petitions were admitted by the High Court on 19th September, 1989 and the hearing was

expedited. The complainant being the Secretary of Pant Nagar Shankar Sadan Co. Op. Housing Society was pursuing these petitions.

vi. Pursuant to order dated 19th September, 1989, the papers of the Petitions remained with the accused. He did not forward those papers to Execution Department. The complainant made enquiry with the accused about the papers and at that time the accused demanded Rs.100/- for sending papers to Execution Department. The complainant again met the accused on 25th September, 1989 and at that time the accused told him that he would not forward the papers to the Execution Department unless the complainant pay him Rs.100/-.

vii. The complainant went to ACB office on 26th September, 1989 and lodged the complaint. Offence was registered against the accused under Section 7 of PC Act. Panchas were arranged. They were introduced to complainant. On 27th September, 1989 facts were narrated to the panchas. The procedure for trap was demonstrated. Currency notes totalling the amount of Rs.100/- were obtained from complainant for using it for bribe. Anthracene powder was applied to the currency notes.

viii. The complainant was instructed to visit High Court along with panch and handover money to the accused only on demand. He was also instructed to give signal to raiding party after transaction. The panch was instructed to be with complainant and hear the conversation and witness the transaction between the complainant and the accused. The other panch was instructed to be with the raiding party. Pre-trap panchanam was prepared by Investigating Officer at ACB office.

ix. All of them proceeded to the High Court. The complainant and panch approached the accused. The complainant asked the accused about his matter and he was told by the accused that he will have to verify it. The accused came out of the Court hall and started walking. The complainant and panch walked with the accused and proceeded to Associates room situated on the ground floor. The members of raiding party and panch followed them at safe distance. The accused went to his table. The complainant asked him about his work. The accused took out the papers which were lying near his table and told him that his work was done and demanded money. The complainant took out currency notes of Rs.100/- and handed

over to the accused. The accused accepted the notes and kept it in the shirt pocket. Since money was accepted by accused, the complainant gave signal to raiding party. The raiding party immediately rushed to the spot and caught hold of accused. Clothes and hands of the accused were searched in the presence of panchas and bluish glow of anthracene powder was seen on the phalanges of fingers, thumb and palm of hands of accused. The currency notes were recovered from the pocket of the accused. The number of currency notes were compared with the numbers mentioned in the pre-trap panchanama. Post trap panchanama was recorded. The accused was arrested. Sanction was granted to prosecute the accused.

3. Charge was framed against the accused for offence punishable under Section 7, 13(1)(d) r/w Section 13(2) of PC Act vide order dated 16th September, 1991.

4. The prosecution examined nine witnesses. PW-1 Gopal Shetty is the complainant. PW-2 Pratod Modi is Panch. PW-3 Joe Miranda is Panch. PW-4 Madusudan Shah is the Advocate of complainant. PW-5 Ramkrishna Jadhav was working as Peon in the High Court. PW-6 Anil Kumar Siddhaling Swami was working as Associate in the High Court. PW-7 Dnyanoba Ambulkar was working

as Police Inspector in ACB. PW-8 Arvind Mahapadi was attached to ACB, Mumbai. PW-9 Ms. Katy Barucha was working as Prothonotary of Bombay High Court.

5. Learned Advocate Mr. Mundargi appearing for the appellant submitted as follows :-

- i.** The appellant has been falsely implicated in this case.
- ii.** The prosecution has not succeeded in establishing its case beyond all reasonable doubt.
- iii.** The appellant has been acquitted for offence under Section 7 of the PC Act, whereas on the same facts he has been convicted for offences under Sections 13(1)(d) r/w 13(2) of the PC Act.
- iv.** The demand of bribe by the appellant is not proved. In the absence of proof of demand, the appellant ought not to have been convicted for offence under Section 13(1)(d) r/w Section 13(2) of PC Act.
- v.** The evidence of complainant does not inspire confidence.
- vi.** In the examination-in-chief the complainant (PW-1) has

stated that the clerk of Advocate had a talk with the peon and the clerk had told the complainant that he will required to be spend Rs.100/- or Rs.200/-.

vii. The evidence of PW-1 is inconsistent with the prosecution case.

viii. The prosecution failed to connect the appellant with the alleged demand. The clerk of the Advocate was not examined.

ix. Since the Court has observed that the complainant was required to be declared hostile, his further evidence ought to have been dealt with cautiously.

x. PW-2 was examined as panch witnesses. He admitted to have acted as panch in 3 to 4 cases of Anti-corruption Bureau.

xi. PW-8 (Investigating Officer) has stated he had no knowledge about PW-2 acting as pancha for ACB cases.

xii. There are no circumstances to indicate that the appellant had any intention to keep back the petitions or orders in his custody. There is nothing on record to show that, on account of non payment of money, the papers were withheld by the appellant.

xiii. The circumstance of anthracene powder detected on the hands of the accused has been explained.

6. Learned Advocate for the appellant has relied upon the following decisions.

- 1) Ashok Sadarangani and Another v/s. Union of India and Others (2012) 11 SCC 321.
- 2) Mohammed Fasrin V/s. State Rep. by Intelligence Officer, 2019 (8) SCC 811.
- 3) P. Satyanarayana Murthy V/s. District Inspector of Police, State of Andhra Pradesh and Another (2015) 10 SCC 152.
- 4) Sukumaran V/s. State of Kerla 2015 Supp AIR (SC) 771.

7. Learned APP submitted that there is no illegality in the impugned judgment and order passed by the trial Court convicting the appellant. PW-2 is the panch witness. He is the independent witness. He has supported the prosecution case. The accused had accepted bribe amount. The evidence of complainant supports the prosecution case in that regard. Anthracene powder was found on the currency notes and on the fingers and palm of the accused. Panch witness had supported the prosecution case that the accused

demanded money and accepted the bribe amount. The papers relating to the orders to the Writ Petitions and the orders passed therein were in custody of the accused. There is sufficient evidence to prove that the accused demanded and accepted the bribe amount. There is no infirmity in the judgment of the trial Court. Although the accused was acquitted for the offence under Section 7 of the PC Act, there is no impediment in convicting him for which he has been convicted. The trial Court has assigned reasons in support of conviction. There is no motive for false implication of the accused. Learned APP relied upon the decisions of the Apex Court in the case of Niraj Datta V/s. State (Govt. of N.C.T. of Delhi) in Criminal Appeal No. 1669 of 2009.

8. The appellant was charged for committing offences under Section 7 of PC Act and Section 13(2) r/w 13(1)(d) of PC Act. The charge firstly indicate that the accused is public servant within the meaning of Section 2(c) of PC Act, 1988. On 22nd September, 1989 the accused attempted to obtain sum of Rs.100/- for himself from complainant Gopal Shetty as gratification other than legal remuneration etc. for doing or forbearing official acts or for showing favour or disfavour in his official functions to complainant in the matter of forwarding papers from Court and committed offence

under Section 7 of PC Act. Charge secondly is similar but pertain to attempt dated 25th September, 1989, for commission of offence under Section 7 of PC Act. Charge thirdly relates to attempt to obtain and accept sum of Rs.100/- on 27th September, 1989 for commission of offence under Section 7 of PC Act. Charge fourthly also relates to act dated 27th September, 1989 obtaining pecuniary advantage of sum of Rs.100/- from complainant by corrupt or illegal means by abusing his position and commission of offence under Section 13(2) r/w 13(1) (d) of PC Act.

9. Section 7 and Section 13 of PC Act, 1988 prior to amendment of 16th January, 2014 reads as follows :

“ **Section 7** : Public Servant taking gratification other than legal remuneration in respect of an official act. Whoever, being, or expecting to be a public servant accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than [three years] but which may extend to [seven years] and shall also be liable to fine.

Section 13 : Criminal misconduct by a public servant -

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in

possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”

10. PW-1, Mr. Gopal Manjan Shetty is the complainant. According to him he was the secretary of Pant Nagar Shankar Sadan Co-operative Housing Society. Some of the occupants/owners had extended their balconies of flats in the open space of the society, unauthorisedly without permission of society. PW-1 filed complaint/application before Deputy Registrar of Co-operative Society, ‘N’ Ward, Navi Mumbai. The matter was dismissed for default. Complainant filed Writ Petitions challenging the order of Deputy Registrar, Co-operative Society before the High Court. Rule was issued by the High Court in all three matters. The Advocate’s clerk took the complainant to the department to verify whether the papers have reached the department. Clerk told him that the papers did not reach the department. On the next day also it was noticed that the papers had not reached the department. He saw his

Advocate's Clerk talking with Peon of department. The Advocate's clerk told him that he will have to spent Rs.100 or Rs.200/- for getting papers from Court to department. The complainant told him that the matter is of society and he could not pay that amount. The Advocate's clerk told him to go to Anti-Corruption Bureau. The complainant went to ACB. He approached the ACB – officer and told him as to what has happened in the High Court. The said officer dictated something to another officer, who typed it. He was told to sign it. It was not read over to him. He identified his signature from FIR. He further stated that, he knows that he had given complaint against one of the employee of High Court by name of Mr. Rajmauli. He identified the accused. He was asked to attend ACB office on 27th September, 1989. Accordingly he went there. He parted an amount of Rs.100/- to ACB officers. Anthracene powder was applied to the currency notes of Rs.100/-. He was asked to sit in the police van. They went to the High Court. He went to the first floor. He met the clerk of his Advocate. Clerk took him to Court hall. Accused was sitting in the Court. The clerk of his Advocate told him to wait near the door of Court hall. After some time, the accused came outside the Court hall. The clerk of his Advocate inquired about his matter. He also enquired about his matter. He saw one person giving money to accused so he also gave money. Thereafter, Police came and caught

the accused. He was arrested in the office of associate. The prosecutor sought permission to put the questions in the nature of cross examination to witness. He stated that FIR was read over and explained to him in Hindi. He had told the officer but he did not mention that clerk of his Advocate told him to give Rs.100 – 200/-. However, the officer did not incorporate the same in FIR. He do not remember the name of clerk of Advocate. Whatever he stated to the Police Officer in the ACB office, he was recording the same. Except the reference of the clerk of the Advocate, rest of the contents of FIR were true, so he signed it. He went to the office of ACB on his own. He went office of ACB since the bribe was demanded from him. He did not approach superior officer to get the same incorporated in the FIR. On 22nd September, 1989, he learnt that the papers were lying in the Court. He went to meet the accused with clerk of Advocate. The accused told the clerk in his presence that unless he paid Rs.100 he would not send papers to the Execution Department. He do not remember whether thereafter he had gone to High Court to meet accused on 25th September, 1989 or not. He had gone to meet him but he do not remember the date. On that day again accused told the clerk of his Advocate in his presence that unless he pay him Rs.100/- he would not forward papers to Execution Department. Whatever written in the FIR is correct. It did not happen that accused told him

directly that unless he pay him Rs.100/- he would not forward the papers. He did not tell the Police that, accused warned him that unless he pay Rs.100/-, he would not forward papers. It is not correct that reference given by him of clerk of Advocate is false. It is not correct that contents of FIR were all correct and so he signed it. He was not informed by Police that Mr. Modi and Mr. Miranda would act as Panchas. He do not remember whether demonstration of anthracene Powder was shown to him in presence of Panchas. He do not remember whether currency notes were kept in the left side pocket of his shirt. It did not happen that, Investigating Officer has instructed him to contact accused in the High Court and handover marked currency notes to him only on his demand. It did not happen that he was instructed by Investigating Officer to take one person with him out of two and introduce him to accused. It did not happen that Investigating Officer instructed Mr. Modi to hear the conversation and witness transaction. He do not remember whether the hands of both panchas and all the member of raiding party and his hands were seen under U.V. rays and no bluish glow was seen on it. It did not happen that he and panch Modi went to the High Court in room No.37 on first floor. It did not happen that he and Modi entered the Court room. It did not happen that accused replied to their query about papers that he had to go down and see papers and

he and Modi followed him. It did not happen that members of raiding party and panch followed them. He denied that accused told him to give money, he took out marked currency notes and extended towards accused. The accused accepted money and kept it in his shirt pocket, he gave signal by removing his spectacle, Police arrested accused, bluish glow was seen on his fingers, pocket. He cannot identify currency notes as the same which were given to accused. He was cross examined by Advocate for accused. He stated that he had studied upto 4th standard. He cannot read and write English. Since he started business, he had to go to number of Courts to attend matters. He has filed suit against BMC. He had moved application for contempt against municipal officer. He filed appeal against BMC in High Court. He had visited Court number of times. He filed three petitions to set aside order of Deputy Registrar dismissing application for default. He had prayed for action against Deputy Registrar of co-operation society. He had gone to office of the accused for the purpose of affirming the documents. When accused came out of Court hall, he gave him money. It would not be correct to say that he gave money to the accused in his room of Associates on the ground floor.

11. PW-2 - Pratod Sadanand Modi is the panch witness. He deposed that he visited office of ACB on 27th September, 1989. He was instructed to act as panch witness. Trap was arranged. Instructions were given to the accused and the panch witnesses. According to him all of them went to the High Court. He accompanied complainant. He went to Court hall with PW-1. The complainant (PW-1) asked the accused that whether his work was done. The accused answered that he will have to go downstairs to find it out. He walked with them. They entered Associates room. PW-1 again asked accused about work. The accused answered that his work is done and demanded money. The complainant took out marked currency notes and gave it to the accused. The accused accepted it. Signal was given to raiding party. The accused was apprehended. Currency notes were recovered. Trap panchanama was recorded. Accused was arrested. He identified currency notes and tallied them with Pre-trap Panchanama. Special Public Prosecutor sought permission to put questions to PW-2 under Section 162(2) of Cr.PC. Permission was granted. He stated that, it did happen that PW-1 was instructed by Mr. Mahapadi that money was to be given only on demand. It did happen that accused told PW-1 to give money which was told by him earlier. It did happen that during the post trap panchanama, the complainant, who was asked to wait

outside was called and his hands were exposed to U.V. Rays. It did happen that at that time he could see stains of Anthracene powder on the phalanges of all the fingers and thumb of his right hand. In the cross examination by the Advocate for the accused, PW-2 has stated that he do not remember the names of the officers from ACB, who were present there. He was knowing about raid of ACB. He was called as pancha for raid being the government servant. Prior to this incident, he have acted as panch in other matter investigated by Anti-corruption Bureau. He acted as panch 3 to 4 times prior to this matter. He had seen Mr. Mahapadi before in ACB office. When he walked towards the accused, he did notice any particular thing. It did not happen that while walking along the passage complainant gave something to the accused. The associate room contains many tables of many associates including the accused. When he entered the room he noticed many associates. There were nearly 10 persons in the Associates room. Mr. Miranda took personal search of accused. In Panchanama Exh.-17 it is mentioned that he took search of the accused.

12. PW-3 Mr. Joe Justine Miranda is the second panch witness. He was instructed to visit ACB office. He was introduced to complainant. Pre-trap proceedings were conducted. Panchanama

was recorded. All of them went to the High Court. PW-1 and PW-2 went ahead as decided in ACB office. PW-2 was asked to hear the conversation and to see the transaction between the accused and the complainant. They were at safe distance from PW-1 and PW-2. PW-1 and the PW-2 entered the Court hall. They followed them. He saw them talking to one person and subsequently he came to know that he was Mr. Rajmouli. He cannot identify Mr. Rajmouli. (he did not identify the accused). After some time they all came down and entered the Associates room. PW-1 gave signal to raiding party. Police caught hold of Mr. Rajmouli. He entered the associate room. He checked shirt pocket of accused. Currency notes were recovered from the accused. Trap panchanama was recorded. In the cross examination he has stated that whatever deposed by him about the incident was after going through the Panchanama. Whatever he have mentioned in examination in chief that he was standing at at the door along with raiding party and he saw Mr. Rajmauli accepting bribe and he put that money in left side chest shirt pocket is not mentioned in the panchanama (Exhibit-17). Before he saw panchanama he did not depose these facts in Chief. While going through panchanama he remembered all these facts. He do not remember whether he had given statement to the Police on 28th September, 1989 or not. He could have remembered on 28th

September, 1989 that he had seen Mr. Rajmouli taking bribe when he was standing with the raiding party. He would have stated this fact to the Police in his statement recorded by Police on 28th September, 1989. They did not enter the Court hall. He dont remember which direction one has to go to Court hall and after climbing stair case. The Associate room was in the adjoining building of High Court. In Associates room there were many people. There was one lady sitting next to Rajmouli's table. While PW-1, accused and PW-2 were walking towards the associates room, he could seem them. He may be wrong in saying that he searched the pockets of trouser or shirt of Mr. Rajmouli.

13. PW-4, Madhusudan Shah, has deposed that, he filed writ petitions in the High Court for Pant Nagar Shankar Sadan Co-operative Housing Society. He is the Advocate for said Petitioners. PW-1 was the secretary of the society. He was instructed to file these petitions on behalf of society. The petitions were admitted. Rule Nisi is to be lodged in Execution Department. So, he lodged rule Nisi in Execution Department. The department wanted exact order of the High Court. It was necessary for the Associate of the concerned Court to make endorsement on the original papers which were to be sent to Execution Department. The accused was the Associate

attached to the Court. In these petitions, the order was reproduced by Mr. Rajmouli. The matters were pursued by PW-1. He identified the accused in the Court. He had obtained Sanad as Lawyer in 1978 and he has been practicing since 1978.

14. PW-5 Ramkrishna Ambaji Jadhav was serving as peon in the High Court. According to him he was attending the duty on 27th September, 1989. Mr. Basunkar was the P.A. of the Judge. Accused was associate in the Court. On 27th September, 1989, the Court called for some record. Mr. Basunkar gave him chit and told him to go in record department and bring the document. He went to department with chit. The papers were not in the record department. He went to Associate room to contact accused. He was not there. He found some persons from ACB. He told one of the officer from ACB by showing the chit that the papers were called by the Court. His statement was recorded. He identified papers in Writ Petitions. His statement was not read over to him. The special public prosecutor sought permission to contradict the witness under Section 162(2) of Cr.P.C. Permission was granted. The witness stated that, it did not happen that the accused took out the papers of the petitions and handed over to him. He did not state this to Police at the time of recording his statement. It did not happen that he showed chit to the

accused and asked to him that Mr. Basunkar has called for papers mentioned in the chit. He did not state so to the police at the time of recording his statement. In the cross examination by the Advocate for the accused he has stated that it did not happen that Mr. Basunkar told him to go to the accused and bring the papers from him. He did not state to the Police that Mr. Basunkar told him bring above papers from the accused. He had stated at the time of recording his statement that he was asked to go to record department by Mr. Basunkar.

15. PW-6 Mr. Anilkumar Siddhaling has deposed that he is working as II Assistant Master in the High Court. In 1988 he was working as Associate. For removal and appointment of the Associate, the competent authority is the Chief Justice of the High Court. The work of the Associate is to check Complaints, verify documents, attend Court, affirm Affidavits and sign certified copies. He has seen documents Exhibit-19(5) collectively on 12th September, 1989. He had checked Petitions and raised some objections. After compliance of objection, he made endorsement on 13th September, 1989. After the order of the Court, papers go record department. In the cross examination he has stated that he was the first officials of the High Court, who perused and verified petitions. No interim relief was

prayed in the Petitions. If the order is dictated to the Associate the Judge does not sign but order bears signature of Associate. No interim relief was prayed in Petition. Accused was Associate in Court. The accused was his Associate.

16. PW-7 Dnyanba Ambulkar has deposed that he was working as Police Inspector in ACB Department. According to him Gopal Shetty approached the ACB on 26th September, 1989. His matter was referred to him. He interrogated him and recorded FIR against accused. The portion marked 'A' was correctly recorded as per narration of PW-1. Investigation was handed over to Mr. Mahapadi.

17. PW-8 Mr. Arvind Sakharam Mahapadi is the Investigating Officer. He has furnished the details of events during pre-trap and post trap. According to him he directed the complainant to contact the accused and hand over the amount on demand. He was instructed to take panch Mr. Modi with him and to introduce him to accused and give signal after the transaction. The other panch Mr. Miranda was directed to be with raiding party. They went to High Court. Complainant and Mr. Modi went to the first floor and approached the accused in Court hall. There was some talk between the accused and the complainant. They were outside the Court hall. Accused came out of court hall. The complainant and Mr. Modi

started walking with him. The accused went to Associates room. PW-1 and PW-2 followed him. Raiding party waited outside the room. Complainant gave signal. Accused was apprehended. Bribe amount was recovered. Other procedure was completed. In the cross examination, he stated that PW-3 has not stated that he has seen the accused taking bribe on 27th September, 1989, when he was standing with the raiding party in his statement. Mr. Jadhav did not state at the time of recording statement that he was asked to go to record department by Mr. Basunkar. PW-2 told him that he had not acted as panch before. He did not cross check this fact from Mr. Bhavsar, who was appointed to bring panchas.

18. PW-9 Ms. Katy Rustom Barucha was the Prothonotary of Bombay High Court. She stated that investigation papers and draft sanction order was forwarded by ACB. She studied the papers and prepared the note. The note was submitted to the Hon'ble Chief Justice. The Hon'ble Chief Justice is the competent authority for appointment and removal of Associates in Bombay High Court. In the cross examination she stated that the draft sanction is the same draft which was sent by ACB to her. She has long experience in Prothonotary Department even before she was appointed as Prothonotary and Senior Master. She is conversant with the

administrative procedure in respect of Writ Petitions. After the order was passed by the Court, the papers were sent to the record department.

19. Statement of the accused was recorded under Section 313 of Cr.PC. The accused has denied the charges. He do not know whether PW-4 had lodged Rule Nisi in Execution Department. Exact order is required by Execution Department. He made endorsement on those petitions. However, it was not necessary for him to send papers to Execution Department, but they were to be sent to the record department. He has been falsely implicated in this case because he declined to affirm three writ petitions of PW-1 because he was not knowing English and told him to go to the Interpreter and get it translated by paying their fees. So also he refused to give urgent circulation to complainant on 14th September, 1989. On 13th September, 1989 at 2.45 p.m. PW-4 complained against him that he denied him urgent circulation on 14th September, 1989. However, the Court perused the papers confirmed the date of urgent circulation given by him i.e. on 18th September, 1989. On that day, PW-1 met him at the entrance door of the Court hall and shook hands with him. He told him that his papers were not signed till then by Court so those Court papers were to be sent. He told him that after having

lunch he would visit chamber of the learned Judge to find it out. PW-1 told him after he reached to Associates room that peon had told him that the papers were in the Judges chamber but they were lying with him. He told him only one petition had signed by the Court and two Petitions, there is no signature. So he would sent those papers after obtaining Court signature. He was caught by ACB and asked to sit inside the chamber.

20. The learned Special Judge convicted the appellant for offences under Section 13(1)(d) r/w Section 13(2) of PC Act. However, he was acquitted for offence under Section 7 of PC Act. The trial Court has observed that evidence of complainant/PW-1 is silent on the point of demand by accused. This witness has made improvement in his evidence by stating that, clerk of Advocate Mr. Shah told him that the complainant will have to spend Rs.100 to Rs.200/- for getting papers transferred from the Court to the Execution Department. Thus, this witness speaks about the demand but he does not say about the person, who has demanded money. He keeps the subject in dark. He was declared hostile after some stage of evidence by learned Special P.P. and he brought omissions and contradictions on record. However, after all these omissions and contradictions proved in the cross examination by Special P.P. and

such omissions or contradictions loose their evidentiary value. The improvement made by this witness that a person who told him that he would have to spent Rs.100/- to Rs.200/- for getting his work done, is a material improvement. There is no evidence against accused on the point of demand on 22nd and 25th September, 1989. According to prosecution third incident of demand took place on 27th September, 1989 at the time of post trap panchanama. PW-1 does not say in his evidence that the accused demanded money from him on 27th September, 1989. Although the panch Modi (PW-2) has stated in his evidence that the accused demanded money in his presence and post trap panchanama also discloses the conversation including the demand of money made by the accused to the complainant. However, on this point, the evidence of complainant is totally silent. The submissions of defense Advocate that it is panch who has to corroborate the complainant and not the complainant to the panch is correct. Therefore though there is some evidence of deposition of panch modi and by way of documentary evidence of post trap panchanama (Exhibit-17) on the point of demand, it is not sufficient evidence against the accused to prove the demand beyond reasonable doubt. Thus the prosecution could not prove its case against the accused on the point of demand under Section 7 of P.C. Act, 1988.

21. However, the trial Court further observed that the appellant is charged for the offence under Section 13(1)(d) r/w 13(2) of P.C. Act, 1988. The Court referred to evidence of PW-1 brought through cross examination under Section 154 of Evidence Act by Special P. P. It was observed that whatever admissions sought by learned Special P. P. in the cross examination of complainant have no value and cannot be useful to the prosecution to prove its case on any point. However, on the point of giving money to the accused PW-1 remains firm. There is other corroborative evidence led by the prosecution. The complainant's evidence cannot be said to be totally unreliable. He can be called as an unwilling witness. Court relied on evidence of PW-2 and PW-3. The Court then observed that the accused has accepted money from complainant. Acceptance of money is not sufficient to prove all the ingredients of the offence under Section 13(1)(d) r/w 13(2) of P.C. Act. Surprisingly on analysing same evidence which was not considered for charge under Section 7 of P.C. Act, the Court convicted the appellant for offence under Section 13(1)(d) r/w 13(2) of P.C. Act.

22. On the one hand the trial Court has observed that the evidence of PW-1 is not sufficient to establish the demand and that his evidence suffers from serious infirmities, which has relied to the

acquittal of the accused under Section 7 of the PC Act. The trial Court relied his evidence and other circumstances and convicted the appellant for the other offences.

23. The evidence of PW-1 and PW-2 does not inspire confidence. PW-1 has not stated in substantive evidence that the accused had demanded bribe from him. In the absence of demand of bribe, the Court has acquitted him for offence under Section 7 of PC Act. The evidence of PW-1 is contrary to his complaint and prosecution case. In some part of evidence he has denied having visited Court hall. According to him he followed accused, while he was proceeding to associate room and gave money to accused without demand. The prosecution case is amount was accepted in the office of Associate room. The evidence of PW-2 is contradictory to PW-1. The trial Court has accepted that it is PW-2, who has to corroborate complainant and not vice-versa. The findings of trial Court in Paragraph 8 of the Judgment are contrary to findings of conviction for the aforesaid offence. PW-3 is the other pancha. He stated that he cannot identify Mr. Rajmouli. He did not identify accused. In the examination in chief he stated that while he was standing at the door, he saw Rajmouli accepting bribe and keeping money in shirt pocket. He admitted that whatever stated in

examination in chief that he saw Mr. Rajmouli accepting bribe and keeping money in pocket of shirt is not mentioned in the Panchanama.

24. Considering the nature of evidence of PW-1, his version that accused accepted money without demand cannot be accepted. His version suffers from doubt. The prosecution has to prove its case beyond doubt. The appellant could not have been convicted for offence under Section 13(1)(d) r/w 13 (2) of PC Act.

25. The Special Judge has held that demand of bribe by accused is not proved and acquitted the appellant for offence under Section 7 of PC Act. However, on the ground that money was accepted by accused, he has been convicted for offence as aforesaid. The trial Court ought to have noted that prosecution had failed to prove any demand for the alleged gratification involved and the essential ingredient of the offences both under Section 7 and 13 of the Act being absent, the appellant ought to have been acquitted of charge on both counts. The proof of demand is a sine-qua-non for an offence under Section 7 and 13 of the PC Act. The proof of demand of illegal gratification is the gravamen of the offence under Section 7 & 13 of the PC Act. Mere acceptance of any amount by way of allegedly illegal gratification or recovery, sans proof of demand would

not be sufficient to prove charge under both Sections. The trial Court has held that there is no demand for illegal gratification by accused under Section 7 of the Act. The question of acceptance of illegal gratification from the complainant under Section 13(1)(d) of the Act does not arise. The trial Court has come to the erroneous conclusion that the appellant had received the money and therefore convicted him for offence under Section 13(1)(d) r/w 13(2) of PC Act.

26. The Supreme Court in A. Subair V/s. State of Kerala (2009) 6 SCC 587 ruled that, the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction. In state of Kerala V/s. C.P Rao (2011) 6 SCC 450 the apex Court held that, mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that, the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained. In B. Jayraj V/s. State of A.P (2014) 13 SCC 55, it was underlined that, mere possession and recovery of currency notes from accused without proof of demand would not establish an

offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act. In the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus has been held to be an indispensable essentiality and of mandate for an offence under Section 7 & 13 of the Act.

27. In the case of C. Sukumaran V/s. State of Kerala (supra) the trial Court had convicted the accused for offences under Sections 7 & 13(1)(d) r/w Section 13(2) of the Act, the High Court of Kerala partly allowed the appeal and set aside the conviction under Section 7 of PC Act and confirmed conviction under Section 13(1)(d) read with Section 13(2) of the Act. The High Court held that the conviction under Section 7 of the Act is not warranted as the essential element of demand of illegal gratification by accused from the complainant is not proved. However, the High Court held that there is a strong evidence against the accused under Section 13(1)(d) of the Act to show culpability. The High Court further held that there is sufficient evidence to prove that witness had paid two decoy notes of Rs.100/- denomination to the accused and he had voluntarily accepted the money as bribe. The Supreme Court observed that, it

has been continuously held by Court in catena of cases after interpretation of the provisions of Section 7 & 13(1)(d) of the Act that the demand of illegal gratification by the accused is the sine-qua-non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against accused for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from complainant lies on the prosecution. In the case of before Supreme Court. The High Court had held that there is no demand for illegal gratification by appellant therein under Section 7 of the Act. Therefore, the question of acceptance of illegal gratification from the complainant under the provisions of Section 13(1)(d) of the Act also does not arise. The trial Court has come to the erroneous conclusion that the accused had received the money and therefore finding was recorded that there was demand and acceptance of bribe money by accused. The High Court held that the demand by accused was not proved and set aside conviction under Section 7 of the Act but erroneously affirmed the conviction under Section 13(1)(d) r/w Section 13(2) of the Act, although as per law, demand by the appellant under Section 7 of the Act, should have been proved to sustain the charge under Section 13(1)(d) of the Act. The appeal was allowed and conviction was set aside.

28. In the case of P. Satyanarayana Murthy (supra) the trial Court convicted the accused under Section 7 and 13 (1)(d)(i)(ii) r/w Section 13(2) of the Act. The High Court in appeal while upholding conviction under Section 13(1)(d)(i) and (ii) r/w Section 13(2) of the Act set at naught conviction under Section 7 of the Act. The Hon'ble Supreme Court held that, the proof of demand of illegal gratification is the gravamen of the offence under Sections 7 & 13(1) (d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two Sections of the Act. As corrolary failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

29. Learned APP has placed for consideration the order dated 27th August, 2019 passed by Hon'ble Supreme Court in Criminal Appeal No.1669 of 2009 in the case of Neeraj Dutta V/s. State (Govt. of N.C.T. of Delhi). The Court noted that, decisions in the cases of B.Jayraj V/s. State of Andhra Pradesh (supra) and P.

Satyanarayana Murthy V/s. District Inspector of Police, State of Andhra Pradesh are in conflict with with an earlier decision in the case of M. Narsinga Rao V/s. State of Andhra Pradesh (2001) 1 SCC 691, regarding the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 & 13 (1)(d) r/w Section 13(2) of the PC Act, 1988, when the primary evidence of the complainant is unavailable. The apex Court referred the question of law framed to be decided by larger Bench. The question of law for determination by a larger Bench as follows :

“The question whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/built of a public servant under Sections 7 & 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution.”

30. The observations in Paragraph – 5 of the reference order as above indicate that the conflict is regarding quality of proof necessary to sustain conviction for the offences referred therein when the primary evidence of the complainant is unavailable.

31. In the present case, the complainant has been examined. His evidence is full of discrepancies. His version is under shadow of doubt. It is contrary to prosecution case. He admitted

that there was no demand by accused. The trial Court has given finding that demand is not proved and acquitted the accused under Section 7 of the PC Act.

32. In Ashok Sadarangani and Another V/s. Union of India and Others (supra) one of the contentions of learned counsel for respondent was that, the decision relied upon therein and issue involved in case were referred to larger Bench and the Court should abstain from pronouncing Judgment on the issue which was the subject matter in the said reference; and no relief could be given to petitioners therein and Writ Petition be dismissed. The apex Court observed that there is no reason to differ with views that had been taken in the decision referred therein. The Court also observed that, furthermore, the issue which has been referred to a larger Bench clear with a situation which is different from that of the present case. The apex Court then observed that, as indicated in Harbhajan Singh V/s. State of Punjab (2009) 13 SCC 608, the pendency of a reference to a larger bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. Till such time as the decisions cited at the bar are not modified or altered in any way, they continue to hold the field.

33. It is pertinent to note that, in the present case trial Court

has disbelieved the complainant and acquitted the accused for offence under Section 7 of PC Act. The findings of the trial Court is that the demand of illegal gratification is not proved. On the basis of same evidence, the trial Court has convicted the appellant for offence under Section 13(2) and 13(1)(d) of PC Act. The other evidence on record does not inspire confidence. The circumstances relied by trial Court for conviction under Section 13(1)(d) r/w Section 13(2) of the Act are not cogent. In the light of the findings of the trial Court, the evidence on record, the conviction of the appellant for the aforesaid offences is erroneous and deserves to be set aside.

34. Hence, I pass the following order :

ORDER

- i.** Criminal Appeal No.369 of 1998 is allowed.
- ii.** The impugned judgment and order dated 16th December, 1997, passed by Special Judge, Greater Bombay in Special Case No.33 of 1990 convicting the appellant for offences under Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 is set aside and the accused is acquitted for the said offences.
- iii.** Criminal Appeal No.369 of 1998 stands disposed off.

(PRAKASH D. NAIK, J.)