

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

CRIMINAL APPEAL NO.720 OF 1998

Madhukar Bhatu Bhamare, Age 47 years,
Occ.Service, R/o.Shivaji Nagar, Jail Road,
Nashik.

Appellant

versus

The State of Maharashtra

Respondent

Mr.Harshad Bhadbhade, Advocate for appellant.
Mr.S.R.Agarkar, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 4th August 2021

Date of listing appeal for directions/
clarifications and closed for
Judgment : 29th April 2022

Date of Pronouncing the Judgment : 6th May 2022

JUDGMENT :

1. The appellant is convicted vide judgment and order dated 27th August 1998 passed by learned Special Judge, Nashik in Special Case No.18 of 1989 whereby the appellant has been convicted for the offence under Sections 7 and 13(2) read with Section 13(2)(d) of Prevention of Corruption Act, 1988 ('P.C.Act' for short). For the offence under Section 7 of P.C.Act the appellant has been sentenced to undergo simple imprisonment for six months and pay fine of Rs.100/-. For the offence under Section 13(2) r/w Section 13(1)(d) of P.C. Act, the appellant has been sentenced to suffer imprisonment for one year and pay fine of Rs.100/-. The appellant is acquitted of

the charge under Section 12 of P.C.Act. The accused no.2 was acquitted of all the charges levelled against him.

2. The case of prosecution is as follows :-

(a) The complainant was working as peon in the office of Junior Scientific Officer, at Nashik. His mother Shantabai had met with an accident for which he incurred expenses of Rs.1,374.95 for her treatment during the period 18th April 1988 to 28th April 1988. He submitted bill for reimbursement to his office on 6th January 1989. The Civil Surgeon passed the bill on 28th January 1989 for Rs.1,129/-. It was submitted to Deputy Director of Health for his sanction who sanctioned the bill for Rs.830/- and sent it to the office of Junior Scientific Officer, Nashik;

(b) The complainant was required to incur medical expenses for his wife and son amounting to Rs.33.05 and Rs.164.55 respectively. He submitted that bill for reimbursement to his office on 27th March 1989. The office forwarded it to the treasury but the treasury by raising some objections returned that bill of complainant's wife and son for its compliance. Before that he had given application on 5th May 1989 and 30th May 1989 for the early process of his bill for sanction. The cashier of the office (appellant) and Junior Clerk Mr.Ravindra More (accused No.2) working in that office were concerned with the process of that bill for forwarding it to the treasury by making necessary compliance. Therefore complainant met both of them and requested to submit his bill to the treasury for according sanction. On 1st June 1989 both of them informed in writing that reimbursement bill of his wife and son was submitted to

the Deputy Director, Health for his further order. On receiving the order he would be informed about the same. According to complainant in fact that bill of Rs.198/- regarding reimbursement in connection with his wife and son was not sent to Deputy Director and it was suppressed by accused nos.1 and 2 with them. the medical reimbursement bill of treatment of his mother amounting to Rs.830/- was sanctioned by Deputy Director but it was not sent to the treasury. Therefore, on 1st June 1989 he requested the cashier (appellant) and his Junior Clerk Mr.More (accused no.2) to send bills. The accused told complainant that if he pays Rs.50/- they would attend to his work immediately. The complainant told them that on that day he had no money. The accused told him to give it to them on the next day and then they would do his work immediately;

(c) The complainant approached ACB office on 2nd June 1989 and gave complaint narrating the above incident with request to take necessary legal action against both the accused. His complaint was reduced into writing;

(d) Panch witnesses were arranged for conducting trap. They were employees of Dairy Development Department. Both of them visited ACB office. They were introduced to complainant. The complainant narrated his grievance to them. Complainant produced currency notes of Rs.50/-, two notes of Rs.20/- and one note of Rs.10/-. Necessary formality was completed. Preparation was made for trap. Anthracene powder was applied to the currency notes. Purpose of trap was explained. Panchanama was recorded. Instructions were given to panch witnesses as well as to complainant. Panch no.1 was requested to accompany the complainant. Panch

no.2 was requested to accompany the raiding party. Pre-trap panchanama was completed;

(e) Complainant, panch witnesses and others left for the office of Junior Scientific Officer, Nashik. The complainant and panch witnesses were instructed to proceed to meet the accused. They approached the office of accused. The complainant had his meal. Thereafter complainant and the panch witnesses went to the cabin of both the accused. Accused no.1 was present in the cabin. The complainant told him that he is in need of money as his relative is sick and requested accused no.1 to pay money out of his pocket. Accused no.1 told him that he would do his work within 4 to 5 days. The panch witness was introduced to accused as person from his native village. Accused no.1 then asked the complainant whether he has brought money as told on the other day. The complainant answered in the affirmative. He took out currency note and held it in front of accused no.1. The amount was accepted by accused no.1. Accused no.1 assured him to do the needful by giving instructions to accused no.2.

(f) The complainant went out. He gave pre-determined signal to raiding party. The members of raiding party entered into the office of accused no.1. He was found holding currency notes in his hand. The panch confirmed that amount was accepted by accused no.1. The currency notes were found containing anthracene powder. The fingers and palm of the hand of accused no.1 were emitting glow. The currency notes amounting to Rs.100/- were recovered from accused no.1. Notes were seized and sealed. Accused no.1 denied that he was having any medical reimbursement bill of the wife and

son of complainant. The documents relating to medical reimbursement bill referred by complainant amounting to Rs.198/- were found in the cupboard lying in the office of accused. Accused no.1 claimed that he had given 2 currency notes of Rs.20/-, 1 note of Rs.10/- to complainant to get it exchanged from bank as they were torn. Three pieces of papers i.e. noting in the handwriting of the accused no.1 were found in the cash book. There was some noting about closing balance and currency notes sent for exchange (Exhibits-50, 51 and 52). Trap panchanama was recorded. The FIR was registered vide CR No.67 of 1989 under Sections 7(1), 13(2) read with 13(1)(d) and Section 12 of P.C.Act. On completing investigating charge sheet was filed.

3. Charge was framed against accused, by order dated 30-12-1992 for offences under Section 7 of P.C.Act, Section 13(1)(d) r/w 13(2) of P.C.Act and Section 12 of P.C.Act.

4. The prosecution examined five witnesses. PW-1 Hiranman Kirve is the complainant. PW-2 Dharma Patil is panch witness. PW-3 Surendra Kulkarni is Junior Scientific Officer. PW-4 Ramniwas Bharuka is sanctioning authority. PW-5 Madhukar Kadve is Deputy Superintendent of Police. He is the investigating officer.

5. Learned advocate for appellant submitted as under :

- (a) The applicant has been falsely implicated. The prosecution has not proved its case beyond doubt;
- (b) Sanction was accorded without application of mind;
- (c) No work of complainant was pending with appellant;

- (d) Exhibit-49 explains the incident;
- (e) First and second demand is not proved;
- (f) There was no cordial relation between accused nos.1 and 2 and question of joint demand does not arise. Accused nos.1 and 2 used to sit separately;
- (g) Accused no.1 had given torn currency notes for exchange;
- (h) There was enmity between complainant and accused as they had witnessed the incident where complainant had abused and assaulted Mr.Chavan;
- (i) There is no independent witness for first demand;
- (j) Investigation conducted by first informant is biased;
- (k) The Trial Court has not appreciated that evidence adduced by prosecution is full of doubt. Hence, benefit of doubt ought to have been given to the appellant. Accused no.2 has been acquitted by Trial Court;
- (l) The evidence of PW-1 is full of contradictions and improvements;
- (m) The evidence of PW-3 shows that there was no evidence to indicate that bills were given to appellant;
- (n) PW-3 has admitted that complainant had assaulted peon Chavan. Appellant and accused no.2 were eye witnesses of the said incident.;
- (o) The Trial Court failed to appreciate that defense of the appellant was plausible and corroborated by evidence on record. The defense of appellant that amount was given to the complainant for exchange of notes is admitted by Investigating Officer since chit to that effect was found and it has also come on record through evidence of PW-3;
- (p) The Trial Court did not appreciate evidence of defense witness

wherein he has stated that on the date of incident the complainant had gone to treasury and he gave Rs.45/- for exchange by appellant;

(q) As per office order, accused no.2 was responsible for preparation of bills and not appellant;

(r) The defense of appellant that Rs.45/- was given for exchange is supported by Exhibit-50;

(s) The raiding officer did not check the cash lying in cash box;

(t) The alleged incident is of trivial nature and benefit ought to be given to appellant in accordance with Section 95 of IPC.

6. Learned advocate for appellant has relied upon following decisions :

(i) Mrs.Veeda Menezes Vs. Yusuf Khan Haji Ibrahim Khan and another¹;

(ii) Bhagwan Singh Vs. State of Rajasthan²;

(iii) Bhagwan Jathya Bhoir Vs. State of Maharashtra³;

(iv) Megha Singh Vs. State of Haryana⁴;

(v) Tryambak Lilaji Binnar Vs State of Maharashtra⁵.

7. Learned APP submitted that the prosecution has established its case beyond all reasonable doubt. The demand of bribe amount is proved. The tainted amount was accepted by appellant. Anthracene powder was found on the currency notes. The notes were recovered from the possession of accused. The evidence of complainant (PW-1) and panch witness (PW-2) corroborates each other about acceptance of bribe amount by accused. The demand by the accused is proved by PW-1 and PW-2. There is no reason to discard evidence of

1 AIR-1966-SC-1773

2 AIR-1976-SC-985

3 AIR-1992-Cri.L.J.-1144

4 AIR-1995-SC-2339

5 2002-Cri.L.J.3059

complainant and panch witness who was accompanying him. Minor discrepancies does not affect the prosecution case. The files regarding claim of complainant were found in the cupboard of accused no1, which shows that work relating to reimbursement claim of the complainant was with appellant. Accused no.2 was not present at the place of incident at the time of trap. The trap amount was accepted by appellant and not by accused no.2. Hence, accused no.2 was acquitted and benefit of acquittal of co-accused cannot be given to appellant.

8. PW-1 is the complainant. In 1986 he was working as Peon in District Head Laboratory. In 1989 he was working in Junior Scientific Laboratory. According to him his mother had sustained fracture and admitted in the hospital. He incurred expenses for the treatment of his mother. The total expenses incurred by him were Rs.1,374=95 Ps. He was entitled for reimbursement of expenses incurred by him from Government. He made application in that regard. The application was given to accused no.2. Accused no.2 kept the documents relating to reimbursement. The complainant had kept copies of all the documents submitted by him to accused no.2, who made endorsement on the copy of application retained by complainant about the fact that he received application made by complainant along with required documents. On 27-3-1989 he made application for reimbursement of the expenses made by him for treatment of his wife and son along with bills and vouchers. The accused no.2 made endorsement on the copy of that application retained by him. The copy bears signature of accused no.2. He had attached list of medicines and its price. The reimbursement claim for Rs.1,374.95 was sanctioned for Rs.1,129/- and the said application

after such sanction was forwarded to Deputy Director, Health Department. The Deputy Director reduced the sanctioned amount to Rs.868/- and forwarded it to office of complainant. The application was received by accused no.2. Bill was sanctioned by Civil Hospital and it was submitted to the treasury. The treasury office raised some objections and returned it to complainant's office. As he did not receive the amount claimed by him, he made application on 27th April 1989 and 5th May 1989 to his superiors. Accused no.2 made endorsement about their receipts (Exhibits-24, 25 and 26). Both the accused were supposed to prepare reimbursement bill and send them to treasury, encash them and disburse. Accused no.1 used to withdraw cash or deposit. Complainant gave two copies of bills of his mother and wife to accused no.1 (appellant). He did not receive amount. He requested accused to send his bills. He approached them on 1st June 1989. The bill in respect of his wife and son was to be sent to treasury. It was in office itself. The accused demanded Rs.50/- for each of them. The complainant approached ACB. His complaint was recorded. Trap was arranged. Panchas were called. He produced bribe money. Procedure for trap was completed. He was instructed to go to office with panch Dharma Patil and talk to both the accused about work. He was told to pay amount only on demand by accused. He went to office with PW-2. Accused no.1 as present in office. He spoke to accused no.1 about his claim. Accused no.1 asked him whether he had brought money as settled on previous day. Accused no.1 told him that he should pay. He handed over money which was accepted by accused no.1. He gave signal to raiding party. They entered cabin. Accused no.1 was apprehended.

9. In the cross-examination he stated that prior to this incident

there was occasion to submit medical bills for reimbursement. Bill from private practitioner has to be sent to superiors for being passed. Case paper number has to be given if treatment is taken in civil hospital. The bill was reduced to Rs.868/-. Bills were returned by treasury. He had not given case paper number after the bill was returned from treasury. He did not enquire with Mr.Kulkarni as to why his bill was sent to Deputy Director. On 1st June 1989 the work of carrying bills was with Mr.Shimpi. In the afternoon of 2nd June 1989 he was assigned to another section. He did not tell police the time on 1st June 1989 when accused demanded money. He did not complain to Mr.Kulkarni about the demand. He did not know that bill of Rs.198/- was sent to Deputy Director of Health, Nashik. Reply was received to his application dated 30th May 1989 on 1-6-1989 before accused demanded money. Since the receipt of letter till visiting the office of ACB he did not enquire in the office of Deputy Director whether his bills were received. He did not complain to Mr.Kulkarni that he gave him false letter. All letters filed by him were delivered to accused no.2. He did not ask Mr.More (accused no.2) how letter Exhibit-31 was delivered to him when papers were in cupboard. He did not complain on 1st June 1989 to anyone about suppression of bill. He did not refer to his mother's bill in application dated 30th May 1989. On 2nd June 1989 he went to office. He did not demand bills from accused. He knew that none of the bills have been passed by treasury or had been encashed. He had occasion to go to treasury during intervening period. From 27th April 1989 to 30th May 1989 he did not make any attempt to get the bill passed from treasury. After the treasury passes the bill cheque is issued. He paid amount of Rs.100/- to accused no.1. It did not occur that on 25th May 1989 accused no.1 had given torn currency

notes for being exchanged in the treasury. On 1st June 1989 when both the accused made the demand, they were sitting in the same room. When he submitted bills to accused no.2, he did not demand money. Accused no.2 was supposed to assist accused no.1 in preparing bill.

10. PW-2 Dharma Patil has acted as panch witness. He stated that he was directed to visit office of ACB. He was requested to act as panch witness. One more person was present in the office of ACB who acted as panch witness. They were introduced to complainant who narrated his evidence. Arrangement was made for conducting raid Pre-trap panchanama was recorded. Instructions were given to him to accompany complainant and visit the office of accused. They went to the office of Junior Scientific alongwith complainant. The complainant approached the accused no.1 and told him that he should settle his bills early as he was in need of money and that his relations had come. The accused no.1 asked him if he has brought the money as directed on the previous day. The complainant answered in affirmative. Accused no.1 told him that he would do the work expeditiously and asked him to pay. The complainant took out money and held it before accused no.1. It was accepted by the accused. The raiding party visited the office of accused. He was apprehended. Currency notes were recovered from him. When asked about medical bill, accused no.1 stated that he did not have any bill. His cupboard was searched. The medical bill was found in his cupboard. Accused no.2 produced a bill from a pocket in his cupboard. The accused no.1 gave statement in writing. He stated that he told the complainant to change notes. PW-5 examined the cash book and found rough noting. They are Exhibits-50 to 52.

11. In the cross-examination PW-2 stated that PW-5 searched the complainant after the raid. The backside of the palm of the complainant did not have any powder. Powder was not found on the shirt of complainant. All the currency notes in the bundle were checked in ultra violet lamp. He did not see what was the value of note at the top of bundle. No powder was found on the top most note. He did not state before Police that bundle was taken out from cash box. Portion marked 'A' in Exhibit-54 and his statement is not correct. It was not stated by him. He had read the panchanama before he had signed it. He did not complain about reference of cash box. There was no talk between him and complainant after they entered chamber of accused. It took half an hour for the raiding party to enter the chamber of accused. He cannot tell if the complainant also signed the documents in the office of ACB. The panchanama of events was not made in ACB office on 2nd June 1989. After warning by prosecution to understand the question properly he stated that panchanama had taken place. Papers showing that accused gave the notes to complainant for changing were seized from that office in the evening.

12. PW-3 Surendra Kulkarni was working as Junior Scientific Officer at District Health Laboratory. He stated that the accused was working as Senior Clerk in his office. He was allotted cashier's duty. He was getting cash allowance of Rs.50/-. He was also store keeper and used to supervise over the work of Junior Clerks. Since September-1988 he came to his office. Accused no.2 was assigned duty of inward/outward receiving samples and preparing bills etc. Even work of medical bills was given to accused no.2. One or two

months before the incident, medical bills had come. The responsibility of preparing medical bill was not assigned to any one. Accused no.2 was not assigned that duty specifically. At this stage the prosecutor was permitted to put leading questions to the witness. He had asked the appellant as to why he was preparing bills when that was the job of accused no.2. He made endorsement on bill Exhibit-35 on 25th August 1989 directing accused no.2 to take necessary action. Complainant had also given bill for Rs.198/- to the office. It was sent to treasury twice but returned with objections. He will not be able to tell without reference to the record the date of dispatch or return of bill. On seeing the register he stated that it was sent to treasury on 11th April 1989 and returned with objections. He cannot tell the dates when the bills were returned. The entry of dispatch of two bills bear his signatures. The bill of accused no.1 was sent back to treasury on 15th April 1989. Bill of complainant was also sent on the same date. There are entries in that regard which bear his signatures. Bill of complainant was lost when it was returned from the treasury for the second time. On 15th May 1989, he sent a letter to Deputy Director about loss of bill. The bill for Rs.796/- and Rs.198/- were given to accused no.1 on 20th April 1989. On 26th May 1989 the Deputy Director sent letter to him for being served on accused no.1. He served copy to accused no.1. Cash book was to be maintained by accused no.1. PW-2 was Drawing and Disbursing Officer. He was responsible for checking cash from time to time. He has to check it at least twice in a month. He used to make endorsement on cash book. Bill for Rs.868/- was produced by accused no.2. Bill for Rs.196/- was lost by accused no.1. There is no evidence except his letter to Deputy Director to show that he handed over the bill to accused no.1. He do not remember if accused no.1

had informed in writing that he had not received the bill. Bill was sent by Deputy Director without being forwarded by office to him. He do not remember if medical bill for Rs.198/- in respect to son of complainant was returned because case number was wrong. His office had informed complainant in writing that deficiency in the bill should be removed by him. The complainant did not tender that bill. He cannot tell without reference to the record if on 2nd May 1989 he had ordered PW-1 to look after the work in account branch. Prior to the incident peon Chavan had complained to him that he was beaten by PW-1 complainant. Accused nos.1 and 2 had told him that they had seen the incident and complaint was drawn. Police had taken from him relevant record. Subsidiary cash book is maintained in his office. All the money received in the office are kept in the cash box in the possession of accused no.1. It is not necessary that cash in the cash box must tally with the figure in cash book. After the incident his department has enquired whether accused no.1 had given torn notes of Rs.45/- to PW-1 for being exchanged on that day. He had recorded statement in that enquiry. Copies of statements were not seized by Police. Entry of handing over torn notes for replacement is not made in the cash book. He do not remember if he had searched cupboard of accused no.1 for bills of PW-1 prior to the incident. Accused no.1 had complained to superior that he had claimed to have delivered bills of PW-1 to him without actually delivering them. Superior had called his explanation in this matter. On the day of the incident before trap accused no.2 received telephonic call and informed him that PW-1 had telephoned to say that he would be coming late. There were frequent disputes between accused no.1 and accused no.2. Due to dispute accused no.2 had obtained his permission to sit in veranda instead of room of accused no.1.

Accused no.2 had requested him to guide him in respect of bills. Behaviour of complainant/PW-1 with superiors was arrogant.

13. PW-4 Ramniwas Bharuka is the sanctioning authority. According to him, he was working as Deputy Director of Health Services, Public Health Department, Nashik. He had authority to appoint or remove Junior and Senior Clerks working in the District Public Laboratory. On 9th November 1989 the Director, ACB sent him copies of investigation papers with a request to accord sanction. The investigation papers revealed that for official work of sanctioning reimbursement bills of treasury, both the accused had demanded money. It was revealed that accused had demanded Rs.50/- each i.e. Rs.100/-. The amount was to be paid on 2nd June 2019. The papers revealed that accused no.1 demanded and accepted the amount. He accorded sanction. The sanction order was produced in evidence. In cross-examination he stated that he do not remember if after the trap he had sought explanation of the accused no.2 or if accused no.2 had submitted an explanation demonstrating his non involvement or his superior had supported his explanation. Prior to incident there were no complaints against accused no.2 that he demanded money for preparing bills or sending them to treasury. He do not remember if there were money complaints about misbehaviour of accused no.1. He accorded sanction only on the basis of papers submitted by ACB and did not independently call for any papers from department. The cash book or other registers were not sent along with ACB's letter. It did not come to his notice in the papers examined by him that accused no.1 had given notes worth Rs.45/- to PW-1 for being exchanged. He did not seek any explanation from accused no.1. He do not recollect having received draft sanction order along with letter of ACB.

14. PW-5 Madhukar Kadve is the Investigating Officer. He deposed that he was attached to ACB, Nashik as Deputy Superintendent of Police. On 2nd June 1989 he was present in the ACB Office. Complainant approached his office. He had complained against two officers. It was recorded in writing. He requested the officer from Dairy Development Office for providing panch witnesses. Two officers were provided for acting as panch witnesses. The complainant narrated them his complaint. Arrangements were made for trap. Instructions were given to panch witnesses, complainant and others. Currency notes were arranged for trap. Anthracene powder was applied. All of them proceeded to the office of accused. The panch witness and complainant were instructed to visit the accused and on demand and acceptance of bribe amount, signal be given to raiding party. PW-1 and PW-2 proceeded to office of accused. On receiving signal from the complainant the raiding party entered into the office of accused. Accused no.1 was holding currency notes in his hands. He was identified as accused no.1. Bribe amount was recovered from accused. Anthracene powder was noticed on currency notes and hands of accused no.1. Accused was apprehended. Trap panchanama was recorded. Statements of witnesses were recorded. Sanction was sought from the sanctioning authority. He forwarded report and copies of investigation to sanctioning authority. Sanction was accorded. Charge sheet was filed.

15. In the cross-examination PW-5 has stated that their office has not maintained a register regarding complaints given in such cases. There is no record in this case about seal on the container of anthracene powder. On chit Exhibit-50 it is mentioned that accused

no.1 had given Rs.75/- and Rs.45/- to complainant on 25th May 1989. He had given Rs.75/- for depositing it in treasury with challan and Rs.45/- to get exchanged from bank. He do not remember whether he made inquiry about it. After the trap, hand of accused no.1 was inspected in ultra violet light and it did not happen that presence of anthracene powder was found on the dorsal of his right hand palm and wrist. After entering the office of accused and completing all the proceedings, they called PW-1 and inspected his right hand in the ultra violet light and did not find presence of anthracene powder on the dorsal of his right hand and wrist. All the rest of notes in the bundle of currency notes found in the hand of accused no.1 were not inspected. He inspected from the bottom, the first and second currency notes, the 3rd and 4th currency notes and 4th and 6th currency notes, the 7th and 8th currency notes. The currency notes above 8th currency note were not inspected. He cannot say about total number of currency notes in that bundle. There were no registers or any papers on the table of accused. Along with copies of investigation papers he had sent a draft sanction order to his superiors. He has not produced the draft of sanction order which was sent to his superiors along with charge sheet. He do not remember whether there was no direct entry in the cabin of office. When he learnt from PW-3 that medical reimbursement bill was with accused no.2, he called him and when he came there immediately. He was asked to produce bill. He went to his cupboard and produced the bill kept in cupboard.

16. The accused examined DW-1 as defense witness Bhagwan Shimpi. He stated that he was working as a peon in Junior Scientific Office at Nashik. On the day of the incident he was on duty in the office. He knows Kirve (complainant) and Chavan. Couple of days

prior to the present incident there was quarrel between Kirve and Chavan. Chavan was working as peon in their office. Quarrel between Chavan and Kirve took place in their office. That time he was present in the office. Kirve had caught hold of Chavan and dragged him out of office. The witness himself, More (accused no.2), Bhamre (accused no.1) and Jagtap separated them and took them into the office. Chavan made complaint against Kirve with Junior Scientific Officer. Jagtap, More (accused no.2), Bhamre (accused no.1) and he had signed the complaint endorsing that complaint made by Chavan was correct. As they had signed the complaint as witnesses, Mr.Kirve had threatened them that he would take revenge. Accused no.2 was asked to sit but sit in veranda of the office by officer. He was asked to collect water samples submitted to office. Accused no.2 was sitting in veranda of office. On the day of trap, accused no.2 was sitting in veranda of office. Mr.Kirve had telephoned from treasury at about 1 to 1.30 pm to their office saying that as there was guest at his house he would be coming to office at about 3 to 3.30 pm.. At about 3 to 3.30 pm, Kirve (PW-1) and one more person came to the office. Mr.Kirve collected his tiffin and went to veranda. He started taking his meals. After PW-1 finished his meals, Bhamre (accused no.1) called him and asked him whether he had exchanged the currency notes which were given to him. Mr.Kirve went into office and 15 minutes thereafter some incident took place. He was standing in veranda. He learnt that ACB had conducted trap on accused no.1. The cabin where accused no.1 was sitting can be approached only through veranda. Accused no.2 never asked for any favour or money from any staff member. On the next day his statement was recorded. In the cross-examination by Advocate for accused no.1 he stated that the peon has to attend the

treasury and bank work pertaining to office. This work is assigned to him and others by rotation. On the day of trap Mr.Kirve had gone to treasury for the office work. Mr.Bhamre had given two currency notes of Rs.20/- and one currency note of Rs.5/- to get it exchanged from bank. Before incident, on 25th May 1989, 29th May 1989 and 2nd June 1989 the accused no.1 had given currency notes to Kirve for exchange. The quarrel between Kirve and Chavan took place on 31st May 1989. The complaint of Chavan against Kirve was read over by him. He was satisfied about its truthfulness. Hence, he signed it. Bhamre and More signed the complaint in his presence. Kirve had threatened him, More and Bhamre that as they had signed the complaint, he would see that their lives are spoiled. On the day of trap, the ACB did not make enquiry with him. On 13th the ACB called the witnesses to their office. In the cross-examination by Public Prosecutor he stated that Bhamre and More are his superiors. Since Bhamre was his superiors he used to be in his contact. In September-1992 he was promoted as clerk. He was appointed as peon. In 1986 he was transferred to office of Junior Scientific Office. He did not make any complaint against Mr.Kirve regarding threats. After 31st May 1989 for the first time he is referring to threats given by Mr.Kirve. He was required to attend order of Junior Scientific Officer. Peon Chavan was assigned duty in section of analysis. Accused no.1 was looking after all the cash transactions. He was also doing all the work of getting cash from bank. On making payment to any person accused no.1 used to obtain his signature. On 3rd June 1989 accused no.1 was on duty. The Junior Scientific Officer Mr.Kulkarni did not record his statement regarding trap. More, Bhamre, Chavan and witness himself had formed one group in the office. Quarrel between Kirve and Chavan was settled.

17. The statements of both the accused were recorded under Section 313 of Cr.PC. The appellant/accused no.1 in his explanation stated that before this incident there was quarrel between complainant and Mr.Chavan from their office. Chavan had made complaint regarding that incident. He along with accused no.2 and others had signed it as witnesses. Complainant had threatened him that he would take revenge against him and see that he would be harassed like anything. He has expressed written apology for that before the Deputy Director of Health Services, Nashik. Thereafter again complainant had made complaint against the officers in the Health Department alleging that they are corrupt. He is in habit of making such false complaints. As they were witnesses in the complaint given by Chavan against complainant Kirve, by adopting attitude, PW-1 has caused revengeful incident. He is in habit of causing harassment and bringing others in to trouble. The medical reimbursement bills are sent to the treasury only after 5th of every month and not before that PW-1 was eager to get his bills earlier. Therefore he caused this incident. He heard that complainant had prepared false reimbursement bills of Rs.198/-. Therefore, he has caused its disappearance and not by any other person. He learnt that treasury had returned that bill for two times raising objection that the O.P.D number quoted on that was not correct. Therefore, complainant had caused disappearance of that bill. Complainant had brought pressure on the officer for assigning him the duty of taking the bills to the treasury as he wanted to trap them, in ACB case. On 25-5-1989, 29-5-1989 and 2-6-1989 he had given two currency notes of Rs.20/- and one currency note of Rs.5/- to PW-1 to get it exchanged from the bank as they were torn. He had given him Rs.75/- for depositing with treasury challan. Presuming that PW-1 is

giving that amount of Rs.100/- he accepted it. By that time ACB men came there and without giving him any opportunity held both his hands. The accused no.2 in his statement under Section 313 Cr.PC has stated that some days before this incident, there was quarrel between complainant and Pandu Chavan in their office. Chavan was severely beaten by complainant. He and others were witnesses. Chavan had filed complaint against PW-1. Inquiry was made with them. He told in inquiry that he had witnessed the incident. Hence PW-1 is hearing grudge against him. He has involved him in this false case. PW-1 is adamant person in office. There is record to that effect with office. Written Statement was filed by accused nos.1 and 2 before Trial Court by way of explanation under Section 313 of Cr.PC. Accused no.1 has stated that he is innocent. He has been falsely implicated. Hiranman Kirve has filed false complaint to take revenge. If there was any intention to accept bribe, accused no.1 could have kept bribe amount in his pant pocket or shirt pocket. Benefit of doubt must be given to the accused. On account of ACB case, he suffered financial loss and could not provide better medicine to his son who passed away on 23rd July 1989. The entire family was mentally disturbed. On 20th April 1989 accused no.1 had availed one day leave. Written Statement was also filed by accused no.2. The relation between both the accused were not cordial and accused no.2 had sought permission to sit in veranda of office. He has explained procedure of submission of bills etc. Complainant is in habit of filing false complaint. He did not demand money. He had supported complaint of Chavan against PW-1.

18. Thus, from the analysis of evidence it can be seen that case of prosecution is that the accused had demanded bribe of Rs.100/-, Rs.50/- to each accused for taking steps about reimbursement of

making bills of complaint. Whereas the defense of the accused is of false implication. Other defense of accused no.1 is that he had handed over the torn notes to the complainant for exchange from bank and those notes after exchange were to be returned to the accused no.1. Writing executed by accused no.1 on the paper regarding exchange of torn notes were found during investigation. Search was conducted in the office and during search the said writings were seized. The said documents were exhibited in the evidence.

19. It is the defense of accused that the complainant has apparently grudge against both the accused. The appellant and accused no.2 were eye witnesses to the incident of assault by complainant and Chavan. Mr.Chavan was also employee in the same office. It is not disputed that complaint was lodged by Mr.Chavan against PW-1. Accused nos.1 and 2 had signed the complaint of Mr.Chavan indicating that they were the witnesses to the incident.

20. In 1989 the complainant (PW-1) was working in Junior Scientific Laboratory. For getting reimbursement he made application. It was given to accused no.2. Endorsement was made by accused no.2. On 27-3-1989 he made another application for reimbursement. Endorsement was made by accused no.2. According to him bill of Rs.868/- about treatment of his mother had been passed by Deputy Director and reached his office. The bill in respect of his wife and son was to be sent directly to the treasury. It was in the office itself. He was informed in writing that by letter dated 1-6-1989 that bill has been sent to Deputy Director for approval. The accused had suppressed the bill with them. There is no evidence about suppression of bill by accused. He stated that he did not know

that bill for Rs.198/- was sent to Deputy Director of Health, Nashik. He received reply on 1-6-1989 before accused demanded money. He had not inquired in the office of Deputy Director whether his bills have been received. He did not complain about letter issued by Mr.Kulkarni. All letters filed by him were delivered to accused no.2. Even after receipt of letter he did not ask accused no.1 that papers were suppressed by him. He did not complain about suppression of his bill of Rs.198/-. He did not inquire with Mr.Kulkarni why his bill was sent to Deputy Director since he did not have that authority. On 1st June 1989 the work of carrying bills was with Mr.Shimpi. He did not complain to Mr.Kulkarni about demand by accused. He did not know that bill for Rs.198/- was sent to Deputy Director of Health, Nashik. He did not inquire into office of Deputy Director whether his bills have been received. Even after receipt of said letter he did not ask accused no.1 that papers were suppressed by him and how letter was delivered to him. On 2nd June 1989 he did not demand bills from accused. He knew that it takes time for the Deputy Director to clear bill. From 27th April 1989 to 30th May 1989 he did not make any attempt to get the bill passed from treasury.

21. The evidence of this witness does not inspire confidence. There are serious discrepancies. It is not established that any work relating to the reimbursement of the work of complainant was pending with accused no.1. He admitted that peon by name Chavan was working in his office. He denied having assaulted Chavan in office premises during office hours and that he tendered apology in writing. However, he was shown copy of writing and admitted that it bears his handwriting and signature. The same was marked as Exhibit-37. He denied that accused no.1 had given him torn currency notes for

exchange. His version is contrary to evidence on record and investigation conducted by ACB. It is pertinent to note that it is the case of prosecution that appellant was found holding currency notes in his hand during the raid. This circumstance supports the defense of the accused that the amount was handed over by complainant under the garb of exchange of torn notes.

22. PW-2 has acted as panch witness. His evidence discloses that he did not see what was the value of note at the top of bundle. No powder was found on the top most note when it was examined under ultra violet light. He did not state before police that bundle was taken out from the cash box. There was no talk between him and complainant after they entered chamber of accused no.1. Panchanama of office was not recorded in the office of ACB on 2nd June 1989. After the warning by prosecution he corrected himself and stated that panchanama was drawn. According to him, when the accused was apprehended bundle of notes was in the left hand of accused no.1 with thumb at the top and four fingers at the bottom. Thus, the accused no.1 did not keep amount in pocket. While recording his statement he stated that bundle was taken out from the cash box. He stated that it took half an hour for the raiding party to arrive after they entered chamber of accused no.1. The events had allegedly occurred immediately after they had approached accused no.1. It is not clear why the raiding party entered after half an hour after entry of PW-1 and PW-2. He admitted that papers showing that the accused had given notes to the complainant for changing were seized from the office in that evening.

23. PW-3 Surendra Kulkarni stated that accused no.2 was assigned duty of inward and outward of receiving samples and preparing bills etc. Work of medical bills was also given to accused no.2. The responsibility of preparing bill was not assigned to any one. Thus, from his evidence it can be seen that the work of preparing of bills etc was administered to accused no.2. Bill Exhibit-35 was endorsed by PW-3 on 25th May 1989 directing accused no.2 to take necessary action. Bill for Rs.198/- was sent to treasury twice but returned with objection. Bill of PW-1 was lost when it was returned. He sent letter to Deputy Director about loss of bill. There is no evidence to show that he had handed the bill to accused no.1. PW-3 has disclosed that Peon Chavan had complained that Peon Chavan had assaulted to him. Accused nos.1 and 2 had stated to him that they had seen the incident and complaint was true. Police had collected relevant record from him. True copy was issued by PW-3 and statements of staff were recorded. The version of PW-3 falsifies the defense of accused that both the accused were witnesses to the incident of assault upon Peon Chavan by complainant. He has also admitted that both the accused have stated before them that they are not witness to the assault of complaint was true. The copies of statements recorded by PW-3 were not seized by police. After the incident the department had inquired whether accused no.1 had given torn notes of Rs.45/- to Kirve for exchange. He do not remember whether he has searched Bhamre's cupboard for Kirve's bill prior to the incident. He admitted that accused no.1 had complained to superior that PW-3 had claimed to have delivered Kirve's bill to him without actually delivering them. Thus, evidence of PW-3 makes it clear that work of complainant was not pending with appellant. There is no evidence that bills were handed over to

appellant. He also admitted that there was dispute between More and Bhamre and More had obtained permission to sit in verandah instead of room of Bhamre. More had requested him to guide him in respect of medical bills because bills were being processed in their office by accused no.2 for the first time. In the light of admission of PW-3 about relationship of accused nos.1 and 2, it is doubtful there was a joint demand by both the accused for bribe from complainant. PW-3 has also stated that behaviour of PW-1 with superiors was arrogant. It is difficult to hold that applicant had demanded bribe and accepted the amount as bribe. All these circumstances creates doubt about the case of prosecution that appellant has demanded bribe and accepted it.

24. PW-4 had accorded sanction. He admitted that sanction was accorded by him on the basis of papers submitted by ACB and did not independently call for any papers from department. Cash book or other registers were not sent along with letters of ACB. It did not come to his notice that accused no.1 had given notes worth Rs.45/- to complainant for being exchanged. He did not seek explanation from accused no.1. He do not recollect having received draft sanction order alongwith letter of ACB. Whereas PW-5 has stated that draft sanction order was sent to superiors with investigation papers. It appears sanction was granted mechanically.

25. The evidence of witnesses, documents on record, investigation conducted by ACB, defense of accused under Section 313 of Cr.PC attributes motive for false implication of applicant. His defense is plausible.

26. Evidence of PW-5 discloses that chit (Exhibit-50) was recovered during investigation. It is mentioned that accused no.1 (appellant) had given cash to PW-1 on 25-5-1989 for depositing in treasury and for exchange. He has ignored the question about inquiry regarding chit Exhibit-50 by stating that he do not remember whether he made inquiry about it.

27. Considering the evidence of witnesses examined by prosecution and doubts about their versions, it is difficult to give a finding that prosecution has established the charge against appellant. He is entitled for benefit of doubt. The conviction will have to be set aside.

ORDER

- (i) Criminal Appeal No.720 of 1998 is allowed and disposed of;
- (ii) The impugned judgment and order 27th August 1998 passed by learned Special Judge, Nashik in Special Case No.18 of 1989 is set aside and appellant is acquitted of all the charges.

(PRAKASH D. NAIK, J.)