

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 247 OF 2009**

Manohar Sahadev Parab,
Age 49 years, Occupation-Service,
Residing at Hatkanangale,
Taluka hatkanangale,
District Kolhapur.

.....Appellant
(Orig. Accused)

Vs.

The State Of Maharashtra
(at the instance of Sr.PI.
Anti-Corruption Bureau, Kolhapur)

.....Respondent

Mr. Satyavrat Joshi a/w Mr. Nitesh Mohite for the Appellant.
Mr. Ajay Patil APP, for the Respondent-State.

CORAM : A.S. GADKARI, J.
RESERVED ON : 1st JULY, 2022.
PRONOUNCED ON : 29th JULY,. 2022.

JUDGMENT:-

Appellant has questioned legality and correctness of Judgment and Order dated 25th February, 2009 passed by the learned Special Judge, Ichalkaranji in Special Case No.05 of 2005, convicting him under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for short, "*the P.C.Act*") sentenced him to suffer rigorous imprisonment for one year and to pay a total fine of Rs.10,000/-.

2 Heard Mr. Joshi, learned Advocate for the Appellant and Mr. Patil, learned APP for the State. Perused entire record.

3 Prosecution case in brief is as under:-

(i) Property bearing block No.714 admeasuring about 0.53 ares, situated at Managaon was owned by Mr. Anant G. Joshi. Appellant was working as Talathi of the said village at the relevant time. The said property was in possession of Mr. Nabhiraj Magadum i.e. father of the complainant Mr. Nitin Magadum since the year 1974. Revenue records mentioned name of Mr. Nabhiraj Magadum in crop statement as the person in possession and cultivating the said land. However, in the rights column names of Mr. Annasaheb Magadum and Mr. Appasaheb Magadum were mentioned as protected tenants of the said land. As the said land was being cultivated since the year 1974 by Mr. Nabhiraj Magadum, the original landlord i.e. Mr. Anant Joshi decided to sell it to the complainant. Complainant accordingly filed an Application before Tahasildar, Hatkanangale on 16th January, 2003 for deletion of names of Mr. Annasaheb Magadum and Mr. Appasaheb Magadum. The Tahasildar, Hatkanangale by its Order dated 31st January, 2003 directed Talathi, Managaon to delete names of Mr. Annasaheb Magadum and Mr. Appasaheb Magadum. The said Order was handed over by the complainant Mr. Nitin Magadum to the Appellant.

(ii) That, on 31st January, 2003, the complainant Mr. Nitin

Magadum purchased the said land from Mr. Anant Joshi for a consideration of Rs.42,000/- by executing a Sale Deed in the name of his sons namely Darshan and Bhushan who were minors. After purchase of the said land, the complainant Mr. Nitin Magadum forwarded one application to the office of the Appellant by registered post for effecting mutation in the revenue record on the basis of the said registered Sale-Deed. He received acknowledgment of the same on 6th March, 2003.

(iii) On 17th February, 2003 Mr. Nitin Magadum (complainant) contacted Appellant in his office and inquired about the Order passed by the Tahasildar for deleting names of Mr. Annasaheb and Mr. Appasaheb Magadum. He also inquired as to whether the mutation on the basis of the Sale Deed dated 31st January, 2003 was effected on the revenue record in favour of his sons. At that time the Appellant informed Mr. Nitin Magadum (complainant) that, an amount of Rs.4,000/- was required for the said work. Mr. Nitin Magadum questioned Appellant, why such an amount was required, upon which the Appellant informed him that, he was not knowing the transactions. The complainant informed the Appellant that, he was not in a capacity to pay an amount of Rs.4,000/-, whereupon the Appellant asked him to leave his office. Subsequently, in the month of February again the complainant contacted the Appellant and made inquiry about his work. However, the Appellant informed him that, he was busy in some other work and asked the complainant to come later on.

(iv) That, on 29th April, 2003, Mr. Nitin Magadum (complainant) again contacted the Appellant in his office about his work. Appellant told Mr. Nitin Magadum.(complainant) that, if he was ready to pay Rs.4,000/- then only the Appellant would do his work. Complainant again expressed his inability to pay Rs.4,000/- and after bargaining Appellant decided and demanded Rs.2,000/- for doing the work of the complainant. Mr. Nitin Magadum (complainant) informed the Appellant that, at that point of time he was not having such an amount and requested the Appellant to do the work and he would pay the payment later on. Appellant told the complainant that, if it was not possible for him to pay the amount in lumpsum, then he may pay an amount of Rs.1,000/- on the next day and the balance amount of Rs.1,000/- after completion of the work. Complainant informed the Appellant that, he would return with the said amount on the next day.

(v) As the complainant was not inclined to pay the said amount demanded by the Appellant, he approached the Anti-Corruption Bureau, Kolhapur and narrated all the facts to the officer-in-charge, who recorded his complaint (Exh-40). Mr. Dilip Katake (PW-3) was then Deputy Superintendent of Police attached to Anti-Corruption Bureau, Kolhapur (for short, "*ACB, Kolhapur*") verified the facts stated in the complaint and after getting satisfied, sent requisition letter to the Chief Executive Officer (for short, "*the CEO*"), Zilla Parishad, Kolhapur for deputing two officials for

acting as panchas for effecting the raid on the Appellant.

(vi) The CEO, Zilla Parishad, Kolhapur accordingly sent Mr. Suryakant Patil (PW-1) and Mr. Tatyasaheb Nawale who were working on its establishment and directed them to visit the office of ACB, Kolhapur. The said two witnesses visited office of ACB, Kolhapur on 29th April, 2003 at about 5.00 p.m. and contacted the officers of ACB. They were directed to attend the office of ACB on 30th April, 2003 at about 9.00 a.m. The said two witnesses accordingly came to the office of ACB on the said date and time and noticed that, one unknown person was sitting therein. The said person was introduced as Mr. Nitin Nabhiraj Magadum (complainant) resident of Managaon, Taluka Hatkanangale. Mr. Nitin Magadum narrated his grievance to the said witnesses and the said facts were verified by the panch witnesses with his complaint (Exh-40) and found it to be correct. The panch witnesses thereafter put their respective signatures below Exh-40.

(vii) Mr. Nitin Magadum produced cash amount of Rs.1,000/- consisting of one currency note of Rs.500/- and five currency notes of Rs.100/- denomination. The numbers of the said currency notes were noted down. After applying anthracene powder to the said currency notes, a pre-trap panchanama was drawn by following necessary procedure prescribed by law and rules framed thereunder. The panch witness Mr. Suryakant Patil (PW-1) was directed to accompany complainant to the

office of the Appellant. Complainant was directed to hand over the said amount only in the event and demand of bribe by the Appellant and in the event of acceptance of the amount, complainant was directed to give necessary signal. Mr. Suryakant Patil (PW-1) was instructed to listen and watch the conversation between complainant and the Appellant and other panch witness was directed to remain in company of ACB officials and should watch the entire transaction which would happen in his presence.

(viii) It is the further case of the prosecution that, on 30th April, 2003 at about 12.15 p.m. the raiding party reached the office of the Appellant. Mr. Nitin Magadum (complainant) and Mr. Suryakant Patil (PW-1), an independent panch witness, entered the office of the Appellant. The other panch witness and members of raiding party were waiting outside the office of the Appellant. After reaching the office of the Appellant, the complainant made inquiry about his work with the Appellant, whereupon the Appellant took complainant inside one room which was attached to his office and asked complainant to keep the amount in the cupboard in the said room. As was directed, Mr. Nitin Magadum kept the said amount in the cupboard. Complainant and the Appellant both came out of the room and Appellant occupied his chair. Complainant thereafter went out of the office and gave predetermined signal to the raiding party. The officers of ACB entered the office of Appellant and apprehended him. Mr. Suryakant Patil (PW-1) informed the events which occurred in his presence to the ACB

officers and accordingly Mr. Tatyasaheb Nawale i.e. the other panch witness was asked to remove the said amount from the cupboard. The numbers of the said currency notes were tallied with the numbers of the currency notes of pre-trap panchanama and the same were examined under ultra violet rays, traces of anthrocene powder were noted on the currency notes. A post trap panchanama was accordingly recorded in presence of panch witnesses by the Investigating officer i.e. Mr. Dilip Katake (PW-3).

(ix) The Circle Inspector of Revenue Department, on the same day issued an information in writing that no revenue dues were outstanding against Mr. Nitin Magadum (complainant). After completion of investigation, the complete record of investigation was forwarded to Mr. Sanjaysingh Chavan (PW-2) the Sub-Divisional Officer, Ichalkaranji Division (for short, "*the SDO, Ichalkaranji Division*") for according sanction to prosecute Appellant for the offences committed under the provisions of Prevention of Corruption Act.

(x) Mr. Sanjaysingh Chavan (PW-2) the SDO, Ichalkaranji Division after scrutinizing the documents, reached to the conclusion that, it was a fit case for according sanction to prosecute the Appellant for the commission of offences as alleged against him. After receipt of sanction, Mr. Dilip Katake (PW-3) submitted charge-sheet against the Appellant before the Special Court.

(xi) Trial Court framed charge below Exh-16. The contents of the

same were read over and explained to the Appellant in vernacular language, to which he pleaded not guilty and claimed to be tried.

In support of its case and to prove the guilt of Appellant, prosecution examined in all three witnesses namely (i) Mr. Suryakant Patil (PW-1), (ii) Mr. Sanjaysingh Chavan (PW-2) the SDO, Ichalkaranji, Division, Kolhapur and sanctioning Authority and; (iii) Mr. Dilip Katake (PW-3), Deputy Superintendent of Police, ACB Kolhapur and Investigating Officer.

(xii) After recording evidence, the Trial Court recorded statement of the Appellant as contemplated under Section 313 of the Code of Criminal Procedure (for short, "*the Cr.P.C.*"). Appellant was afforded an opportunity to explain the incriminating circumstances put forth against him. He denied all the incriminating circumstances and in addition, submitted memorandum of written arguments (Exh-62). Appellant also examined Mr. Deepak Patil (DW-1), an employee from Talathi office, Managaon in his defence.

The trial Court has convicted and sentenced Appellant by the impugned Judgment and Order.

4 Mr. Joshi, learned Advocate for the Appellant submitted that before the trial began, the informant expired on 8th October, 2005 and therefore the alleged first demand of 17th February, 2003 made to him by the Appellant and its verification has not been proved by the prosecution. He submitted that, once the prior demand is not proved, the rest of the

prosecution case regarding alleged subsequent demand by the Appellant will have to be construed with great caution and circumspection. That, on 30th April, 2003 i.e. the date of conducting trap/raid, no work was pending with the Appellant, as the papers of complainant were already sent to the office of the Tahasildar. That, as per the evidence of witnesses on record, independent witnesses were present in the office of the Appellant on the said date however, they have not been examined by the prosecution, which creates doubt about the prosecution case in the mind of the Court. He submitted that, tainted currency notes were found in the cupboard in the adjoining room which is accessible to others also. That, Appellant was not arrested immediately on the same day of trap i.e. on 30th April, 2003 but later on 2nd May, 2002. It show that, the investigating agency was not certain about the role of the Appellant in the present crime. He submitted that, the sole testimony of panch witness Mr. Suryakant Patil (PW-1) as to the demand allegedly made by the Appellant on 29th April, 2003 may not be relied upon.

In support of his argument, Mr. Joshi for the Appellant relied on the following decisions-

- i) Avinash Sitaram Garware Vs. State of Maharashtra, reported in 2008 ALL MR (Cri) 15;*
- ii) Suraj Mal Vs. State (Delhi Administration) reported in (1979) 4 SCC 725;*

- iii) *Mr. Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra, reported in 2018 SCC OnLine Bom 1073;*
- iv) *Anil Krishnarao Apashingkar Vs. The State of Maharashtra, reported in 2021 ALL MR (Cri) 2273;*
- v) *Dudh Nath Pandey Vs. State of Uttar Pradesh, reported in (1981) 2 SCC 166;*
- vi) *Bismilakha s/o Salarkha Pathan Vs. State of Maharashtra, reported in 2004 ALL MR (Cri) 1341;*
- vii) *Suresh s/o. Purushottam Ashtankar Vs. The State of Maharashtra & Anr., reported in 2015 ALL MR (Cri) 4243;*
- viii) *Namdeo s/o. Bakaramji Pagare Vs. The State of Maharashtra, reported in 2018 ALL MR (Cri) 3294 and,*
- ix) *Jivandhar s/o. Govindrao Katke Vs. The State of Maharashtra, reported in 2015 ALL MR (Cri) 3589.*

He therefore prayed that, the impugned Judgment be quashed and set aside by allowing present Appeal.

5 Per contra, learned APP submitted that, the demand by Appellant on 29th April, 2003 has been proved by the prosecution through the evidence of Mr. Suryakant Patil (PW-1) an individual panch witness. He submitted that, the prosecution has successfully proved demand and acceptance by the Appellant. That, Mr. Deepak Patil (DW-1) examined by the Appellant in support of his defence is an interested witness. The said

witness has admitted in his cross-examination that, the Appellant used to pay him Rs.50/- when no one turns to his office for doing copying work. He submitted that, the said witness was obliged by the Appellant and in return, he deposed in favour of the Appellant. He submitted that, the prosecution has proved its case beyond reasonable doubt and the Appeal may be dismissed.

6 At the outset, it is to be noted here that, Mr. Nitin Magadam (complainant) lodged his complaint (Exh-40) on 29th April, 2003 and in furtherance thereof a trap was laid on 30th April, 2003. Mr. Nitin Magadam passed away on 8th October, 2005. The trial of the present case began on 8th August, 2007 i.e. the charge against the Appellant was framed below Exh-16 on the said date. As Mr. Nitin Magadam passed away prior to beginning of the trial, his evidence could not be recorded by the prosecution. The prosecution therefore could not establish first demand dated 17th February, 2003 made by the Appellant with the complainant.

In view of the ratio laid down by this Court in the Case of *Avinash Sitaram Garware (Supra)*, once the prior demand is not proved, rest of the prosecution case regarding money allegedly demanded by the Appellant will have to be read with great caution and circumspection.

7 In the present case, in the absence of original complainant who passed away on 8th October, 2005 i.e. prior to beginning of the present trial the testimony of independent witness Mr. Suryakant Patil (PW-1) assumes

great importance.

8 Mr. Suryakant Patil (PW-1) in his testimony has deposed that, on 29th April, 2003 he was serving as a Junior Clerk in the office of Zilla Parishad Primary Education Department, Kolhapur. On that day, at about 4.00 p.m. he and other staff member of his office namely Mr. Tatyaso B. Nawale were directed by his superior officer to go to the office of Anti Corruption Bureau, Kolhapur at about 5.00 p.m.. A letter issued by Chief Executive Officer, Zilla Parishad Kolhapur written to Education Officer, Zilla Parishad Kolhapur was accordingly issued. As per the said directions, he along with Mr. Tatyaso B. Nawale went to the office of Anti Corruption Bureau, Kolhapur at about 5.00 p.m. and met PSI Mr. Bhosale. The said officer took them to Police Inspector Mr. Nikam. Mr. Nikam directed them to come again in Anti Corruption Bureau office on 30th April, 2003 at about 9.00 a.m. He along with Mr. Nawale went to the ACB Office, Kolhapur on 30th April, 2003 at about 9.00 a.m. P.I. Mr. Nikam asked them about their willingness to act as punch in a trap case. Both of them expressed their willingness to do so. One person was sitting in the office of Mr. Nikam. P.I. Mr. Nikam, asked them to hear the grievance of the said person. The said person told his name as Mr. Nitin N. Magadum (complainant), resident of Managaon. The complainant narrated his grievance to PW-1 and other panch witness and the illegal demand of amount by the Appellant for effecting mutation of names in the revenue record.

PW-1 has deposed that, Mr. Nitin N. Magadum (complainant) further disclosed to them that, on 29th April, 2003, he had been to the office of Talathi of village Managaon and made inquiry to the Appellant about his work. The Appellant had questioned to him, whether the complainant had brought Rs.4,000/- as was directed by him. After bargaining, the amount was settled to Rs.2,000/-. Complainant had asked the Appellant to pay Rs.1,000/- before his work is done and Rs.1,000/- after his work is done. Appellant had asked complainant to come with the said amount on the next day in the noon and remaining amount be paid after 4 to 5 days. Mr. Nitin N. Magadum told panch witnesses that, he was not willing to pay the said amount which was other than legal remuneration to the Appellant and therefore he had lodged complaint (Exh-40) with the ACB, Kolhapur. After reading the said complaint, PW-1 and another panch put their respective signatures at the end of the said complaint.

PW-1 has thereafter narrated the details of pre-trap panchanama (Exh-21). The raiding party along with panch witnesses thereafter decided to go to village Managaon by jeep. Necessary instruments/gadgets for conducting raid were also taken by the Officers of ACB, Kolhapur along with them. After reaching village Managaon, the jeep was halted near the temple of Birdev which was on the outskirts of the said village. After getting down from the jeep, PW-1 with Mr. Nitin N. Magadum (complainant) went to the office of Talathi of the said village. Members of

raiding party and other panch Mr. Nawale also followed them by keeping safe distance. Talathi office of village Managaon was facing towards northern side and comprising of two rooms i.e. one hall and one room. After entering in Talathi office, Mr. Nitin N. Magadum saluted Talathi-Appellant by folding his both hands who is sitting in the said room facing towards eastern side. One staff member was sitting near the Appellant and other staff member was writing something on the floor. There was one more person sitting on an iron chair near the Appellant.

Mr. Nitin Magadum made inquiry with Appellant about his work. Appellant told Mr. Nitin Magadum that, 'whether he has come after making required arrangement for getting his work done'. Complainant replied him in the affirmative. Thereupon, complainant asked Appellant whether he should hand over the said amount to him upon which Appellant told him to keep the said money with himself. Appellant told Mr. Nitin Magadum that, he had received order of Tahasildar, but there was deficiency in the order regarding deleting the name of protected tenant. The said order was again sent to Tahasildar office for making certain rectification. Then Appellant told Mr. Nitin Magadum with regard to the mutation names of his sons as per the sale deed. He told that, necessary diary has been prepared and the Circle Officer has issued notice to the concerned parties. Appellant however, gave assurance to Mr. Nitin Magadum that, the names of his sons would be mutated as per his sale deed

only after complying with the issuance of notices by Circle Officer. Appellant thereafter questioned Mr. Nitin Magadum as to who the PW-1 was? Mr. Nitin Magadum told Appellant that, PW-1 as his brother-in-law. Thereafter, Appellant stood up from his chair and asked Mr. Nitin Magadum to accompany him inside the adjoining room. PW-1 also followed them. Appellant asked PW-1 to wait outside the room. PW-1 stood in front of the said room. Appellant thereafter opened wooden cupboard and asked Mr. Nitin Magadum to keep the said amount in it. Mr. Nitin Magadum took out the said amount from his right hand from left side shirt pocket and kept it in wooden cupboard. Appellant thereafter closed the wooden cupboard and he along with Mr. Nitin Magadum came out of the said room. Appellant occupied his seat. Thereafter, Mr. Nitin Magadum came out of Talathi Office, while PW-1 sat on a tin chair which was kept near Appellant. Members of raiding party i.e. Police Inspector Mr. Nikam and ASI Mr. Bhosale along with other members entered in the office of Appellant. PW-1 narrated whatever transpired earlier and informed members of raiding party that, the Appellant had asked Mr. Nitin Magadum to keep an amount in the wooden cupboard after accepting it. PW-1 has identified the Appellant in the Court as the same Talathi.

ASI Mr. Bhosale and constable Mr. Bhaladar caught hold both hands of Appellant. ASI Mr. Bhosale disclosed his identity and identity of other staff and the purpose of visiting his office. PI Mr. Nikam asked name

of Appellant. Appellant was given demonstration that, no bluish glittering appeared on the person of the raiding party and panch witnesses under the rays of ultra violet lamp. The said demonstration was done in the office of Appellant itself. The officers of raiding party questioned Appellant as to where he has kept the bribe amount to which, he replied that he kept it in the next room in wooden cupboard. The members of raiding party and Appellant then went inside the said room. Appellant opened wooden cupboard and pointed out the place where the said amount was kept by him. PI Mr. Nikam asked another panch to pick up the said amount. It was one currency note of Rs.500/- and five currency notes of Rs.100/- denomination. The numbers of the said currency notes were tallying with the numbers mentioned in the pre-trap panchanama. The said currency notes were inspected in the rays of ultra violet lamp and it was found having bluish glittering on both sides of the said notes.

The place where those notes were kept in the wooden cupboard was also inspected with the help of ultra violet lamp and bluish glittering was also found on the place where the said notes were kept. The wooden cupboard being heavy, could not be seized by the Police. The currency notes were thereafter kept in an envelop (Exh-22) and it was sealed by wax. This witness has identified the currency notes in Court which were seized under the said panchanama. The search of Appellant was conducted. The palm and fingers of both the hands of the panch

witness Mr. Nawale was observed in lamp in darkness wherein bluish glittering appeared on his both hands. Mr. Nitin Magadum was called in the office of Appellant. His personal search was taken. Right hand of complainant was inspected under the ultra violet rays whereupon bluish glittering found on his right palm.

A detailed panchamana (Exh-23) of the said event was drawn. A copy of the said panchanama was given to Appellant. He put his endorsement to that effect. After reaching to the office of ACB, Kolhapur he and another panch witness were shown a sealed envelop which is kept in office of ACB, Kolhapur while leaving the office for raid. The said sealed envelop was opened before him. The box containing anthracene powder was handed over to Mr. Katke. Rough papers and cotton swab were destroyed by burning. Panchnama (Exh-25) was accordingly drawn about the things which transpired in the office of ACB, Kolhapur after returning from raid.

9 Learned Advocate for the Appellant has cross examined PW-1, Mr. Patil at considerable length. In his cross-examination, vital admissions detrimental to the interest of Appellant have been brought on record by the defence. PW-1 in his cross-examination has admitted that, after their entry in Talathi office, the complainant by saluting Appellant stated that, “नमस्कार तलाठी साहेब” The Appellant looked at the complainant and said to him as

for what purpose he had come? The complainant replied that, he had come to inquire for his work. Appellant asked complainant, 'whether he had come with arrangement as directed by him yesterday'. Complainant replied that, he had come with by making arrangement of Rs.1,000/-. Complainant told Appellant whether he should hand over to him, but he did not touch his pocket. Complainant also did not touch currency notes. Appellant replied that, he should keep the said amount with him. Thereafter, the Appellant started telling complainant about his work. The said conversation was going on between them for about 5-10 minutes. Thereafter, Appellant and complainant went in another room. Both of them proceeded to said room by the side of woman staff member. At that time, PW-1 and complainant were standing in front of Appellant. The said room in Talathi office was at the distance of about 20 feet from the table of Appellant. Appellant and complainant entered the room and PW-1 followed them. While proceeding to the said room, there were no talks between Appellant and complainant. When Appellant asked PW-1 to go outside the room, he moved 4 feet from the entry of the said room.

The suggestion that, nothing was visible what is happening inside from the outside, has been specifically denied by PW-1. He has further denied that, the conversation going on inside the room could not be heard from outside. He has denied that, he did not know what transpired in the room when he was standing outside.

10 Perusal of entire cross-examination indicates that, nothing beneficial to the Appellant has been brought on record by the defence as noted earlier. In fact, vital admissions which are detrimental to the interest of the Appellant as noted above have been brought on record. The material deposition of PW-1 in examination-in-chief, has not been shaken at all by the defence in his elaborate cross-examination.

11 Mr. Dilip Katake (PW-3) is the Investigating Officer of the present crime. He in his examination-in-chief has in detail narrated all the facts from the date of lodgment of the complaint till completion of raid.

In his cross-examination, nothing beneficial to the Appellant, which will shake his credibility and of PW-1 has been brought on record. In the cross-examination of Mr. Katake (PW-3), further vital admissions detrimental to the interest of Appellant have been brought on record. PW-3 has denied that, the room (where currency notes were found) was also part of Grampanchayat office. He has denied that, the Revenue Department has nothing to do with possession of the said room. That, the place where the Appellant was sitting was adjoining to the western wall. He has denied that, the cupboard in that room was belonging to Police Patil, it was not in use and was containing the papers belonging to the Police Patil.

12 Mr. Sanjaysingh Chavan (PW-2) was Sub-Divisional Officer then serving at Ichalkaranji Division, Kolhapur and has accorded sanction to prosecute Appellant in the present crime. His evidence is formal in nature.

Perusal of his evidence, indicate that after proper application of mind and reaching to the conclusion, he has accorded sanction to prosecute Appellant in the present crime.

13 Appellant has examined Mr. Deepak Patil (DW-1) as his defence witness. In his examination-in-chief, he has deposed that, he was doing work in the Talathi office to help the Appellant since when Mr. Salim Mujawar was Talathi. He used to assist the persons who applied for 7/12 extracts and such persons used to pay him Rs.5 to 10 per copy. That, on the date of incident at about 12.00 to 12.30 p.m., 5 to 6 persons entered the office and informed that, they were employees of Anti Corruption Bureau and collected certain files from the hands of the Appellant. In his cross-examination by the learned APP, he has admitted that the Appellant used to pay him Rs.50/- when no one visit to his office for copying. The concerned person used to pay amount firstly to the Appellant and the Appellant then used to pay amount to him. That, in the absence of Appellant, he used to receive applications and prepare copies of the relevant revenue record. He has admitted that, there was only one door for entering into Talathi office. That, he did not see any paper to the effect that the room was belonging to Police Patil.

14 Perusal of evidence of aforestated witnesses, clearly indicates that, the room from where the tainted amount was recovered was having entry from the office of the Appellant and apart from Appellant, nobody

else was using it. PW-1 has categorically deposed that, the Appellant took complainant to the adjoining room and asked him to keep the amount in the wooden cupboard which is lying therein.

He has also admitted that, he could see what happened inside the said room. He therefore told the said fact to the raiding party of keeping the said amount in the cupboard under the directions of the Appellant. This witness has proved the fact of demand by the Appellant. He has deposed that, the Appellant told Mr. Nitin Magadum, whether he has come after making required arrangement for getting his work down and thereupon Mr. Nitin Magadum asked the Appellant, whether he should pay the amount to him. This clearly indicates that, the prosecution has proved the act of demand by the Appellant from Mr. Nitin Magadum. The said amount was subsequently found in the cupboard, which was pointed out by PW-1 in presence of Mr. Nitin Magadum and Appellant. This witness has thus clearly proved the demand and acceptance of bribe amount by the Appellant. PW-1 Suryakant Patil is an independent witness. He was working with the Zilla Parishad Education Department, Kolhapur. He had no grudge, grievance, animosity or enmity to grind against Appellant to falsely implicate him in a crime. The evidence of PW-1 is self eloquent.

Prosecution has thus proved that, the Appellant demanded the bribe amount from Mr. Nitin Magadum and had directed him to keep it in wooden cupboard in the adjoining room which was subsequently recovered

by the Investigating Agency after it was pointed out by PW-1.

15 As noted earlier, in the present case the complainant had passed away on the date of commencement of trial and therefore his evidence could not be recorded. Assuming for the sake of argument, if the complainant would have been alive and did not support prosecution case i.e. turned hostile, then in that case the evidence of PW-1 who is an independent witness, for demand and acceptance of bribe amount, had to be taken into consideration with reasonable corroboration in that behalf.

 According to this Court, the testimony of PW-1 is fully trustworthy and reliable. In the absence of complainant, the prosecution has successfully proved that the Appellant demanded illegal gratification from the complainant and accepted it in presence of PW-1.

 There is no dispute about the fact that, the Appellant was a public servant working as Talathi at village Managaon on the date of commission of offence i.e. 30th April, 2003. It is thus established by the prosecution that, the Appellant being a public servant, on 30th April, 2003 demanded and accepted amount of Rs.1,000/- from the complainant as gratification other than legal remuneration for effecting mutation entries of the names of his sons in the revenue record and has committed an offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

16 As far as sanction accorded by Sanjaysingh Chavan (PW-2) to prosecute the Appellant is concerned, it clearly appears to me that, the said witness after taking into consideration the material placed before it by the investigating agency reached to the satisfaction and accorded sanction to prosecute Appellant. He has proved sanction Order dated 4th June 2003 at Exh-33.

17 Perusal of entire evidence on record, leads to draw a safe conclusion that the prosecution has proved its case against the Appellant beyond reasonable doubt. In view thereof, the decisions relied upon by the learned Advocate for the Appellant are of no help to him as the facts in the said decisions differ from the facts of the case in hand.

18 Trial Court has not committed any error either in law or on facts while passing impugned Order dated 25th February, 2009.

There are no merits in the Appeal.

Appeal is accordingly dismissed.

19 Appellant is directed to surrender before the trial Court for undergoing balance of sentence within a period of eight weeks from the date of uploading of present Judgment on the official website of Bombay High Court.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR
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by SANJIV
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MASHALKAR
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