IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1175 OF 2006

The State of Maharashtra ...Appellant

Versus

1. Abdul Ghulam Ambiya Khot,
Age 57 Years,
Deputy Tax Inspector,
Thane Municipal Corporation,
Resident of – Own House,
Kharbazar, 12/15 Kalyan, District, Thane.

2. Ragho Dhulaji Kokare,
Age 52 Years,
Clerk in Thane Municipal Corporation,
Resident of Om Kalavati Apartment,
3rd Floor, Room No.303,
Kulgaon, Badlapur (E),
District : Thane.

3. Mohammad Ayub Ataullah Pathan,
Age 38 Years,
Resident of Arafat Mahal,
B-wing, 2nd Floor, Room No.203,
Kausa – Mumbra. ...Respondents

Mr. R. M. Pethe - APP, for the Appellant – State.
None for the Respondents.

CORAM	:	**PRAKASH D. NAIK, J.**
JUDGMENT RESERVED ON	:	**26th AUGUST, 2021.**
JUDGMENT PRONOUNCED ON	:	**7th APRIL, 2022.**

JUDGMENT :

1. The State of Maharashtra has preferred this appeal under

Section 378(3) of the Code of Criminal Procedure (for short "Cr.P.C.") challenging the judgment and order dated 3rd February, 2006 passed by learned Special Judge, Thane in Special Case No. 20 of 2001. The respondent Nos. 1 & 2 were acquitted for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short "PC Act"), whereas respondent No.3 was acquitted for the offence under Section 12 of the PC Act.

2. The prosecution case is as under :-

(a) The complainant (PW-1) purchased flat consisting three rooms bearing Nos. 401, 402 & 403 on 4th Floor of building known as Arafat Mahal, B-Wing, in the year 1994. He was occupying the said premises. He did not pay municipal tax from 1998 onwards.

(b) PW-1 was at his native place in Uttar Pradesh for a period of about one and half year from 1998. During his absence, the flat was sealed by Municipal Corporation for default in payment of tax. When he returned to the premises in the year – 2000 he came to know about sealing of premises.

(c) In view of resolution of standing committee of Municipal

Corporation passed in June, 2000 it was decided to deliver possession of flats to defaulters on payment of arrears.

(d) The complainant (PW-1) met Accused No.1 in his office showing his willingness to pay the tax with a request to remove the seal.

(e) The Accused No.1 told him to bring Accused No.3, secretary of Arafat Apartment. On 29th June, 2000, the complainant met Accused No.1 along with Accused No.3. The tax was calculated and the Accused told him to pay Rs.8,200/- towards tax and additional sum of Rs.3,000/- to him for performing work. The complainant returned without parting money.

(f) The complainant met Accused on 4th July, 2000 at his office along with Accused No.3 and requested to reduce the amount. On negotiation, the Accused agreed to accept Rs.2,000/- for removing the seal of flat and the Accused was told to give the amount to Accused No.3 on 5th July, 2000.

(g) Since the complainant was not willing to give bribe, he lodged the complaint against Accused No.1 with Anti-Corruption

Bureau, Thane. Complaint was recorded by Inspector Devade. Trap was arranged. Panch witnesses were called. The complainant produced amount of Rs.2,000/- for trap. Procedure for trap was completed.

(h) As per plan, the complainant met Accused No.1 at his office. He was supposed to handover the tainted notes, if demand is made and thereafter, give signal to the raiding party. One of the panch was to accompany complainant and watch the events.

(i) The complainant and panch went to the Municipal Office at Kausa – Mumbra. Raiding party waited outside. They met Accused No.3 at Wasim Hotel. He told the complainant to give money to him as the Accused No.1 will not accept money from him. The complainant gave trap notes to Accused No.3. The amount was kept in pocket. They went to the Municipal Office. Accused No.1 was not present in the office. Accused No.2 was present in the office. He informed that the Accused No.1 has proceeded to Sagar Apartment. Hence, they went to Sagar Apartment. Accused was not found. They returned to Municipal Office and waited for Accused No.1.

(j) Accused No.1 reached the office at about 4.45 p.m. The complainant informed him that he paid Rs.2,000/- to Accused No.3 and requested to accept the said amount and remove the seal.

(k) The Accused ascertained this fact by questioning Accused No.3. Accused No.1 instructed Accused No.3 to handover Rs.5,00/- to Accused No.2 and obtain key of the flat from him. Accused No.2 was instructed to receive the tax amount and handover the key of the flat.

(l) The complainant handed over the tax money to Accused No.2. With the help of clerk receipt of Rs.7,100/- was prepared. Receipt of Rs.1,000/- was also prepared and was given to complainant. Accused No.3 gave note of Rs.500 out of trap note to Accused No.2. The complainant was told by Accused No.2 that peon was not present and on his arrival the key will be handed over. The complainant gave predetermined signal. The raiding party reached the spot. Accused Nos. 2 & 3 were caught. Trap notes of Rs.500/- were seized from Accused No.2. Anthracene powder was seen on the finger of Accused No.2. Trap panchanama was prepared. Complaint was registered with Mumbra Police Station vide Crime No.120 of 200. Sanction for prosecution was obtained. Charge-sheet was filed against the Accused.

3. Charge was framed by order dated 23rd July, 2004 against Accused. Subsequently, the charge was altered by order dated 1st March, 2005.

4. The prosecution examined four witnesses. PW-1 Aziz Siddiqui is the complainant. PW-2 – Prasad Patkar is panch. PW-3 – Kalyaneshwar Prasad Bakshi is sanctioning authority. PW – 4 - Kedu Ragho Devade is the Investigating Officer.

5. The statement of the Accused was recorded under Section 313 of Cr.P.C. The defence of the Accused was denial. Accused No.1 filed written statement under Section 313 of Cr.P.C.(Exhibit – 72). Accused No.2 filed written statement under Section 313 of Cr.P.C. (Exhibit – 44). Accused No.3 filed written statement (Exhibit – 73). Accused No.1 filed application on 4th October, 2004 for exhibiting certain documents. The Court passed an order on 4th October, 2004 that the documents admitted by defence be exhibited to be read in evidence.

6. The Accused were acquitted by the trial Court vide judgment and order dated 3rd February, 2006 concluding that the story of demand on 29th June, 2000 and 5th July, 2000 is not established. The allegations that the tainted notes were given to Accused No.3 as per instructions of Accused No.1 is unbelievable. Explanation of Accused No.3 regarding acceptance of money is acceptable. In absence of evidence regarding demand and motive, the charges against Accused No.2 shall fail. Accused No.1 did not receive money. Except evidence relating to talk of Accused No.1 with Accused No.3 in the office, there is no other evidence to prove the charges against him. There are various discrepancies in the evidence of the complainant and panch witnesses. Their evidence does not inspire confidence. Prosecution failed to prove the guilt of the Accused beyond reasonable doubt.

7. Learned APP submitted that the judgment of acquittal is contrary to evidence on record. The conversation between the Accused and the complainant establishes that there was demand and acceptance of bribe amount. Tainted currency notes were recovered from Accused. Demand was proved. Bribe amount was demanded for de-sealing the premises. Panch witness supported the case of the prosecution. Presumption under Section 20 of the PC Act was not rebutted by the Accused. There was no reason to discard the evidence of witnesses. The charges were proved beyond doubt. The trial Court has committed error in arriving at conclusion that demand of bribe amount is not proved. The trial Court has erred in concluding that the prosecution has failed to prove that during the course of same transaction, on 5th July, 2000 at 5.00 p.m. at Municipal Office Accused No.2 has accepted the bribe amount. The Accused No.3 has aided and abetted other Accused in commission of the offences. There is no reason to disbelieve the evidence of the complainant and the panch witnesses which is corroborative in nature. The trial Court has overlooked the evidence on record and arrived at erroneous conclusion that the charge is not proved beyond doubt.

8. In the light of the grounds urged by the appellant in this appeal and submissions of learned APP, I have scrutinized the evidence on record.

9. PW-1 has deposed that he owns the flat consisting of three rooms at Arafat Mahal at Kausa. He paid municipal tax up to 1998. Accused No.3 is secretary of the building. The Corporation sealed the flat for non payment of taxes in 2000. He was at his native place. On enquiry he came to know about arrears of taxes. Accused No.1 is officer in Tax Department at Kausa office. Accused No.2 works in that office as typist. Accused No.1 told complainant to meet Accused No.3. PW-1 was informed that the flat was sealed for non payment of taxes. On 29th June, 2000, he visited Municipal Office with Accused

No.3. He was introduced to Accused No.1 and requested to calculate the tax and accept it and remove the seal. On Calculation, accused No.1 told him that he has to pay Rs.8,200/- towards taxes. Accused No.1 demanded Rs.3,000/- as bribe. The accused No.1 told him that if the amount was not given the seals would not be removed. On 4th July, 2000, the complainant again went to the office of Accused No.1 along with Accused No.3 and indicated that he would pay the amount of Rs.8,200/- towards tax on the next day. He tried to negotiate the amount of Rs.3,000/- and it was reduced to Rs.2,000/-. The amount was to be given on 5th July, 2000 at 3.00 p.m. at his office. He agreed. He was instructed by Accused No.1 to give the amount of Rs.2,000/- to Accused No.3. On 5th July, 2000 complainant went to Anti-Corruption Bureau, Thane office and lodged Complaint. Panchas were called. Procedure for trap was completed. Instructions were given to complainant and panch witnesses and members of raiding party. All of them proceeded towards the office of Accused. They reached near Petrol Pump. As per instructions, he along with panch PW-2 went to Wasim Hotel, where he was supposed to meet Accused No.3. PW-1 and PW-2 went to Wasim Hotel and met Accused No.3 outside the hotel. Accused No.3 told him that he was waiting for him and told him that they would go to pay the tax and the seal would be removed. He further told him to give Rs.2,000/- which was to be given to Accused No.1 as he would not accept money himself from him. The notes were handed over to Accused No.3. He accepted them. Than, they went to municipal office with him. Accused No.1 was not present in the office. Accused No.2 was present. He informed that Accused No.1 has gone to Sagar Apartment. Thereafter the complainant, panch witness and Accused No.3 went to Sagar Apartment. Accused No.1 was not found. They returned to Municipal Office at 4.00 p.m. and informed accused No.2 that accused No.1 was not present. Accused No.2 asked PW-1 about nature of work. He told him about it. Accused No.2 told him that the Accused will reach by 5.00 p.m. At 4.45 p.m. accused No.1 reached there. Complainant requested him to accept the tax amount and remove the seal of flat. Accused No.1 asked PW-1 whether he gave Rs.2,000/- to Accused No.3. Accused No.3 told him that work was done and he received Rs.2000/-. He also told accused No.2to accept Rs.8,200/- from complainant to remove the seals. Accused No.1 told Accused No.3 to go out as he wanted to discuss something. He went out. Complainant went out with PW-2. Accused No.3 again told that he had received amount for accused No.1 and accused No.1 may take the money. Accused No.1 directed accused No.3 to give Rs.500/- to accused No.2. Except this, he (PW-2) could not listen other conversation between them. Again they went inside the office. Accused No.1 directed accused No.2 to accept the tax amount and to issue receipt. He directed Accused No.3 to give Rs.500/- to accused No.2. He also told that he was going out for some work. Thereafter PW-1 gave Rs.8,00/- to accused No.2. He took money and issued two receipts. One for Rs.7,100/- and the other for Rs.1,000/-. Accused No.3 handed and kept it in pocket. over amount of Rs.500/- to Accused No.2. He accepted the amount. He demanded receipts. Accused No.3 asked Accused No.2 to go to the flat and remove the seal. Accused No.2 told that office peon was not available and on his arrival seal would be removed. Accused No.3 went out. Complainant gave signal to raiding party. The raiding party caught Accused No.2. Accused No.3 was also caught. Further procedure was completed. In the cross examination he stated that there was only one secretary for all the wings of Arafat Mahal. Tax from all the flat owners was collected by the society and paid in Municipal office. On 29^{th} he was at the office of Accused for 15-20 minutes. Conversation took place in the office. Except himself Accused No.1 and Accused No.3 nobody was present in hearing distance at the time of conversation. He do not remember whether he stated while complaint was lodged that Accused No.3 introduced him to Accused No.1 and told him to calculate the tax and accept the money. This fact is not stated in the complaint. He did not state before the Police. He had stated this fact when his supplementary statement was recorded. He cannot say why it is not mentioned in it. He felt that after paying taxes he had right to get back the possession. He had no money on 29th to pay the taxes and he was not knowing how much amount was due and therefore, he did not pay taxes on 29th. He borrowed Rs.10,000/- from his friend which was used for trap. In view of demand he felt that it was necessary to give bribe. He did not like the demand. He did not state to police that Accused No.1 told him that if the amount was not given, the seals would not be removed. He has stated that this fact during his supplementary statement. He cannot say why it is not recorded in his supplementary statement. He was not willing to pay the bribe. He questioned the Accused about it. He stated that he will not do the work unless the bribe was paid. He agreed to pay bribe on 29th. He did not approach Assistant Commissioner Raje or Commissioner as he wanted to approach the Anti-Corruption Bureau to trap the Accused. He felt that on approaching Commissioner, he would not be required to pay bribe. On 29th he did notapproach ACB as he had no money on that day and also for the reason that he had told the accused that he would approach him again on 4th. He had not told the Accused that he would approach him on 4th. On 4th he went to the office of the Accused at 3.00 p.m. Accused Nos.1 & 3 were present. He did not inform accused No.3 that he was to trap accusedNo.1. He did not inform accused No.3 that he lodged complaint. Accused No.3 was secretary and hence he took him with on 29th. As per instructions he was to approach Accused No.1 at his office with panch and pay the tax and obtain the receipt and then to make a request to open the flat and if there was demand he was to give trap money to him. He was instructed to give signal on acceptance of bribe. There were no instructions to meet Accused No.3 and to give him the trap notes. He was not asked by Mr. Devade, where Accused No.3 was and where he would meet. He did not tell him about it. He did not mention his name in ACB office. He did not tell Devde that accused No.1 instructed him to give money to accused No.3. The panch was not knowing accused No.3 Shri. Devade did not instruct him to search for accused No.3. He was not knowing that he would meet Accused No.3 near Wasim Hotel. He told the panch that Accused No.3 was secretary of the building. The panch was with him when the trap notes were given. The panch questioned him when he gave trap notes to Accused No.3. According to him from the talk with Accused No.3, the panch got knowledge as to why the amount was given to Accused No.3. Raiding party members were watching them. He do not know whether raiding party members witnessed the incident of giving trap notes. Before giving trap notes to Accused No.3 he did not contact Shri. Devde for further instructions. He did not consult panch at that time. Except panch nobody witnessed the incident of giving trap notes. Shri. Devde did not sent anybody at the hotel to see why they were there. The talk with Accused No.3 was in normal tone. Money was given openly. The panch was silently watching the events till they reached Municipal Office. He did not signal at Wasim Hotel as the trap notes did not reach the target. He did not contact Shri. Devde after knowing that Accused No.1 was not in the office. He did not ask Accused No.2 to receive the money of tax. Without order from Accused No.1, tax would not have been accepted in the office. He cannot tell why he did not give the tax money to Accused No.3. He was not knowing why Accused No.1 had gone to Sagar apartment. Shri. Devde did not send anybody to contact them. The raiding party followed them to Sagar Apartment. They were not contacted by raiding party till they returned to Municipal Office. The panch did not tell him that the events were not happening as per instructions. He did not tell Accused No.3 to give money to Accused No.1. He did not feel that the money did not reach the target. He felt that accused No.1 would accept the money from Accused No.3. When Accused No.1 and Accused No.3 went out of office for discussion, he followed them to listen conversation. Accused No.1 asked whether his work was done and Accused No.3 said, yes.

Except this, that other conversation took place between them could not be heard. He had stated to Police in supplementary statement that instruction to give Rs.500/- to Accused No.2 was given inside the office. It is not mentioned in supplementary statement. The money has reached the hand of Accused No.2. He do not know whether Accused No.1 had received the money or not. He tried to contact Mr. Devde. It was not possible for him to stop Accused No.1. Panch did not ask him to stop Accused No.1 from going out. He got the possession of flat in the night of trap. The name of Accused No.2 is not mentioned in the complaint. He had stated to Police that Accused No.3 introduced him to Accused No.1 and appraised him of the fact and requested to calculate the tax and to accept the amount to remove the seal. However, this fact is not mentioned in the complaint. He felt that Accused No.1 and Accused No.3 may accept bribe outside the office and therefore went out with panch. Accused No.2 asked about nature of work. There were no instructions to meet Accused No.3 at Wasim Hotel. It was not decided that he should meet Accused No.3 at Wasim Hotel. In the supplementary statement he had stated that Accused No.3 told him that he was waiting for him and that they were go to pay the tax and seal would be removed. This fact was not mentioned in the supplementary statement. He do not know whether accused No.1 received money or not nameof accused No.2 is not mentioned in complaint. He had stated to Police that accused No.3 had introduced him to accused No.1 and appraised him of the facts and requested to calculate the tax and to accept the amount and to remove the seal. He felt that accused No.1 & 3 may accept money outside the office and therefore he went out with panch after them. Accused No.2 was not present when accused No.3 to give Rs.500/- to Accused No.2. There were no instructions to meet accused No.3 at Wasim Hotel. It was not decided that he should meet him at Wasim Hotel. It is not mentioned in his statement that accused No.3 told him that he was waiting for him and that they would go to pay the tax and that seals would be removed.

10. Thus, the evidence of PW-1 suffers from serious doubt. There are various omissions in his statement. It is difficult to accept his evidence about demand and acceptance of bribe. PW-1 and PW-2 had acted contrary to the instructions given by the raiding party. The amount was not given to Accused No.1. His evidence does not inspire confidence. There was no conversation with accused No.2 to about demand and acceptance of bribe amount.

11. PW-2 – Prasad Patkar is panch witness. He stated that he attended Anti-Corruption Bureau Office on 5th July, 2000 along with Deepak Phulkar. Complainant was present. His complaint was that one Khot employee of T.M.C. demanded bribe from him to open seal of his flat. He was told to act as panch witness. Complainant produced cash of Rs.2,000/-. Anthracene Powder was applied. Notes were shown under ultra violet light. He kept the notes in his pocket. Panchanama was drawn. He was instructed to accompany the complainant as his relative. Phulkar was instructed to accompany raiding party. They left ACB office. They reached the office of T.M.C. Accused was not present. Accused No.2 was present. He told that Accused No.1 had proceeded towards building. They proceeded towards that building which was in front of office. Raiding party followed them. Accused No.1 was not present. They returned to office. They met Accused No.3. He was secretary of the society of the complainant. He took them to Wasim Hotel. Accused No.3 inquired with complainant whether he did the job of Accused No.1. He replied in affirmative. Accused No.3 told him that Accused No.1 will not accept money from him and that the money should be given to him. On this complainant gave amount to him. He accepted the same. Accused No.3 told him to pay the tax in the office. They went to office. Accused No.1 was not present. Accused No.2 was present. They waited for Accused No.1. After sometime Accused No.1 reached there. Accused No.3 was present. Accused No.1 called Accused No.3 outside and asked him whether his work was done.

Accused No.3 said 'yes'. Accused No.1 instructed Accused No.3 to give Rs.500/- to Accused No.2. He further told that Accused No.3 should keep the remaining amount with him and he would collect later on. Thereafter they went inside the office. Accused No.1 instructed Accused No.2 to receive the tax amount and he left the place. He instructed Accused No.2 to handover the key of the flat. The complainant paid the tax amount. Receipt was issued. Receipts were given to Accused No.1. On giving signal, raiding party reached the spot. Accused No.2 was apprehended. Currency notes of Rs.500/- were recovered from Accused No.2. Rs.1,500/- were found with Accused No.3. In the cross examination he stated that as per instructions, the complainant was to contact Accused No.1 and talk to him and handover the trap notes in the event there is demand of bribe from him. The raiding party members were outside. On finding that Accused No.1 was not in the office, they did not contact the Investigating Officer. There were no instructions to search for Accused No.1, if he was not present in the office. They crossed distance of about 10 minutes for his search. They did not inform about it to Shri. Devde. He did not feel that it is necessary to inform about the said fact to Shri. Devde. They did not feel that trap was over as Accused No.1 was not present at the office. Shri. Devde had instructed him to accompany the complainant till further instructions.

He was aware that the notes were to be given to Accused No.1. Complainant told him that Accused No.3 was secretary of the society. He felt that the trap notes were not given as per instructions. It did not occur to him that it was not proper. He did not disclose to Shri. Devde that the notes were given to wrong person. He did not know how Accused No.3 reached the spot. Accused No.1 had reached the office at about 4.00 to 4.15 p.m. He was there for about 10 to 15 minutes. The trap notes were with Accused No.3. It did not occur to him to prevent to Accused No.3 from going out. From conversation between Accused No.2 and Accused No.1 he came to know that he was the officer. Shri. Devde did not ask him why signal was not given on arrival of Accused No.1. He did not tell PW-1 to inform Shri. Devde that the Accused No.1 is leaving office. He was not knowing Accused No.2. His name was disclosed accidentally. There were no instructions whether trap amount was to be paid. The trap amount was given to Accused No.2 by the same hand by which trap notes were given by complainant. They were at Wasim hotel for 10 minutes.

12. PW-3 Kalyaneshwar Bakshi is the sanctioning authority. According to him he was Muncipal Commissioner, Thane. He was competent to appoint Assistant Tax Inspector and clerks in the corporation. He received investigation papers from ACB with request to accord sanction for prosecution. He went through the papers and came to the conclusion that it was fit case for filing charge-sheet. The general body resolved to accord sanction for prosecution of the Accused. On the basis of that resolution he accorded sanction by order dated 26th June, 2001. The sanction order was issued on 27th June, 2001. In the cross examination he stated that the copy of resolution was sent along with sanction order. He produced forwarding letter received from ACB. He admitted that draft sanction was sent to him in sealed envelope. He did not remember whether documents about the sanction of the flat of complainant were seen by him. Flat and shops of defaulters were purchased by the corporation for normal price. The complainant was defaulter. There was no demand by Accused No.2. He did not accept bribe from him. The Police papers revealed that the complainant did not follow the instructions of ACB officers in giving trap notes, even though, he did not find any suspicion. He relied on the report of ACB and investigation papers. The sanction order was drafted by personnel officer. He approved it. It is identical to draft sanction.

13. PW-4 Kedu Ragho Devde is the Investigating Officer. According to him complainant lodged the complaint against Accused No.1 about demand of bribe. He arranged the trap. Panch witnesses were summoned. Amount was arranged by complainant. Instructions were given to complainant and the panch witnesses. The complainant was instructed to visit office of Accused No.1 with panch witness. The trap notes were to be handed over to the Accused in the event of demand by him. On receipt of the bribe amount by Accused, the complainant was instructed to give signal to the raiding party. They left the office for trap. The raiding party along with him was waiting outside the office of Accused. He met Accused No.3. Three of them entered the hotel. They came out of the hotel and went towards the municipal office. Accused No.1 came to his office. After sometime Accused No.1 left the office. Accused No.2 was working as clerk in the office. Complainant gave signal to the raiding party. Thereafter, they approached into the office of Accused No.1 and caught the hands of Accused No.2. The complainant was asked to wait outside. Tainted money were recovered. Traces of anthracene powder were noted on the currency notes. Panchanama was recorded. Statements of witnesses were recorded. Accused were arrested and subsequently granted bail. Papers were forwarded for obtaining sanction. Sanction was accorded. Charge-sheet was filed against the Accused. In the cross examination he deposed that, he was convinced about the story reflected in the last paragraph of the complaint. He arranged trap against Accused No.1. Instructions were given to the raiding party, complainant and panch witnesses. Wasim Hotel is adjacent to Municipal Office. Going towards the hotel by complainant and panch witnesses was contrary to instructions given to them. He did not feel it necessary to know why they acted so. He had no discussion with the second panch and members of raiding party about it. He has no personal knowledge about the events occurred inside the Wasim Hotel and Municipal office. He did not feel it necessary to know why they came out of the office after first visit and went towards Sagar Apartment. He did not know where they were going. He did not feel it necessary to know why they again returned to Municipal Office. Till the signal was received, he was not aware whether the complainant and panch witness had met Accused No.1. On receiving signal, he felt that Accused No.1 had accepted the trap amount. The complainant pointed out fingers towards Accused No.2 and Accused No.3 and told that money was received them. He did not inquire about Accused No.1. He came to know from Accused No.2 and Accused No.3 that the Accused No.1 was not there. He did not find it necessary to mention one person had entered the office and subsequently his name was revealed as Khot (Accused No.1). The events which were not personally seen by him are narrated in the complaint as told by complainant. There were no instructions in respect to Accused No.2 & Accused No.3. The trap was against Accused No.1. The Deputy Superintendent of Police did not make any endorsement on the complaint. There is no record that he read the complaint. Statement was not recorded during investigation. He do not know why he was examined by the prosecution. It was revealed that three flats from Arafat Mahal were seized by Corporation due to arrears of tax. The flats were auctioned and the same were purchased by corporation. As per the auction, the Corporation became owner of the flat. The complainant was given possession of the flats. The complainant moved an application to the Commissioner for possession of flats. Accused No.3 was arrested on the same day. He did not record the statement of Municipal Corporation. Supplementary statement of the complainant was recorded. He did not state before him that Accused No.1 had instructed to give Rs.500/- to Accused No.2. When he caught Accused he did not know where and when the trap notes were given. He did not feel it necessary to inspect tax amount under ultra violet light.

14. In addition to explanation given by the Accused qua questions put to them while recording statement under Section 313 of Cr.P.C., Written statements were filed by them. The written statement filed by Accused No.1 mentions that incriminating circumstances appearing on record were put to him in the form of questions & answers. He denied the incident alleged against him. The complainant filed false complaint as he told him that it was not possible to remove the seals even if he pays the tax in respect to three flats. Seals were put up by corporation which had purchased the flat in auction and reserved for rehabilitation. The complainant did not visit his office. He had gone to Mumbra for routine work. He has instructed Accused No.2 to receive the tax amount. He did not instruct the Accused No.3 to pay Rs.500/- to Accused No.2. Accused No.2 has also filed similar statement and contended that he has been falsely implicated in the case. On the day of trap, he was in the office and the Accused No.1 had gone to Mumbra office. The complainant paid the tax. Accused No.1 was not in the office at all. Bribe was not demanded by the Accused. Accused No.3 has also filed written statement and contended that PW-1 was in arrears of maintenance charges. The complainant gave writing that he would pay the arrears of maintenance. The arrears was to be paid by Accused No.3. The flats were sealed by the Corporation in 1998. On 5th July, 2000 he was at his residence. In the afternoon, he was conveyed the request of complainant. He was told to accompany him for collecting the receipt of tax. He went to T.M.C. office. He has no acquaintance with Accused No.1 and Accused No.2. He had not met Accused No.1. False complaint is filed by PW-1. He was not concerned with the trap.

15. From the evidence of all these witnesses it is apparent that the prosecution case suffers from serious doubt. The trial Court gave findings of acquittal. The impugned judgment was based on the reasoning of trial Court. The version of PW-1 is doubtful. The evidence of PW-2 contradicts PW-1. Motive has been attributed to PW-1 for falsely implicating the Accused. The demand of bribe by Accused No.1 has not been established beyond doubt. The case of the prosecution is that bribe was demanded by Accused No.1. The Accused No.3 was the abettor. He accepted the money from PW-1. Amount of Rs.500/- was handover to Accused No.2. There was no demand of bribe by Accused No.2. Accused No.1 and Accused No.2 are public servants. The entire case of the prosecution speaks volumes of doubts. The complainant and the panch witnesses have acted contrary to instructions given to them. Accused No.2 was not in picture at all. Accused No.3 was also not concerned with the work. The complainant had approached Accused No.1. Accused No.1 was not present in the office when PW-1 & PW-2 had visited the office. It has not been explained that PW-1 & PW-2 has proceeded towards the building. They were acting contrary to the instructions by the officers of ACB. The alleged conversation of PW-1 and Accused No.1 does not refer to involvement of either Accused No.3 or Accused No.2. Accused No.3 has been inducted by the complainant himself. It is not the case of the prosecution that Accused No.1 had requested PW-1 to handover bribe amount to Accused No.3 or Accused No.2. Money was not accepted by Accused No.1. Accused No.3 is not a public servant. The defence of Accused No.3 would indicate that he was Secretary of the society where the flats of complainant were situated. Accused No.3 was collecting arrears of maintenance. Flats were sealed on account of non-payment of charges. The complainant was interested in releasing the flats. The Accused No.1 had instructed the complainant to pay the tax. The question of demanding bribe does not arise.

16. The trial Court has taken into consideration the infirmities in evidence and rightly acquitted the Accused. The conduct of complainant is suspecious. As per evidence of PW-4 it is apparent that flats were sealed for non-payment of tax. The property was auctioned. The Corporation purchased the property. The flats were earmarked for transit accommodation. The Accused No.1 was Deputy Assistant Tax Inspector in Kausa Office of Corporation.

According to complainant he met Accused No.1 along with Accused No.3. Accused No.1 demanded Rs. 3,000/- as bribe for removing seal. According to him Accused No.3 introduced him to Accused No.1 and appraised him of facts and requested to calculate the tax and remove the seals. This part of evidence is an omission. In the meeting on 29th, Accused No.1 allegedly told him that the seals would not be removed if the bribe amount was not given. This is an omission. It appears that after purchase of flats by Corporation in public auction and earmarked for certain purpose, it would not be within power of the Assistant Tax Inspector to remove the seals.

17. The statement of complainant is contrary to prosecution case. There were no instructions to contact Accused No.3 at Wasim Hotel. The instructions were to contact Accused No.1 and give trap notes to him on demand. The Panchanama is silent about instructions when the complaint was given and preparations were made and instructions were given, the Accused No.3 was not in picture. If Accused No.1 had asked PW-1 to give money to Accused No.3, this fact would have been mentioned in the complaint. Trap would have arranged by taking into consideration of this fact. In normal course PW-1 and PW-2 would not have gone in search of Accused No.1. They could have waited in the office for his arrival. However, they went towards Sagar Apartment contrary to instructions. PW-1 did not contact the raiding party when Accused No.1 was not found in the office. They could not have searched Accused No.1 at Sagar Apartment. They did not contact raiding party. According to panch he took them to Wasim Hotel. Accused No.3 inquired whether he has done the job of Khot (Accused No.1). Trap amount was given to him. If amount was given to Accused No.3 at Hotel Wasim either before making search for him or thereafter, the trap was over and there was no reason to again contact Accused No.1. The plan as per pre-trap, panch was to trap Accused No.1. However, the action was contrary. All these aspects create doubt about the prosecution case. The Trial Court has assigned cogent reasons for acquittal. I do not find any infirmity in the decision of the trial Court. The appeal must fail.

18. Hence, I pass the following order:-

ORDER

Criminal Appeal No.1175 of 2006 is dismissed and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)