IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1267 OF 2013

Arun Sambhaji Khanvilkar,
Age 57 years, Occu.: Service,
R/o. 902-A, Landmark Tower,
Naigaon, Mumbai-400 014. …..Appellant
(Orig. Accused No.1)

Vs.

The State Of Maharashtra
Through ACB, Mumbai
Vide its C.R. No.8 of 2010. …..Respondent

WITH

CRIMINAL APPEAL NO.1299 OF 2013

Chetan Laxman Desai @ Khamla,
Age 50 years, Occupation: Service,
R/o. C/4, Durga Niwas, Opp. IIT Main Gate,
Powai, Mumbai …..Appellant
(Orig. Accused No.2)

Vs.

The State Of Maharashtra,
Copy to be served on
Government Pleader,
High Court of Bombay. …..Respondent

WITH

CRIMINAL APPEAL NO.1306 OF 2013

Mr. Sanjay Brijlal Khakkar,
Age 39 years, Occ.: Business,
R/o. Tarapur Garden, A-4, 2nd Floor,
Opposite Oshiwara Police Station,

Andheri (W), Mumbai …..Appellant
(Orig. Accused No.3)

Vs.

The State Of Maharashtra,
(At the instance of ACB, Worli,
Mumbai vide C.R. No.08/2010) …..Respondent.

Mr. Nitin Pradhan i/by Shubhada D. Khot for the Appellant in Appeal No.1267 of 2013.
Mr. Satyavrat Joshi a/w Mr. Nitesh Mohite for the Appellant in Appeal No.1299 of 2013.
Mr. Vaibhav G. Bagade for the Appellant in Appeal No.1306 of 2013.
Mr. R.M. Pethe APP, for the Respondent-State.

CORAM : A.S. GADKARI, J.
RESERVED ON : 7th JULY, 2022.
PRONOUNCED ON : 30th AUGUST, 2022.

JUDGMENT:-

Appellants have questioned legality and correctness of Judgment and Order dated 28th October, 2013 passed by the learned Special Judge (under P.C. Act), Greater Mumbai in Special Case No.76 of 2012, thereby convicting the Appellant-Arun S. Khanvilkar (Appeal No.1267 of 2013) for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, *"the P.C. Act"*) and is sentenced to suffer maximum rigorous imprisonment for two years and to pay total fine of Rs.1,00,000/-; Appellant-Chetan L. Desai @ Khamla (Appeal No.1299 of 2013) and Appellant-Sanjay B. Khakkar (Appeal No.1306 of 2013) under Section 12 of the P.C.Act and are sentenced to suffer rigorous imprisonment for 18 months and to pay fine of

Rs.50,000/- each; in default of payment of fine they are sentenced for further imprisonment of specified period to be undergone.

2) For the sake of brevity, the Appellants hereinafter will be referred to as per their original nomenclature before the trial Court i.e. Appellant-Arun S. Khanvilkar as accused No.1 (A-1); Appellant-Chetan L. Desai @ Khamla accused No.2 (A-2) and Appellant-Sanjay B. Khakkar accused No.3 (A-3).

3) Heard Mr. Pradhan, learned counsel for the Accused No.1, Mr. Joshi, learned Advocate for the Accused No.2, Mr. Bagade, learned Advocate for the Accused No.3 and Mr. Pethe, learned APP for the State. Perused entire record and Notes on arguments filed by Mr. Pradhan.

4) Prosecution case in brief is as under:-

(i) The complainant/informant, Manoj S. Singh (PW-1) was engaged in lottery business for 15 years prior to 2009 and was conducting it in the name and style as *"Ronak Agency and Men Star Lotteries Pvt. Ltd.",* from Kandivli (W) Mumbai. On 26th December, 2009 at about 10.00 p.m. he had been to a social club situated at Mulund to play cards. At that time, Accused No.1 who was working as Police Inspector in ATS, Kalachowki Police Station, Mumbai, conducted raid and the cell phones and cash amount of all the persons present therein were seized by the police. Accused Nos.2 and 3 were present along with Accused No.1 at the said time. Manoj Singh (PW-1) was acquainted with Accused Nos.2 and 3 prior to the said incident.

(ii) At about 2.30 a.m. of 27th December, 2009, the Accused Nos.2 and 3 asked Manoj Singh (PW-1) to sit in the police vehicle. The Managers of that club were also made to sit in police vehicle. Name of one of the Managers was Ashok Talwar and his nick name was *'Phataka'*. All the said persons were thereafter brought to ATS, Kalachowki Police Station at about 3.30 a.m. and were kept in one room. Chetan Desai @ Khamla (A-2) and Sanjay Khakkar (A-3) threatened Manoj Singh (PW-1) that, he would be implicated in some other case and pressurized him to sign on a green coloured blank paper. PW-1 was also threatened by all the accused that, he would be implicated in a case related with the incident happened at Mumbra in which one accused *'Manoj'* was absconding. Accused No.2 told Manoj Singh to pay some amount in police station to get released immediately and threatened him that, otherwise he would be detained in police station for 2 to 3 days. Manoj Singh asked Chetan Desai (A-2) to charge him for the offence of gambling. Arun Khanvilkar (A-1) came there with a leather belt and assaulted PW-1 with it. Then, Accused No.2 asked PW-1 not to behave in such manner and to do something. PW-1 thereafter asked as to how much amount he was to pay, as he was under tremendous pressure. Accused No.2 told PW-1 that, he will have to ask Accused No.1 and tell him about the figure of amount. Thereafter, Accused No.2 demanded an amount of Rs.20 lacs for and on behalf of Accused No.1 and assured PW-1 that, he would be released immediately after payment of amount. At that time, Manoj Singh (PW-1) told Accused No.1 that, he was not having that much amount and demand made by him is excessive and he can arrange for reasonable amount. After negotiations, Chetan Desai (A-2) reduced the said demand to Rs.10 lacs and asked PW-1 to pay an amount of Rs.5 lacs at that time itself and to pay remaining amount after his release.

(iii) As per Manoj Singh (PW-1), the said amount was demanded on behalf of Accused No.1 and at that time of said demand, he was present with Accused No.2. PW-1 was assured that, after payment of the said amount to Accused No.1 he would be released immediately. Accused No.1 then asked Manoj Singh to arrange an amount of Rs.5 lacs and to pay it to the person present in one social club situated near Jaya talkies at Borivali (W) through someone. At that time, Accused No.2 gave instructions to Manoj Singh on behalf of Accused No.1. Manoj Singh (PW-1) then gave a call from his cell phone to one of his employees namely Savlaram D. Prajapati (PW-5) and instructed him to collect an amount of Rs.5 lacs from his wife and to go to the social club situated near Jaya talkies and to make a call after reaching there. PW-1 then gave a call from his cell phone to his wife and instructed her to handover an amount of Rs.5 lacs to Savlaram Prajapati (PW-5). The said amount was available at the residence of Manoj Singh, as he had withdrawn it from the bank for his business.

(iv) After some time, Manoj Singh (PW-1) received a call on his cell phone from Savlaram Prajapati (PW-5) who told him that, he has paid Rs.5 lacs to the Manager of the said social club. At that time, Accused No.2 took mobile handset of PW-1 and talked with the Manager of the said club. Accused No.2 instructed to the said Manager that, the said amount was of Accused No.1 and would be collected later on. Thereafter, all the accused persons asked Manoj Singh to pay remaining amount of Rs.5 lacs within 2 to 3 days otherwise he would be implicated on the basis of the said blank paper signed by him. Manoj Singh was then allowed to go from the police station.

(v) Manoj Singh (PW-1) thereafter thought that, all the accused would demand remaining amount and as he was not able to pay it, he went to the office of Anti Corruption Bureau (for short, *"ACB"*) on 30th December, 2009, met an officer namely Mr. Bangar there and filed a hand written complaint (Exh-22). After filing of the complaint, the said officer Mr. Bangar told PW-1 that he wants to verify the correctness of his complaint and asked PW-1 to come on next day at his office for verification. On 31st December, 2009, PW-1 had been to ACB office, Mumbai. At that time, two panch witnesses were also present. He was introduced with them. PW-1 was thereafter asked to call on the cell number of Chetan Desai (A-2) in presence of panch witnesses and switched on the speaker of his handset. PW-1 was using cell No.9821435128. During the conversation, PW-1 told

Chetan Desai (A-2) that, he had already paid an amount of Rs.5 lacs and requested to return the said blank paper signed by him. Chetan Desai (A-2) told PW-1 to complete the transaction and then get back the said paper. The said conversation was heard by panch witness Prashant Kadam (PW-2) and ACB staff and was also recorded on digital recorder. The said conversation was thereafter heard and transcribed on paper and panch witnesses signed the said verification panchanama (Exh-26). Thereafter, PW-1 was asked to attend the ACB office on 1st January, 2010 again.

(vi) On 1st January, 2010, Manoj Singh (PW-1) was directed to make a phone call to Chetan Desai (A-2). However, at that time no material talks took place between them. The said conversation was thereafter heard and transcribed on paper and panch witnesses signed the said verification panchanama (Exh-27). Thereafter, PW-1 had been to ACB office on 16th January, 2010. When he was in the office of ACB, he received a phone call from the cell phone of A-2. He accepted the said call. At that time, Chetan Desai @ Khamla (A-2) told him that, Arun Khanvilkar (A-1) has called him to meet him at Kalachowki Police Station on the said day itself. Manoj Singh (PW-1) told Chetan Desai (A-2) that he was not able to come to meet as he was out of station whereupon, the A-2 told him that, he will arrange a meeting with A-1 on 18th January, 2010.

(vii) On 18th January, 2010, Manoj Singh (PW-1) had been to ACB office. At that time, two panchas were already present there. He then made a call on the cell phone of Chetan Desai (A-2) in presence of panch witnesses. At that time, A-2 informed PW-1 that, the said meeting has been cancelled and he would tell him later on. A-2 then told PW-1 that, Arun Khanvilkar (A-1) was not available on that day. The said conversation was recorded and transcribed by effecting panchanama (Exh-29) in presence of panch witness Vinayak Gurav (PW-3).

(viii) On 19th January, 2010 at about 11.00 p.m., Chetan Desai @ Khamla (A-2) met Manoj Singh (PW-1) near one hotel situated in Mulund area. However, at that time A-2 did not speak anything with PW-1.

Thereafter, Manoj Singh (PW-1) had been to the ACB office on 20th January, 2010. Police Inspector, Mr. Katkar (PW-7) was present there. PW-1 informed him about his meeting with A-2 on 19th January, 2010. At that time, two panch witnesses were also present in ACB office. Manoj Singh (PW-1) gave a call on cell number of Chetan Desai (A-2) and requested him to reduce the amount and to return the said blank signed paper. A-2 thereupon asked PW-1 to pay the remaining amount to Arun Khanvilkar (A-1) and assured that the blank signed paper would be returned to him. PW-1 again requested A-2 to reduce the amount whereupon, A-2 told him that he would talk with A-1 and would inform him accordingly.

The said conversation was also recorded and heard after completion of call. Its transcript (Exh-30) was prepared in presence of panch witness Vinayak Gurav (PW-3). Manoj Singh (PW-1) thereafter received a call from the cell phone of Chetan Desai (A-2) however, he did not accept it and went to the office of ACB and informed P.I. Mr. Katkar (PW-7) about the same. Thereafter, panch witnesses were called to the ACB office and in their presence, PW-1 gave a call on the cell number of A-2. At that time, A-2 asked PW-1 to come at Kalachowki police station on 4th February, 2010 at 12.00 noon. The said conversation was also recorded and transcribed after hearing it.

(ix) Manoj Singh (PW-1) subsequently on 3rd February, 2010 received a phone call from the cell phone of Chetan Desai (A-2). He asked PW-1 to come at Kalachowki police station on 4th February, 2010 at 12.00 noon. On 4th February, 2010, Manoj Singh (PW-1) went to ACB office. P.I. Mr. Katkar (PW-7) and two panchas were present in the office. At about 12.09 p.m. PW-1 received a call from the cell phone of A-2 who inquired about his location. PW-1 told him that, he was at Hajiali. A-2 then instructed PW-1 to reach to Kalachowki police station. The conversation was heard on speaker of the said phone by P.I. Mr. Katkar (PW-7) in presence of panch witnesses. At about 12.25 p.m. on the same day, Manoj Singh (PW-1) along with panch witnesses and ACB staff proceeded towards Kalachowki police station in his vehicle. After reaching near police station, digital recorder was clipped under his shirt and panchas and ACB staff alighted from the vehicle and asked PW-1 to proceed alone to the police station. PW-1 then went to Kalachowki police station where A-2 was already present outside it. Manoj Singh (PW-1) approached Chetan Desai (A-2) who took him inside the police station. PW-1 noticed that in the passage of the police station, Arun Khanvilkar (A-1) and Sanjay Khakkar (A-3) were present. Then all the accused took Manoj Singh (PW-1) in the cabin of Arun Khanvilkar (A-1). Manoj Singh requested all the accused to reduce their demand. Arun Khanvilkar (A-1) told him to pay Rs.3 lacs to close the chapter. Manoj Singh thereafter requested to reduce the said amount to Rs.2.5 lacs to which, Sanjay Khakkar (A-3) acceded. After sometime, Manoj Singh came out of the police station and returned to the place where the panchas and ACB staff were present. PW-1 disclosed the conversation took place at police station to P.I. Mr. Katkar (PW-7) and thereafter they all returned to ACB office. The said conversation was transcribed (Exh-32) in presence of witness Kirankumar Dhivare (PW-4).

(x) On 5th February, 2010, Manoj Singh (PW-1) and both the panchas had been to ACB office. P.I. Mr. Katkar (PW-7) recorded statement of Manoj Singh as per his say and on the basis of the same, registered C.R. No.8 of 2010 (Exh-23) against accused persons under Sections 8, 9 and 10 of the P.C. Act. On 5th February, 2010, Manoj Singh had been to ACB office with an amount of Rs.2.5 lacs. The said amount was consisting of currency notes of Rs.1,000/- denomination. Kirankumar Dhivare (PW-4), panch witness was present in the office of ACB. Anthracene powder was applied to the currency notes and it were divided into three bundles and kept in one plastic hand bag. After completion of necessary legal formalities, pre-trap panchanama (Exh-34) was recorded. Manoj Singh (PW-1) was instructed to carry that hand bag with his left hand and hand over the bundles of currency notes to Chetan Desai @ Khamla (A-2) by his right hand, after it was demanded and accepted by him and to give a predetermined signal. PW-1 thereafter gave a call on the cell phone of A-2 and told him that, he was having an amount of Rs.2.5 lacs and asked A-2, where to deliver it. A-2 told PW-1 to come at Gulfam hotel situated at Dahisar area. The officers of ACB along with panch witness proceeded from ACB office. Manoj Singh (PW-1) along with P.I. Mr. Katkar (PW-7) and panch witnesses proceeded from his vehicle. At that time, Manoj Singh (PW-1) had kept the hand bag containing currency notes in the dash board of the vehicle. When Manoj Singh (PW-1) reached Goregaon area, he received a call from the cell phone of Chetan Desai (A-2) who asked him about his location. A-2 asked PW-1 to come at Sai Mandir, situated on Borivali High way. After reaching Kandivali, the digital recorder was clipped under the shirt of Manoj Singh (PW-1) and P.I. Mr. Katkar along with panch witnesses alighted from his vehicle. Manoj Singh (PW-1) was instructed to proceed alone and P.I. Mr. Katkar (PW-7) told him that, they will follow him. Manoj Singh (PW-1) reached at Sai Mandir and stopped his vehicle on service road situated near that Mandir. PW-1 received a call from the cell phone of A-2 who inquired about his location to which PW-1 told that he was present near the Mandir.

(xi) Manoj Singh (PW-1) got down from his vehicle and waited for Chetan Desai (A-2). After some time, A-2 arrived there in one Scorpio jeep and parked it in front of the vehicle of PW-1. Chetan Desai (A-2) then approached Manoj Singh (PW-1). PW-1 requested A-2 to return the said blank paper signed by him, at that time A-2 demanded the amount from him. Chetan Desai (A-2) told Manoj Singh (PW-1) to pay the amount and assured him that, after handing over the amount to Arun Khanvilkar (A-1), he would return the said paper.

(xii) Manoj Singh (PW-1) thereafter took out hand bag containing currency notes from the dash board of his vehicle, took out the bundles of currency notes from the plastic bag by his right hand and handed it over to Chetan Desai @ Khamla (A-2). A-2 accepted those bundles by his both hands. PW-1 asked A-2 to count it, but A-2 said that the amount would be complete. Manoj Singh gave predetermined signal and immediately members of raiding party apprehended Chetan Desai (A-2) and held his both hands. A-2 was then made to sit in ACB vehicle. Digital recorder was taken from the person of Manoj Singh (PW-1) and was switched off. The legal formalities of post trap panchanama (Exh-40) were concluded in the early morning of 6th February, 2010 and accused persons were arrested.

(xiii) Investigation of the present crime was completed by P.I. Mr. Katkar (PW-7). He thereafter forwarded all the Compact Discs of the conversation recorded by the ACB to Forensic Science Laboratory. He received report of the same (Exh-50) on 15th October, 2011 from the FSL, Kalina.

(xiv) After completion of investigation, ACB sent its proposal to the Director General of Police of Maharashtra State for seeking sanction to prosecute Arun Khanvilkar (A-1). Mr. Sanjeev Dayal (PW-6), the then Director General of Police and sanctioning authority issued Sanction Order (Exh-47) on 13th September, 2012. P.I. Mr. Katkar (PW-7) thereafter filed charge-sheet against the accused persons before the Special Court.

5) Trial Court framed charge below Exh-10 against Appellant-Arun Sambhaji Khanvilkar (A-1) under Sections 7, 13(1)(d) read with Section 13(2) of the P.C.Act; against Chetan L. Desai @ Khamla (A-2) and Sanjay B. Khakkar (A-3) under Section 12 of the P.C. Act. The contents of the charge were read over and explained to the Accused in vernacular language to which they pleaded not guilty and claimed to be tried. The defence of Appellants was of total denial. It was their further defence that, as Manoj Singh (PW-1) was detained by ATS Kalachowki police station in the intervening night of 26th December 2009 and 27th December, 2009, he got annoyed, had grudge against the accused persons and therefore with a view to falsely implicate all of them, filed the present case.

6) Prosecution has examined in all seven witnesses in support of its case to prove guilt of accused persons namely, Manoj S. Singh (PW-1)

Complainant; Prashant N. Kadam (PW-2) panch witness to the verification panchanamas dated 31st December, 2009 (Exh-26) and 1st January, 2010 (Exh-27); Vinayak L. Gurav (PW-3) panch witness to the verification panchanamas dated 18th January, 2010 (Exh-29) and 20th January, 2010 (Exh-30); Kirankumar V. Dhivare (PW-4) independent panch witness to the verification panchamanas dated 4th February, 2010 (Exh-32), pre-trap panchanama dated 5th February, 2010 (Exh-34), panchanama dated 4th February, 2010 (Exh-36), panchanama of voice sample of A-1 to A-3 dated 8th February, 2010 (Exh-37), Panchanama of voice sample of PW-1 dated 8th February, 2010 (Exh-38), post-trap panchanama dated 6th February, 2010 (Exh-40); Savlaram D. Prajapati (PW-5), an employee of PW-1; Sanjeev S. Dayal (PW-6) Director General of Police, Maharashtra, Sanctioning Authority and Chandrakant B. Katkar (PW-7) the Investigating Officer.

7) After recording evidence of prosecution witnesses, trial Court recorded statements of accused under Section 313 of the Code of Criminal Procedure (for short, *"Cr.P.C."*) below Exhs-52, 54 and 56 respectively.

(i) Arun S. Khanvilkar (A-1) in answer to question No.172 of his statement recorded under Section 313 of Cr.P.C. has stated that, he would file his written explanation. He accordingly filed written explanation dated 17th October, 2013 (Exh-53). In his written explanation, Arun Khanvilkar (A-1) has stated that, on 26th December, 2009, he received confidential information from reliable sources that, certain persons of members of organized crime syndicate had assembled in a club at Mulund to do antinational activities and were having firearms. He therefore on 27th December, 2009 in the night at 00.30 a.m. conducted raid at the club at Mulund. As per confidential information given by the informant, he found a person by name Mainul Haq Aziz Ul Haq Siddhiqui (Masiha) a person having criminal background along with Manoj Singh (PW-1) and other three persons. He therefore brought all the persons at ATS Unit at Kalachowki. That, after conducting inquiry with the said persons, no firearms were found as was informed by the informant and therefore all the persons were released at about 5.00 a.m. on 27th December, 2009. Station Diary Entries (Art.9 colly) were accordingly effected in the police station record on 26th December, 2009 and 27th December, 2009. He has also stated that, when he conducted raid with the panch witnesses i.e. Chetan Desai @ Khamla (A-2) and Sanjay Khakkar (A-3), he realized that, A-2 and A-3 were already having close relations/acquaintance with Manoj Singh (PW-1). Arun Khanvilkar (A-1) has lastly categorically denied to have meeting with Manoj Singh at any point of time and directed anybody to accept money from him.

(ii) Chetan Desai @ Khamla (A-2) in answer to question No.158 of his statement recorded under Section 313 of Cr.P.C. has stated that, he would file his written explanation. He accordingly filed written explanation dated 19th October, 2013 (Exh-55). In his explanation, he has stated that, he never demanded and accepted any amount from PW-1 for A-1. That, he had acquaintance with PW-1 since about two years prior to the incident. That, he was called in the ATS office at Kalachowki and after going there, he was told that, he had to act as a panch witness in a case. He subsequently realized that, there was a raid in the club where a suspected gangster was present. Police of ATS brought the complainant/informant and some other persons at the office of ATS at Kalachowki and after completing the interrogation, those persons were allowed to go at about 5.30 a.m. The complainant was one of those persons who were brought to ATS at Kalachowki. The complainant was annoyed because of the said raid and had expressed his annoyance with their common friends after the said raid. That, A-2 had no acquaintance with Bipin and Laxman who were allegedly conducting the club at Borivali. That, he never asked the complainant to arrange the said amount of Rs.5 lacs and to pay at the club of Bipin.

It is the further defence of Chetan Desai @ Khamla (A-2) that, on the day of incident, PW-1 had sent a message at his house and had asked to come at the spot of incident for discussion on an important issue. Since A-2 was having friendly relations with PW-1, he went at the spot of the incident. That, when the talks were going on, suddenly the complainant (PW-1) put the bundles of notes in his hands. That, before he realized anything, he was apprehended by the persons in civil dress who were the officers of ACB. That, his mobile handsets were seized without SIM cards therein. That, the alleged SIM cards on which the complainant (PW-1) had allegedly made phone calls were not of his.

iii) The defence of Sanjay Khakkar (A-3) was of total denial. In answer to question No.155 of his statement recorded under Section 313 of Cr.P.C. he has stated that, the complainant falsely implicated him in this case.

8) The trial Court recorded evidence of aforestated witnesses and by its impugned Judgment and Order has convicted and sentenced the Accused as noted earlier.

9) Mr. Pradhan, learned counsel for Accused No.1 submitted that, the alleged demand by Chetan Desai @ Khamla (A-2) from Manoj Singh (PW-1) on the date of trap was not in presence of panch witness Kirankumar Dhivare (PW-4). That, it was a conscientious decision of P.I. Mr. Katkar (PW-7) and Manoj Singh (PW-1) to, not to take panch witness PW-4 with PW-1 while conducting the trap. It was decided by them that, PW-4 should observe the happening of the event of trap from a distance. He submitted that, admittedly the interaction/conversation between Chetan Desai @ Khamla (A-2) and Manoj Singh (PW-1) was not heard by the independent witness to corroborate version of PW-1. That, the very purpose of engaging panch witnesses for pre-trap and post-trap panchanama was therefore frustrated. He submitted that in any event,

there was a specific instruction given by P.I. Mr. Katkar (PW-7) directing Manoj Singh (PW-1) to, not to hand over the money to Chetan Desai (A-2), unless he demands. That, there is no reflection at all of this material caution in the evidence of PW-1 nor in the evidence of independent panch witness Kirankumar Dhivare (PW-4). He submitted that, PW-1 does not even say or suggest that he followed the said caution or instructions given by P.I. Mr. Katkar (PW-7) scrupulously. That, what PW-1 has not stated in his first written complaint (Exh-22) what has been stated in his examination-in-chief. That, the examination-in-chief of Manoj Singh (PW-1) is full of improvements. He submitted that, the prosecution has miserably failed to prove its case and offences charged against the Appellants.

As far as legal submissions are concerned, he submitted that the demand of illegal gratification is *sine qua non* to constitute the offence under the P.C. Act. The failure of prosecution to provide corroboration to the witness assertion of demand for three times, is a gross failure and the consequence thereof is acquittal of accused. That, evidence of accomplice, as a competent witness against an accused person may be used for conviction. However, such conviction based on uncorroborated testimony of an accomplice is unsafe to rely or unworthy of credit unless it is corroborated in material particulars. Precisely for this reason, an independent panch witness accompanies the complainant or witness to the demand made by the accused during a trap and the bribe is thereupon handed over with tainted currency notes. The independent evidence of panch corroborating the case of the complainant about the demand of bribe by an accused is thus, providing an assurance to the evidence of an accomplice, as contemplated and illustrated in Illustration (b) of Section 114 of the Evidence Act. He submitted that, the Hon'ble Supreme Court has enunciated rules with regard to the admissibility of uncorroborated testimony of an accomplice and it has been held that, such corroboration must come from independent sources. Ordinarily, the testimony of one accomplice would not be sufficient to corroborate that of another.

He lastly submitted that, the Hon'ble Supreme Court has observed that, the evidence of complainant in corruption cases should be corroborated in material particulars, regarding the demand of money by the accused as illegal gratification.

In support of his aforenoted contentions, Mr. Pradhan, learned counsel for the Accused No.1 relied on the following decisions:-

(i) *Rameshwar S/o. Kalyan Singh Vs. The State of Rajasthan,*
reported in A.I.R. (39) 1952 SC 54;

(ii) *Panalal Damodar Rathi Vs. State of Maharashtra,*
reported in (1979) 4 SCC 526;

(iii) *Satvir Singh Vs. State of Delhi Through CBI,*
reported in 2014 DGLS (Soft.) 616 : 2014 AIR (SC)

3798.

(iv) *T.K. Ramesh Kumar Vs. State Through Police Inspector Bangalore,*

reported in (2015) 15 SCC 629.

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

10) Mr. Joshi, learned Advocate for the Accused No.2 submitted that, on the date of trap i.e. on 5th February, 2010 and even prior thereto, it was the complainant (PW-1) who gave call for verification to Chetan Desai @ Khamla (A-2) and not vice-versa. That, on 4th February, 2010, the complainant alone went in the cabin of Arun Khanvilkar (A-1) in the absence of panch witness PW-4 and therefore there was no verification of alleged demand of the said amount by A-1 or any of the accused persons on that day. He submitted that, even the Investigating Officer Mr. Katkar (PW-7) in his examination-in-chief on internal page No.5 (page-341) has admitted that, on 4th February, 2010 he had instructed the complainant to proceed alone and to return to that chowk (square) after meeting with A-1. That, the version of complainant (PW-1) of demand either by A-1 or A-2 is therefore wholly uncorroborated for want of independent panch witness. He submitted that, the panch witness (PW-4) in his examination-in-chief has also admitted the said fact. The panch witness has further admitted that, on the date and time of alleged trap, he was instructed to remain with

complainant by maintaining safe distance to witness the said transaction. The said witness has further admitted that, at the time of actual trap, he (PW-4) was present at the distance of about 20 feet from the complainant and noticed that the complainant handing over bundles of currency notes in the hands of Chetan Desai (A-2). He submitted that, it is the specific defence of A-2 that, Manoj Singh (PW-1) on the date of alleged trap thrusted the said amount in the hands of A-2 and specific suggestions were put to the PW-1 in his cross-examination to that effect. He submitted that PW-1 has admitted that, in his handwritten complaint he did not make allegation against A-2 and A-3 as deposed by him before the Court in examination-in-chief and therefore there are substantial improvements made by PW-1 in his testimony. He submitted that, therefore PW-1 is not a reliable and trustworthy witness to accept his evidence. He further submitted that, the first alleged demand and payment through Savlaram Prajapati (PW-5) to Mr. Lachhubhai in the wee hours of 27th December, 2009 at Bipin's club at Borivali has not been substantiated by prosecution by examining Mr. Lacchubhai i.e. the Manager of the said club to corroborate the said version of PW-1. He submitted that, in the present case there was no demand made by any of the accused persons from the complainant (PW-1) and Chetan Desai @ Khamla (A-2) has been falsely implicated in the present crime by thrusting the said amount in his hands by PW-1 at the spot of incident.

In support of his contention, Mr. Joshi, learned Advocate for the Accused No.2 in addition to the decisions relied upon by Mr. Pradhan, placed his reliance on the following decisions:-

(i) *Suraj Mal Vs. State (Delhi Administration), reported in (1979) 4 SCC 725;*

(ii) *Avinash Sitaram Garware Vs. State of Maharashtra, reported in 2008 ALL MR (Cri) 15;*

(iii) *State of Punjab Vs. Madan Mohan Lal Verma, reported in 2013 ALL SCR 3051;*

(iv) *Mr. Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra, reported in 2018 ALL MR (Cri) 3711 and,*

(v) *Anil Krishnarao Apshingkar Vs. The State of Maharashtra, reported in 2021 ALL MR (Cri) 2273.*

He therefore prayed that, his Appeal may be allowed by setting aside the impugned Judgment and Order.

11) Mr. Bagade, learned Advocate for the Accused No.3 submitted that, the trial Court while framing charge against Sanjay Khakkar (A-3), it is alleged that on 27th December, 2009 between 6.15 a.m. to 6.30 a.m. Mr. Amit B. Soni has collected amount of Rs.5 lacs from Mr. Lachhubhai, the Manager of Poonam Club, Borivali Mumbai which was collected subsequently by A-3 for A-1. That, the prosecution neither examined the said person i.e. Amit Soni nor Mr. Lachhubhai, i.e. Manager of the said club.

That, there is no evidence at all on record to show that A-3 in fact collected the said amount from Amit Soni on that day. That, the charge itself was defective as it was alleged against A-3 that, he acted as an agent of A-1. He submitted that, a totally new case has been put forth by the prosecution at the time of framing of charge which caused prejudice to A-3 in defending his case. That, no CDR of conversation between A-1 and A-3 has been produced and proved by the prosecution. He submitted that, there is no material at all against A-3 in the present case, least to say that any corroboration to it by independent witness. He further submitted that, P.I. Mr. Katkar (PW-7) in his cross-examination has admitted that, when A-2 made a call on the cell phone of A-3 as per the instructions after the trap, A-3 asked as to *'who is Khanvilkar (A-1)'.* That, it is thus established that A-3 was not knowing A-1. He submitted that, A-3 has successfully rebutted presumption as contemplated under Section 20 of the P.C. Act. He therefore prayed that, the Appeal of Mr. Sanjay Khakkar may be allowed by setting aside impugned Judgment and Order.

12) Per contra, Mr. Pethe, learned APP vehemently opposed the Appeals and submitted that, the defence adopted by A-1 and A-2 in their written explanation i.e. Exh-53 and Exh-55 respectively was not put to PW-1 in his cross-examination and therefore, the said explanation is an afterthought. He submitted that, in the present case, Manoj Singh (PW-1), Savlaram Prajapati (PW-5) and P.I. Mr. Katkar (PW-7) are relevant and

important witnesses. He submitted that, the demand by accused persons on 27th December, 2009 and its acceptance of the said amount has been proved by Savlaram Prajapati (PW-5). He submitted that, the defence of A-1 and A-2 by conducting a lawful raid on the said club at Mulund and thrusting of amount by Manoj Singh (PW-1) in the hands of Chetan Desai @ Khamla (A-2) is an afterthought and therefore is not genuine. He however fairly conceded to the fact that, the alleged *'blank paper'* mentioned by Manoj Singh (PW-1) has not been traced out in the investigation of the present crime. He therefore prayed that the present Appeals may be dismissed by confirming the impugned Judgment and Order.

13) In the present case, admittedly, the alleged first demand on behalf of Arun Khanvilkar (A-1) by Chetan Desai (A-2) on 27th December, 2009; the alleged payment of Rs.5 lacs by Manoj Singh (PW-1) at a club situated near Jaya talkies at Borivali (West) owned by Mr. Bipin, through his employee Savlaram Prajapati (PW-5) to Mr. Lachhubhai, the Manager of the said club between 5.00 a.m. to 5.30 a.m. has not at all been proved by the prosecution. It is the uncorroborated oral version of Manoj Singh (PW-1), which is not tenable in law.

This Court, in the case of *Avinash Sitaram Garware Vs. State of Maharashtra (supra)* has held that, once the prior demand is not proved, the rest of the prosecution case regarding money allegedly demanded by the accused, will have to be read with great caution and circumspection.

14) Savlaram Prajapati (PW-5) in his testimony has stated that, on 27th December, 2009 at about 5.00 a.m. he received a phone call from Manoj Singh (PW-1). That, PW-1 asked him to collect an amount of Rs.5 lacs from his wife from his residence and hand it over the same in the club of Mr. Bipin situated at Borivali (W). He accordingly collected 10 bundles of Rs.500/- denomination from the wife of Manoj Singh (PW-1) and went to the club of Mr. Bipin. There he made an inquiry with Mr. Shailesh Maniyar about Mr. Lachhubhai. He met Lachhubhai. He also gave a phone call on the cell phone of Manoj Singh (PW-1). There were talks between Lachhubhai and Manoj Singh (PW-1). Thereafter he handed over the said amount of Rs.5 lacs to Lachhubhai.

Prosecution has not examined Mr. Bipin i.e. the owner of the said club and Mr. Lachhubhai i.e. the Manager of the club in whose possession, Savlaram Prajapati (PW-5) allegedly handed over an amount of Rs.5 lacs in the morning of 27th December, 2009. Thus, the version of Manoj Singh (PW-1) and Savlaram Prajapati (PW-5) is totally uncorroborated for want of examination of Mr. Bipin and Mr. Lachhubhai and their corroborating evidence in that behalf.

15) It is an admitted fact on record that, the electronic devices/gadgets on which the conversations between PW-1 and A-2 was recorded on various dates as stated hereinabove, was neither produced nor played before the trial Court and the said aspect is not proved by the

prosecution. Likewise, the prosecution did not produce a certificate as contemplated under Section 65(b) of the Indian Evidence Act before the trial Court to prove the transcript of the said conversations.

The trial Court in paragraph No.56 of the impugned Judgment has held that, though it is claimed by the prosecution that, report of public analyst shows that, there were voices of complainant and A-1 to A-3 in the compact discs, on which the conversations recorded on mobile phones was transferred, the prosecution did not produce digital recorder before the Court, which is primary piece of evidence and no permission was obtained to adduce secondary evidence in form of compact discs. That, the prosecution had not obtained any certificate under Section 65(b) of the Evidence Act about the preparation of compact discs, which are electronic documents, from the person who prepared it. Similarly, compact discs were also not played before the trial Court by the prosecution. That, therefore no value can be attached to the transcriptions available in the verification and in trap panchanama. The trial Court has therefore observed that, there remains only oral and other documentary evidence for analysis in the present case.

This Court concurs with the said findings recorded by the trial Court, which are in consonance with the evidence on record. Thus, the demands and verification made by the prosecution agency on 31st December, 2009 (Exh-26), 1st January, 2010 (Exh-27), 18th January, 2010

(Exh-29) and 20th January, 2010 (Exh-30) have not at all been proved by it.

In view of the above, the oral evidence of PW-1, PW-4 and PW-7 only remains for scrutiny and analysis before this Court.

16) In the case of *Satvir Singh Vs. State of Delhi Through CBI, (supra),* the Hon'ble Supreme Court has observed that, while invoking Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the Court may look for [sic] independent corroboration before convicting the accused. It is further held in paragraph No.32 therein as under:-

> *"32. This Court, in K.S. Pandurangas case (supra) has held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent to constitute an offence, the relevant paragraph in this regard from the above-said decision is extracted hereunder:*
>
> > *"39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition*

precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. [pic] When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of approval given to the same by the High Court cannot be faulted." (emphasis supplied)

17) Before proceeding with the analysis of the evidence of material witnesses, it will be useful to refer to a decision of the Hon'ble Supreme Court in the case of *M.O. Shamsudhin Vs. State of Kerala, reported in (1995) 3 SCC 351*. The Supreme Court has interpreted the words 'accomplice' and 'corroboration' and types and grades of accomplices in the said decision. In paragraph Nos.11, 12 and 22, it is held as under-

"11. Since this is an argument which is frequently put forward in all cases of bribery, we would like to examine the scope, nature and extent of corroboration that is necessary in

such cases. The word 'accomplice' is not defined in the Evidence Act. However, it is accepted that the word is used in its ordinary sense which means and signifies a guilty partner or associate in a crime. Illustration (b) to Section 114 in a way cautions the court to bear in mind the presumption that an accomplice is not worthy of credit unless he is corroborated in material particulars. Section 133 of the Act, however, declares that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice. The relation between Section 133 which is a rule of law and Illustration (b) to Section 114 which is a rule of prudence has been the subject of comment in a large number of decisions. However, it has emerged that a conviction based on the uncorroborated testimony of an accomplice is not illegal though an accomplice may be unworthy of credit for several reasons. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together, the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused. The reasons for requiring corroboration of the testimony of an accomplice are that an accomplice is likely to swear falsely in order to shift the guilt from himself and that he is an immoral person being a participator in the crime who may not have any regard to any sanction of the oath and in the case of an approver, on his own admission, he is a criminal who gives evidence under a promise *of pardon and supports the prosecution with the hope of getting his own freedom."*

"12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous tests which are generally applied to a case of an approver. Though bribe-givers are generally treated to be in the nature of accomplices but among them there are various types and gradation. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving the trap cannot succeed. When there is such a demand by the public servant from person who is unwilling, and if to do public good approaches the authorities and lodges complaint, then in order that the trap succeeds he has to give the money. There could be another type of bribe-giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is a particeps criminis in respect of the crime committed and thus is an accomplice. Thus there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category

and who becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of 'accomplices' by reason of their being bribe-givers, in the first instance, the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances."

"22. Now coming to the witnesses in trap cases, as held in Basawan Singh case by a Bench of five Judges, if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charge, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices in that sense but are only partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested which may vary from case to case and the corroboration in the case of such interested witnesses can be in a general way and not as one required in material particulars as in the case of an approver. Therefore in seeking corroboration for the evidence of trap witnesses a distinction has to be drawn where participation of an individual in a crime is not voluntary but is the result of pressure. In such a case the element of mens rea to commit the crime is not apparent and (sic) cannot strictly be classified as an accomplice and at any rate be treated as being on the same footing. Where a bribe has already been demanded from a man and if without giving the bribe he goes to the police or magistrate and brings them to

witness the payment it will be a legitimate trap and in such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the court depending upon the facts and circumstances of each case. However as a rule of prudence, the court has to scrutinise the evidence of such interested witnesses carefully."

18) The Hon'ble Supreme Court in the case of *State of Punjab Vs. Madan Mohan Lal Verma (Supra)* in paragraph No.7 has held as under:-

"7. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of

proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person.

(Vide: Ram Prakash Arora v. The State of Punjab AIR 1973 SC 498; T. Subramanian v. The State of T.N., AIR 2006 SC 836 : [2006 ALL MR (Cri) 620 (S.C.)]; State of Kerala & Anr. v. C.P. Rao, (2011) 6 SCC 450 : [2012 ALL MR (Cri) 3068 (S.C.)]; and Mukut Bihari & Anr. v. State of Rajasthan, (2012) 11 SCC 642 : [2012 ALL MR (Cri) 2421 (S.C.)]).”

19) Manoj Singh (PW-1) in his examination-in-chief has deposed what has been briefly stated in the foregoing paragraph Nos.4(i) to 4(xii) and for the sake of brevity repetition of it is hereby avoided. In his testimony he has admitted that, on the day of trap he was instructed to carry a hand bag containing money with his left hand and handover the bundles of currency notes to Chetan Desai (A-2) by his right hand after it was demanded and accepted by him. That, on 5th February, 2010, he gave a call on the cell number of Chetan Desai (A-2) and told him that, he (PW-1) was having an amount of Rs.2.5 lacs and asked A-2 where to deliver it. After reaching to the spot of incident, he was instructed to proceed alone

and P. I. Mr. Katkar (PW-7) told him that, they will follow him. He has stated that, A-2 demanded amount from him and thereafter, he gave it in the hands of A-2.

P. I. Mr. Katkar (PW-7) in his examination-in-chief has admitted that, he had instructed Manoj Singh (PW-1) to hand over marked currency notes to Chetan Desai @ Khamla (A-2) by his right hand *'only on demand'* and till then not to touch it.

Kirankumar Dhivare (PW-4), an independent panch witness in his testimony has admitted that, after reaching near the spot of trap, the vehicles were stopped at some distance from Sai Mandir at Kandiwali. Then it was decided that Manoj Singh (PW-1) will alone proceed in his vehicle near the temple and remaining members will follow him by auto-rickshaw. He was instructed to remain with complainant by maintaining safe distance to witness the transaction. At the time of trap, he took position in front of the vehicle of PW-1. That, he was present at the distance of 20 feet from PW-1. After sometime a Scorpio jeep came there and it was stopped in front of vehicle of PW-1. He noticed that, one person got down from the vehicle and proceeded to PW-1. Initially, there was conversation between them and he noticed that, PW-1 had took out bundles of currency notes by his right hand from that hand bag, offered it to the person talking with him. Then, the said person accepted those bundles by his both hands.

It is thus abundantly clear that, Kirankumar Dhivare (PW-4) an independent witness did not witness i.e. heard the demand of money by Chetan Desai (A-2) on the date and time of trap. Therefore there is no evidence on record to indicate that, A-2 demanded money from PW-1 on the date and time of trap.

20) It is the explanation offered by Chetan Desai (A-2) that, complainant (PW-1) was annoyed because of the raid conducted in the wee hours of 27th December, 2009 by Arun Khanvilkar (A-1) at the said club at Mulund and has expressed his annoyance with their common friends after the raid. That, Chetan Desai (A-2) had no acquaintance with Mr. Bipin and Mr. Lachhubhai who were allegedly conducting the club at Borivali (West). That, on the day of incident, Manoj Singh (PW-1) had sent a message at his house and had asked him to come at the spot of incident for the discussion on an important issue. Since Chetan Desai (A-2) had friendly relations with Manoj Singh (PW-1), he went to the spot of incident and when the talks were going on, suddenly PW-1 thrusted the bundles of notes in his hand. That, before he could realize anything, he was apprehended by the officers of ACB.

The explanation offered by Chetan Desai (A-2) appears to be more probable than the case put forth by the prosecution and in particular, in the absence of cogent evidence of demand by any of the accused persons for the same. It is to be noted here that, the said 'blank paper' allegedly signed by Manoj Singh (PW-1) has not been recovered by the investigating agency from any of the accused persons. Learned APP, during the course of arguments, fairly conceded to the fact that, the said blank paper was not traced out during the course of investigation. The defence adopted by Arun Khanvilkar (A-1) and Chetan Desai @ Khamla (A-2) while rebutting the presumption under Section 20 of the P.C. Act, according to me is more probable.

21) From the deposition of PW-1 it is apparent that, on 31st December, 2009, 1st January, 2010, 18th January, 2010 and 20th January, 2010, he gave phone calls to Chetan Desai (A-2) and at that time, panch witnesses were already present in the office of ACB. No explanation is offered by the Investigating Officer (PW-7) that, how the panch witnesses were already made available even prior to coming of Manoj Singh (PW-1) to his office on the said dates and time. It clearly appears that, Manoj Singh (PW-1) had grudge in his mind against all the accused as Arun Khanvilkar (A-1) had conducted raid in the club at Mulund on 27th December, 2009 and detained him for inquiry and therefore with a view to implicate him in a crime, he consistently persuaded Chetan Desai (A-2) by giving phone calls on the said dates.

22) This Court in the case of *Mr. Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra (supra),* by relying on various decisions of the Hon'ble Supreme Court, in paragraph No.9 has held as under:-

"9. It is well settled law that, mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since the demand of illegal gratification is sinequanon to constitute the said offence. The same also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Prevention of Corruption Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reliance is placed on (i) N. Sunkanna Vs. State of Andhra Pradesh 2015 ALL MR (Cri) 4551 (S.C.), (ii) T.K. Ramesh Kumar Vs. State through Police Inspector Banglore 2015 ALL SCR 2863, (iii) Khaleel Ahmed Vs. State of Karnataka 2016 ALL SCR (Cri) 291, (iv) Suraj Mal Vs. The State (Delhi Administration) 2014 ALL SCR (O.C.C.) 251 and (v) Sita Ram Vs. The State of Rajasthan (supra)."

23) From the above discussion it is clear that, there is every reason to draw a safe inference that, Manoj Singh (PW-1) was having grudge against Arun Khanvilkar (A-1) for detaining him at ATS Police Station, Kalachowki in the wee hours of 27th December, 2009 after conducting raid at the said club at Mulund. The station diary entries dated

26th December, 2009 and 27th December, 2009 (Article 9 colly) clearly indicates that, on the basis of confidential information received by Arun Khanvilkar (A-1), he conducted raid on the said club at Mulund. That, he had brought Mainul Haq Siddiquie, Ashok Talwar, Manager of the said club along with complainant (PW-1) and two other persons to ATS Police Station, Kalachowki; conducted inquiry and subsequently released them in the morning of 27th December, 2009. It is thus clear that, the defence adopted by A-1 has substance in it and it is as per the record maintained by ATS Police Station, Kalachowki. That, Manoj Singh (PW-1) was also having close acquaintance with Chetan Desai (A-2) and Sanjay Khakkar (A-3) and with a view to implicate all the Appellants/accused in a criminal case, Manoj Singh (PW-1) might have called A-2 on 5th February, 2010 at Sai Mandir, Kandivli and thrusted the said amount in his hand. The Appellants have successfully rebutted presumption against them as contemplated under Section 20 of the P.C. Act.

As noted earlier, the prosecution has not established the first demand and acceptance of amount by any of the accused persons on 27th December, 2009 at a club situated near Jaya talkies, Borivali (West). There is no evidence at all against Sanjay Khakkar (A-3) to show that he abetted Arun Khanvilkar (A-1) in commission of the present crime.

24) The aforestated deliberation would lead to an irresistible conclusion that, the prosecution has failed to prove the basic fact of

demand either by Arun Khanvilkar (A-1) or Chetan Desai @ Khamla (A-2) on the date of trap and in furtherance of the said demand, Chetan Desai @ Khamla (A-2) accepted the said amount from Manoj Singh (PW-1).

In view thereof, the Appellants succeed.

Hence the following Order-

ORDER

(a) Impugned Judgment and Order dated 28th October, 2013 passed in Special Case No.76 of 2012 by the learned Special Judge (under P.C. Act), Greater Mumbai, is hereby quashed and set aside and the Appellants are acquitted from all the charges framed against them.

(b) Fine amount, if any paid, be refunded to the Appellants.

(c) Bail Bonds of Appellants are cancelled.

(d) Appeals are accordingly allowed.

(A.S. GADKARI, J.)

SANJIV SHARNAPPA MASHALKAR

Digitally signed by SANJIV SHARNAPPA MASHALKAR
Date: 2022.09.08 14:03:36 +0530