

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 155 OF 2015

APPELLANT : Smt. Ashoka Karunakaran Panikar,
Aged about 55 years, Occ. Service,
R/o Mundada Colony, Nichangaon Road,
Pulgaon, Tah. Deoli, Dist. Wardha

...V E R S U S...

RESPONDENT : State of Maharashtra,
Through Deputy Superintendent of Police
Anti Corruption Bureau, Wardha.

Shri M.B. Naidu, Advocate for the Appellant.
Shri Sagar Ashirgade, APP for the Respondent/State.

CORAM : ANIL S. KILOR, J.
DATE : 16TH MARCH, 2022

ORAL JUDGMENT :

This is an appeal arising out of the judgment and order dated 16th April, 2015 passed by the Additional Sessions Judge, Wardha in Special (ACB) Case No. 3/2011, convicting the appellant for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer

simple imprisonment for one year and to pay fine of Rs. 10,000/- and in default to undergo simple imprisonment for one month. The appellant is also convicted for the offence punishable under Section 13(1)(d) of the Prevention of Corruption Act 1988 and sentenced to suffer simple imprisonment for two years and to pay a fine of Rs. 10,000/- and in default to undergo simple imprisonment for one month. Both the sentences shall run concurrently.

2. I have heard Shri M.B. Naidu, learned counsel for the appellant and Shri S.A. Ashirgade, learned APP for the State.

3. It is the case of the prosecution in brief that, in the month of February-2011 when the accused was working as Head Clerk (Class-III), with Establishment Department Municipal Council Pulgaon, District Wardha and as such she was public servant within the meaning of Section 2 (C) of the Prevention of Corruption Act, 1988 (hereinafter referred as

“the Act 1988” for brevity).

4. It is further case of the prosecution that the complainant Shri Mahendra Pande (P.W.1) was working as Clerk in Municipal Council Pulgaon from 1985 to 2013. As, he had not qualified MS-CIT Examination his early increments for the year 2002 to 2010 was stopped. On his persuasion, the Chief Officer ordered on 13th December, 2010 to release his increments for the year 2002.

5. It is alleged that thereupon, the complainant met the accused and asked her about releasing of increments. Whereupon, she said the complainant that “*Chaware Babu aikat nahi, pahile Rs.1500/- dya, nantar tumche bill nighel*”. The complainant agreed to pay Rs. 1500/- on the next day. Thereafter, the complainant took half day leave and went to the office of ACB, Wardha and gave oral complaint to Ms. Uikey, Deputy Superintendent of Police, ACB, (P.W.3) who has got the complaint typed.

6. Thereafter, Ms. Uikey, Deputy Superintendent of Police, ACB, (P.W.3) took preparatory steps to lay a trap to intercept the accused and set up trap them.

7. It is further case of prosecution that at about 10 am complainant and both the pancha, ACB employees went to Pulgaon. Ms. Uikey, Deputy Superintendent of Police, sent complainant and panch No.1 Kathle (P.W.2) to Municipal Council to verify the demand of bribe. Complainant and panch No.1 met with accused in the office of Municipal Council, Pulgaon. When P.W-1 inquired about bill regarding his arrears of increments to accused, she asked complainant Mahendra (P.W.1) as to whether he had brought Rs. 1500/-. On that complainant Mahendra told her that the amount is with his son and he will bring it. On that accused told him to bring it quickly.

8. Thereafter, complainant (P.W.1) and the panch No.1 Kathle (P.W.2) came back to the place where ACB staff were waiting. When Ms. Uikey, Deputy Superintendent of Police,

(P.W.3) inquired with panch No.1 Kathle, on that he confirmed about the demand of bribe money.

9. The complainant (P.W.1) and panch No.1 (P.W.2) then went to accused in Municipal Council Office. When accused asked the complainant whether he has brought the money he took out the bribe money from his shirt pocket and gave it to accused. Accused took that amount in her right hand and said “Tumache Kam aatach Karun dete, Chaure babu kade chala”. Thereafter, complainant came outside the office and gave prearranged signal.

10. After giving signal, ACB Officer and the panch witnesses went to the accused and introduced themselves. The ACB Officer asked the accused her name. On that she told that her name as Ashoka Karunkaran Panikar. The ACB Officer asked the accused what was there in her palm. She said Mahendra Pande gave Rs. 1500/- and she was going to Chaware Babu for giving that amount. Deputy Superintendent of Police Uikey (P.W.3) asked the lady police officer to hold

the hands of the accused. Accordingly, she caught hold the hands of the accused.

11. On the instruction of ACB officer, panch No.2 took out bribe amount from right hand fist of accused. Numbers of those currency notes were verified from panchanama No.1 and they were tallied. Solution of sodium carbonate was sprinkled on those currency notes, on that dots of violet colour appeared on currency notes. Those currency notes were kept in envelope and envelope was sealed.

12. On instruction of ACB Officer fresh solution of sodium carbonate was prepared. Accused was asked to dip her right hand finger in that solution, when accused dipped her right hand fingers, colour of solution changed into violet colour.

13. Ms. Uikey, Deputy Superintendent of Police (PW-3) lodged formal report with police Station, Pulgaon. On the basis of report, offence vide Crime No.3018/2011 was registered.

14. Thereafter, as the sufficient material found against the accused, the charge was framed vide Exhibit No.10 for the offences punishable under Section 7, 13(1)(d) read with 13(2) of the Act of 1988. The contents of the charge were read over and explained to the accused in vernacular and pleaded not guilty and claimed to be tried and a trial was conducted.

15. In order to establish charge against the accused, prosecution has examined in all five witnesses, Shri Mahendra Sadashiv Pande, P.W-1 – the complainant who is examined at Exhibit No.16, Shri Arun Dattatraya Kathle, PW-2 is the Panch witness No.1 and shadow witness also was examined at Exhibit No.27, Ms. Deoki Methataji Uikey, PW-3 who is the Deputy Superintendent of Police, ACB and Investigating Officer was examined at Exhibit No.41, Shri Harishchandra Dhanaramji Takarkhede PW-4 who is the Chief Officer, Municipal Council, Pulgaon and Sanctioning Authority was examined at Exhibit No.62 and Shri Sanjay Suryabhanji Dagwar, PW-5 who is the carrier of the Muddemal Property

was examined at Exhibit No.67.

16. After marshaling the evidence by the learned Sessions Judge, the appellant was convicted vide impugned judgment and order dated 16th April, 2015 and thereby the appellant has been convicted for the offence punishable under Section 7 of the Act of 1988 and sentenced to suffer simple imprisonment for one year and to pay a fine of Rs. 10,000/- and in default to undergo simple imprisonment for one month. The appellant is also convicted for the offence punishable under Section 13 (1) (d) of the Act of 1988 and sentenced to suffer simple imprisonment for two years and to pay a fine of Rs. 10,000/- and in default to undergo simple imprisonment for one month. The said judgment and order dated 16th April, 2015 is under challenge in this appeal.

17. Shri Naidu, learned counsel for the appellant submits that the learned Special Court erred in convicting the appellant in absence of any cogent and reliable evidence on the point of demand and acceptance of alleged illegal gratification

of Rs. 1500/-.

18. It is submitted 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 of or under Section 13(1)(d) or 13(2) of the Act of 1982. It is submitted that demand and acceptance of illegal gratification is *sine qua non* to attract the provisions of Section 7, 13(1)(d) as well for the presumption under Section 20 of the Act of 1988.

19. Shri Naidu, learned counsel for the appellant would submit that the burden to prove accusations against the appellant for the offence punishable under Sections 7, 13(1)(d) of the Act of 1988 with regard to the acceptance of the illegal gratification lies on the prosecution. It is submitted that the prosecution did not examine material witnesses.

20. It is further submitted that it is not possible that the complainant signed the muster roll in his office at Pulgaon between 9.45 am to 10 am and he reached Wardha at 10.00

a.m. at the ACB Office.

21. Learned counsel for the appellant has placed reliance on the judgments reported in (i) Mukhtiar Singh (since deceased) through his L.R Vs. State of Punjab¹, (ii) Shrikant Sadanand Jadhav Vs. The State of Maharashtra², (iii) The State of Maharashtra Vs. Prakash Nathu Pawar³ (iv) Balkrishna Bhau Desai Vs. State of Maharashtra⁴, and (v) Arjun Bajirao Kale Vs. State of Maharashtra⁵

22. *Per contra*, Shri Ashirgade, learned Additional Public Prosecutor submits that the prosecution has proved and established the fact of demand and acceptance of bribe beyond doubt. It is submitted that oral evidence brought on record is sufficient to establish the offence against the appellant and the learned Sessions Court, after marshaling the evidence has rightly convicted the appellant for the offences punishable under Sections 7 and 13 of the Act of 1988.

1 2018(1) Mh.L.J (Cri.) SC 1

2 2021 ALL MR (Cri) 2793

3 2020 ALL MR (Cri) 1356

4 2016(1) Mh.L.J (Cri) 25

5 2009 ALL MR (Cri) 85

23. Learned APP has drawn attention of this Court to the oral depositions of the witnesses to show that sufficient evidence has been brought on record to bring home the offence against the accused. Thus, he submits that the learned Sessions Judge has not committed any error in convicting the appellant. Accordingly, he prays for dismissal of the appeal.

24. To consider the rival contentions of the parties, I have perused the record and also the impugned judgment and order.

25. Before averting to the evidence it would be appropriate to refer to the relevant provisions of the Act whereunder the accused had been charged.

7. Public servant taking gratification other than legal remuneration in respect of an official act – Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament

or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

13. Criminal misconduct by a public servant – (1) A public servant is said to commit the offence of criminal misconduct, -

(a)...

(b)...

(c)...

(d) if he,-

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

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

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

(e).....

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

26. In the case of *B. Jayaraj v/s State of Andhra Pradesh*⁶, the Hon’ble Supreme Court of India while considering the issue whether mere possession and recovery of the currency notes from the accused is sufficient as a proof of demand to bring home the offence under Section 7, has observed thus :

8.*We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by*

the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13 (1) (d) (I) and (ii) 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.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13 (1) (d) (I) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.

27. The Hon'ble Supreme Court of India in the case of *Mukhtiar Singh (since deceased) through his Legal Representatives Vs. State of Punjab (supra)* has observed thus:

14. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In *A. Subair vs. State of Kerala*, 2009(4) Mh.L.J(Cri.(S.C.) 465=(2009) 6 SCC 587, this Court

propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was expounded in *State of Kerala vs. C.P. Rao*, (2011) 6 SCC 450 that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

15. In *P. Satyanarayana Murthy* (supra), this Court took note of its verdict in *B. Jayaraj vs. State of A.P.* 2014 MhLJ Online (Cri) (S.C.) 33 = (2014) 13 SCC 55 underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in *P. Satyanarayana Murthy* (supra) on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove

the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder. (emphasis supplied)

28. Thus, from the above referred observations of the Hon'ble Supreme Court of India, it is clear that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained. It is further clear that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d) (i) and (ii) of the Act. The proof of demand thus was held to be an indispensable essentially and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act as well qua Section 20 of the Act and any presumption thereunder would arise only on such proof of demand.

29. In the teeth of above referred well settled principle

of law, the evidence on record has to be scrutinized. Having regard to the gravamen of the charge and the imperatives of demand of illegal gratification, the receipt and recovery thereof, the evidence on record relatable thereto only need to be noticed.

30. Shri Pande, Complanant, P.W.No.1 has deposed that vide order dated 30th December, 2010, the Chief Officer, Nagar Parishad, Pulgaon directed to release increment of the complainant except for the year 2001. On 7th December, 2001, he met administration head Ms. Panikar (appellant). He asked her when his bills regarding increment would be released. Ms. Panikar said “Chaware Babu Aiket Nahi, Pahile Rs.1500/- Dya Nantar Tuumche Bill Nighel”. He further deposed that he said to her that he would give her Rs.1500/- tomorrow. Thereafter, he gave oral complaint to Ms. Uikey (PW 3), who was present in the ACB Office. His complaint was typed. That complaint was given to him for reading and he had read the same. He made his endorsement on the complaint regarding the

correctness and signed it. The same was exhibited as Exhibit 17.

31. P.W. 1 in his deposition while narrating the trap laid down, he has deposed that at about 10.00 he and both the panchas alongwith ACB employee went to Pulgaon in Government vehicle. Ms. Uikey, Deputy Superintendent of Police (P.W.3), sent him and panch no.1 Kathale (P.W.2) to Nagar Parishad, Pulgaon then he inquired about the bill regarding his arrears of increments, the accused asked whether he had brought Rs.1500/-. On that he told her that amount is with his son and he will bring it. On that appellant told him to bring it quickly. Thereafter, he and panch witness no.1 (P.W.2) came there where ACB staff was waiting. When Ms. Uikey, Deputy Superintendent of Police (P.W.3) inquired with panch witness no.1 (P.W.2), he confirmed about the demand of bribe money.

32. P.W.1 further deposed that he and panch witness no.1 Kathale (P.W.2) went near the table of appellant.

Appellant asked him, whether he has brought the money, he took out the bribe money with his right hand from left side shirt pocket and gave it to the appellant. The appellant took that amount in her right hand and said “tumcha kaam aatach karun dete, chaware babu kade chala”. Thereafter, he came outside the office and gave the signal. The appellant followed him and came out of the office as she wanted to go with him to the establishment department. He further deposed that ACB along with panch witness no.1 went to the accused and introduced them. The ACB officer asked the accused what was there in her palm. She said Mahendra Pande had given Rs.1500/- and she was going to Chaware Babu for giving that amount. Ms. Uikey, the Deputy Superintendent (P.W.3) thereupon asked the lady police officer to hold hands of accused. Accordingly, she caught the hands of the accused. ACB Officer brought the accused to the chamber of the Chief Officer.

33. In cross-examination, the complainant has stated

that when he was working in the water department there was an allegation against him that he had misappropriated Rs.27,810/- and as he paid that amount before 31st March, no complaint was lodged against him regarding missing of one file when he was working in the tax department. He further stated that he had taken a leave without pay on many occasions. He has further admitted that he was suspended from service from 5th April, 2003 to 12th June, 2003. He further admits that he was in police custody for more than 48 hours, he was suspended from 12th February, 2005 to 27th June, 2005.

34. He further admits that work regarding calculation of the amount payable to him as increment from the year 2003 was with Shri Chaware. He also admits that the relevant papers in that regard were with Shri Chaware.

35. He further admits that when Shri Chaware was working in the establishment department. The glass kept on his table was broken because of him and Shri Chaware had lodged complaint against him in this regards with Chief

Officer. He further states that he and Shri Chaware were not on talking terms since about two years prior to the incident.

36. He further states that the accused used to seat in a big hall in the premises of Municipal Council. The employees of Municipal Council used to seat in that hall. The cabin of the cashier was also in that hall. The general public including the persons who have work regarding their pension also used to come in that hall for their work. The accused was given one Almirah by the department. He further states that after receiving the money, the accused immediately went in the office of Shri Chaware with money in the hand.

37. He admits that he did not file any application for leave on 8th February, 2011. He further admits that his name is shown at serial number 38 in the muster role and his presence was marked on the dates when he was present on duty. The certified copy of the muster role was exhibited as Exhibit No.24. He has also stated that office timing of Nagar Parishad was from 9.45 am to 5.45 pm.

38. P.W.2 who is the shadow witness who deposed that as per the instructions, reporter Mahendra Pande (P.W-1) produced two currency notes of Rs.500/- denomination and five currency note of Rs.100 denomination. He further deposed that after reaching in Establishment Department, reporter Pande inquired with accused as to whether his bill for increment in salary are prepared. On that appellant asked reporter whether he had brought amount of Rs.1500/- on that reporter Pande (P.W-1) told her that amount was kept with his son, he will bring the amount immediately. P.W.1 stated that he alongwith reporter Pande came back to raiding party and he told Ms. Uikey (P.W.3) about conversation in between reporter and accused.

39. In cross-examination of P.W.No.2 admitted that he had shown the spot of incident to ACB Officer. He had shown ACB the spot on which the demand was made, amount was accepted and about verification of demand. He further states that in his presence map of spot was prepared and in that map

all above spots were shown. He further states that he had not raised any objection about the said map and he signed the map after verifying its contents. He further admits that spot at which the amount was accepted and verification of the spot was not shown in the map. He further admits that in map Exh.35, he was shown standing outside the building of Municipal Council.

40. P.W.No.3 who is Investigating Officer has deposed that papers containing to increment in salary and service book of reporter Shri Pande were seized from Shri Chaware by preparing seizure memo in presence of panchas. The documents were exhibited as Exhibit 34.

41. In cross-examination P.W.No.3 states that while preparing map Exhibit 34 she has obtained information where P.W-1, accused and panch witness no.1 (P.W-2) were standing at the time of verification of panchnama and at the time of accepting the amount. She further admits that in map Exhibit 35 location of accused, P.W-1 and P.W-2 at the time of

verification panchanama and accepting bride amount is not shown. She further admits that she had not recorded the statement of other staff except Shri Hete and Shri Chawre. She further admits that when the accused was caught hold, the amount was in her fist.

42. P.W.No.4 in his cross-examination has admitted that complainant Mahendra Pande was shown on duty on 8th February, 2011. He further states that there was no leave application of Mahendra Pande on 8th February, 2011.

43. In the case in hand the muster roll Exhibit 24 shows that the name of the complainant appears at serial number 38 and on 8th February, 2011 he had signed the muster role which shows that he was present on duty at Pulgaon in the office of Municipal Council during duty time from 9.45 am to 5.45 pm. The complainant admits in cross-examination that duty time as 9.45 am to 5.45 pm.

44. Thus, it creates a doubt that if the complainant was on duty right from 9.45 am upto 5.45 pm then, at the same time how he could be at the ACB Office Wardha which is at a distance of about 45 kms from Pulgaon, at 10 am on 8th February, 2011.

45. It is significant in the above referred backdrop to note that the complainant has deposed that he started at 10 am with panch in Government vehicle from Wardha to Pulgaon and they reached Pulgaon at about 11 am.

46. The above stated facts create doubt about the presence of the complainant at the ACB Office, Wardha at 10 am for preparatory to lay a trap.

47. I am conscious of the well settled law that it is not the requirement that the public servant must, in fact, be in a position to the official act, favour or service at the time of demand or receipt of the gratification. It is enough if the public service, who accepts the gratification, takes it by

inducing a belief or by holding out that he would render assistance to the giver with any of the public servant and giver gives the gratification under that belief.

48. In this case, the P.W. No.1 in the cross-examination has admitted that work regarding calculation of the amount payable to him as increment from the year 2003 was with Shri Chaware. He further admits that the relevant papers in that regard were with Shri Chaware.

49. Thus, it is clear that the accused was not in an official position to do the work of the P.W. 1. Furthermore, no evidence has been brought on record to show that though the accused was not in a position in the official capacity to do the work of the P.W. No.1, but she induced a belief that she would render assistance to P.W.1 and the P.W.1 gave the gratification under that belief. Even this is not the case of the prosecution.

50. The P.W. No.1 in his cross has admitted that he was not in talking terms with Chaware since about two years prior to the incident. In the light of the above admission,

nothing has been brought on record by the prosecution to establish that Shri Chaware made a demand of illegal gratification to release the increment of the P.W. 1, through the accused.

51. The P.W. 1 in his chief, while deposing on first demand, has stated that when he met the accused, she said “Chaware Babu Eikat Nahi, Pahale Rupaye Pandhrashe Dya Nantar Tumche Bill Nighel.”. There is no witness to this demand and no corroborative evidence has been brought on record to establish the first demand.

52. It is significant to have a corroborative evidence to the first demand as on the date of the trap, it is the case of the prosecution that when P.W. 1 met her with P.W. 2, she asked him “Whether he has brought the money” There is no mention about any demand by Chaware Babu or about the release of bill amount. Thus, merely utterance of words, ‘whether the complainant has brought the amount’, will not constitute demand of bribe, unless sufficient evidence is

brought on record in corroboration of the same.

53. In this case, no witness has been examined to corroborate to the evidence of P.W.1 regarding bribe. In the case of *State of Punjab ..vs.. Madan Mohan Lal Verma*, reported in (2013) 14 SCC 153 the Hon'ble Supreme Court of India has held that the complainant is an interested 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. It is further held that in a proper case, the Court may look for independent corroboration before convicting the accused person. It is also held that 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.

54. It has come in the evidence of the complainant that the accused used to sit in big hall in the premises of the Municipal Council, most of the employees of the department seat in that hall and the general public including the persons

who have work regarding their pension also come in that hall for doing the work.

55. However, no person who was present in the hall at the time of accepting the bribe by the appellant was examined by the prosecution.

56. Interestingly, though it is the case of the complainant that amount was paid as a bribe to the appellant to give it to Chaware, Shri Chaware has not been made co-accused in this case.

57. Thus, in absence of any corroborative evidence available regarding bribe, it cannot be said that the prosecution has established the demand and acceptance of bribe beyond reasonable doubt.

58. As regards the demand P.W.No.1 says that he inquired about the bill regarding his arrears of increments thereupon the appellant asked him “whether he had brought Rs.1500/-”.

59. P.W.No.2 corroborated this version of P.W.No.1 however map Exh.35 creates doubt about the presence of P.W.No.2 shadow witness at the time of verification, wherein P.W. No.2 has been shown standing outside the office of appellant.

60. This Court in the case of the *State of Maharashtra Vs. Prakash Nathu Pawar* (supra) in paragraph 22 has observed that it does not however stand to reason that a person who has accepted a bribe of Rs.8000/- containing 16 notes, would still keep that amount for such a long period in his hands. Normal conduct of a person accepting a bribe would be to either keep it in his pocket or in the drawer or elsewhere as early as possible.

61. In the case in hand, it has come on the record when the appellant was intercepted the amount was in her fist. P.W.No.3 in her deposition has deposed that she asked the accused what is in her right palm, the appellant replied that amount of Rs.1500/- given by Shri Pande, is there. She further

deposed that appellant had stated that Pande has given the said amount for giving it to Chaware Babu.

62. It can reasonably assume that more than reasonable time was passed after accepting the amount by the appellant and when she was intercepted. The amount was accepted by the appellant in the hall of the Municipal Council and after accepting the amount she went towards the chamber of Chaware Babu which admittedly was not within the same hall but it was outside the hall. Thus, it creates doubt whether it was illegal gratification because a normal conduct on accepting the bribe would be either keep it in her purse or almirah provided by the department or elsewhere, as early as possible.

63. On overall appreciation of evidence on record, in the context of the elucidation of law pertaining the proof of the ingredients of Sections 7 and 13 of the Act as adverted herein above, I have no hesitation to hold that the prosecution has failed to prove the charge levelled against the appellant, beyond reasonable doubt. Accordingly, I pass the following order :

- i. Criminal appeal is **allowed**.
- ii. Judgment and order dated 16th April, 2015 passed by Additional Sessions Judge, Wardha in Special (ACB) Case No.3 of 2011 is hereby quashed and set aside.
- iii. The appellant is acquitted of the offence punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988.
- iv. Her Bail Bonds shall stand cancelled.
- v. The Muddemal Property be dealt with as per the Order of the learned Additional Sessions Judge.

The Criminal Appeal stands **disposed** of accordingly.

[ANIL S. KILOR, J.]

sknair/rkn

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by
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K NAIR
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