

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****Criminal Appeal No. 384 / 2004**

Dnyandeo s/o Namdeo Jagtap,
Age 52 years, Occu. Head Constable,
R/o. Kopargaon, Tq. : Kopargaon,
Dist. Ahmednagar.

...Appellant**Versus**

The State of Maharashtra,
Copy to be served on Public Prosecutor
High Court of Judicature at Bombay,
Bench at Aurangabad.

...Respondent

Mr. P. B. Shirsath, Advocate for the Appellant
Smt. D. S. Jape, APP for Respondent/State

CORAM : KISHORE C. SANT, J.
RESERVED ON : 15th NOVEMBER, 2022.
PRONOUNCED ON : 2nd FEBRUARY, 2023.

JUDGMENT :

1. This appeal is against the judgment and order dated 31.05.2004 passed by the learned Special Judge and Additional Sessions Judge, Kopargaon in Special Case No. 01/1999, whereby the present

appellant-accused is held guilty of the offence punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' for short). He is sentenced to suffer Rigorous Imprisonment (R.I.) for two years and to pay fine of Rs.2500/- in default to suffer Simple Imprisonment (S.I.) for six months for the offence under Section 7 of P.C. Act. He is further sentenced to suffer R.I. for three months and to pay fine of Rs.2500/- in default to suffer S.I. for six months for the offence under Section 13(2) of P.C. Act. Both the substantive sentences are directed to run concurrently.

2. The story of the Prosecution in short is as below:

The present appellant/accused was working as a Head Constable in the Police Department at Kopergaon Police Station. The complainant namely Bhimrao lodged a complaint that his cousin brothers assaulted his another cousin namely Punja. The complainant and his brother – Dashrath tried to intervene in the dispute. The cousin brothers therefore assaulted the complainant and his brother by iron bar due to which complainant sustained bleeding injury on his head. The

complainant therefore with his wife, his brother Dashrath, his brother-in-law Haribhau and cousin Punja went to the Kopargaon Police Station to lodge a report. The accused referred him to Hospital for treatment. The complainant was therefore admitted in Rural Hospital, Rahata and was discharged on 09.05.1998.

. The complainant after discharge from hospital again went to the police station and handed over injury certificate to accused and requested him to take legal action against his cousin brothers. The accused demanded a bribe of Rs.2000/- for taking action against cousin brothers of complainant and also to arrest them. The amount was settled to Rs.1000/-. It is alleged that the complainant took amount of Rs.1000/- from his employer/Pyarasinth Sandhu and paid Rs.500/- to accused and assured to pay remaining amount within 7 to 8 days. On 10.05.1998, the cousins gave abuses to the wife of complainant and therefore she again went to police station on 11.05.1998 to lodge report. At that time, accused again demanded remaining amount of Rs.500/- to the wife of complainant, he further threatened her to file a chapter case against complainant if amount of Rs.500/- is not paid. On

13.05.1998, the complainant again went to police station to see the accused. At that time he came to know that the accused is in the Court and therefore he went and met the accused in the Court. Accused asked the complainant as to whether he has brought Rs.500/-, the complainant requested for sometime to arrange for the remaining amount. That time again accused threatened the complainant that he would initiate a Chapter proceeding against him. Since there was demand of bribe, the complainant approached Anti Corruption Bureau, Nashik, where P.I. Bhalerao recorded his report on 15.05.1998.

3. On 14.05.1998, panchas were called to the office of ACB and trap was arranged. The prosecution alleged that the trap was successful. After the trap, investigation was carried out and the charge-sheet came to be filed. The prosecution came to be launched against the appellant. On recording the evidence and holding a trial, the learned trial Judge held the accused guilty of the said offences of P.C. Act and thus the accused is before this Court.

4. The case of the accused is that he has not demanded and accepted any amount towards bribe and he is falsely implicated by the complainant in the offence. It is defence of the accused that the complainant wanted this accused to take action against his cousins and arrest them. Since the accused told that it was not a case where arrest was required. It is for this reason the complainant got annoyed and lodged a complaint. Before coming to the conclusion and before discussing the judgment of the trial Court, it would be necessary to see the evidence laid before the trial Court.

5. There are total five witnesses examined by the prosecution. The defence has not examined any witness. The first witness is Chandrkant Eknath Maind, who acted as panch witness. In his evidence, he stated on 14.05.1998 he was called to the office of ACB at 05:00 pm. There he was introduced to the complainant Bhimrao Jagtap. Thereafter this witness was called next day again on 15.05.1998. On next day the complaint was explained in detail to panch witnesses. This witness was instructed to remain with the complainant all the while during the raid

and to watch the accused that if head constable Jagtap accepts the bribe amount. After instructions, a pre-trap panchnama was drawn. As decided this witness alongwith complainant went to the Kopargaon Police Station. On making enquiry about the accused, they came to know that accused might be at his residence. Thereafter, they went to the house of accused and gave him a call. The accused came out of the house and asked as to how many persons have come. It was told by the complainant that two three persons have come. Accused asked all persons to wait near the gate of the Police Station and told that he would come there. After changing the dress within fifteen minutes, he came there near the gate of police station on motor-cycle and asked the complainant also to come to Biroba Chowk in the shop of one Mandage. Then he went towards the Biroba Chowk and this witness alongwith complainant went to the said chowk in the shop of Shri. Mandage. There was a tea stall. The complainant and panch alongwith accused sat on the benches in the said stall. The complainant placed order for tea for all. Other members of the raiding party were following them from some distance. Accused asked complainant as to whether he has

brought amount of Rs.500/-. The complainant took out five tainted currency notes and gave those in the hands of accused. Accused accepted those currency notes and kept those in his right hand. He assured the complainant that his work will be done. On handing over money the complainant gave signal to raiding party. On receiving signal, all the members of raiding party rushed towards spot. Mr. Bhalerao Investigating Officer showed his identity card to the accused and introduced himself. The accused was caught hold by police. This witness deposed that the hands of the accused were examined in the ultra violet lamp and found blue shining to the hands. He further deposed that thereafter detailed a panchnama was drawn.

6. In the cross-examination, certain omissions are taken on record by the defence that he had stated before police that the complainant produced 5 currency notes of the domination of 100 each and Investigating Officer seized those currency notes. The complainant had head injury and bandage on it. Therefore his head was covered with a cloth called "Uparane". However he could not assign as to why these

facts are not appearing in the police statement. It is also taken on record that he had stated before the police that the Mr. Pardeshi told that there was a bottle in the container called Dibba. However, this also does not find place in the police statement. He could not tell the technical differences between the anthracene powder and powder etc. He accepted that one cannot describe differences by watching it simply without Ultra-violet lamp. He could not give details about the ACB Office at Nashik. He accepted that he stated before the police that the door and windows of the room were closed and there was dark in the room, where the currency notes and the hands of Pardeshi were shown under the light of U.V. lamp. However, it is not there in the police statement. About actual meeting with the accused, he said that accused came and sat on the benches in that tea stall, where the witnesses were sitting.

7. The next witness is the complainant namely Bhimrav Hiranman Jagtap (PW-2). In his evidence, he deposed that he lodged the complaint with the ACB since the accused had demanded the amount.

He had been to the police station as his cousin Punja Piraji had quarrel with Chandrabhan, Ashok, his cousins. Complainant went to intervene and therefore Chandrabhan, Raju and Ashok beaten him and his brother Dashrath by iron rod. Complainant sustained head injury therefore the Complainant with his wife, brother and punja had been to the police station at Kopargaon. Accused Jagtap met them in the police station and gave them police yadi by referring to the hospital for medical treatment. Complainant was admitted in Rahata Rural Hospital. After his discharge from the hospital, he was admitted in private hospital. Thereafter he went to the accused and gave him medical certificate. At that time, accused demanded Rs.1000/- from him for not lodging chapter case against him. Complainant lodged complaint against his cousins and insisted the accused to take action against his cousins. Accused demanded Rs.2000/- for taking action against the cousins of the complainant and ultimately the amount was settled Rs.1000/-. Complainant went to his Master, who runs Sandhu Transport and requested him to pay Rs.1000/- for medical expenses. He took Rs.1000/- from the Master and out of that amount, handed over

Rs.500/- to the accused by going again to the police station. He assured that remaining amount will be paid later on. Complainant used remaining amount of Rs.500/- for his treatment. After 7-8 days, the cousins gave abuses to the wife of complainant and therefore she again went to police station to lodge the report. At that time, accused again demanded remaining amount of bribe of Rs.500/- to the wife of complainant and he also threatened her to file a chapter case against them if complainant fails to pay Rs.500/-. Complainant went again police station to meet the accused. At that time he came to know that the accused is in the Court and he therefore met the accused in the Court. Accused asked the complainant as to whether he has brought Rs.500/-. Then complainant asked him for sometime to arrange for the money amount. That time again accused threatened the complainant to initiate a Chapter proceeding against him. Thereafter he went and lodged the complaint with the ACB, Nashik. He stated that the incident which he had narrated in the ACB Office was reduced into writing. At that time, the panchas were present. After that, Investigating Officer gave details about the procedure of trap and gave currency notes to

him. Some of the officials applied powder to the notes. Upon instructions of Investigating Officer, Complainant with one Mr. Maind (PW-1) went to the police station, where it was told that the accused had gone to his house. On that, both these witnesses went to the house of accused. Accused was standing at his door. The house was situated in the police chawl. Accused asked them to wait under Bhendi tree near police station. After some time, accused came there, they all went to the hotel in a chowk and had a tea there. Accused asked the complainant about the remaining amount and told to give the amount on that the Complainant took out Rs.500/- from his shirt pocket with right hand and gave it to the accused. Accused kept that amount in his hand. On giving amount, the complainant gave signal to the raiding party by taking out his 'uparane' from his head and wiping his face. On receiving signal, the raiding party caught the accused and took him to the police station. This witness was asked to wait outside the police station.

8. In the cross-examination, this witness accepted that after the

incident of beating by Chandrabhan and others, Complainant with his wife, his brother and Punja, went to police station in his truck. They met one Mr. Gaikwad, who was police officer in the police station. The incident was narrated to Mr. Gaikwad, who gave them police yadi and referred the Complainant to hospital. After taking medical treatment from Rahata Hospital, he was admitted again in the private hospital. After discharge, he went to Kopargaon Police Station and met Mr. Gaikwad. It was told that the present accused was investigating the offence lodged by the complainant. Complainant had been to police station on 4th day of the incident after taking treatment and shown both the medical certificates. Complainant insisted the accused to arrest Chandrabhan and others. Since the accused did not arrest the assailants, Complainant got frustrated. Complainant wanted that his assailants be arrested but it is this present accused, who was against such arrest. Therefore, complainant was annoyed. He accepted that next day of the alleged incident of beating, the same persons again beaten, abused his wife and his wife also had been to the police station to lodge the complaint against the cousin brothers of the complainant.

Therefore she met the accused. At that time also, accused demanded her remaining amount instead of lodging complaint. She returned back to home and told this witness about demand of money by the accused and that no offence was registered by the police. The complainant therefore again visited police station to meet the accused but still accused did not take any action against the assailants. Accused further asked the complainant about the remaining amount of bribe and told that otherwise he will file chapter case against him. Therefore, complainant went to the ACB, at Nashik.

. In his deposition, it has come that after his deposition was deferred on the previous date, on application filed by the P.P. for adjournment. Thereafter he was taken to office of learned P.P., where his previous statement was read over and explained to him by police and he was instructed how to depose before Court. He accepted that he deposed before the Court in the second sessions as he was taught by the police.

9. The next witness is Investigating Officer namely Dattatraya

Vithalrao Bhalerao (PW-3). He deposed that the complainant came at his office at ACB, Nashik on 15.05.1998. In his deposition, he stated that complainant had not visited his office prior to 15.05.1998. However, two panchas had come to his office on 14.05.1998 at about 05:00 p.m., where he and his staff were present in the office. Panchas were called to come on next date i.e. on 15.05.1998. The complainant was introduced and panchas were asked to listen to the complainant carefully. Thereafter the complaint Exhibit-15 was also given to panchas for perusal and the contents of the same was gone through by the panchas. He further stated as to how the trap was arranged and about instructions given to the members of the raiding party etc. He further deposed that at 02:10 pm. accused arrived near tree on his motor cycle. Some talk took place in between complainant and accused. Thereafter accused alone proceeded on his motor cycle near the tea stall, complainant and panchas proceeded there. Accused, complainant and panch sat in that tea stall. Members of the raiding party followed them by hiding themselves near by the spot. After having tea, complainant gave signal as instructed after giving money to

the accused by taking out towel (uparne) from his head and wiping his face by that towel. The raiding party immediately rushed and caught hold the accused. On asking as to where the amount received from the complainant is kept, the accused told that money is in his palm and opened the palm. This witness and other members also disclosed their identity to the accused. On further asking the accused as to what he want to say about the money found with him? Accused gave in writing that which is at Exhibit-53. The further investigation was carried out by PW-5 as per the direction of Dy. SP and ACB.

10. In the cross examination this witness, he stated that he sent a letter to the department for requisition of panch on 14.05.1998 and on the same day he received reply. A pre-trap panchanama was drawn in the office at Nashik. He accepted that on 14.05.1998, he did not receive any complaint from the complainant. He reiterated that the complainant had not come to his office prior to 15.05.1998. He could not tell as to whether on 06.06.2001 recording of his statement started in the Court. His chief was deferred at 12:30 noon. He stated that the

chief was deferred till recess on that day on the application of DGP and the same was resumed at 04:15 p.m. He accepted that after deferring the chief till same was resumed, he was in the office of Prosecutor. He accepted that during that period he studied the case papers.

. In further cross, he accepted that he did not notice currency notes after the raid and therefore he asked the accused about whereabouts of the currency notes. The notes in the palm of the accused were totally folded. The said notes were shown in the Court, where those were single folded. He accepted that if the notes had been single folded then he could have seen the same in the palm of the accused. Thereafter this witness was re-examined by DGP. The learned DGP sought permission to put question to the witness as to what he means by saying that the powder is seen under ultraviolet lamp? By submitting to the Court that there is possibility of ultra violet rays and therefore explanation was necessary. In spite of opposition by the defense Counsel, the Court allowed the said question. As to how many notes with antheracene powder looked in the ultraviolet lamp? He was cross-examined to that extent, however that is not much material.

11. The next witness namely Himanshu Roy a sanctioning authority is examined as PW-4, then Superintendent of Police at Ahmednagar. In his deposition, he stated that he received the proposal for sanction. He received the record for granting sanction for prosecution of the accused by ACB. He had gone through the said record carefully. After going through the same, he formed an opinion that there was sufficient evidence and circumstances to prosecute the accused and therefore he issued sanction order Exhibit-45.

12. In the cross-examination, he deposed that in the FIR, it is mentioned that on 08.05.1998, complainant went to police station for lodging the FIR about assault on him and his family members. He deposed that it is only mentioned in Exhibit-15 that accused was on duty at police station. He accepted that it is also mentioned that the accused gave requisition letter for medical treatment to the complainant. He accepted that he noticed that Raghunath Gaikwad, head constable was PSO at the time of giving of the complaint Exhibit-15. He noticed that Gaikwad received the complaint and he issued

requisition letter for medical treatment to the complainant. However he could not notice any contradiction as he did not mention this inconsistency in sanction order and he did not find it necessary to mention the same. He again said that there is no inconsistency. He also could not say whether the notes recovered from the accused were folded or unfolded. He accepted that he received statements of witness Rajendra Kisan Mandage, Suresh Sukhdeo Ahire, Ashok Chandrakant Pandore, who were on the point of actually catching the accused red handed. He admitted that he noticed that these witnesses did not witness the incident of actual payment to the accused though they were present on the spot. He accepted that it reveals from the papers and the statements of the complainant recorded after trap that the complainant met the accused on 15.05.1998 at his house, but there was no demand at that time. He also accepted that second incident took place on the same day of meeting under tree but there also no demand was made by the accused. He also received police statement of Pyarasing Sandhu with the case papers. By which, it revealed that complainant demanded the amount to his employer Pyarasingh Sandhu

for medical treatment. It further revealed from Exhibit-15 that at that time complainant took Rs.500/- from his cousin Punja.

13. The last witness is PW-5 namely Shard Bansidhar Mane, who had taken over the investigation from the Investigating Officer. He deposed that he recorded the statement of complainant and panch and arrested the accused on the same date at 23 hrs. on 29.05.1998. He recorded statements of Punja and Haribhau Gorde. On 01.06.1998, he recorded statement of Pyarasing and others and further statements from time to time. On 18.07.1998, he sent report to sanctioning authority for sanction. On 14.08.1998, he was transferred and therefore he handed over investigation to Dy. S.P. Khaire.

14. On this evidence and material, the learned Advocate for the appellant made his submissions. Very first, he submits that initially this accused was not present in the police station, when the complaint was given to one Mr. Gaikwad by the informant in respect of assault on him.

Therefore there was no question of this accused asking for any bribe. Even after discharge from the hospital of the informant and till he came with certificate to the police station there was no role of this accused. From the examination of the complainant, it is submitted that the informant somehow wanted the persons, who assaulted him to be arrested and this accused was not arresting those accused persons in that case as per the say of the complainant. So there was a motive for the complainant to falsely implicate the accused and therefore he went to the ACB office on 14.05.1998, whereas the date on the complaint shows that it was on 15.05.1998. It is clear from the endorsement that the complaint bears the date as 15.05.1998. He submits that the Investigating Officer and panch witness have also deposed that the complainant had been to the ACB office on 15.05.1998. In their evidence, there is no reference to the visit of the complainant on 14.05.1998. He submits that after part of the examination of the informant, the P.P. filed an application for adjournment and the examination was deferred. It has come in the cross-examination, that this witness was taken to the office of the prosecution by the police,

where he was shown his previous statement and he was taught how to depose before the Court. Thus, the witness was tutored and in the second session he deposed as he was taught by the police. He thereafter submits that the person i.e. brother of the complainant in whose presence, the amount was paid, the owner of the transport office, who paid amount to the complainant are not examined, though these statements are recorded. The wife of the complainant is also not examined, though her statement is recorded. He submits that the role of the complainant is of accomplice and for this reason, it was necessary to look for corroboration.

15. From the evidence of panch witness (PW-1), learned Advocate submits that the omissions are brought on record. Though he had stated that the complainant had produced five notes of Rs.100 and further that the complainant had head injury and therefore there was a bandage to his head. However these facts are not recorded in the police statements.

16. From the evidence of PW-3 i.e. Investigating Officer, he points out

from his deposition, that the Investigating Officer has stated that the complainant had been to the ACB office on 15.05.1998 for the first time, which is contrary to the evidence of the complainant. In his evidence it has come that however panchas had come to the office of ACB on 14.05.1998 at about 05:00 pm. He specifically deposed in his evidence that this witness did not notice the currency notes, which were given as a bribe and therefore he asked the accused about whereabouts of the notes. He deposed that the currency notes were double folded. However, the notes shown in the Court were single folded. It is specifically brought on record that the witness was tutored. In this case also the chief was deferred and it was resumed after sometime. In the meantime, this witness was in the office of the prosecutor, where he studied the case papers. It is therefore submitted that out of five witnesses, two were tutored.

17. As regards, the evidence of PW-5, learned Advocate for appellant points out that this witness recorded a statement of Punja Jagtap and Haribhau. The learned Advocate submits that however these witnesses

were not examined by the prosecution in spite of recording their statements. From the evidence of sanctioning authority, he submitted that the sanctioning authority has not assigned reasons to show that he has applied his mind. He accepted that from the papers, it appears that twice the accused met with the complainant under the bhendi tree, still there was no demand. The learned Advocate submitted that in this case, the demand is not at all proved and therefore the presumption under Section 20 cannot be invoked. The sanction is without application of mind and thus the entire prosecution is vitiated. He relied upon the following reported judgments.

- (i) Panalal Damodar Rathi vs State Of Maharashtra
reported in AIR 1979 (SC) 1191.
- (ii) Om Prakash Vs. State (1998(4) Crimes 227 in Cr. A. No.340/1977
Manu/De/0765/1998.
- (iii) Syed Murtuza Syed Murad Ali Vs. State of Maharashtra
2018 Cri.L.J. 609.
- (iv) Ramdas s/o Zaparaji Shahane Vs. State of Maharashtra
1996 Cri. L.J. 1848.
- (v) Som Prakash Vs. State of Punjab
AIR 1992 SC 665

- (vi) Khilli Ram Vs. State of Rajasthan
AIR 1985 SC 79
- (vii) V. Venkata Subbarao Vs. State represented by Inspector of Police
A.P., reported in AIR 2007 SC 489.
- (viii) Ramvilas and others Vs. State of M.P.
1985 Cri.L.J. 1773
- (ix) Kanu Ambu Vish Vs. State of Maharashtra
AIR 1971 SC 2256
- (x) Vinod Savalaram Kanadkhedkar Vs. State of Maharashtra
2016 (4) Mh.L.J. (Cri) 570.

18. The learned APP submits that in this case demand is proved through the evidence of PW-2 that is complainant from his evidence, it is clear that this accused was the Investigating Officer in an offence registered by the complainant in the earlier case of assault on him. He submits that even previous demand is also proved by giving dates. PW-2 is practically illiterate person as he has taken education only till third standard. From such person, no exact date, time etc. is expected. Therefore, the question about whether he visited the office of ACB on 14th or 15th May, 1998 does not assume any importance and in this

case, the dates are immaterial. It is only this informant who had stated the date of first visit to office of ACB as 14.05.1998. As regards the Dy. S.P. and the panch witness, there is no confusion about the date and they are consistent. On the point of tutoring of the witness, he submits that it has come in the evidence that he was told by the police to tell truth in the Court and this cannot be said to be tutoring a witness. On the point of sanction, he submits that the sanctioning authority has rightly applied its mind and has properly concluded that this was a case, where sanction was necessary. He submits that in this case the demand, acceptance and validity of sanction everything is proved. There is no reason for the complainant to falsely implicate the accused. He thus supports the impugned judgment by submitting that the learned trial Judge has rightly convicted the accused and no interference is called for.

19. After hearing the submissions, it is necessary to test the submissions in the light of evidence on record the judgments cited by the appellant. In the judgment of Panalal Damodar Rathi (supra), the

Hon'ble Apex Court has clearly held that the position of the complainant in corruption case is like an accomplice. It is necessary therefore to look for corroboration. In this case submitted that there is no corroboration found to the fact of demand by the other witnesses. The prosecution though had recorded the statements of the wife of the complainant and also his brothers, however none of them is examined in the Court to corroborate the facts of previous demand.

20. In the case of Om Prakash (supra), reliance is placed upon paragraph no.17, where the Delhi High Court has observed that there is no statement except that of PW1 in respect of demand and acceptance of the crime. It is observed that his statement is in the nature of an accomplice and it would not be safe to place reliance on his statement unless the same is corroborated by independent evidence.

21. In the case of Syed Murtuza Syed Murad Ali (supra), this Court has acquitted the accused since there was no corroboration to the evidence of complainant about the alleged demand.

22. In the case of Ramdas Zapparaji Shahane (supra), this Court found that there was initial demand as well as demand at the time of trap. In that case, the learned trial Court had discarded all the omissions in the evidence of the complainant saying that he was a rustic person. In this case also, it is the submission that the complainant is educated up to third standard, however that cannot be said to be the reason to ignore the inconsistency in the evidence as submitted by the learned APP. The complainant in his evidence had stated that he had been to the office of ACB on 14.05.1998; whereas the panch witnesses and the Investigating Officer have said that he visited on 15.05.1998. This point inconsistency needs to be considered.

23. In the case of Som Prakash (supra), the Hon'ble Apex Court has held that the witnesses associated in the conduct of the raid for recovery of tainted money, could not be termed as independent witnesses. The Hon'ble Court further held that the guilt of the accused was not proved beyond reasonable doubt and the benefit must go to the accused.

24. In the case of Khilli Ram (supra), the Hon'ble Apex Court had considered the discrepancies in the evidence. It was further found that the evidence of panchas was not available to support the prosecution case and the defence version was accepted as probable.

25. In the case of V. Venkata Subbarao (supra), the Hon'ble Apex Court has held that the presumption under Section 20 of the P.C. Act can be raised, only if a demand is proved. In this case, since the demand is not proved, presumption cannot be invoked.

26. In the case of Ramvilas and others (supra), it was held that the witness gave random and self contradictory statements. In his deposition he stated that his earlier statement had been read over to him and he was asked to give the same statement in Court. In that view of the matter, the Madhya Pradesh High Court held that the entire evidence of the witness becomes inadmissible. In this case, it has clearly brought on record in the cross-examination that at least two witnesses were tutored by the police. During the course of the chief,

an application was moved by the Public Prosecutor for adjournment and the chief was deferred. PW-2 has clearly stated that he was shown his statement before resuming the chief examination and where the complainant was told to speak truth before the Court. In case of sanctioning authority, he was given the papers for reading before the resuming the chief.

27. In the case of Kanu Ambu Vish (supra), the Hon'ble Apex Court held that what is required under Section 145 of the Evidence Act, even where a witness is confronted by his previous statement and given an opportunity to explain that part of the statement that is put to him does not constitute substantive evidence. In that case, the panch was not knowing on what power the lamp under which the hands were seen for anthracene powder was working but is certain that it was not with electric current.

28. The last judgment in the case of Vinod Savalaram Kanadkhedkar (supra), is on the point of sanction. It is held that the order of sanction

is not a mere formality. The sanctioning authority has to apply its mind before according sanction. Absence of description of documents referred by sanctioning authority and only considering the grievances made by the complainant shows lack of application of mind by the competent authority while according sanction. It is also held that the sanction is a weapon to discourage vexatious prosecution and it is a safeguard for the innocent and therefore valid sanction is must. In this case, it is seen that from the cross of the sanction authority that he could not give details of the documents, which were placed before him and he could not answer about question put in the cross in respect of the documents sent to him. Thus, this Court finds that the prosecution has not satisfactorily proved that the sanction was a valid sanction with application of mind.

29. The learned APP though has tried to support the case has submitted of the judgments are not of much avail to the accused.

30. This Court therefore has to consider the judgment in the light of

the facts of this case and the evidence that is brought on record. In view of the discussion, this Court finds that clearly a case is made out for acquittal. The learned Sessions Judge has not properly appreciated the omissions and contradictions in the evidence. In the result, the appeal is allowed. The conviction recorded by the learned Court below is quashed and set aside.

31. Considering all the above position, as the prosecution has failed to prove the guilt of the accused beyond the reasonable doubt. The appeal therefore succeeds. Hence the following order.

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order dated 31.05.2004 passed by the learned Special Judge and Additional Sessions Judge, Kopargaon in Special Case No. 01/1999 is quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read

with 13(2) of the Prevention of Corruption Act,1988.

- (iv) Amount of fine deposited in the Trial Court be refunded to the Appellant.
- (v) Bail bonds of the Appellant stand cancelled.
- (vi) Appellant to furnish fresh bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

32. With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]