

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 376 OF 1998

Shafi Abdul Rahiman Kudale

Age-37 year, R/o. Mardi,

Taluka North Solapur, District Solapur

...Appellant

Versus

The State of Maharashtra

...Respondent

....

Mr. Niranjan P. Shimpi, Advocate for the Appellant.

Mr. R. M. Pethe, APP for the Respondent – State.

....

CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 2nd MAY 2022

PRONOUNCED ON : 6th JUNE 2023

JUDGMENT :

1. This is an Appeal under Section 374 of Cr.PC. challenging the Judgment and Order dated 26th February 1998 passed by learned Special Judge, Solapur in Special Case No. 15 of 1994. Appellant has been convicted for an offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “P.C. Act”) and sentenced to suffer rigorous imprisonment for the period of one and half year and to pay fine in the sum of Rs.1250/-. The Appellant is further convicted for the offence punishable under Section 7 of the Prevention of

Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for the period of nine months and to pay fine in the sum of Rs.750/-. Substantive sentences to run concurrently.

2. The case of the prosecution is as under:-

(i) The complainant is resident of Solapur. His father had purchased matador in the name of complainant. He used to ply matador at Valsang and Akkalkot. On 29th January 1994, the matador vehicle was intercepted by RTO for illegal traffic. Memo was issued. License and the papers of the vehicle were taken into custody by the concerned Officer.

(ii) The accused was working as Junior Clerk in Court cases Section at RTO Office. He used to prepare the report and obtain orders from RTO and send cases to the Court.

(iii) On 8th February 1994, the complainant visited RTO office and contacted the accused. The complainant enquired about the papers of his vehicle. The accused told him to deposit penalty of Rs.858/- at the RTO office. The complainant demanded papers of vehicle. The accused told the complainant that he would send the case to the Court and on depositing fine and on payment of Rs.700/- to him, he would return the papers. The case was sent to the Court on the same day. The driver of the matador pleaded guilty and deposited fine.

(iv) The complainant collected the receipt of fine and went to RTO

Office. He contacted the accused and enquired about the papers of his vehicle. The accused told him to pay Rs.700/- and he would return the papers on such payment. The complainant requested for reducing the amount. The accused declined to reduce the amount.

(v) The complainant approached Anti Corruption Bureau Office, Solapur. His complaint was recorded by P.I. Shaikh. It was decided to lay a trap.

(vi) Panch witnesses were called from the Office of Superintending Engineer, Ujani Canal, Circle, Solapur.

(vii) On 9th February 1994, the complainant and panch witnesses appeared in the office of ACB. The complainant narrated his complaint to the panch witnesses. Necessary instructions were given to the complainant and panch witnesses. Anthracene powder was applied to those notes. Those notes were kept in the shirt pocket of complainant. Pre-trap panchnama was recorded.

(viii) The raiding party went to the office of RTO. The complainant and panch No.1 entered the RTO office. Other members of raiding party remained in scattered position waiting for the signal.

(ix) The complainant produced receipt of payment of fine and penalty before the accused. The entry about payment was made in the register. The accused told the complainant to bring written

application for return of papers. The complainant went outside and contacted one writer and prepared written application and the same was tendered to the accused. At that time, the accused asked complainant whether he has brought Rs.700/-. The complainant answered in the affirmative. The accused told the complainant to remain near the gate and he would follow him. The complainant and panch witness went to the gate of office.

(x) The accused approached complainant and suggested that they would have tea. They went to the canteen and sat on katta. The complainant requested accused to return the papers urgently and the accused told him to pay Rs.700/-. The complainant removed Rs.700/- from his left shirt pocket and the accused accepted the same by right hand, counted the same by both the hands and kept the amount in hip pocket of the pant. The accused had told the complainant that he would put the papers before superior for signature. The complainant gave signal to the raiding party.

(xi) On receiving signal, the raiding party apprehended accused. Panch No.1 made disclosure pointing out that he has accepted bribe money from the complainant and the amount has been kept in pant pocket. Currency notes were recovered from the office. Palms and clothes of the accused were seen in the focus of ultra violet lamp and blue shine colour emitted by anthracene power and his finger tips

and hip pocket. The accused asked to produced the papers in the matter of complainant, which was produced by him. Trap panchnama was recorded.

(xii) The raiding party returned to ACB Office. PI. Shaikh recorded complaint and send to Sadar Bazar Police Station, Solapur. Crime was registered vide C.R. No. 199 of 1994. Investigation was assigned to P. I. Shaikh. Statement of witnesses were recorded. Investigation was completed.

(xiii) Papers were sent to Transport Commissioner, State of Maharashtra for sanction. Sanction was accorded by the Transport Commissioner. Charge-sheet was filed.

3. Charge was framed vide order dated 22nd July 1996 for offences punishable under Section 7, 13(2) read with 13(1)(d) of PC. Act whichi is as follows:-

“That, during the month of February 1994, while you were working as Junior clerk in the office of Sub-Regional Transport, Solapur, as such a Public Servant, demanded and attempted to obtain a sum of Rs.1500/- and after settlement agreed to accept Rs.700/- on 08.02.1994 and thereafter on 09.02.1994 demanded and actually accepted Rs.700/- from the complainant Mohmed Sharif Jalaloddin Shaikh in the premises of your office as a gratification other than legal remuneration for yourself as motive or reward for

showing favour in exercise of his official function to the complainant Mohmed Sharif Jaloloddin Shaikh for returning the documents of vehicle No.MH-13-A-1433 which were taken in possession by you in connection with illegal transportation of the passengers and thereby committed an offence punishable under section 7 of the Prevention of Corruption Act, 1988 and within my cognizance that during the month of February 1994, you being public servant alleged to have obtained pecuniary advantage and accepted Rs.700/- on 09.02.1994 from the complainant Mohmed Sharif Jaloloddin Shaikh by corrupt of illegal means or by otherwise abusing your position as a public servant and thereby committed an offence punishable under Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988 and within my cognizance”.

4. The prosecution examined following witnesses.

- (i) PW No.1– Mohammed Sharif Jaloloddin Shaikh is the complainant.
- (ii) PW No.2- Bharat Sudam Choudhari is the panch witness.
- (iii) PW No.3- Chandrakant Punjaji Sawaikar was working as Assistant R.T.O. at RTO office, Solapur.
- (iv) PW No.4- Md. Yunnus Ismail Shaikh was A.P.I. attached to ACB Solapur. He is the Investigating Officer.
- (v) PW No.5-Satyabeersing Nanakchand Dodd is the Sanctioning Authority. He was working as Transport Commissioner, State of Maharashtra. He accorded sanction

to prosecute the Appellant.

5. The defence of the Appellant appearing from the written statement is that the complainant had approached the accused for work on 8th February 1994. The accused told him that his case can be compounded. He was explained the procedure for compounding. The complainant was informed that he will have to pay fine of Rs.500/- towards the owner and Rs.250/- at the behest of driver and compounding charges of Rs.800/- to 850/-. Thus, total sum of Rs.1500/- to 1600/- will have to be deposited. The complainant refused to follow that procedure. He was then informed by accused that even if the case is not compounded he will have to pay fine of passengers with interest. The complainant agreed to do so. As per the order of Mr.Sawaikar, the accused calculated the amount of Rs.75/- per passenger. There were 11 passengers and the total amount of Rs. 825/-. Passenger tax and the interest receipt was Rs.33/-. Hence, the accused accepted Rs.858/- from the complainant and issued receipt to him. On the same day Mr.Sawaikar issued notice to the complainant under Section 53(1)(b) which was served upon the complainant and his signature has obtained as acknowledgment of receipt of the notice. However, inadvertently the signature of Mr. Sawaikar could not be obtained. The accused informed the complainant that he would send the case of driver to

the Court and will have to pay fine. The case was immediately forwarded to the Court and the complainant was advised to attend the Court. On that day, the complainant quarrelled with the accused while he made demand i.e. the papers should be returned to him. In fact, the complainant was informed on 8th February 1994 that he will have to deposit Rs.750/- towards compounding charges, the amount towards fine and interest and thus, total amount could be around 1500/- to 1600/-. However, the complainant deposited Rs.858/- and carried the impression that accused is demanding more money for returning the papers and hence approached the ACB and lodged the complaint. On 9th February 1994, the complainant urged for return of papers and at that time he was informed that he will have to reply to the notice. Blank paper was handed over to the complainant. The complainant wrote his explanation on the paper. The complainant was informed that inquiry in that regard would be conducted and after the order is passed, he would be intimated about it. The complainant was also informed that unless appropriate order is passed by the superior, he cannot hand over the papers to him. Accused went out for answering nature's call and that time the complainant thrust something in his rear pant pocket. The accused removed the article kept in the pocket and while he was looking at it, he was apprehended by officials of ACB. Accused informed them

that the amount is forcibly thrust by complainant in his pocket. He never demanded bribe from complainant. It is false that he accepted bribe amount in the canteen. On the day of incident he never visited the canteen. It was not possible for him to return papers to complainant before completion of inquiry with regard to the notice under Section 53(1)(b). The complainant had lodged false complaint out of misunderstanding. He has not committed any offence. Registration of the vehicle was suspended and even after the incident, papers were returned to the complainant after several days.

6. The summary of arguments advanced by learned Advocate for Appellant is as under:-

(i) The case is under Section 7 of the P.C. Act 1988 read with section 13(1)(d) and 13(2). The incident is of 9th February 1994. The appellant was working as Court Section Clerk in Deputy RTO office Solapur.

(ii) The factum of demand is not proved by prosecution.

(iii) The complainant's statement about his maternal uncle Abdul Rashid Mohamed Saheb Shaik being present at the time of demand on 8th February 1994 not proved. The amount allegedly demanded was equal to the compounding fee payable under the Motor Vehicle Act.

(iv) The charge against complainant was driving a commercial

vehicle carrying passengers without license or permit. Similar offences committed by the complainant in the past.

(v) The amount of compounding fee and fine is supported by the evidence of PW-3, superior of the accused.

(vi) Prosecution has not proved that return of the documents was part of the official duties of the accused and therefore there is no motive or presumption against the appellant accused.

(vii) The Competent Authority for return of documents was PW-3 without whose orders the documents could not be released.

(viii) There is no record of the alleged bribe amount being made part of the record of the Court or marked as an Exhibit. The prosecution neither proved misuse of official position for the offence under section 13(1)(d) and nor the prosecution proved the factum of demand which is required for convicting the appellant accused under Section 7 of the P.C. Act.

(ix) Trial Court has ignored glaring defects in the case of the prosecution and has incorrectly convicted the appellant accused, who is entitled to be acquitted.

(x) The complainant's admissions in his cross examination that he had filed the complaint with the impression that the accused demanded Rs.700/- for himself. This shows that the complaint was

filed against the accused on assumption of the complainant and there is no actual demand of bribe by the accused.

(xi) The appellant accused has narrated true and correct facts in his statement recorded under Section 313 of Cr.PC.

(xii) The sanction is defective. The sanction order is copied from the draft sanction. The sanction order shows non application of mind.

7. Learned APP submitted that, the demand and acceptance of the amount has been proved. PW-1 and PW-2 has supported prosecution case. The Appellant demanded the amount of Rs.700/- for returning the paper. The complainant was told to wait near the gate of office. The amount was accepted by the accused. Panch No.1 was present with the complainant. He has corroborated the version of complainant. Anthracene powder was seen on palm, fingers and hip pocket of the accused where he kept the bribe amount. The evidence of PW-1 and PW-2 is consistent. The appellant has not rebutted the presumption under Section 20 of the Act. The evidence does not suffer from contradictions or omissions. The defence of the accused that, the complainant was advised to deposit the amount of Rs.1500/- to 1600/- towards compounding charges and other charges is false. The Sanctioning Authority has applied its mind and accorded sanction after perusing the investigation papers.

8. PW No.1-Mohammed Sharif Jaloloddin Shaikh is the complainant. His vehicle was intercepted by RTO office for illegal transport of passengers. The documents relating to the vehicles were taken into custody by RTO Office. According to PW No.1, he approached the accused in the office of RTO in connection with seizure of document. The accused told him that, he will have to deposit penalty. He agreed to do so. The accused demanded Rs.1500/-. The accused calculated the amount of penalty, which was Rs.858/-. The complainant paid the said amount of penalty to the accused and told him that case would be sent to the Court immediately. On the same day case was filed before the court. The complainant deposited the fine amount. He showed the receipt and demanded his documents. The accused demanded Rs.700/- for returning the papers. The complainant went to the office of ACB and lodged the complaint. As per version of complainant, the accused had demanded Rs.1500/- it is not case of complainant that the bribe amount of Rs.1500/- which is evident from the fact that the penalty amount was calculated of Rs.858/- which was paid by the complainant and the accused promptly sent to the Court. The complainant was directed to pay fine amount, which was deposited by him. Thereafter, according to the complainant, the accused demanded Rs.700/- for returning the papers. From the tenor of the

version of the complainant it does not appear that, the bribe amount of Rs.1500/- was reduced to Rs.700/-. There is no corroboration by independent person to the alleged demand made by accused prior to the complainant approached ACB. It appears from the evidence of PW No.1 that he was interested in collecting the documents immediately. From the evidence on record, it does not appear that the complainant was entitled to receive the document immediately on the day on which he deposited the penalty amount as case was not compounded. Immediately after the payment of penalty amount and receipt being shown to the accused, the papers were forwarded to the Court. PW No.1 stated that, his complaint was recorded by ACB. Instructions were given to panch witnesses. The raiding party proceeded to the RTO office. Panch No.1 was accompanying the complainant. The complainant and panch No.1 approached the accused. Although, it is the case of the complainant that the panch No.1(PW-2) was accompanying him, the accused never enquired about identity of the person accompanying PW No.1. It can be assumed that the accused did not make such inquiry as there was no intention on his part to demand bribe amount from the complainant. According to PW No.1, the accused asked him whether he has brought money and he answered in affirmative. The accused told him to bring application for return of documents. He brought the

application and approached the accused. Accused then asked him whether he has brought the money and he asked the complainant to wait near the gate. The version of complainant does not indicate whether accused had inquired whether the complainant has brought the bribe amount. It is further stated by PW No.1 that they went to the canteen and sat there. Panch No.1 was sitting in between them. He told the accused to return the papers. Accused then asked him to pay him. It is pertinent to note that if the application for return of documents was prepared by complainant, it is expected that the appropriate orders were required to be passed by concerned Officer for returning the document to the complainant. Hence, the question of returning the document by the accused to the complainant does not arise. From the evidence of the witnesses it cannot be inferred that the accused had any authority to return the document to the complainant at the stage when he had approached the accused. According to complainant the accused accepted the amount and kept it in his hip pocket whereas the defence of the accused is that complainant has thrust the amount in his pocket. In the light of version of complainant, the defence of accused reflected in the cross-examination of the witness and the written say filed by him appears to be probable. Demand and acceptance of amount is required to be proved beyond reasonable doubt.

9. In the cross-examination, the complainant has stated that he had purchased vehicle for transport of passengers but he did not take permit for such transport. In the past two to three cases filed against him regarding similar incident, he had paid penalty and fine. He did not complain with the superior of the accused regarding demand made by him. He left the court on depositing the fine. He approached accused and showed him the penalty receipt and fine amount receipt. He met the accused in connection with his papers on 8th February 1994. He filed complaint with impression that the accused demanded Rs.700/- for himself and he realized that amount of penalty was Rs.858/- when he paid the amount. The defence of the accused that, he asked the complainant to pay Rs.1500/- to 1600/- with compromise fee and penalty appears to be probable. From the deposition of the complainant it appears that the amount of Rs.700/- was demanded by accused for himself. From the deposition of the witness in the examination-in-chief it appears that the accused told him to pay Rs.1500/-. There is room for an argument that entire amount was calculated towards penalty and compromise of charges. complainant has admitted that he did not like the fact that despite depositing the fine the accused did not returned his papers. He admitted that notice was served upon him. He admitted his signature. His statement was recorded by Police. According to him

he stated that, in his statement that the accused asked him about money immediately after he demanded papers. He cannot state any reason as to why it does not appear in his statement. He admitted that papers were received by him long after the above incident. Considering the nature of evidence of the complainant, the benefit of doubt is required to be given to the accused.

10. PW No.2 Bharat Sudam Choudhari is the panch witness. He has stated that he was accompanying the complainant. On the date of incident, he went to the office of RTO along with the complainant. The complainant handed over the receipt to the accused. He took entries of those receipts in the register and handed over one paper to the complainant and asked him to bring written application. The complainant prepared the application. The complainant handed over that application to the accused. The accused asked the complainant whether he has brought Rs.700/- . The complainant replied that he has brought the same. The accused told the complainant to remain near the gate and he would come there. The complainant and PW No.2 went to the gate and remained there. PW No.1 has stated that, the accused had asked him as to whether he has brought the money. He replied in the affirmative. PW No.2 however stated that accused asked complainant whether he has brought Rs.700/- and the complainant replied that he has brought the same. PW No.1 has not

specified the quantum whereas PW No.2 referred to quantum of amount. PW No.2 does not know for what purpose the amount was demanded by the accused. PW No.2 does not state that the accused asked complainant whether he has brought the money as demanded by him. PW No.2 further stated that, the accused took them to canteen. They sat there. The evidence of PW No.2 does not indicate that at any point of time, the accused had enquired as to who is the person accompanying him. The complainant then demanded his papers urgently. The accused asked the complainant to pay Rs.700/-. The complainant handed over the amount to the accused which was kept by him in the hip pocket of the pant. The evidence of PW No.1 does not mention that the accused told him to pay the amount of Rs.700/-. PW No.1 has stated that the accused told him to pay the amount and thus did not specify the quantum. It is pertinent to note that, it is not case of prosecution that verification of demand of bribe was made prior to the raid. PW No.2 stated that, there is no mention in the panchnama that only pant of the accused was seen in the focus of U.V. lamp. He had stated before PI. Shaikh when panchnama was recorded and his statement was recorded that the accused kept the money in the pant hip pocket. However he cannot state as to why this fact does not appear there.

11. The evidence of PW Nos.1 and 2 does not inspire confidence to convict the appellant.

12. PW No.3 Chandrakant Punjaji Sawaikar was working as Assistant RTO Office Solapur. He stated that the concerned clerk in the Court cases section used to put up the checking report before him with the note. Accused used to do that work. Witness was passing orders under the motor vehicle Act to recover tax penalty or prosecution or both. He used to sign orders. Concerned clerk from the court cases section used to carry out his orders. During the period of passing order by him and payment of penalty or prosecution, the original papers used to remain with Court cases section. The concerned clerk of that section used to return the same, as per action proposed by him. On the checking report, he passed the order of prosecution under Section 66/192, recover tax for a month with 2% penalty and issued show cause notice. These orders were passed on 8th February 1994. The note along with checking report was put by accused. The concerned party had deposited one month tax and penalty in sum of Rs.858/-. Notice was prepared as per his orders but his signature was not obtained on the same. It might have been prepared by concerned clerk. After the notice, he was supposed to conduct hearing. On hearing he used to suspend the vehicle under motor vehicle Act. On perusal of notification dated

27th October 1993 issued by the Home Department, he stated that on inquiry, he was competent to compound the offences on imposing penalty mentioned in the circular for offence under section 192 read with 66. Compounding fee for the owner was Rs.500/- and for driver was Rs.250/-. In the present case the case was sent against driver. Notice under Section 53 (1)(b) was to be issued against the owner. If the compound fees was recovered, there would not be prosecution against the driver. There could not be compounding because prosecution was must according to Motor Vehicle Act. The hearing contemplated under section 56(1)(b) was not held because notice was not served. On perusal of the notice at exhibit 34 he stated that it bears signature of concerned party in token on receipt of notice. Party would not get back the papers unless inquiry under Section 53(1)(b) is completed. From the aforesaid evidence it is evident that, the fees for compounding the offence under Section 192 read with 66 was Rs.500/- for owner and Rs.250/- for driver. This fact support the defence of the accused that he had appraised the complainant about quantum of amount required to be paid by him. It is also evident that the accused could not have handed over the document to the complainant since show cause notice was issued to him and inquiry under section 56(1)(b) was not completed. He stated that after show cause notice is served, the party has to file say. The

prosecution in the present case relates to offence under section 66/192 of M.V. Act. In such cases driver is liable to prosecution in the Court and the other has to pay the passenger tax with interest and action under Section 53(1)(B) for suspension.

13. PW No.4 Md. Yunnus Ismail Shaikh is the Investigating Officer. He furnished the details about the complaint lodged by complainant, pre-trap panchanama and post-trap panchnama. He conducted investigation and obtained sanction for prosecution. He recorded statements of witnesses. He stated that he had prepared set of investigation papers and sent them for obtaining sanction. He received the sanction order. He sent charge-sheet. He admitted that after recording the complaint, he did not make any other inquiry before the calling panch witnesses. He did not verify contents of the complaint before laying the trap. On the basis of complaint itself it transpired that the complainant had committed breach of certain provisions of Motor Vehicles Act and deposited the fine. He did not record the statement of person sitting on the counter as well as owner and servant of canteen. He could not record statement of Mr.Sawaikar before 2nd September 1994 due to other investigation. On 11th February 1994 he recorded statement of 4 witnesses from RTO office. He did not record statement of Mr.Chitre. The fact that panch No.1 was pointed out to the accused and disclosed that the

accused had demanded and accepted bribe is important fact. The fact that the amount was removed by him from the hip pocket of the accused through panch No.2 is important fact. This facts are not mentioned in his complaint exhibit 49. He recorded statement of complainant on 10th February 1994. He did not state before him that the accused made demand of money immediately after complainant made demand of papers. Panch No.1 did not state before him that the accused had kept money in the hip pocket.

14. PW-5 Satyabeersing Nanakchand Dodd was working as a Transport Commissioner. He accorded sanction to prosecute the accused. He deposed that he is competent to appoint and remove the accused from his post. Papers in this case were put up before him for grant of sanction. The papers included panchnama, statement of witnesses, report submitted by ACB and report submitted by RTO Solapur. He went through the papers and made assessment as regard fact of case and procedure adopted by ACB and laying the trap. He found that it was fit case for grant of sanction. He passed sanction order. The compoundable offences are mentioned in section 200 of Motor Vehicle Act. Offence under Section 53(1)(b) is not compoundable. He stated that Punjabi and Hindi is his mother tongue. Medium of instructions for education was Hindi, Punjabi and English. Marathi was not his medium of education. Section 192 read

with 66 of M.V. Act is compoundable. The papers were sent to his office under letter dated 13th June 1994. It is pertinent to note that this witness have not stated that he understand Marathi and did not state that he can read, write and understand Marathi. The sanction order exhibit 68 is in Marathi. According to the witnesses, papers including panchnama, statement of witnesses, report by ACB and RTO were placed before him. Papers were examined by his Office and note was put up before him. It is relevant to note that all the documents are in Marathi. It appears that the Sanctioning Authority has relied upon the note put up by office and it is difficult to believe that he had applied his mind independently for according sanction.

15. The evidence on record does not inspire confidence. It suffers from serious discrepancies. The demand and acceptance are not established beyond reasonable doubt. In the case of *Sujit Biswas Vs. State of Assam*¹, it was held that suspicion, however grave it may be, cannot take the place of proof and the prosecution cannot afford to rests its case in the realm “may be” true but has to upgrade it in the domain of “may be”, in order to steer clear of any possible surmise or conjuncture. Court must ensure that miscarriage of justice are avoided and if in the facts and circumstances, two views are possible then, the benefit of doubt must be given to the accused. Applying the legal principle as above, the material on record, leave no manner of

1 2013 (12) SCC 406

doubt that the prosecution in the present case, has failed to prove unequivocally the demand of illegal gratification and even its acceptance. In the case of *P. Satyanarayna Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Anr.*². It was held that the proof of demand of illegal gratification is gravamen of offence under Sections 7 and 13(1)(d)(i) and (ii) of the P.C. Act and in the absence thereof mistakably the charge therefor, would fail. Mere acceptance of any amount by way of illegal gratification or recovery thereof, dehorse the proof of demand, *ipso facto*, would not be sufficient to prove home the charge under these 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 or 13 of the Act would not entail his conviction thereunder. In the case of *B. Jayaraj Vs. State of Andhra Pradesh*³. It was held that the presumption under Section 20 of the P.C. Act can be drawn on proof of acceptance of illegal 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. In catena of decisions, the Apex Court has held that mere possession of recovery of currency note from an accused without proof of demand would

2 (2015) 10 SCC 152

3 (2014) 13 SCC page 55

not establish an offence under Section 7 as well as Section 13(1)(d), 13(2) of the P.C. Act. It has been propounded that in absence of proof of demand of any 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. The proof of demand has been held to be an indispensable essentiality to prove the offence.

16. Considering the aforesaid circumstances, the impugned judgment of conviction is required to be set aside.

ORDER

- (i) Criminal Appeal No. 376 of 1998 is allowed.
- (ii) Judgment and Order dated 26th February 1998 passed by learned Special Judge, Solapur in Special Case No. 15 of 1994 convicting the Appellant for the offence punishable under Section 13 (2), read with 13 (1)(d) of Prevention of Corruption Act, 1988 and Section 7 of Prevention of Corruption Act, 1988 is set aside and the appellant is acquitted of all the charges.
- (iii) Bail bond stands cancelled.
- (iv) Criminal Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)