

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 361 OF 2000**

1. Jayprakash Digambar Tagde,
Age – Adult, Occu. Service,
working as Surveyor consolidation
Officer No.II, Kolhapur
 2. Balbhim Sitaram Pansare,
Age – Adult, Occu. Service,
working at office of consolidation
officer No.III, Sangli
- ...Appellants
- Versus
- The State of Maharashtra
- ...Respondent

Mr. Shekhar A. Ingawale, Advocate for Appellant.

Mr. S.R. Agarkar, APP for the Respondent–State.

CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 2nd MAY, 2022.

PRONOUNCED ON : 4th MAY, 2023.

JUDGMENT :-

1. The Appellants are convicted vide Judgment and order dated 10th April, 2000 passed by Special Judge, Pune in Special Case No. 2 of 89. The Appellant No.1 is convicted for offences punishable under Sections 161 of Indian Penal Code (for short ‘IPC’), 5(1) (d) r/w 5(2) of Prevention of Corruption Act and Section 218 IPC and sentenced to suffer rigorous imprisonment for one year on all Courts and fine of Rs.1,000/- for each offence. The Appellant No.2 is convicted for offence under Sections 161 of IPC,

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5(1)(d) r/w 5(2) of Prevention of Corruption Act r/w Section 109 of IPC and sentenced to suffer simple imprisonment for one year on both counts and to pay fine of Rs.500/- for each offence. The Accused No.3 was acquitted of the offences punishable under Section 161 r/w Section 165(A) r/w Section 109 of IPC.

2. The case of prosecution is as under :-

i. The Accused Nos. 1 and 2 (Appellants) are public servants working in the Revenue Department in the office of District Inspector of Land Records as Survey or and Scrutiny Clerk.

ii. Bhagwan Sadu Tengle (PW-1) is the original complainant. He is an agriculturist residing at village Koyale Tarf Chakan, Tal. Khed, District Pune. The agricultural land bearing Gut Nos.1626 and 1633 belongs to joint family of complainant.

iii. The complainant and his father decided to level their lands for which they had to fix the boundaries of lands. On 15th April, 1988 the father of the complainant submitted

application in the office of District Inspector of Land Records after depositing amount of Rs.750/- to survey their lands and fix boundaries.

iv. In connection with application, the complainant had been to the office of D.I.L.R. situated in Collector's Office at Pune. The clerk in the office told complainant that the application has been assigned to surveyor Tagde (Accused No.1). The complainant met Accused No.1 and requested him to survey his lands and fix the boundaries before the rainy season.

v. In the second or third week of May in 1988, the complainant again requested Accused No.1 to survey the lands. The Accused No.1 told him that he would have to bear his expenses for tea and would be required to spend Rs.500/-. The complainant was in need of getting lands surveyed before the ensuing rainy season and so he agreed for the same.

vi. The Accused No.1 issued notices of survey measurements to the land owner and adjoining land owners. Pursuant to said notice on 28th May, 1988, Accused No.1 alongwith peon went to village Koyale and measured lands

bearing Survey No.1626 and 1633 belonging to complainant. The Accused No.1 demanded an amount of Rs.500/-. The complainant gave an amount of Rs.450/- to Accused No.1.

vii. Subsequently, the complainant visited office of Accused No.1 on two to three occasions but did not meet him. On the day when the complainant met the Accused No.1, he inquired with him as to when he is going to fix boundaries of his lands. The Accused No.1 fixed the date as 24th July, 1988 for fixing boundaries of the lands. He also told complainant to get police protection. After issuing necessary notices, the Accused No.1 went to village Koyale with peon and fixed the boundaries of the land in the presence of complainant, his father, adjoining land owners, police persons and other villagers. Photographs were taken. Panchanama was prepared. After fixing boundaries of the land while they were returning home, the Accused No.1 told complainant that the adjoining land owner has encroached in an area of one and half acres land of complainant and thereby the complainant will be a profit of Rs.30,000/- to 40,000/-. The Accused No.1 also stated that, he would prepare map of encroachment but the complainant would have to give him Rs.1,000/-. He also told

complainant that, he would prepare the map if the complainant give him Rs.1,000/-. Since, there was no alternative, the complainant agreed to pay the said amount and told Accused No.1 that he would make arrangement for the said amount. Thereafter, the Accused No.1 returned to Pune.

viii. The complainant met Accused No.1 and requested him to prepare the map. On 3rd August, 1988 at 11:00 a.m. when the complainant went to meet Accused No.1, he could not meet him. The complainant met Accused No.2 who was working as Scrutiny Clerk in the office and inquired with him Accused No.1 and also told him about his work. The Accused No.2 told the complainant that Accused No.1 knows about the work and he would give the information.

ix. On 5th August, 1988 the complainant met Accused No.1 and requested to give the map. The Accused No.1 told him that unless he gives Rs.1,000/- he will not prepare the map. The complainant had no money and he told the Accused about it. The complainant was told to make arrangement for the amount. He was told to come on next day with money.

x. The complainant obtained Rs.1,000/- from a flower dealer and went to office of A.C.B. for lodging complaint. The complaint was recorded. The complainant was called on 8th August, 1988 at 7:30 a.m. with amount. Panchas were called.

xi. On 8th August, 1988, complainant and Panchas visited office of A.C.B. ACP Chandgude visited the office of A.C.B. Trap was arranged. Instructions were given to Panch witnesses.

xx. Complainant (PW-1) and Panch witness (PW-2) proceeded to office of Accused. The other members or raiding party followed them.

xxx. On reaching the office of D.I.L.R. the complainant and Panch witness (PW-2) made inquiry about Accused No.1. He was not in the office. They again went to the office and made inquiry with Accused No.2. Accused No.1 visited the office. The complainant told the Accused No. 1 to give him map. The Accused No.1 told the complainant to do his work first and then he would give the map. Thereafter, they went to the canteen in the vicinity of the office. The complainant again asked Accused No.1 whether the map is ready. The Accused

No.1 inquired about Panch witness Dhaigude. The complainant told him that he is his relative. They went to the canteen for tea. The Accused No.2 went to the person sitting at the counter of canteen (Accused No.3) and had some talk with the said person and pointed out complainant to him. Accused No.1 returned to complainant and inquired with him whether Accused No.1 had told him anything. The Accused Nos. 1 and 2 returned to their office. Complainant and Panch went to Accused No.3. The Accused No.3 told the complainant that the Accused had told him to take Rs.1,000/- from complainant. The complainant took out the amount from his shirt pocket and gave it to Accused No.3. The complainant gave signal to raiding party. Accused were apprehended. Accused No.3 was apprehended. Tainted amount was recovered after completing the procedure. Investigation proceeded and charge-sheet was filed.

3. Charge was framed on 30th January, 1992 which reads as follows :-

“1. That you Accused Nos. 1 and 2 being public servants in the Revenue Department, on or about the 8th day of August, 1988, at the office of District Inspector of Land Records,

Collector Office Compound, Pune, either individually or in furtherance of your common intention, directly accepted from Bhagwan Sadu Tengale,(through Accused No.3) for your selves, an amount of Rs.1,000/-, a gratification other than legal remuneration, as a motive for supplying measurement plan and showing encroachment thereon, relating to the agricultural lands at Gut No.1626 and 1633 at Koyale Tarf Chakan, Tal. Rajguru Nagar, District Pune, belonging to Sadu Maruti Tengale the father of Bhagwan Tengale, and thereby committed an offence punishable either under Section 161 r/w Section 34 of IPC and within my cognizance ;

AND

2. That you Accused Nos. 1 and 2, being the public servants as aforementioned, on or about the same day, date, time, place, and in course of the same transaction, by corrupt or illegal means, or by otherwise abusing your position as public servants, obtained for yourselves pecuniary advantage of Rs.1,000/- from Bhagwan Sadu Tengale through Accused No.3, for the aforementioned purposes, to wit for supplying measurement plan and showing encroachment thereon relating to the agricultural lands at Gut Nos. 1626 and 1633 at Koyale Tarf Chakan, Tal. Rajguru Nagar, District Pune

belonging to Sadu Maruti Tengale the father of Bhagwan Sadu Tengale, and thereby committed an offence punishable under Sub-Section (2) of Section 5 of the Prevention of Corruption Act, 1947, r/w Clause (d) of Sub-Section (1) of Section 5 of the said Act and within my cognizance ;

AND

3. That you Accused No.3 on or about the same day, date, time, place and in course of the same transaction abetted Accused Nos. 1 and 2 who were public servants in commission of an offence punishable under Section 161 IPC, and thereby committed an offence punishable under Section 165-A of the IPC ;

IN THE ALTERNATIVE

That Accused Nos. 1 and 2, on or about the same day, date, time, place and in course of the same transaction committed the offence of “Public Servants taking gratification other than legal remuneration in respect of an official act” and that, you Accused No. 3 accepted the said amount of Rs.1,000/- from Bhagwan Sadu Tengale under the direction of the said Accused Nos. 1 and 2 and thereby abetted the said Accused in the commission of the said offence, which was committed in consequence of your abetment, and you have

thereby committed an offence punishable under Sections 109 and 161 of IPC and within my cognizance ;

AND

4. That you Accused No.1 being the public servant charge with preparation of record, to wit measurement extract of Gut Nos. 1626 and 1633, Koyale Tarf Chakan, Tal. Rajguru Nagar, District Pune, of the ownership of Sadu Maruti Tengale, the father of Bhagwan Sadu Tengale, in a manner which you knew to be incorrect and which you made with an intention to cause loss or damage to Sadu Maruti Tengale, and that you thereby committed an offence punishable under Section 218 of IPC and within my cognizance.”

4. The prosecution examined four witnesses. PW-1 Bhagwan Tengale is the complainant. PW-2 Bhagwan Dhaigude is the Panch witness. PW-3 Pundlik Lad is the surveyor. PW-4 Ashok Chandgude is the Investigating Officer.

5. Learned Advocate for the Appellants submitted that, there is no charge framed regarding demand of bribe amount by Accused. The only charge framed against them is that on the day of trap i.e. 8th August, 1988, the Accused accepted Rs.1,000/- as

illegal gratification through Accused No.3. Thus, the specific charge of demand by the Accused No.1 was not framed. On the day of trap there was no demand by the Accused. In the absence of demand the Accused were convicted for the aforesaid offences. Demand of illegal gratification is a *sine qua non* for constitution of an offence under Prevention of Corruption Act. In the statement under Section 313 of Cr.P.C. the Accused were not put up with the circumstances regarding acceptance of bribe by Accused No.3 as per their direction. There are inconsistencies in the evidence of complainant and Panch witnesses regarding demand of bribe by Accused Nos. 1 and 2 on the day of trap. According to complainant he gave bribe amount with his left hand and bluish glow was seen on his left hand fingers. According to PW-2 and PW-4 the bluish glow was seen on the right hand of the complainant. The complainant had motive to lodge a false complaint. After fixing the boundaries of the lands the complainant tried to enter in the land forcibly and tried to pluck flowers for which his uncle filed a civil suit in the Court at Khed. The complainant required the map urgently for the civil suit and he thought that, the Accused No.1 is purposely delaying the handing over the map to him. The complainant filed an application to Collector on 5th August, 1988 and on the same day he lodged a complaint to A.C.B. Pune. In the

complaint Exh.88 to Collector it is not mentioned that, Accused No.1 had demanded money as bribe amount at the time of fixing boundaries or measurement of lands. In the application to Collector dated 5th August, 1988 (Exh.88) or complaint to A.C.B. dated 5th August, 1988, there are no allegation against Accused No.2 about abetment of demand of bribe amount. There is no evidence to prove charge under Section 218 of IPC. It is not the case of the prosecution that, Accused No.1 on receipt of bribe amount handed over the map to the complainant wherein no encroachment was shown. After the trap, A.C.B. seized the record and incomplete map from the office of Accused No.1. For preparation of map, Accused required several documents. PW-3 has stated that, map was drawn by Accused No.1 and the map he drew were corrected as per measurement. Thus, A.C.B. seized the map from the Accused No.1 when it was incomplete and thereafter the encroachment was not shown on the map. It is not the case of prosecution that, the Accused No.1 framed incorrect record with intent to save person from punishment or property from forfeiture or cause any loss to the complainant. The demand and acceptance are not proved in the case.

6. Learned Advocate for the Appellants has relied upon following decisions :

i. State of Maharashtra V/s. Dnyaneshwar Laxmnrao Wankhede, (2009) 15 SCC 200.

ii. Pandharinath Shelke V/s. State of Maharashtra, 2005(2) Bom.C.R.(Cri.) 940.

7. Learned APP submitted that, the Appellants were public servants. The Appellant No.1 was involved in demand and acceptance of bribe amount. The demand and acceptance is proved. The Appellant No.2 has aided and abetted Appellant No.1. The Accused No.3 was instructed to accept the money. The bribe amount was handed over to Accused No.3. It was found in possession of Accused No.3. The evidence of complainant is corroborated by PW-2. The complainant was insisting that his land may be measured and map be issued to him. There was encroachments on the land of the complainant. The Accused No.1 demanded money for preparing map pursuant to fixing boundaries of the land of the complainant. On several occasions the complainant was required to visit the office of the Accused. On the first visit of Accused No.1 the complainant had parted an amount of Rs.450/- to the Accused No.1. After realizing that the Accused

No.1 would not issue a map of his land without accepting the bribe amount of Rs.1,000/-, he approached A.C.B. and lodged the complaint. The trial Court has analyzed the evidence and gave findings of conviction.

8. I have scrutinized the evidence adduced by the prosecution. The charge framed against the Accused is defective. The Appellants were not charged for demanding bribe. The prosecution has failed to establish that on the day of trap the Accused had demanded the bribe amount. There is no verification of demand by the investigation agency prior to the trap. The distinguishing feature of the present case is that the public servants were not involved in directly accepting the bribe amount. It is the case of prosecution that on the instructions of the Appellants the Accused No.3 who was working in the canteen situated near the office of D.I.L.R. had accepted the bribe amount. The Accused No.3 was charged for aiding and abetting Accused Nos. 1 and 2. Accused No.3 has been acquitted by the trial Court on the ground that, it cannot be presumed that he had a knowledge that the amount accepted by him was a bribe amount. There are discrepancies in the evidence of PW-1 and PW-2. There is variation in their version with regards to the incident occurred on the day of

trap. There is no evidence to prove the charge under Section 218 of IPC. It is apparent from the evidence that the complainant was interested in carrying out survey of his lands situated in his village and fixing boundaries. According to complainant (PW-1) the Accused No.1 and his peon had visited the lands of complainant's family in his village and conducted survey and carried out measurement. All the formalities including giving notice to the concerned parties were complied. On the instructions of the Accused No.1 the Appellant No.1 and another person again visited complainant's village and boundaries were fixed. Police protection was obtained. The complainant was interested in fixing boundaries as early as possible. PW-1 has deposed that on several occasions he was required to visit the office of the Accused Nos. 1 and 2. According to complainant he had parted an amount of Rs.450/- to Accused No.1 when he visited his village. This evidence is not corroborated by any witness. The complainant had not lodged any complaint in respect to the first demand or parting of the amount of Rs.450/- to Accused No.1. The grievance appears to be after thought. If the Accused No.1 was interested in demanding bribe, he would not have performed the duty pursuant to application preferred by father of complainant. It appears that the properties stands in the name of the father of complainant. The application

for survey was preferred in the name of father of complainant. He had visited the office for preferring the application alongwith the complainant. The father of complainant has not been examined by the prosecution. The uncle of complainant had filed a suit before the concerned Court. It seems the complainant was in hurry to fix the boundaries and bringing on record the encroachment on the land belonging to his father. The defence of the Accused No.1 is that for not doing the work as per the expectations of the complainant, he has been framed by the complainant. The prosecution has examined by PW-3. He is the surveyor of the land. According to him he had visited the land and conducted the survey of lands belonging to the complainant. PW-3 refers to the fact that, the map drawn by the Accused No.1 and map drawn by him are correct as per the measurement. The role attributed to the Accused No.2 (Appellant No.2) is that he was present in the office when the complainant and Panch witnesses had visited office. It is alleged that the Accused No.2 had given instructions to Accused No.3 on behalf of Accused No.1 to accept the bribe amount. Nobody has heard the conversation between Accused Nos. 2 and 3. He has no role in visit to the lands of complainant or carrying out survey/measurement of his lands. Accused No.2 was not in picture prior to incident of alleged trap.

9. PW-1 Bhagwan Sadu Tenge is the complainant. According to him on 15th April, 1988 application was submitted by them in the office of D.I.L.R. by depositing necessary fees for survey. PW-1 had approached Appellant No.1 and told him that he wanted to level his lands and it should be measured before ensuing rains. The Accused No.1 surveyor in the office. He again approached him on three to four occasions and requested him to survey their lands. The Accused No.1 stated that, he would not do the work free of cost and that the complainant is required to bear expenses for tea and an amount of Rs.500/-. He agreed to give Rs.500/- to Accused No.1. Notices of surveyor were received by complainant and adjoining land owners on 28th May, 1988. Appellant No.1 and peon visited the village of complainant for survey measurement. Measurement was carried out. They returned to house of complainant. The Appellant No.1 demanded amount of Rs.500/-. The complainant gave Rs.450/- to him. He left for Pune. While going back Accused No.1 told him that he would come again for fixing boundaries. Thereafter, on two to three occasions the complainant approached the Appellant No.1 for fixing the boundaries. Appellant No.1 told him that he would come on 24th July, 1988 to fix the boundaries. Notice was given to PW-1 in person. On the notice Appellant No.1 had written that he should

take police protection. PW-1 obtained police protection. On 24th July, 1988 Appellant No.1 visited village with one person. The work of fixing boundaries started. Boundaries were fixed. Police were present. Photographs were taken. It was revealed that there land about 34 gunthas was gone into the land of their neighbour land holder. After the work they returned to house of PW-1. Appellant No.1 told him that complainant is at profit of Rs.30,000/- to Rs.40,000/-. Appellant No.1 demanded Rs.1,000/-. Appellant No.1 told him that he would not give him map unless he pays him Rs.1,000/-. Thereafter, on two to three occasions he went to Pune to collect map. Appellant No.1 was insulting him. On 3rd August, 1988 he went to meet Appellant No.1. He made inquiry with Appellant No.2. On 5th August, 1988 complainant met Appellant No.2. At that time Appellant No.1 was not available. Subsequently Appellant No.1 came to office. PW-1 demanded map. Appellant No.1 demanded money. On the same day PW-1 made application to collector. He went to the office of ACB. Complaint was recorded. Trap was arranged on 8th August, 1988. The complainant and Panch witnesses went to the office of Accused. The Appellant No.1 was not in the office. Appellant No.2 was present in the office. He told them that Accused No.1 has not yet reached the office. Thereafter, the Accused No.1 came to the office. Accused No.1 told

the complainant to do his work first then he would give his map. The complainant was told to wait outside. Thereafter, they went to canteen for tea. Accused No.2 went to the person who was on the counter. Accused Nos. 1 and 2 made signal to each other. Accused No.2 inquired with complainant whether he was not told by Accused No.1 to give the amount to the person at the counter in the canteen. The complainant and Panch witness went to the person on the counter. They made inquiry with that person. The said person told them that the Accused had told the complainant to give Rs.1,000/- to him. He accepted the amount. He was apprehended by the raiding team. Further procedure was complied. Pretrap and post-trap Panchanama were recorded. First information report was registered. Investigation was conducted. In the cross-examination he stated that, the first demand was made in first or second week of May 1988. The Police Inspector of A.C.B. did not ask him to give the exact date of first demand. Need for survey measurement of land was for about 25 to 30 years. They had idea about the encroachment in the land. It was by his uncle. At the time of first survey measurement his father, Police Patil, Talathi, Sarpanch, adjoining land owners and some villagers were present. There was no complaint about the measurement. The encroachers had also no complaint about the survey measurement.

After the survey measurement there was writing. Their signatures were obtained on the writing. His father was present when the amount was given. He paid that amount as the measurement was done. He had an idea that giving amount to Government Servant is an offence. After measurement he did not insist to show the boundaries according to measurement. He do not remember the exact dates after 28th May, 1988, when he went to Accused No.1 at Pune for requesting him to fix boundaries. On 24th August, 1988 Accused No.1 came to fix boundaries. His uncle was also present. Panchanama and statement of his father was recorded. He had no complaint about the work done on that day. His father had received a notice regarding suit filed by his uncle. His father had remained present in Court. His father had received notice of Court on 4th August, 1988. Copy of the suit plaint was also received. Written say was filed by them in the suit. He did not state in statement dated 9th August, 1988 that Accused No.2 told him to give amount. Till he gave amount to Accused No.3, he did not take out that amount from his pocket and offer it. On the day of raid, Accused Nos.1 and 2 did not ask him whether he brought the amount of Rs.1,000/-. Only once the Accused No.1 told him that, the other person with him (Panch) should go away. Thereafter, at no point of time the Accused Nos.1 had told him that Panch should

go away. During the period of waiting of two hours the complainant did not go to the office of the Accused. He admitted that, he had applied for urgent survey measurement by depositing fees and he was insisting to get the survey measurement done. During his visits to office of Accused, the Accused No.2 did not demand any money from him. He was instructed to give the bribe amount by his right hand. After the raid, his hands and shirt pocket were checked in the ultraviolet lamp. The Accused No.1 was insulting him. In the supplementary statement he did not state that he borrowed Rs.1,000/- from another person. He cannot state why it is not mentioned in his supplementary statement that when he made inquiry with Accused No.3. He told them that Accused Nos. 1 and 2 had told to give Rs.1,000/- to him. He was not acquainted with Accused No.3. Prior to raid he had never visited canteen. He gave money to Accused No.3. He told false that, Accused No.3 demanded money and therefore he gave it.

10. From the evidence of this witness it can be seen that the Accused No.1 had conducted survey and measurement of land and also visited the land for fixing boundaries. Although the complainant had visited the office on several occasions, the Accused No.2 never demanded bribe from him. On the day of trap

although the complainant met Accused Nos. 1 and 2, they did not ask him whether he has brought the amount of Rs.1,000/-. The complainant was in the vicinity of the office for a long period of time. It is not established that on the day of trap the Accused had demanded the bribe amount. The complainant handed over the amount to Accused No.3 allegedly on the instructions of Accused No.2. PW-1 was not acquainted with Accused No.3. In the past he had never visited canteen. The defence that complainant was in hurry to get the map due to dispute with his uncle and since he was not getting map immediately as per his demand false complainant is filed appears probable. In the cross-examination the witness has admitted that during the same period summons was received in respect to suit filed by uncle and that his father had appeared before Court in suit proceedings. The evidence of this witness does not inspire confidence.

11. PW-2 Bhagwan Dhaigude is the Panch witness. He was summoned in the office of A.C.B. and instructed to act as a Panch witness. According to him he was accompanying the complainant on the day of trap. He stated that, Accused No.1 came to the office on the day of trap at 11:45 a.m. Complainant demanded the map and the Accused No.1 told him that he should do his work first.

They went to the canteen. Both the Accused went at some distance. He could not hear the conversation. Accused No.2 went towards canteen and he gave signal to Accused No.1. Accused No. 2 told complainant that the Accused No.1 had told him to give the money to person sitting at the counter. The complainant and PW-2 went to canteen. The amount was handed over to Accused No.3. He was apprehended and bribe amount was recovered. In the cross-examination PW-2 has stated that, there was rush of people in the canteen. He did not speak to complainant Accused No.1. There was rush of people at the counter in the canteen. In his presence Accused Nos. 1 and 2 did not make demand of actual money nor they made any inquiry about money brought by complainant. He did not remember whether he told police in his statement that, Accused No.2 told complainant that Accused No.1 had told him to give the amount to person sitting at the counter. He do not remember whether he told police in his statement that Accused No.2 told complainant that Accused No.1 told him to give the amount to person sitting at the counter. He do not remember whether he told police in his statement, that person at the counter than told them that they should see Accused No.2.

12. Thus, the evidence of PW-2 who is a independent person does not establish that there was demand of bribe Accused Nos. 1 and 2. It is pertinent to note that although the complainant and PW-2 were in the vicinity of the office of Accused for a long period of time. The complainant never offered the amount to Accused Nos.1 and 2. It is admitted by this witness that there was no demand by Accused Nos. 1 and 2 about actual money nor the Accused made an inquiry about the money brought by complainant in his presence. The fact of handing over amount to Accused No.3 at the instance of Accused Nos. 1 and 2 also speaks volumes of doubt. This witness do not remember whether he told in his statement that Accused No.2 told PW-1 that Accused No.1 told him to give amount to person at the counter and that person at the counter told them to see Accused No.2.

13. PW-3 Pundalik Lad is the surveyor. According to him on 11th August, 1988 he was directed to re-survey the land from village Pune. He issued notices and fixed the date of survey as 27th August, 1988. Survey was conducted. In his survey measurements, it transpired that adjoining land onwer Natu Vidhoba Tengle of land No.1624 and owner of land gat no. 1923 had committed encroachment on an area of 34 gunthas in land gat no.1626 of

Applicant Sadu Tenge. However, no such encroachment was shown by Accused No.1 in his map. In cross-examination he stated that Accused No.1 was not capable of carrying survey measurement work and therefore he used to ask him difficulties in work. At the time of carrying survey measurement they used to take Phalni Naksha village map, original tipan with them. After going through this record they have to carryout survey measurement. When Accused no.1 prepared the survey map, he did not take with him phalni naksha. It is true that map drawn by Accused No.1 and map drawn by him are correct as per measurement. His evidence does not attribute any *mala fides* to Accused No.1. He admitted that and map drawn by Accused No.1 and the map which he drew are correct as per measurement. If the version of PW-1 is to be accepted, there was no reason for Accused No.1 to deliberately carryout incorrect measurement. According to PW-1 he had paid the amount demanded by Accused No.1 at initial stage. PW-1 has also stated that Accused No.1 had told him that there is encroachment in his land.

14. PW-4 Ashok Chandgude has conducted investigation he has narrated the events from lodging of complaint till completion of raid. In the cross-examination he stated that, it is not mentioned

in the post-trap Panchanama that after returning from canteen counter to platform Accused No.2 had a talk with complainant. He do not remember whether he recorded statement of the person who runs the canteen. On going through papers he stated that, he did not record the statement of the said person.

15. The trial Court in the impugned Judgment has observed that, the Panch Dhaigude has admitted in his cross-examination that in his presence Accused Nos.1 and 2 did not make demand of actual amount nor they made inquiry about the money brought by complainant. However, Exh.77 proved by complainant shows that, demand was made by Accused No.1 on 24th July, 1988 it self when the boundaries were fixed. The trial Court failed to appreciate that, in the absence of the evidence that there was demand by Accused on the day of trap, no adverse inference could have been drawn against the Accused on the basis of Exh.77. The demand referred to by the complainant dated 24th July, 1988 is the sole version of the complainant and there is no corroboration to the said fact.

16. In the case of State of Maharashtra V/s. Dnyaneshwar Laxmnrao Wankhede (supra) Supreme Court has observed that, indisputably, the demand of illegal gratification is a *sine qua non*

for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of amount of illegal gratification have been satisfied or not the Court must take into consideration the facts and circumstances brought on record in their entirety. Before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational fact must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the Accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of prove beyond all reasonable doubt. In the case of *Pandharinath Shelke V/s. State of Maharashtra (Supra)*, it was observed by this Court that mere recovery of money from Accused was not sufficient to raise presumption against such person. Different versions regarding acceptance of amount, no independent corroboration shows that, the demand was not proved beyond doubt.

17. Considering the aforesaid circumstances, the conviction of the Appellants is required to be set aside.

ORDER

- i. Criminal Appeal No. 361 of 2000 is allowed.
- ii. Impugned Judgment and order dated 10th April, 2000 passed by Special Judge, Pune in Special Case No. 2 of 89 convicting the Appellants is set aside and the Appellants are acquitted of all the charges.

[PRAKASH D. NAIK, J.]