

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

CRIMINAL APPEAL NO. 437 OF 2018

The State of Maharashtra

...Appellant

vs.

Raghunath Dnyandev Katkar

...Respondent

Age -52 years, Occ. - Service

R/o. 2449, D Ward,

Juna Budhwar Peth

Dist. Kolhapur

Mr. H. J. Dedhia - APP for the Appellant-State.

Mr. Anand Patil – Advocate for the Respondent.

CORAM :

S. M. MODAK, J.

RESERVED ON : 21st DECEMBER 2022

PRONOUNCED ON : 17th FEBRUARY 2023

JUDGMENT :-

1. This is a State's appeal against judgment of acquittal delivered by the Special judge (ACB) Kolhapur. Though the Complainant complained against two Police officers, action was taken against present Respondent only. He faced trial for the offences punishable under Sections 7, 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act. He was acquitted vide judgment dated 13.07.2016.

2. Trial Court noticed variances in the testimonies of Complainant PW-1 and trap panch PW-2. On the basis of grievance of Complainant-Sayaji (that real complaint is not coming forward) trial court given benefit of doubt to the Respondent. So also the Respondent was not having official work of “*giving reply in return of property application*” and still sanction was given. So trial Court held there was non application of mind. This is a case wherein the trial Court totally disbelieved the Complainant without verifying what he has said against the Respondent.

3. So in this appeal we have to ascertain :-

- a) are there material Variances?
- b) whether there is substance in the grievance of PW-1 that real complaint has not come on record? and,
- c) whether there is non application of mind by the sanctioning authority?

Role of appellate Court

4. These issues need to be decided on the background of limitations on the power of appellate Court in case of judgment of

acquittal. Learned App Shri H. J. Dedhia advanced his submission and learned Advocate Shri Anand Patil advanced his submission. Learned advocate Shri Patil relied upon the judgments in case of *Dr. Sunil Kumar Vs. State of Maharashtra*¹ and in case of *Chandrappa and Ors. Vs. State of Karnataka*² which deals with scope of appeal against judgment of acquittal. It is true that judgment of acquittal is not to be interfered with unless there is perversity in the findings. On appreciation of evidence, if the view taken by the trial Court is possible view, the findings need not be interfered with. The appellate court is bound to take decision & come to conclusion only on the basis of objective evaluation of evidence. The findings need not be interfered with just because different view is possible. If there is different view, it has to be on the basis of proper appreciation.

5. While doing this exercise, the appellate court is governed by the principles of Evidence Act. Whether particular fact has happened or not is to be decided on the basis of test of prudent man. If foundational facts are proved, court can take the help of presumption under Section 20 of the Prevention of Corruption Act.

1 (2011) Cr. LJ 705

2 (2007) 4 Supreme Court Cases 415

Apart from this, the substantive provisions of the Prevention of Corruption Act and more specifically Section 7, Section 13 (1)(d) need to be considered.

Prosecution story

6. First of all the prosecution story needs to be looked at. Anti Corruption Bureau normally swung into action only when there is a tussle between a private individual and a public servant. A private person approached a public office for some work. Sometime he has got a legitimate work. Sometime, he is required to visit a public office when he breaches/violates the law. In this case, the Complainant-Sayaji Desai along with his wife Nirmala were involved in an offence bearing No. 89 of 2002, forgery, cheating to Bhudargad Nagari Sahakari Patsanstha. There were several accused. Both of them were arrested and then released on bail. The investigation was transferred to C.I.D.. Deputy Superintendent Chougule was investigating and API Katkar present Respondent was his associate.

7. Both these officers directly and indirectly demanded illegal gratification from the Complainant Sayaji. Sayaji's wife

Nirmala has filed an application for return of ornaments from the local Court. That is why first he met Deputy Superintendent Chougule for his co-operation by giving favourable reply. He cleverly send Sayaji to Respondent Katkar and through Katkar, there was demand for Rs. 20,000/-. Nirmala lost before the first Court and her application was rejected. She approached appellate Court. There was demand for money earlier to this rejection and after rejection.

Approaching the office of A.C.B.

8. The Complainant-Sayaji was fade up of this attitude and he approached Anti Corruption Bureau, Kolhapur on 09/10/2006. He was aware that complaint is lodged against high ranking officer of CID and hence he interacted with ACB officials at rest house Kolhapur. Though his complaint was registered, there is some confusion. It was registered on 10/10/2006 or on 11/10/2006. Though he did met ACB officials on 09/10/2006, 10/10/2006 and 11/10/2006, accordingly to ACB officials, complaint was registered on 10/10/2006 and he claims that it was on 11/10/2006.

9. Thereafter with the help of panchas, ACB officials verified the demand of illegal gratification by Katkar and a verification panchnama was prepared on 11/10/2006. It was at Dasara chowk Kolhapur. There was heated exchange with Katkar. Sayaji's wife Nirmala and panch witness PW-2 Sayaji Mahadik were also there.

10. Then trap was arranged at Chopdar hotel on same day but it failed as there was no contact with Shri Katkar.

11. Then again pre-trap formalities were completed on 12/10/2006 and successful trap was organized at Chopdar hotel Kolhapur and Shri Katkar was found with tainted notes of Rs. 20,000/-. He was charge-sheeted.

Prosecution evidence.

12. The prosecution examined following four witnesses:-

(a)	PW -1	Sayaji Bapuso Desai	Complainant
(b)	PW -2	Savita Raju Mandalik	Trap Panch
(c)	PW -3	Hanumant Bhiva Wakade	Sanctioning Authority
(d)	PW -4	Sukhavindar Singh	Investigating Officer

13. Trial Court disbelieved the above evidence. Learned APP took me through entire evidence. According to him the variances were of minor nature. Shri Patil also took me through entire evidence. He also filed written notes of arguments. He relied upon following judgments:-

- (i) *Satvir Singh Vs State of Delhi reported in (2014) 13 Supreme Court Cases 143 (Para 10,11,24, 34, 40 to 48)*
- (ii) *B. Jayraj Vs. State of AP reported in (2014) 13 Supreme Court Cases 55 (Para 7 to 10)*
- (iii) *C. M. Girish Babu Vs. CBI Kochin High Court of Kerala reported in (2009) 3 Supreme Court Cases 779 (Para 13 onwards)*
- (iv) *Dr. Sunil Kumar Vs. State of Maharashtra reported in (2011) Cr. LJ 705*
- (v) *P. Satyanarayana Murthy Vs. District Inspector of Police reported in (2015) 10 Supreme Court Cases 152 (Para 7 to 10)*
- (vi) *Krishan Chandar Vs. State of Delhi reported in (2016) 3 Supreme Court Cases 108 (para 35 to 40)*
- (vii) *Chandrappa and Ors. Vs. State of Karnataka reported in (2007) 4 Supreme Court Cases 415 (Para 42 to 45)*

- (viii) Chironjilal Vs. State of MP reported in 2008 Cri. LJ 1784 (Para 19, 20 and 21)*
- (ix) K. Subba Reddy Vs. State of AP reported in (2007) 8 Supreme Court Cases 246 (Para 7)*
- (x) State of MP Vs. Anil Kumar Varma reported in 2007 Cri. LJ 2919*

Grievance about real complaint not before the Court.

14. Trial Court has not believed P.W.-1-Sayaji. There are criminal cases registered against him earlier. Their details were also filed by Katkar alongwith 313 statement. Though Sayaji complains that his real complaint is not Exh. 65, there is no explanation on behalf of the prosecution. Since beginning Sayaji said that he was having complaint against Deputy Superintendent Chougule. But it failed on deaf ears. His conduct is consistent with his grievance. Present Respondent is only charge-sheeted. Whereas the Complainant contend that Dy. SP. Chougule is also responsible. He has filed a complaint under Section 156 (3) of the Criminal Procedure Code against Shri Chougule. Special Judge dismissed it summarily on 15.11.2011. Sayaji carried the issue to this Court. It was remanded.

15. He was successful in reopening the investigation. It was accepted on 12.12.2012 by the learned Special Judge. However after negative report of police, his application was rejected. However learned Special Judge kept certain issues open. He observed :-

“Therefore, from the report and documents on record, it appears that though the complainant has made severe allegations against the Deputy Superintendent of Police Shri Chougule, but as per report of the concerned officers, there is no evidence against him to submit charge-sheet against him. Therefore, Shri Chougule has not been made as accused in this case. Thus, at this stage, there is no substance in the allegations of the complainant. However, point is kept open that if after recording evidence any role is attributed to the Deputy Superintendent of Police Shri Chougule, then he can be made accused and further necessary steps would be taken.”

Findings of the trial court.

16. After trial learned Judge while acquitting Katkar
observed as follows:

“While deciding application Exh. 48, it was observed that if at the conclusion of trial, it is

noticed that the allegations against Chougule are proved, then he should be made as accused in this case. However, considering the entire evidence on record, particularly the omissions and contradictions in the evidence of complainant, panch witness and the Investigating Officer, it is clear that no case is made out against said Chougule also. Therefore, it would not be proper to make Chougule accused in this case.”

Evidence of P.W.No.1

17. It will be material to see what the PW-1 Sayaji has said in his chief about the complaint.

“I had been to Anti Corruption Bureau Kolhapur and narrated entire facts to Shri Bagal and Shri Wakade officers of Anti Corruption Bureau Kolhapur, it was on 09.10.2006. Accordingly, they told me to lodge complaint. My complaint was accepted as per my statement since beginning. I have stated all the facts. It was reduced into writing on rough paper.”

About the events of 10.10.2006, Sayaji said :

“On 10.10.2006, I was again called. Instructions were given to me about demand verification. All instructions

about trap were given to me. The complaint was then typed and some paragraphs from the rough notes were deleted. Myself and my wife took objection on that. Wakade Saheb and his staff told me that it is not final complaint, final complaint will be reduced into writing which will come from the mouth of panchas after demand verification by panchas. I requested him to give rough notes which were reduced into writing by Shri Bagal Saheb. They stated that after demand verification, those notes will be given to you.

18. Complaint lodged by him on 10.10.2006 was shown to him. It is Exh. 65. Still he has grievance. He said :-

“At the time of lodging the complaint on 10.10.2006, I made a grievance and therefore the complaint was not completed. On 11.10.2006 I was called at the Circuit House, Kawala Naka, Kolhapur. Then I read the entire complaint and put my signature. It was on 11.10.2006.”

19. During cross-examination, he answered :

“I met Bagal and Wakade on 09.10.2006 but the complaint was lodged on 10.10.2006. My complaint was prepared by Bagal. There was discussion that complaint was not as per my say and it was told that after demand verification main

complaint will be prepared. My complaint dated 10.10.2006 was handwritten and also typed. The typed complaint was containing two pages and on the very same day, I have signed on it. Exh. 65 the complaint is referred to the witness. It bears my signature, below signature date is 11.10.2006.”

Evidence of I.O.

20. PW-4, Investigating Officer Wakade has said during Chief.

“In room No. 10 of the circuit house, the complaint of Sayaji Desai was got typed as per his say. He read it and he found its contents correct, and then he signed on it. Said complaint is at Exh. 65, it is now shown to me, is the same, bears my signature and signature of the complainant. Contents are true.

Then complainant was called at 11-00 a.m. on next day.”

During cross-examination he answered:-

“On 10.10.2006 at about 12.00 noon I reached to Circuit House, Kolhapur. For about 1-2 hours, I was there. On 10.10.2006 complaint of the complainant was obtained and signature of the complainant was obtained on it.”

Further he said,

“It is true to say that though the complaint is dated 10.10.2006, but below the signature of the complainant date 11.10.2006 is written. Panchas did not put the date below their signature on it.”

21. On above evidence, trial Court observed :

“In his further evidence, he stated that he has lodged complaint on 10.10.2006 which is at Exh. 65. At the time of lodging the complaint on 10.10.2006, he made grievance and therefore his complaint was not completed on that day. On 11.10.2006 he was called at Circuit House, Kawala Naka, Kolhapur. He read the complaint and then put his signature on it. If the complaint is perused, it transpires the date 10.10.2006, but below the signature of complainant dated 11.10.2006 is mentioned. Therefore, it is doubtful whether it is the real complaint dated 10.10.2006 or not.”

It is further observed :-

“So, from the evidence of these three witnesses it clearly appears that the date on which the complaint was lodged is not certain because on 09.10.2006,

10.10.2006 and 11.10.2006 the complainant had met Bagal. Panchas were called on 10.10.2006. Typed complaint and handwritten complaint are not coming before the Court. Original complaint is not filed before the court and hence evidence of the prosecution in this respect is fatal to the prosecution.

Observation

22. From above discussion there are two inferences. Complaint at Exh. 65 is real complaint or it is not the real complaint. Trial court has concluded that

“it is doubtful whether it is real complaint dated 10.10.2006 or not”.

However what I find it is not supported by reasoning. The grievance has to be considered vis-à-vis who is the accused before the Court. That is to say whether it is not the real complaint against the Respondent or against Dy. SP. Chougule. Trial Court disbelieved the Complainant totally. When trial court came to conclusion that it is not the real complaint, whether trial court has considered the evidence of the complainant given in the Court? Court occasionally come across grievance that complaint is anti dated. That is to say in

fact the incident has taken place later on but F.I.R. is lodged subsequently but by showing that it was registered earlier. This happens in counter cases. But in that eventuality, the first informant and the Police are together. Here the complainant is having grievance against the Anti Corruption Bureau officials.

23. Whether trial Court has appreciated the evidence of Complainant in the light of averments in the complaint vis-à-vis involvement of this Respondent? When Complainant-Sayaji says that real complaint is not coming forward, whether it is proper to raise doubt on the Complainant only? Whether that was a possible view? I think it is not because trial court took that view without considering the materials on record. “What the complainant has deposed in the court” is not considered. The facts deposed in evidence is generally tested by comparing what the complainant has stated in the F.I.R./complaint. Because complaint is earlier in time. About demand, the complainant has deposed facts against two officials. One against Shri Katkar and another against Shri Chougule, the complainant has stated the following facts :-

“As per the advise of my advocate, I had been to meet Investigating Officer Shankar Piraji Chougule for sending reply to the Court. I met Chougule and requested him to send say at the earliest. Chougule told me that you did not say anything to me, you go and meet Mr. Katkar, I have stated him about that. I did not meet Katkar and went to my house.”

Further he says :-

“After 2-3 days, I came and went to meet Chougule in his office and requested him. He told me that he should not stay here, you go at the ground floor and I will send Katkar to you.”

Further he says :-

“Thereafter, within 3-4 days, on motorcycle I was coming to Kolhapur. I have seen the vehicle of C.I.D., which was coming from opposite direction. Somebody else has shown me hand and therefore at some distance I stopped my motorcycle and went to that C.I.D. vehicle.”

Further he says:-

“After 2-3 days, I received phone call of Chougule to my landline No. 02324-222222. On phone, he

told me that you do the compliance as stated by Katkar.”

Further he says :-

“Thereafter, Chougule had made call on mobile of my friend Namdev @ Jayant Hari Savant and told him that you tell Sayaji to give amount as early as possible to Mr. Katkar”.

24. If we compare these facts with particulars of complaint at Exh. 65, fact relating to “receiving a phone call of Chougule on landline” and fact relating to “making a call by Chougule on mobile of friend Namdev Savant” does not find place. No doubt the trial Court has not conducted a trial against Shri Chougule. So trial court is not supposed to deal with those particulars and their truth. Trial court has only to deal with allegations against Shri Katkar. But so far as Complainant is concerned, he has deposed whole story. He is a layman. He cannot bifurcate facts in between Shri Chougule and Shri Katkar (just because Chougule is not charge-sheeted). Because the facts are interconnected. And then why A.P.P. in-charge has not restricted Sayaji in respect of facts connected to Shri Katkar only.

However trial Court over looked what the Complainant has said against the Respondent and also overlooked whether it was stated while lodging the complaint?

25. These facts were not considered by the trial court. Instead trial court had chosen to observe that Exh. 65 is not a real complaint. There is second reason. The trial court was aware that Sayaji has filed a complaint under Section 156 (3) of the Criminal Procedure Code and made grievance against Shri Chougule. Then why trial court has not considered the “grievance of Complainant that real complaint is not before the court” on this background. Even though Exh. 65 may not be the real complaint (not containing details showing involvement of Dy. SP. Chougule), but the trial Court overlooked the fact that the Anti Corruption Bureau officials acted on the complaint of Complainant and also arranged trap. So there is substance in the complaint against the Respondent.

26. The view taken by the trial court was taken without considering the available materials on record. I do not agree with that view.

Judgment cited on behalf of the Respondent.

27. The observations in Satvir Singh (Supra) are not applicable as the facts are different. There was no evidence of demand by Appellant-Satvir Singh. Even there was documentary evidence to suggest that Appellant never demanded the money (para 30). On this factual background the conviction under Section 7 of the Prevention of Corruption Act by the High Court was set aside.

28. Whereas in case of B. Jayraj (Supra) there was conviction even though the complainant has turned hostile. If demand is not proved, the evidence of acceptance cannot be accepted.

29. Whereas in case of C. M. Girish Babu (supra) also there was conviction even though complainant P.W.10 has not supported. The appellant has accepted the bribe and it was demanded by acquitted accused. The conviction was set aside as demand is not proved.

30. In case of P. Satyanarayana Murthy (Supra) – Complainant died prior to trial. The Hon'ble Supreme Court set aside

the conviction under Section 13 of the said Act. Demand was not proved, hence there was acquittal under Section 7 of the Prevention of Corruption Act.

31. In case of Krishan Chandar (Supra) the conviction under Section 7, 13(2) of the Prevention of Corruption Act was set aside. P.W. 2- Jai Bhagwan the complainant has turned hostile on the point of demand and acceptance. (para 27). The evidence of panch P.W. 6 was found unsatisfactory. The portion from the statement of P.W. 2 (which he disowned) was not proved through Investigating Officer – PW 10 (para 30)

32. In case of Chironjilal (supra) it was not the job of Head Constable to release the culprit on anticipatory bail as per the order of the court (para 14). The amount was demanded by SHO Vimal Kumar but it was accepted by the Appellant. There was no evidence of demand by Appellant from Kunj Bihari (PW1). When motive of demanding bribe is not proved, then accused can not be convicted for receiving illegal gratification. “In law in capacity of Government Servant to show any favour or rendered any service in connection

with official duties weakens the case of prosecution” (para 15). However in this judgment it was not brought to the notice that there are different ways of showing favour laid down in Section 7 of the Prevention of Corruption Act. These wordings are there in Section 7 and not in Section 13 of the Prevention of Corruption Act. There was no evidence of demand. As such the benefit has to be given to the Appellant. Section 7 also mentions “as a motive/reward for doing/for bearing to do any official act”. In this clause, it is not said “this official functions”. In that clause official function has to be connected to the accused.

33. In case of *K. Subba Reddy* (Supra), Appellant a home guard accepted the amount from defacto complainant on behalf of co-accused excise inspector. The conviction under Section 7 of the Prevention of Corruption Act was set aside as Appellant was having no role to play in respect of return of stock register. Appellant gave an explanation that money was given to him for deposit in the treasury. There was the evidence of demand by the Appellant.

Above said observations are on the basis of those cases. The underline principle is that there has to be reliable evidence on the

point of demand and the evidence on the point of acceptance can be believed only when the evidence on the point of demand is satisfactory.

Evidence on the point of demand

34. Complainant in his evidence before the Court narrated following demands:-

“Within five minutes Katkar reached there. Katkar told that Chougule Saheb has demanded Rs. 20,000/-, you give it earlier, I will do your work. Why you are disappointing saheb i.e. Chougule. I told that at present I have only Rs. 5,000/- and I am ready to give it. Katkar got annoyed and told that whether you are giving Daxina to me, and he went at the upper floor of the office. I went to my village.”

35. This was prior to rejection of an application for release of ornaments. After it was rejected again there was demand. He says :-

“After 2-3 days, Katkar came to Gargoti, he came to my xerox shop which is near to Gargoti Police Station. He told me that whether you came to know about power of Chougule saheb. If you are in need of those ornaments, then you should make application to Appellate Court and comply the

demand of Chougule saheb.”

After informing to Katkar on phone about filing of application Katkar told him :-

“that you comply with demand of Rs. 20,000/- then I will submit say to get your articles back”.

36. Trial court disbelieved the evidence on the point of demand. Trial Court gave following reasons:-

- a) There must be some official work for completing it and illegal gratification, is demanded. Trial court noticed different types of official work mentioned in the complaint. “Katkar told Sayaji why you are disappointed Chougule Saheb. Investigation is completed” However in last paragraph of the complaint, Sayaji said money is demanded to give favourable reply” (para 18)
- b) During entire trap proceedings “Katkar did not make demand of money for himself” (para 32)
- c) “no work of complainant was pending with Katkar”
- d) There is no document on record to show that suite from rest house was taken on 10/10/2006 and 12/10/2006 (para 35)
- e) Investigating Officer has admitted that work of complainant was with Chougule and accused is not authorized to file say to the application of the complainant

(para 35)

- f) Nirmala, wife of Sayaji was not examined. Call details not brought on record.

Above reasoning pertains to the demand at the time of trap, is there any motive for accepting illegal gratification and supporting materials. The correctness of these reasonings need to be checked.

Part of official act/function

37. It is material to note that trial court has not considered the provisions of Section 7 of the Prevention of Corruption Act properly. It is in two parts.

One

- a) If illegal gratification is accepted
- b) Other than legal remuneration
- c) As a motive or reward

&

Second

It is related to some work.

Public servant can help the Complainant in different way.

One of the way is :-

*“for showing/forbearing to show **in exercise of his official functions** any favour/disfavour to any person’.*

This act of favour or disfavour should be connected to “his official function”. For this act, there must be official function concerning him and that is part of his duty. Whereas in respect of an act done in following manner, act should not be connecting to his official function. It says:-

*“for doing/for bearing to do **any official act.**”*

It means act must be official act. It need not be connected to his official duty. This provision is ignored by the trial Court.

38. If this is considered then giving reply may not be official duty of Katkar. But certainly giving reply is an official act. Whether Katkar is supposed to do or not is immaterial.

39. On these demands made prior to trap, there is absolute no cross-examination. Even there is no comment by the trial Court.

Lack of evidence on the point of reiteration of demand at the time of trap will be considered later on. Trial Court disbelieved PW-1 only due to his previous antecedent. Now whether this uncorroborated

testimony can be believed? Sayaji's wife has asked for return of ornaments is not disputed. CID is investigating Bhandargad Patpedhi case is not disputed. Shri Katkar is attached to CID is not disputed. Dy. Superintendent Chougule has to file reply is not disputed.

40. The Appellate Court should not normally disturb the findings of acquittal. When the impugned judgment is perused, there are no findings on the point of demand. This evidence is about events that took place earlier to trap. Hence the same has to be appreciated independently.

41. The appellate Court has got power to appreciate the evidence. As said above, except criminal antecedent, there are no reasons. There are certain documents produced by Respondent to support that allegation. Be that it may it does not makes the witness disbelievable altogether. At the most his evidence can be viewed with caution. The complainant has breached the penal law, that is why he has approached the police/CID. There has to be convincing reason to disbelieve him. They are not there. There is already explanation given by the complainant why he met the ACB officials

in the rest house. Not producing documents about booking of rest house will not make the case doubtful if otherwise the evidence is reliable. Merely producing documents showing good service conduct does not absolve the Government Servant if he commits wrong on particular instance. Nirmala wife of Sayaji is not the witness to the incidents of demand. Call details pertain to demand made by Chougule and not this Respondent. Whatever benefit I can give to Respondent I have given while appreciating the evidence on the point of acceptance of bribe.

Evidence of PW.-2 Savita Mahadik

42. She works in irrigation department. She attended all panchnamas. They are as follows :

a)	Exh. 68 _____ 11/10/2006	Demand verification panchnama
b)	Exh. 69 _____ 11/10/2006	Pre-trap panchnama circuit house
c)	Exh. 70 _____ 11/10/2006	Withdrawal of trap panchnama (unsuccessful)
d)	Exh. 71 _____	Panchnama of taking into custody the bottle containing remaining anthrasin powder,

	11/10/2006	cotton and paper.
e)	Exh. 72 12/10/2006	Pre-trap panchnama
f)	Exh. 73 12/10/2006	Panchnama of taking into custody the bottle containing remaining anthrasin powder, cotton and paper.
g)	Exh. 74 12/10/2006	Successful trap panchnama

43. Trial court has not believed the verification and trap panchnama. Trial Court gave following reasons:-

- a) Sayaji and Investigating Officer counted the notes after taking it from Katkar. This is said by PW 2. But Sayaji and Investigating Officer has not said this fact. Thus there is variance (para 35)
- b) accused was not supplied copy of panchnama signed by panchas and Investigating Officer. Katkar has produced alongwith 313 statement. Therefore, it is doubtful whether panchnama was executed or not. (para 35)
- c) “Katkarn took out the amount from his shirt pocket” is said by Sayaji. “Whereas panch no. 2 took out notes (who is not examined) from shirt pocket of Katkar” is said by Investigating Officer Wakade. This is the variance.
- d) Muster roll of P.W. 2 (produced by accused in 313 statement) shows presence of PW 2 in the office on 11/10/2006. Hence it is doubtful whether verification and trap panchnama were

properly executed. (para 39)

44. On all above grounds, the theory of acceptance of bribe of Rs. 20,000/- by Katkar is not believed. If particular fact took place there should be consistency in between two witnesses. The case under the Prevention of Corruption Act depends on oral evidence. There are documents but they are created after happening of an event. So if the Court has to believe oral testimony, they have to be consistent. Considering nature of inconsistencies noted above, it is difficult to believe which of them is true. So I find no reason to disagree with the view expressed by the trial court. Hence the findings on the point of acceptance and recovery cannot be interfered.

Sanction

45. For the reason that the sanctioning authority 'has not considered the fact that there is also allegation against Deputy Superintendent of Police Shri Chougule in addition to Respondent' and granted sanction, trial court held there was non application of mind. There is evidence of sanctioning authority P.W.No. 4 Shri

Sukhavinder Singh. This issue was pointed out to him during cross examination. He admitted that there was complaint against both Shri Chougule and Shri Katkar. He is also aware that the investigating officer has to give reply. As said above, the contention about the Respondent not supposed to give reply is already rejected. That is not the requirement of law. The sanctioning authority gave sanction on the basis of available materials. This is an administrative act. He cannot be blamed for not seeking sanction against Shri Chougule. Either he may reject or grant sanction. At the most he can ask for more materials. But certainly he has no supervisory power over the decision of the Investigating agency. Considering this it can be said that he has properly appreciated the materials placed before him and decided to grant sanction. I do not think there is any error, irregularity or omission. Trial Court has not accepted the sanction as valid because the appreciation of evidence on the point of demand was wrong. I held that sanction is valid.

CONCLUSION

46. He is prosecuted for offence under Section 7 and under

Section 13 (1)(d) read with Section 13 of the Prevention of Corruption Act. For Section 13(1)(d) obtaining valuable thing/pecuniary advantage is material ingredient. That is not proved. Hence his acquittal for offence under Section 13(1)(d) read with 13(2) of the said act is proper.

47. For an offence under Section 7 even agreement to accept/obtain an illegal gratification is punishable. Material portion read thus :-

Public Servant taking gratification other than legal remuneration in respect of an official act. ---

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

*Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than **six months** but which may extend to **five years** and shall also be liable to fine”.*

48. So when Respondent has demanded Rs. 20,000/- he has “attempted to obtain the illegal gratification”. Hence offence under Section 7 of the Prevention of Corruption Act is proved. He is liable to punishment. For this category, acceptance of the amount is not required. The punishment prescribed at the time of commission of an offence is relevant. Minimum sentence is six months. There is no discretion to the Court. I am inclined to impose minimum sentence considering age of the Respondent, his retirement and time spent so far.

49. So far as acceptance and recovery are considered, Shri Chougule has no role to play. There is only allegation of demand. As the trial court found evidence not reliable, there was no observation against Chougule. The findings on the point of demand are set aside. On this background, if the application which is disposed of by the

trial court is pressed, trial court is at liberty to deal with it on merits.
This Court has restricted its observations only against Katkar and not commented on the allegations against Chougule.

50. The judgment requires interference partly. Hence following order is passed:-

ORDER

- (a) The appeal is partly allowed.
- (b) The judgment dated 13/07/2006 delivered by Special Judge (ACB) Kolhapur is partly set aside.
- (c) The Respondent -Raghunath Katkar is convicted for the offence punishable under Section 7 of the Prevention of Corruption Act.
- (d) The Respondent – Reghunath Katkar is convicted for the offence punishable under Section 7 of the Prevention of Corruption Act and he is directed to undergo sentence of simple imprisonment for six months and to pay a fine of Rs. 5,000/- and to undergo for simple imprisonment for 15 days in case of default to pay fine amount.

[S. M. MODAK, J.]

51. After the pronouncement of the judgment, learned Advocate Shri Patil submitted that let this sentence be suspended for a period of ten weeks. Learned APP opposed the same.

52. The Respondent-accused is aged about 70 years. The operation of the sentence is suspended for ten weeks, except the sentence about payment of fine.

53. The copy of judgment be given to Respondent-accused himself/ through his Advocate free of cost.

[S. M. MODAK, J.]