

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

**CRIMINAL APPEAL NO.899 OF 2003**

**The State of Maharashtra**

**...Appellant**

Versus

**Shri Shashikant Dnyanu Jadhav**

Age : Adult, Occupation : Police Constable,  
B. No. 1785, Borgaon Police Station,  
Taluka : Borgaon, District : Satara.

**...Respondent**

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|---------------------------------|----------------------------|
| Mr.H.J.Dedhia:-                 | APP for Appellant – State. |
| Mr.Dhananjayrao D. Rananaware:- | Advocate for Respondent.   |

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**CORAM : S. M. MODAK, J.**

**RESERVED ON : 12<sup>th</sup> JULY 2024**

**PRONOUNCED ON : 26<sup>th</sup> AUGUST 2024**

**JUDGMENT:-**

- Constitutional bench of Hon'ble Supreme Court in case of *Neeraj Dutta v/s. State (Govt. of N.C.T. of Delhi)*<sup>1</sup> held "in a case under the provisions of the Prevention of Corruption Act the Court can base its conviction on circumstantial evidence, even though direct

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<sup>1</sup> 2023 SCC OnLine SC 280

evidence is not available". So to say, if for any reason, the *de-facto* Complainant is not available for giving evidence, Court can certainly look for circumstantial evidence. It may be in the form of evidence of trap witness or any other witness. The *de-facto* Complainant may be dead or not available or has not supported the prosecution case. The reference was made to larger bench in view of divergence of opinion amongst various benches of the Hon'ble Supreme Court. After taking conspectus of the decision, certain principles were laid down. Following are relevant for our consideration:-

- (a) Proof of demand and acceptance is *sine qua non*<sup>2</sup> for an offence under Section 7 and Section 13(1)(d)(i) and (ii) of the **Prevention of Corruption Act, 1988**<sup>3</sup>.
- (b) First demand has to be proved and then subsequent acceptance has to be proved.
- (c) Demand and acceptance can be proved by direct oral evidence and in absence – by circumstantial evidence.
- (d) If illegal gratification is paid without earlier demand, it is a case of acceptance under Section 7 of the Prevention of Corruption Act.

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<sup>2</sup> An essential condition.

<sup>3</sup> Henceforth, "the PC Act".

- (e) If there is a demand and then acceptance, it is a case of obtainment under Section 13(1)(d)(i) and (ii) of the Prevention of Corruption Act.
- (f) Presumption under Section 20 can be drawn only when foundational facts of demand and acceptance are proved.
- (g) Even if the Complainant dies, not available or turned hostile, offence can be proved by examining other witnesses or by circumstantial evidence or through documents.

2. According to learned APP in this case, even though the *de-facto* Complainant has turned hostile, still there is evidence of PW No. 2-panch witness and it is sufficient. According to him, the trial Court, while acquitting the Respondent, has not at all referred the evidence of panch witness. And this is total dereliction of duty. **He is right.**

3. I have read the impugned judgment. Nowhere the trial Court has commented on the evidence of panch witness. It is true when the trial Court passed the impugned judgment, the observations in **Neeraj Dutta** (cited supra) were not in force. But it does not mean that, the trial Court should overlook a piece of evidence.

4. In such cases, the panch witness has an important role to play.

Generally raids are conducted in the presence of independent witness. Trial Court has failed to consider this evidence. Does it mean that the matter should be remanded ? According to learned Advocate Mr.Rananaware, this Court being last fact finding court can consider evidence of panch witness and even if considered, it will not result into reversal of the judgment.

5. The prosecution case needs to be stated.

#### Prosecution case

6. The *de-facto* Complainant **Mahendra Gujar** resident of **village-Bhondavade, District – Satara** owns a tempo. He purchased it from one **Raghurath Nikam**. Yet Shri **Gujar** has not paid the entire consideration and that is why it is not transferred in his name. Shri.**Gujar** has appointed Shri.**Raghunath Shinde** to drive the tempo.

7. The corruption offence is outcome of **plying the tempo** in limits of **Borgaon** Police Station and carrying passengers. The driver **Shinde** was obstructed by Police constable **Zanjurne** on the instructions of Police Head Constable **Shri Sandbhor**. Neither of them were charge-sheeted. Shri **Gujar** went to **Borgaon** Police Station on **29/03/1995** and met head constable **Sandbhor**. Mr.**Sandbhor** first took Mr. **Gujar** to task and pressurized him to pay instantly Rs. 1,000/-. This is the first

demand. But unfortunately, Shri.**Sandbhor** though named as an accused in **FIR dated 30/04/1995** (filed by **PI Mane** after the trap), was dropped from the charge-sheet.

8. **Mr.Gujar** was hesitant in paying the bribe and his driver **Shinde** was prosecuted for unlawful carrying passengers. He was fined by Satara Magistrate for Rs. 2,000/-. He paid Rs. 500/-. Still his worries were not over. Police Head Constable **Sandhor** insisted for payment of entire fine amount, prior to release of tempo.

9. **Mr.Gujar and Mr.Shinde** paid remaining amount of fine and again went to meet Police Head Constable **Sandhor**. He again reiterated demand for **Rs.1500/-**. **Mr.Gujar and Mr.Shinde** were helpless. **On 15/04/1995**, **Mr.Gujar** went to Police station and met **Mr. Sandbhor** and prayed leniency. **Mr.Sandbhor** was **adamant** on payment of Rs. 1500/-. At that time, present **Respondent-Police Constable Jadhav** entered on the scene. He was called by **Mr.Sandbhor**. He instructed **Mr.Jadhav** *“to accept Rs. 1500/- from Mr.Gujar on Wednesday if he will not be present”*. **PC Jadhav** was the loyal **lieutenant** of Police Head Constable **Sandhor**. He again reiterated the instructions.

10. **Mr.Gujar** realized, he will not get license and RC book unless

money is paid. At that time, **Mr.Gujar** was an ardent follower of law. He has a respect for law. But unfortunately, when it comes to giving of evidence, **Mr.Gujar** realised he will not be **benefited** and till that time he has cooled down. Mr.Gujar approached Anti Corruption Bureau Satara and taken their help to nab the culprits. **PI Mane** has recorded his complaint on **18/04/1995**.

### About trap

11. On this background, **trap was laid on 19/4/1995**. **Mr.Sandbhor** was not trapped. But it was **PC Jadhav**. Though the team went to village **Borgaon**, they were told that **Mr.Jadhav** had gone to Satara. There are two versions about place of trap. They were found in the evidence of **Mr.Gujar PW No.1 and Panch witness PW No. 2**. PW 1 took several somersaults in his evidence. As stated above, there is demand earlier to trap and at the time of trap.

12. PW 4-PI Mane recorded statement of **PW No.1 - Gujar on 18/04/1995** (Exhibit-47). There is complaint against **Mr.Sandbhor** and reference of **Mr.Zanzurne and Mr.Jadhav**. However, only **Mr.Jadhav** was found at the time of trap. However, **PI Mane** lodged complaint on **20/04/1995** against **Mr.Sandbhor and Mr.Jadhav**. Interestingly, only **Mr.Jadhav** is charge-sheeted for committing an offence under Section

7, 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act.

**Evidence of demand earlier to trap**

13. It seems that **Mr.Gujar** is a very clever guy. He has made up his mind prior to giving of evidence. He deposed every fact about challenging his driver, fine imposed by the Court, its payment. However, when it comes to involvement of Police Head Constable **Sandbhor**, he has disowned his version in his complaint. As per his statement, he has stick up to the following facts from his complaint:-

- (a) Introductory fact about purchase of tempo, consideration, **plying of tempo** by his driver. **Mr.Shinde** on a route **Rajwada-Asangaon-Pilani**.
- (b) **Detaining** of tempo by **PSI Sandbhor** at **Borgaon Police Station** and going to **Borgaon Police Station**.
- (c) Filing of a case against driver **Shinde** for illegally carrying 45 passengers and Court fined him Rs.2,000/-. An amount of Rs. 500/- was deposited and then Rs.1500/-.
- d) Photocopy of receipt was handed over not to **Sandbhor** but to **Zanzurne**.

14. From the statement. He has not **deposed** following facts :

- (a) He has not met **Mr.Sandbhor** in the police station and **Mr.**

**Sandbhor** has not demanded Rs.1,000/- for illegally carrying passengers.

- (b) **Mr.Gujar** never expressed “*availability of Rs. 250/- only and assurance to pay balance later on*”.
- (c) **Mr.Sandbhor** insisted to pay Rs. 1,000/- then and there only and he “*gave instructions to **Zanzure** to challan him for illegal carrying of passengers*”.
- (d) “He never gave receipt of Rs.500/- to PSI **Sandbhor** and he was not ready to release the vehicle unless and until Rs. 1,500/- is paid.”
- (e) “On the say of **Mr.Sandbhor**, **Shri.Shinde** driver was handed over RC Book and license to him.”
- (f) “**Mr.Sandbhor** demanded Rs. 1,500/- (Rs. 300 per day for 5 days) and then take back RC book and license”.
- (g) “**Mr.Gujar** and one **Shri.Shaikh** visited **Borgaon** Police Station on **15/04/1995** and sought time of 4 days for payment of Rs. 1,500/- and Mr. **Sandbhor** directed him to bring that amount on **19/04/1995**.”
- (h) “**Mr.Sandbhor** instructed **Mr.Jadhav** present Respondent to accept the amount of Rs. 1,500/- on **19/04/1995**, if he will not be present in the Police Station”.
- (i) “**Mr.Sandbhor** has not specifically instructed -RC book and license will not be returned unless that amount of Rs. 1,500/- will be paid”.
- (j) “**Mr.Gujar** has not given any assurance to present Respondent to come with amount of Rs. 1,500/- on

19/04/1995 and then left Police station.”

**About not sanctioning Mr.Sandbhor**

15. So, **Mr.Gujar** has not deposed those facts which were **implicating Mr.Sandbhor**. Conveniently, he has omitted them. Prosecution has not charge-sheeted **Mr.Sandbhor**. However, it does not mean that the witnesses cannot depose against such a person. Witnesses are not aware of the formalities of sanction. If PW No.1 could have deposed against **Mr.Sandbhor** (on the basis of statement), then trial Court was certainly empowered to issue directions to the investigating agency. But neither the investigating agency nor **Mr.Gujar** were in frame of mind to charge-sheet him/to depose facts against him. There is much emphasis by Mr.Rananaware on the conduct of the Anti Corruption Bureau in not charge-sheeting **Mr.Sandbhor**. He invited my attention to a report dated **29/02/1996** sent by **PI ACB to the Special Judge, ACB**. There is a request to discharge Police Head Constable **Sandbhor** as no sufficient evidence was found.

16. According to **Mr.Rananaware**, this is partisan approach of Anti Corruption Bureau when **Mr.Gujar** has specifically lodged complaint to Anti Corruption Bureau about demand made by **Mr.Sandbhor**, Anti

Corruption Bureau was not justified in discharging him. Because according to him even a person can be charged for demand (without acceptance).

### **Provisions of PC Act**

17. It is true, as per the PC Act, Public Servant can be prosecuted for several offences. Two of them are Sections 7 and 13. The ingredients of both the Sections are different. **The following are the ingredients for an offence under Section 7:-**

(i) Whoever either

accepts or

obtains or

agrees to accept or

attempts to obtain

(ii) any gratification.

(iii) for official act.

Then it is punishable under Section 7 of the Prevention of Corruption Act. Whereas as per **Section 13** of the Prevention of Corruption Act, there are five acts which are punishable. In **clause (a) and (b) of Sub-Section (1) of Section 13**, both the words “accept or obtain” are used. But those clauses are applicable only when

there is habitual act. Whereas the word ‘habitual’ is not used in clauses (c), (d) and (e) of sub-Section 1 of Section 13 of PC Act. Clause (d) is relevant. In that clause, there are three sub-clauses. In all of them, only the word ‘obtain’ is used.

**Meaning of the word ‘accept’ and ‘obtain’**

18. Is there any difference in between the word “*accept*” and word “*obtain*”. Dictionary meaning of the word “***accept***” is :--

*“to receive something offered willingly”.*

Whereas meaning of the word “***obtain***” is :--

*“to gain or attain usually by planned action or effort”.*

19. There was an occasion for the Hon’ble Supreme Court to consider the difference in the meaning of these two words in case of **C.K. Damodaran Vs. Government of India**<sup>4</sup>. In case of obtainment, the initiative vests in the person who receives and in that context a demand/request from him will be a primary requisite for an offence under **Section 5 (1)(d) of the Act (old)/new section 13(1)(d)(i) and (ii)**.

20. On the other hand, for offence under Section 7, both acceptance and obtainment are covered. The scope is wide. Even “*agreeing to accept or attempting to obtain*” is punishable under Section 7 of PC Act. So if any Public Servant attempt to obtain means only

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4 (1997) 9 SCC 477

*'makes a demand of illegal gratification'* (without being delivered), it will fall under Section 7 of PC Act. So, under Section 7, demand for money is covered. So also, money accepted with demand (obtainment) or without demand (acceptance) is covered. Whereas, under Section 13(1)(d), only money accepted in pursuance to demand is covered.

### **Facts**

21. So if it is the law, when the *de-facto* Complainant complains that **Shri.Sandbhor** insisted payment of money (agrees to obtain), the Anti Corruption Bureau ought to have charge sheeted him. But their action is totally unjustified. They have abdicated role of a Court on themselves and **exonerated Shri.Sandbhor**. During trial, Mr.Gujar has not deposed about the involvement of Mr.Sandbhor. The issue is, whether the present Respondent can be **benefited**. This is breach of equality enshrined under Article 14 of the Constitution. If two persons have breached the provisions of the Prevention of Corruption Act, both are to be dealt with equally. But the prime witness Mr.Gujar has not deposed about the involvement of Mr.Sandbhor.

22. The Respondent will not get any benefit. His case has to be dealt with on the basis of evidence against him.

### **Evidence of demand at the time of trap**

23. **PW No.1 - Gujar** has admitted about lodging of complaint with the Office of Anti Corruption Bureau on 18<sup>th</sup> April 1995. Even he admits of visiting Anti Corruption Bureau Office on next date along with currency notes to the tune of Rs.1500/-. He admits everything about happening of events in the Office. The facts deposed by him after they left Anti Corruption Bureau Office are as follows:-

- (a) First they (PW No. 1 and PW No. 2) went to **Borgaonn** Police Station and called **Mr.Zanzure**. **Mr.Zanzurne** told them **Mr.Jadhav**-Respondent had gone to Satara for election duty.
- (b) Then all went to **Satara** and met **Mr.Jadhav** in his house. PW No. 1-**Gujar** told to return documents **Mr.Jadhav** told them to **come** to **Borgaon**.
- (c) All again met at **Borgaon** and **Mr.Jadhav** enquired about the amount. **Mr.Gujar** requested him to return the papers and accept amount.
- (d) **Mr.Gujar** gave the money and gave the signal PW No. 2 was present. **Mr.Jadhav** was caught by **PI Shri Mane**.
- (e) He was cautious enough not to take the name of **Sandbhor**.
- (f) Even he has not supported the prosecution case. **Mr.Gujar** was cross-examined. He gave answers favourable to the prosecution case. He admitted following facts:-
  - (i) **Mr.Jadhav** told him to give the amount if brought by him and **Mr.Gujar** gave the amount of Rs.1,500/-.

- (ii) **Mr.Jadhav** counted the amount and kept it in his shirt pocket.
- (iii) **Mr.Jadhav** assured to give RC book and license afterwards. They were kept in **dicky** of motorcycle.

Mr.Gujar deposed above facts, after Learned APP put suggestive questions. He was declared hostile at subsequent stage (Para No.9). Evidence Act prohibits putting questions in which answers are suggested. It is permissible only when the witness is not supporting and that too after obtaining permission under the provisions of Section 154 of the Evidence Act. This procedure is not followed.

24. According to learned APP, **Mr.Gujar** has candidly deposed about *“demand made by Respondent and handing over the money”*. Whereas according to learned Advocate Mr.Rananaware, even this theory is not reliable and there are different answers given during cross-examination.

25. The trial Court disbelieved the evidence of **Mr.Gujar**. During cross-examination on behalf of the accused, PW No. 1 gave following answers:-

- (a) **Mr.Jadhav** was not present when an amount of Rs.1500/- was demanded.
- (b) Witness was not having any connection with **Mr.Jadhav** till the date of trap.

- (c) when witness went to the house of **Mr.Jadhav at Satara**, he was sleeping.
- (d) At Satara, initially witness tried to search **Mr.Zanzure**. He was not found.
- (e) That is how witness paid the amount to **Mr.Jadhav**. But Mr. Jadhav inquired as to how he is concerned with the amount.
- (f) witness told “he had already talked to **Mr.Zanzurne** and instructed **Mr.Jadhav** to pay the amount to **Mr.Zanzurne** and is concerned with private transaction of payment of money”.

26. If we read the evidence of **PW No. 1 Mr.Gujar** in its **entirety**, we may find:-

- (a) he has not deposed anything about interaction with Mr. **Sandbhor**.
- (b) Even he has not deposed about instructions given by **Mr.Sandbhor** to witness to pay the amount to **Mr.Jadhav**.
- (c) About demand at the time of trap and acceptance, there are two versions:- One when learned APP cross-examined **Mr.Gujar** and second when accused cross-examined him.
- (d) We have to read them together. We can infer that money is paid and accepted. But when the answers given by Mr.Gujar when accused **cross-examined him are considered, the**

**evidentiary value of the answers given by him** when he was cross examined by learned APP got diminished.

27. So we cannot trust such witness. His conduct is not reprehensible. First he exonerated **Sandbhor** and tried to give some favourable answers to the prosecution and then again took u turn. So witness cannot be trusted. The law on the point of “*hostile witness is well settled*”.

### **On the point of hostile witnesses**

28. The law is settled. Even if the witness called by the prosecution does not support their case, his evidence cannot be discarded in its entirety. The Court has to bifurcate the evidence into two parts. The part which supports the prosecution case and the part which does not support. After doing that exercise, the Court has to balance those two parts and then, come to a conclusion, which part can be used and its evidentiary value. The law on the point of reliability of witness is also well settled. The Hon’ble Supreme Court has categorised the witnesses into three categories. They are:-

- (a) A witness who is only unreliable, his evidence is of no value.
- (b) The witness who is partly reliable and partly unreliable, his

evidence can be considered to certain extent and

- (c) A witness who is only reliable, conviction can be based on evidence of said witness.

If these principles are applied in this case, we can only say that **Mr.Gujar** is totally unreliable witness. He cannot be believed at all. On this background, the facts deposited by panch witness **PW No.2 – Ashok Bavane** needs to be considered.

### Evidence of panch witness

29. Said evidence consists of parts. First, the evidence about apprising two panchas about the facts stated by *de-facto* Complainant in his statement. Second part consists of completing the pre-trap formalities including giving instructions, what is to be done at the time of actual trap, production of tainted currency notes by the *de-facto* Complainant and demonstration about the anthracene powder and recording pre-trap panchnama. So, his evidence is material on the point of compliance of the procedure in the Police Station and third part is, about happening of events at the time of trap. Third part is more important.

30. This witness was working as a Junior Clerk in Treasury Office – Satara. Police Inspector – Mane secured his presence. He visited the

Office of Anti Corruption Bureau on 19<sup>th</sup> April 1995. They have left for Borgaon in a Government vehicle. The facts deposed by him are as follows:-

- (a) They stopped the vehicle near pan stall and he along with **Mr.Gujar** went to Borgaon Police Station. They met **Mr.Zanzurne**. **Mr.Jadhav** had gone to Tahsildar Office – Satara for work of election as told to them by **Mr.Zanzurne**.
- (b) Then, all went to Tahsildar Office – Satara and stopped near gate of that Office. (This is a deviation from what Mr.Gujar has deposed “all went to the house of Mr.Jadhav” is the fact stated by Mr.Gujar).
- (c) **Mr.Jadhav** came there on motorcycle and inquired about the amount as demanded by **PSI – Sandbhor**. Mr.Jadhav asked them to follow him to Borgaon. Mr.Gujar told him that the amount has been brought. All went to Borgaon.
- (d) Vehicle was stopped near Borgaon Police Station and **Mr.Gujar** and panch went near telephone booth. After seeing Mr.Gujar, **Jadhav** came out of booth. Again Mr.Jadhav inquired about the amount as instructed by PSI – Sandbhor, Mr.Gujar replied in the positive. Then, the

amount of Rs.1,500/- was given by **Mr.Gujar** and accepted by **Mr.Jadhav** and then a signal was given.

- (e) The dicky of motorcycle of the Accused was checked and his uniform and R.C., book of four wheeler No.M22552 was found.

31. During the course of cross-examination, **Mr.Jadhav** was put only with the denial suggestions. He is not aware about the owner of the motorcycle from whose dickey, R.C.,book was taken out. Vehicle was stopped one kilometer ahead of Borgaon village. All these answers need to be scrutinised in order to ascertain whether this evidence is sufficient to convict the Respondent on the basis of observations in case of **Neeraj Dutta** (cited supra).

32. The evidence of PI – Mane depicts the facts relating to recording the statement of **Mr.Gujar** earlier to trap, completion of pre-trap formalities and the events that occurred after they left the Office to Borgaon Police Station and then to Tahsildar Office – Satara and then, returning back to Borgaon. It further depicts about catching hold **Mr.Gujar**, finding the tainted currency notes and completion of trap formalities and lodging of FIR. During the course of cross-examination, he admits enquiry was not made about the ownership of

two-wheeler bullet wherein R.C., book was found.

### **The evidence on the point of sanction**

33. The sanction was given by the Superintendent of Police – Satara as the Respondent was working as Police Constable. This was granted only against **Mr.Jadhav**. There was no challenge to the Authority of the Superintendent of Police to grant sanction. Though certain questions are put about the procedure followed by him while processing the proposal for sanction, there is no dent to the prosecution case.

### **Findings by the trial Court**

34. The sanction was granted for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act. (Page No.154). The charge was also framed for those sections. (Page No.40). The trial Court discussed about the burden on the Accused to explain how the tainted currency notes were found with him. Certain judgments were also discussed in Para Nos.48 and 49. The trial Court has laid emphasis on not giving sanction to prosecute **PSI–Sandbhor**. (Para No.51). It reflects, the trial Court has kept the case for framing of charge against **Mr.Sandbhor**. (Para No.52). Even, a submission was made by learned APP to obtain a sanction against **PSI – Sandbhor**. However, it reveals that it was not obtained inspite of giving ample opportunity.

35. It was submitted to the trial Court that the Sanctioning Authority has not granted sanction against **PSI – Sandbhor**. That is why, a charge is not framed against him. (Para No.53). In Para No.56, the trial Court has given importance to the answers given by **Mr.Gujar** about interaction with **Mr.Jadhav**. When amount is offered, **Mr.Jadhav** asked how he is concerned with the amount. The trial Court expressed inability to proceed against **Mr.Jadhav** for the reason “Mr.Jadhav accepted the amount of bribe for and on behalf of **Mr.Sandbhor**”. The trial Court also given due weightage to “withholding of papers by **PSI – Sandbhor**”. In other words, the trial Court want to suggest **Mr.Jadhav** is not having any official work with him belonging to **Mr.Gujar**. (Para No.57). Finally, the trial Court accepted the version given by **Mr.Gujar** when he was cross-examined on behalf of the Accused. **Mr.Jadhav** shown his ignorance about the amount offered by Mr.Gujar. The trial Court considered the explanation as probable. (Para Nos.59 and 60). The Investigating Agency fails to investigate the owner of the motorcycle in which, R.C., book was found.

### **Conclusion**

36. It is not the case of prosecution that Mr.Jadhav was involved in demanding the bribe at the beginning. The amount was demanded by

**Mr.Sandbhor. Mr.Jadhav** came on the scene later on. His involvement is at two stages. They are:-

- (a) When **Mr.Sandbhor instructed Mr.Gujar** to pay the amount to Mr.Jadhav on 19<sup>th</sup> April 1995 if he will not be available. Admittedly, it is not the case of prosecution that at that time, even though **Mr.Jadhav** was present, he made a demand and which will fall within a purview of Section 7 of the PC Act.
- (b) When **Mr.Gurav** and **PW No.2** went to Satara (at his house / in the Tahsildar Office – Satara), then to Borgaon and **Mr.Jadhav** accepted the amount of Rs.1500/- outside the STD booth.

37. About these events, **Mr.Jadhav** inquired with **Mr.Gujar** whether the amount is brought as instructed by **PSI – Sandbhor** and finally, he accepted it outside the STD booth. In respect of both these events, we have got evidence of **Mr.Bavane** and the evidence of **PI – Mane** by way of corroboration. Here, the principles laid down in **Neeraj Datta** case (cited supra) comes into picture.

38. At this stage, it can very well be said that the Officials of ACB have favoured **PSI – Sandbhor** by not granting sanction. It is also true

that when the question of giving evidence had arisen, **Mr.Gujar** has taken U-turn and totally exonerated **Mr.Sandbhor**. Against Jadhav, he did not depose the facts. When APP cross-examined him, he gave answers favourable to the prosecution and again when Accused cross-examined him, he had deposed the theory of expressing ignorance while accepting the amount by **Mr.Jadhav**. As said above, he is totally unreliable witness. The issue is, whether the evidence of panch witness and PI – Mane can be discarded. There is no single observation by the trial Court on this aspect.

39. The observations in the judgments relied upon by the Respondent need to be considered. In case of *P. Satyanarayana Murthy v/s. District Inspector of Police, State of Andhra Pradesh and Another*<sup>5</sup>, the Complainant – S. Jagan Mohan Reddy has expired prior to giving evidence (Para 4). PW No.1 – S. Udaya Bhaskar was the trap witness (Para 15). The Supreme Court set aside the conviction and found the evidence of PW No.1 falls short to prove the demand. (Para 24).

40. In case of *B. Jayaraj v/s. State of Andhra Pradesh*<sup>6</sup>, PW No.2 – Complainant K. Venkataiah has not supported the prosecution case. The evidence of panch witness, PW No.1 was accepted. (Para 6). The

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5 (2015) 10 Supreme Court Cases 152

6 (2014) 13 Supreme Court Cases 55

Supreme Court has not believed the evidence of trap panch and set aside the conviction. (Para 8).

41. In case of *State of Kerala and Another v/s. C.P. Rao*<sup>7</sup>, the Complainant was not examined. (Para 7). The conviction was set aside by the Hon'ble Supreme Court. It is very well true. The Hon'ble Supreme Court decided the matter *Neeraj Dutta v/s. State (Govt. of N.C.T. of Delhi)*<sup>8</sup> after the observations by the Constitutional Bench. The Complainant Ravijit Singh died before the commencement of the trial. (Para 2). There was conviction under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act. The Supreme Court found the evidence of panch witness unsatisfactory. Because, mere demand of money is not sufficient. But, it must be by way of an illegal gratification. If it is not there, the provisions of Section 7 are not satisfied. The conviction was set aside. (Paras 17, 18 and 20).

#### **Facts of this case**

42. PW No.2 – panch witness has referred about demand by **Mr.Jadhav**. What he said “*Mr.Jadhav asked about the amount demanded by PSI – Jadhav*”. Now, can it be an illegal gratification. It cannot be for two reasons:-

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<sup>7</sup> (2011) 6 Supreme Court Cases 450

<sup>8</sup> 2023 SCC OnLine SC 280

- (a) First, PW No.2 never deposes “**Mr.Jadhav** inquired with **Mr.Gujar** whether amount demanded by him is brought”.
- (b) PW No.2 never says why for the amount is demanded that is purpose.

If it is absent, demand cannot be called as illegal gratification. (**Mr.Gujar** has described the payment of money was towards some private transactions between **Mr.Zanzurne** and him. This is already disbelieved).

43. If considered from the above perspective, even if evidence of PW No.2 is appreciated, it falls short to prove an offence under Section 7 of the PC Act. Consequently, offence under Section 13(1)(d) of PC Act is also not proved. The prosecution case can only be considered for the purpose of acceptance. But, it is meaningless without proof of demand. The observations of the Constitutional Bench is not useful to the prosecution. Learned APP Shri.Dedhia with all his experience and forcefulness tried to convince me so as to interfere in the judgment of acquittal. I have also perused the evidence very minutely. That is why, I have reproduced the evidence of PW No.1 and PW No.2 in detail. But, on dissection, I could not find favour with the prosecution. The presumption under Section 20 of the PC Act comes into play only

when foundational facts are proved and not otherwise. There is no merit in the Appeal. Consequently, it is **dismissed**.

[S. M. MODAK, J.]