

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 458 OF 2007****Jagannath Shivram Jadhav**

Age:37 years, Occu.:Service
R/o. Kalia Railway Quarters
Bangla, Behind Rly. P. Stn.,
Kalyan (W), Dist. Thane.

...Appellant**Versus****The State of Maharashtra****...Respondent**

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Mr. Ujwal Agandurve, Advocate for Appellant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D.NAIK, J.**DATE OF RESERVING JUDGMENT : 28th JULY, 2023****DATE OF PRONOUNCING JUDGMENT : 5th JANUARY 2024****JUDGMENT:-**

1. The Appellant is convicted vide Judgment and Order dated 24th April 2007 passed by Special Judge (under Prevention of Corruption Act, 1988) and Additional Sessions Judge, Greater Bombay in Special Case No. 34 of 2002 for offences punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as P.C. Act) and sentenced to suffer Rigorous Imprisonment for four years and pay fine of Rs.1,000/-. The Appellant is also convicted for offence punishable under Section 13(1) (d) read with 13(2) of the P.C. Act and sentenced to suffer Rigorous

Imprisonment for seven years and pay fine of Rs.1,000/-. He is also convicted for the offence under Section 343 of Indian Penal Code, 1860 and sentenced to suffer Rigorous Imprisonment for six months and pay fine of Rs.1,000/-.

2. The brief facts of the prosecution case are as under:-

(i) The complainant Firoz Ahmed Dilawar Khan is the brother of Munna @ Munna Khan. They were residing at Gowandi, Mumbai.

(ii) On 6th February 2001, the complainant was alone in the house. His brother Munna was not at home. Six persons in civil dress including Appellant/accused visited his house and made inquiry about complainant's brother Munna. The appellant told complainant to accompany him to Vashi Railway Police Station.

(iii) The complainant accompanied police. Inquiry was made with him about Mohd. Nabi. The complainant was not knowing anything about Mohd. Nabi. The complainant was taken to Vashi Railway Police Station.

(iv) The complainant was detained at Vashi Railway Police Station till 04:00 p.m. on 7th February 2001. The Police Station is situated at platform No.1. During the said period, the appellant and others were making inquiry about Munna and Mohd. Nabi with complainant.

(v) On 7th February 2001 at about 06:00 p.m., the appellant and three police constables brought complainant at his residence. Munna was present in the house. Accused and other police constables took Munna into custody and released complainant. The appellant told the complainant that amount of Rs.25,000/- will be required to be given to release his brother. The complainant told the accused that, he is not having money. He will have to make arrangement by selling his room. The accused told the complainant to give an amount of Rs.5,000/- on 10th February 2001 at Vashi Railway Police Station and remaining amount within eight days. The accused told the complainant that, unless he gives amount, he will not release Munna. The complainant agreed to give amount of Rs.5,000/- to accused/appellant on 10th February 2001 between 06:00 to 08:00 p.m.

(vi) The complainant was not willing to give bribe amount to accused. He approached ACB. He lodged the report with ACB on 10th February 2001. FIR was registered as Crime No. 07 of 2001 under Section 7 of Prevention of Corruption Act.

(vii) Pre-trap panchnama was prepared. Details of incident were noted down. Amount of Rs.5,000/- was arranged. Instructions were given to panch witnesses.

(viii) Another complaint was lodged by Ruksana Banu Ahmed Qureshi alleging that, the accused/appellant demanded bribe for releasing

complainant's brother-in-law. FIR was registered vide C.R. No. 08 of 2001.

(ix) Parallel investigation was conducted in both the cases. Investigation in C.R. No. 08 of 2001 was conducted by Police Inspector Mausamkar. Separate pre-trap panchnama was conducted in respect to the said case. Amount of Rs.25,000/- was arranged for conducting raid. Instructions were given to panch witnesses and both the complainants.

(x) All members of the trap, two complainants i.e. Firoz Khan and Ruksana Banu Ahmed, proceeded in four vehicles to Vashi Railway Police Station.

(xi) The complainant Firoz Dilawar Khan, Panch Vaishali Malshekhar, Ruksana Banu Qureshi and Panch Smt. Muluk proceeded towards platform No.1 at Vashi Railway Police Station and others followed them.

(xii) The complainant Firoz Khan, panch Vaishali Malshekhar, Ruksana Banu Qureshi and panch Smt. Muluk entered into the cabin of Mr.Jadhav/appellant. Police Inspector More, panch Turbhekar, panch Gadve and members of both the trap parties were standing at the same distance.

(xiii) The appellant, accused Bangar and Jagdhane were present in the cabin of the appellant/accused.

(xiv) The appellant inquired with Ruksana Banu whether she has brought the amount of Rs.25,000/- . She replied in the affirmative. The accused inquired with complainant Firoz Khan whether he has brought the amount of Rs.5,000/-. He answered in the affirmative. The appellant told him to bring the balance amount within eight days. The appellant told the complainant Ruksana Banu to hand over the amount to the co-accused. The complainant Firoz Khan was told to hand over the amount to the co-accused, Mr. Somnath Bangar. The amount was accepted by the co-accused. The raiding party rushed inside the cabin and apprehended accused. Further procedure was completed. Accused were arrested. On completing investigation, charge-sheet was filed.

3. Both the cases were tried separately. Separate charge was framed. Witnesses were examined before the trial Court. The co-accused Somnath Bangar could not be tried as he was dead. Case against him was abated.

4. Charge was framed against the appellant vide order dated 3rd February 2006.

5. Case of the prosecution which is apparent from the charge in the present case is that, the appellant was posted as Police Inspector along with deceased/accused Somnath Dagdu Bangar, Head Constable, Vashi Railway Police Station, Navi Mumbai. On 10th February 2001, the accused

demanded and accepted bribe of Rs.5,000/- from the complainant Firoz Ahmed Dilawar Khan as bribe showing favour to the complainant for not arresting his brother Munna in theft case which is already registered at Vashi Railway Police Station vide C.R. No. 07 of 2001 under Section 379 read with 34 of the Indian Penal Code. The accused in furtherance of common intention from 7th February 2001 to 11th February 2001 detained Munna @ Munna Khan for extracting money from the complainant by showing favour to him for not arresting him in the crime.

6. Learned Advocate for the appellant submitted that, the appellant has been falsely implicated in this case. The complainant realized that his brother will be arrested in the crime and to prevent his arrest. False complaint was lodged with ACB. The bribe amount was not accepted by the appellant. The raiding party concocted the story that the complainant was instructed to hand over the amount to co-accused and thereby implicated both the accused in the crime. There is no evidence that the complainant was wrongfully restrained at the police station. The complainant's brother was indeed involved in the crime and admittedly, subsequently he was arrested in the crime. The demand was not verified. Investigation in two complaints was conducted. The complainant in both the cases and the raiding party had connived with each other. The complainant in both the cases were interested in evading the arrest of their

relation, who were involved in crime No.07 of 2001 investigated by Vashi Railway Police Station, sanction is defective. The sanctioning authority has not applied its mind while granting sanction. The sanctioning authority was not competent to grant sanction.

7. Learned Advocate for the appellant had relied upon the following decisions reads as under:

- (i) PA. Mohandas Vs. State of Kerala¹
- (ii) State Inspector of Police, Vishakhapatnam Vs. Surya Sankaram Karri²

8. Learned APP submitted that, the appellant has demanded the bribe amount. Demand is proved. Amount was handed over to the co-accused. The amount was accepted by the co-accused. There is no infirmity in the sanction order. The sanctioning authority was competent to accord sanction. The sanctioning authority had applied its mind to the fact of the case while granting sanction. The prosecution has proved demand and acceptance of bribe amount.

9. The prosecution case proceeds on the basis that the brother of the complainant was involved in the crime and to release him, the appellant demanded the bribe amount. C.R. No. 02 of 2001 was registered with Vashi Railway Police Station for offence under Section 379 of I.P.C.. It was under

1 (2003) 9 SCC 504

2 2007 ALL MR (Cri) 555 (S.C.)

investigation. The complainant's brother Munna was allegedly involved in the said crime. He was detained at Police Station. The accused demanded money for his release. Accused No.2 was present at the police station. The accused No.1 (appellant) instructed complainant to hand over the money to accused No.2 which was accepted by him. Similarly another complainant Ruksana Banu had approached ACB at the same time. Brother-in-law of the said complainant was involved in the same crime for releasing him. The appellant/accused demanded bribe of Rs.25,000/-. Thus, bribe amount was demanded for releasing persons, who were involved in crime No.07 of 2001. Both the complainants proceeded to the police station at the same time. In both the cases, the appellant did not accepted money but it was handed over to the co-accused.

10. PW-1 Mr. Firoz Ahmed Dilwar Khan is the complainant. According to him, police visited his house on 6th February 2001. They inquired about Munna Khan. He was brought back to his residence. Munna was at home. He was taken to police station. The accused demanded Rs.25,000/- for releasing Munna. The complainant was told to arrange Rs.5,000/- and balance amount within eight days. Complaint was lodged on 10th February 2001. Thus, according to PW-1, the accused visited his residence on 6th February 2001. The accused took custody of his brother on 6th February 2001. Complaint was lodged on 10th February 2001. There is no reason as

to why the complainant did not approach ACB immediately after the demand was made by accused. Immediately after lodging complaint, arrangement was made for trap. Instructions were given to the complainant, panch witnesses and raiding party. According to PW-1, while he was at ACB office, he saw one female, who was attended by another officer. Her name was Ruksana Banu. She filed report about Rs.25,000/- bribe from her for releasing her husband's brother Nabi Ahmed Nabi Qureshi. All of them went to Police Station. All of them entered into police station. Two police constables were present in the cabin. Accused inquired with both the complainants. He instructed them to hand over the amount to the co-accused. PW-1 handed over the amount to Somnath Bangar whereas the complainant in the other case handed over the amount to co-accused Arjun Jagdhane. In the cross-examination, he stated that in the statement before the police that his brother Munna Khan and Nabi Qureshi informed in his presence that they were in custody from 7th February 2001 and were not produced before the Court. However, this fact is not mentioned in his statement.

11. PW-2 Mrs. Vaishali Bharat Chawdhari is the panch witness to the trap dated 10th February 2001. She stated that, she was instructed to act as a panch witness. She was instructed to accompany Firoz Khan. Another officer by name Mr.Mousamkar arrived in the room along with two females.

One of them was Mrs.Sunanda Mulik and other was Ruksana Banu. She was the complainant in the other case. Ruksana Banu produced the amount of Rs.25,000/- for the purpose of raid. After making the arrangement for raid, they proceeded to Vashi Railway Police Station. Accused inquired whether she had brought money. The complainant had brought money. The accused No.2 accepted the money. The accused were apprehended.

12. PW-3 Mr. Munna Dilawar Khan stated that on 7th February 2001 four police persons came to his house. They arrested him and took him to the house of Mr.Nabi Qureshi. He was knowing Mohd. Nabi Ahmad Nabi Qureshi. He was released in the night of 10th and 11th February 2001. His version that, he was at police station from 7th February 2001 to 10th February 2001 is not supported by any evidence.

13. PW-4 Mr.Sitaram Ganpat More is the police constable. He was on duty at Nerul Railway Police Station. On 10th February 2001, he was called at Vashi Railway Police Station. He was told to keep watch on the two accused at the police station. The said accused were Munna and Nabi. They were arrested in the offence of theft. In the cross-examination, he stated that he was called at Vashi Railway Police Station from Nerul Railway Police Station. He has not maintained any diary. He had watched the accused at Vashi Railway Police Station. He had no personal knowledge exactly in

which crime Munna and Nabi were arrested.

14. PW-5 Mr. Subhashchandra Malhotra was serving as Director General of Police, Maharashtra State. He stated that accused was attached to Vashi Railway Police Station. He received paper for sanction. He found that there was prima facie case against the accused to grant sanction. He recorded the reasons as to why sanction to prosecute is granted. He granted sanction to prosecute the accused. In the cross-examination, he stated that he had received papers of investigation and draft sanction order. Except few changes in the draft sanction order, he approved the draft sanction order and the place and timing in respect of the allegations are not mentioned, though it is mentioned in FIR. Police Inspectors of A Class and B Class are Gazetted Officers. The Maharashtra State Government has issued GR dated 3rd April 2000.

15. PW-6 Shri. Manohar Sitaram Gokhale, was working as Deputy Secretary to Government of Maharashtra. He stated that sanction order was received under his signature on 18th November 2002 in respect of C.R. No. 07 of 2001 of Vashi Railway Police Station after application of mind. Sanction has been accorded relying upon letters Exh. 40 and 41. Letter was regarding ACB trap pertaining to Vashi Railway Police Station in respect of accused. He denied that the sanction order was passed only by relying on letter Exh. 40 and 41.

16. PW-7 Mr.Govindsingh Jagdishsingh Pardeshi was serving as PSI at Vashi Railway Police Station since May 2000. On 10th February 2001, he was on duty at Vashi Railway Police Station. According to him, two to three days prior to 10th February 2001 PI. Jadhav and Police staff brought Nabi Mohd. and Munna for investigation. There was no entry made in the station diary about bringing the said persons. In the cross examination, he stated that, the incident which have occurred are noted in the station diary. The incidents which have not occurred are not noted in station diary. The attention of the witness was drawn to station diary entry Nos. 17, 18 and 19 dated 6th February 2001. As per the station diary entry Nos. 17, 18 and 19 dated 6th February 2001 the accused No.1 was present at Vashi Railway Police Station from 10:15 am to 12:20 noon. The attention of the witness was drawn to station diary entry No.21 dated 7th February 2001. As per the said entry at 01:45 p.m. accused No.1 and others including the witness had gone to search the pages of Guru Granthsahib as mentioned in the entry serial No. 21. In the entry No. 26 dated 7th February 2001, there is reference of entry No.21. They all returned on the same day at 08:00 pm. On 8th February 2001 at 11:30 am, accused No.1 and others went to search aforesaid papers in three groups at Vashi to Vashi Creek. Accordingly, the entry was made at Sr. No. 17 in the station diary dated 8th February 2001. All of them returned at 07:45 p.m. and accordingly entry was made at Sr. No. 26.

17. PW-8 Mr.Pandurang Ramaji More conducted investigation. He was attached to ACB unit. He stated that, the complaint of Mr. Firoz Khan was recorded. Pre-trap panchnama was recorded. Trap was arranged. Trap Panchnama was recorded. Accused had accepted the bribe amount. Both accused were apprehended. He has not mentioned in panchnama about introduction of all members of police party, names and buckle number to the panchnama and informant. In the said party, there were five police officers and eight constables. In the trap PI. Mosamkar and five Officers and seven constables were involved. In both trap parties, there were ten police officers and 15 police constables.

18. The defence of the appellant reflected in explanation under Section 313 of Cr.P.C. reads as follows:-

“Q.114. Do you want to say anything else?

Ans. Whatever stated by informant Firoz Khan about the demand and acceptance by me from time to time is false. It is false that, I brought informant's brother in the Vashi Railway Police Station. From the entries made in the station diary Vashi Railway Police Station it will be disclosed that evidence of informant Firoz is false. I neither called nor brought to informant and his brother at Vashi Railway Police Station at any time. This will be cleared from the station diary entries, parallel investigation of C.R. No. 7 of 2001 of Vashi Railway Police Station under Section 379, 34 of IPC was going on through PI. Avhad and his staff under the supervision of ACP Shri. Nagdevane. There was direct control of CP on said unit. I was also making investigation of said crime. There were two names of accused in the said crime. One accused Mr. Khambal was arrested on the spot of incident at the platform of Govandi Railway Police Station. Other accused Waghmare was absconded with the bag of Rs. One lakh. Waghmare was brought by police staff Vashi Railway Police Station for investigation. In the said investigation,

Munna and Nabi were disclosed as offenders in the said crime. Munna and Nabi realised that they would be arrested by me. Hence, they lodged false complaints against me at ACB office. Thus, I am falsely involved in this crime with help of ACB Police. ACB Police, Panch and informant Firoz made collusion in this case. DGP Mr. Malhotrasaheb is not a competent authority to remove me from the service. Maharashtra Government is competent authority to remove me from the service. Sanction given by him is without perusal of the papers. Mr. Gokhale has also issued sanction order without perusal of relevant papers only on the basis of draft sanction order submitted by ACB Office.”

19. The defence of the accused is of denial. The Station diary entry (Exh.29/2) mentioned that on 7th February 2001 at 13:30 hours in the afternoon, the accused upon information left Vashi Railway Police Station along with PSI Shri. Pardesh (PW-7) and his staff to search some lost pages of the ‘Holy Guru Granth Sahib’ near Vashi Creek where some Sikh followers had gathered and returned in the evening at 20:00 hours vide entry No. 26. The accused thereby denies that he had visited the house of complainant at 06:00 p.m. on 7th February 2001. It is also case of the accused that in the absence of any such prior demand and appointment, the question of calling the complainant at Vashi Railway Police Station on 10th February 2001 at 19:50 hours does not arise.

20. The station diary entries referred to hereinabove creates doubt about the prosecution case spelt out the evidence from complainant that the appellant had visited his house on 7th February 2001 for making inquiry about Munna and there was demand of bribe amount.

21. PW-7 Mr. Pardeshi has stated that the incidents which are not occurred are noted in the station diary. His attention was drawn to station diary entry Nos. 17, 18 and 19 dated 6th February 2001. As per the station diary entry Nos. 17, 18 and 19 dated 6th February 2001 the accused No.1 was present in Vashi Railway Police Station during the period of 10:15 am to 12:20 noon. The attention of witness is drawn to station diary entry No.21 dated 7th February 2001. He admitted that as per the said entry at about 01:45 pm the witness, accused No.1 and five constables were gone to search the pages of Guru Granth Sahib as mentioned in the entry No.26 dated 7th February 2001 and there is a reference of entry No.21. The witness also admitted that they all returned on the same day at 08:00 p.m.. On 8th February 2001, the witness, accused No.1 and other staff had gone to search the aforesaid papers in three groups to the area in between Vashi to Vashi Creek and entry in that regard is taken at serial No. 17 in station diary dated 8th February 2001. This admission and documentary evidence speaks volumes about the version of complainant.

22. PW-1 has stated that on 6th February 2001, he was present in the house at 10:30 am. Five to six persons entered in his house. They represented themselves as Police attached to Vashi Railway Police Station. One of them gave his name Mr.Jadhav. He has never seen him earlier. Thus,

the version of PW-1 that the accused visited his house at 10:30 am on 6th February 2001 is doubtful. Documentary evidence Exh.29/1 shows that the accused was at Vashi Railway Police Station at 10:30 am on 6th February 2001.

23. PW-1 has deposed that the accused had demanded Rs.25,000/- while he was in the house of PW-1 for releasing his brother and he expressed inability to make the payment and agreed to pay Rs.5,000/- after two days and balance amount of Rs.20,000/- after selling his room. According to PW-1 accused had agreed for the same and directed him to attend Vashi Railway Police Station on 10th February 2001 with cash of Rs.10,000/- in the evening at 06:00 p.m. Documentary evidence (Exh.29/1 and 29/2) run counter to the evidence of the said witness which indicate that the accused could not have visited the house of complainant and the question of making any demand does not arise. The trial Court however drawn adverse inference of imagination that the house is situated about 5 to 6 km. and it was possible for the accused to visit the house of complainant. There was no reason to draw such adverse inference. The version of the complainant was not corroborated by any other witnesses and therefore, accepting his version as gospel truth was not warranted.

24. PW-1 has deposed that while he was in ACB Office he saw one female, who was attended by another officer. He learnt her name as

Ruksana Banu. In the cross-examination, he stated that it is not true to say that he was not knowing Ruksana prior to the incident as she was residing in the same locality and accused had also taken away brother of husband and demanded bribe for releasing him. It is true to say that Ruksana visited ACB office for lodging his report along with him. He had not stated that Ruksana Banu visited ACB Office for lodging her report. PW-8 has contradicted himself and PW-1 has deposed during his cross-examination that it was not revealed during investigation that complainant was already having acquaintance with Ruksana Banu. The complainant has stated in his statement that he knows Ruksana Bano because she resides in the area where he resides. PW-1 has deposed that he saw his brother Munna and Nabi Qureshi in the adjoining room. They were handcuffed. Inspector Mausamkar was present. Both of them replied that they were in custody from 7th February 2001 and were not produced in Court. Police Hawaldar More was present along with Munna and Nabi Qureshi. PW-8 stated that in the writers section they found two persons having joint handcuff. PHC More was guarding him. When PI Mausamkar asked the names of said two persons, they told their names as Munna Dilawar Khan and Nabi Ahmad Qureshi. They told that PI Jadhav and police staff brought them on 7th February 2001 and since then they were not produced before Court. Munna Dilawar Khan is the brother of informant in C.R. No. 7 of 2001 and Nabi Ahmad is the brother-in-law of informant Ruksana Bano in C.R. No. 8

of 2001. During examination-in-chief, PW-2 has deposed that witness and Smt. Mulik were taken by ACB officers in the adjoining room at police station. They noticed two persons being handcuffed. They were disclosed their names as Munaf and Nabi Qureshi. He do not remember who inquired about their names. Though both of them were handcuffed in one handcuff. PW-2 has not deposed that both of them disclosed that they were brought by the accused. PW-3 and PW-4 have not corroborated the prosecution witnesses PW-1, PW-2 and PW-8 on the point that at the time of trap on 10th February 2001. PW-3 and Nabi were handcuffed in one handcuff or they had disclosed any information when they were inquired with by any of the officers from ACB, who came along with the complainant, PW-1 and Panch witnesses. PW-4 has stated that he had not maintained diary to show that he was called at Vashi Railway Police Station. He has also not maintained any diary to show that he was watching accused at Vashi Railway Police Station. He has no personal knowledge exactly in which crime Munna and Nabi were arrested. Although PW-3 Munna has deposed that during his examination in chief, four persons came to his house on 7th February 2001. They arrested him and took at the house of Mr.Nabi. On 8th February 2001, Ruksanabhabhi came to Vashi Railway Police Station but police did not allow her to meet the accused. Police released him in the night of 10th and 11th February 2001. This evidence is not corroborated by PW-1. Station diary entry is contrary to the evidence.

25. The prosecution has failed to prove the charge that the accused had detained PW-3 Munna for extracting bribe amount of Rs.25,000/- from the complainant Firoz Ahmed Dilawar Khan by showing favour to him for not arresting his brother PW-3 Munna in theft case which was already registered in Vashi Railway Police Station vide C.R. No. 07 of 2001.

26. The defence has relied upon the notification dated 2nd June 1979 issued by Government of Maharashtra under Section 197(3) of Cr.P.C. showing that provisions of 197(2) shall apply to all police officers as defined in the Bombay Police Act, 1951. It is mandatory that prior sanction to prosecute accused is required to be before taking cognizance and issuing process if the alleged act is done in the discharge of official duties. PW-8 has stated that Sanction from the Government is obtained under Section 197 of Cr.P.C. to prosecute the accused under IPC Section. Hence, sanction was accorded by PW-6 to prosecute the accused under Section 343 of IPC. However, defence has challenged the sanction on the ground that it has been accorded mechanically without perusing papers of investigation and without application of mind. The sanction order Exh. 42 referred to name of accused No.2 Somnath Bangar, who died on 5th August 2002. Sanction was accorded on 21st November 2002 in respect of deceased/accused who had expired before according of the sanction to prosecute him. Letter at Exh. 40 and 41 pertain to ACB in which charge-sheet is filed vide Special

Case No. 42 of 2002. The prosecution has not brought on record documents to show that the sanctioning authority was asked to accord sanction in C.R. No. 7 of 2001 of ACB in which Charge-sheet is filed vide Special Case No. 34 of 2002. PW-2 has admitted that sanction was accorded by relying upon two letters (Exh.40 and 41) which were not connected with the present case. He also received draft sanction order. Notesheet is not produced by PW-6. There is nothing on record to show that papers of investigation alongwith draft sanction order and covering letter were sent to the Sanctioning Authority in the present case and that the PW-6 has perused the same before according sanction. Sanction was accorded by Government of Maharashtra. There is nothing on record to show that notesheet was submitted to the Deputy Chief Minister or Chief Minister. Sanction order therefore, suffers from infirmity.

27. Sanction accorded by PW-5 Mr. Subhashchandra Malhotra was challenged by defence on the ground that it was granted mechanically without perusing the papers of investigation and application of mind. PW-5 has stated that he received papers of investigation and draft sanction order alongwith letter Exh.32, diary No.21, diary No.26 were filed. PW-5 admitted that except few changes in the draft sanction order, he approved draft sanction order. Apparently, the sanctioning authority has not considered the station diary entry No.21 (Exh.29/2) and station diary entry

No.26 (Exh.29/3) of Vashi Railway Police Station. The said entry shows that on 7th February 2001 at about 13:30 hours the accused had upon information, left the Vashi Railway Police Station along with staff to search of lost pages of the Holy Guru Granth Sahib. They returned in the evening at 20:00 hours vide entry No.26. PW-5 has admitted that in the sanction order and draft sanction order, the place and timing 06:00 pm in respect of allegations are not mentioned though it is mentioned in the FIR. PW-5 has deposed that along with letter Exh.32 he received complaint, panchnama, statement of accused, supplementary statement of informant, statement of PW-7 and statement of panch witness. Apparently, PW-5 has not perused the FIR otherwise he would have mentioned in the sanction order (Exh.34) that 'for releasing him' and may not have mentioned in the sanction order in the matter of releasing him. Except for a few changes PW-5 has approved draft sanction order and accorded sanction. Both the documents are identical. Apparently, the sanctioning authority had adopted the draft sanction order.

28. PW-5 has deposed that Police Inspector of A Class and B Class are gazetted Officers. The Maharashtra State Government had issued G.R. dated 3rd April 2000. It was marked at Exh.37 which relates to grant of sanction under Section 19 of the Prevention of Corruption Act, 1988 to prosecute class A and B Gazetted Officers, The submission of the defence is

that the Government is the only Competent Authority to prosecute P.I. Jadhav who is the Gazetted Officer and in view of the fact that sanction order has been accorded on 25th October 2001 after G.R. was issued on 3rd April 2000. PW-5 is the competent authority to accord the sanction. PW-5 has admitted that Police Inspector are class A and Class B Gazetted Officer. The accused is the Police Inspector. Hence, the sanctioning authority was not competent to accord sanction. The trial Court has analyzed Section 19 of the P.C. Act and held that there is nothing on record to show that prejudice is caused to the accused due to grant of sanction by Director General of Police is valid. The Court also held that sanction under Section 197 of Cr.P.C. to prosecute the accused under Section 343 is not necessary. The reasons assigned by the trial Court are erroneous. The sanction order reflects non-application of mind while granting sanction under section 19 of the P.C. Act.

29. Considering the nature of infirmities in the evidence and doubtful version of witnesses, the accused is entitled for benefit of doubt and hence, conviction is required to be set aside.

ORDER

- (i) Criminal Appeal No. 458 of 2007 is allowed.
- (ii) The impugned Judgment and Order dated 24th April 2007 passed by learned Special Judge (under Prevention of Corruption Act, 1988) and

Additional Sessions Judge, Greater Bombay in Special Case No. 34 of 2002 convicting the Appellant for the offence punishable under Section 343 of Indian Penal Code, and Sections 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 is set aside and the appellant is acquitted of all the charges.

(iii) Bail bond stands cancelled.

(iv) Criminal Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)