



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 91 OF 2006**

The State of Maharashtra

..Appellant

Versus

Babu Tulshiram Shinde

Age: 48 years, Occu.: Service as  
Junior Clerk in the office of the  
Superintendent of Land Records,  
Osmanabad.

..Respondent  
(Ori. Accused)

...

Advocate for Appellant : Mr.PP. Dawalkar

Advocate for Respondents : Mr. V.B. Deshmukh

...

**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 21 NOVEMBER, 2025**

**PRONOUNCED ON : 25 NOVEMBER, 2025**

**JUDGMENT :-**

1. In this appeal at the instance of State, there is challenge to the judgment and order dated 25-10-2005 passed by the learned Special Judge, Osmanabad in Special Case (AC) No.16 of 2003 by which present respondent came to be acquitted from charges under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

**BRIEF FACTS OF PROSECUTION**

2. According to prosecution, PW2 Shaikh lodged complaint that he had approached office of the Superintendent of Land Records, Osmanabad, for supplying him measurement map and report of the alleged measurement carried out in respect of house property bearing no.City Survey nos.52 and 53. According to prosecution, for issuing the same, present respondent, who was working as a Clerk, had demanded Rs.300/- bribe, of which PW2 complainant lodged complaint exh.19 and on the basis of the same PW4 Shinde, Investigating Officer carried out investigation and chargesheeted respondent for above offence.

At trial, prosecution rested its case on the evidence of four witnesses and also relied on documentary evidence. The same was appreciated and vide above judgment and order, learned trial Court, refused to accept the case of prosecution and acquitted the accused. Hence, instant appeal.

**SUBMISSIONS****On behalf of appellant State :**

3. Sum and substance of argument advanced by learned APP is that accused was working as a Clerk in office of Superintendent of

Land Records of which there is no dispute. That, for handing over measurement map and report, there was demand of Rs.300/-. That, prompt complaint was lodged to that extent. Learned APP pointed out that followed by this, there was arrangement of independent panchas, issuing necessary instructions to complainant and panchas and then making shadow panch accompany complainant to the office of accused. There, when complainant questioned about the documents, it is alleged that accused put up demand and also accepted the amount. Therefore, according to learned APP, the essential requirements for bringing home the charge were there in the form of evidence of PW1 complainant and PW2 shadow pancha. He pointed out that, before launching prosecution, investigating machinery had obtained sanction from PW1 Sable, Sanctioning Authority, who after due application of mind, accorded sanction. However, said evidence is also not correctly appreciated by the learned trial Court. Therefore, on account of improper appreciation of evidence and non-consideration of settled legal position, acquittal has resulted. That, State has a good case on merits and hence, learned APP urges this Court to re-appreciate and re-analyze the evidence and allow the appeal by setting aside the impugned judgment.

**On behalf of Respondent Accused :**

4. Learned counsel for respondent pointed out that prosecution has miserably failed to bring home the charges. That, it has come on record that, respondent had no authority to issue alleged documents and the said documents were not in his custody. Therefore, story of prosecution about demand of bribe itself has no foundation. According to him, complaint is out of annoyance because of dispute over encroachment of area. He further submitted that specific and prompt defence of respondent is that, there was attempt of forcibly thrusting the amount. That, respondent accused had thrown away the amount and taken such stand immediately when his statement was recorded. He pointed out that, PW shadow pancha, who is an independent witness, has accepted about accused taking such stand. He further submitted that, here, Sanctioning Authority has used draft model supplied by the investigating machinery and as such there is non-application of independent mind to the available material. For above reasons, learned counsel for the respondent favours the impugned judgment and urges not to disturb the same and ultimately, he prays to dismiss the appeal for want of merits.

**ANALYSIS**

5. Re-appreciated and reanalyzed the evidence adduced before the trial Court.

Here **PW1** Narayan Dharma Sabale is the Sanctioning Authority, **PW2** Shaikh Ahamad Pasha is complainant, **PW3** Chandrakant Murlidharrao Baraskar is shadow pancha and **PW4** Arvind Sambhaji Shinde is the investigating officer.

Defence has adduced evidence of **DW1** Nathu Gomaji Uykey, the then Superintendent of Land Records, Osmanabad.

6. **PW2** Shaikh, complainant, who is examined at exh.18, has reiterated the contents of the complaint that on account of dispute with the neighbour namely Jagdhane and three others, proceedings were instituted before the TILR. It is his case that measurement was carried out and therefore, he had applied for issuance of alleged measurement map as well as report of measurement. He stated that for issuing said documents, accused demanded Rs.300/- and therefore, he lodged report. He has narrated all the events that took place wherein **PW4** Investigating Officer, after summoning the panchas, introduced them to the complainant and explained them procedure of trap.

In paragraph 7 of examination-in-chief, he has stated that when he and independent pancha entered Office of accused, at that time, the accused was busy in typing work. Complainant asked accused about the copies required to which he was in return asked whether he had brought money and thereafter, answering in affirmative and on demand being raised, he handed over money, which according to this witness was accepted by the accused. He claimed that right thereafter, he came out of office and relayed necessary signal followed by arrival of raiding party and apprehension of accused.

In paragraph 11 of **cross-examination**, he has admitted that he was personally present at the time of measurement carried out on 16-07-2002 and that, he had given statement before the Surveyor also. He admitted that on 09-10-2002, when he visited office of Superintendent of Land Records, he did not apply for issuance of copies. He also admitted about receipt of notice from Municipal Council regarding encroachment and its removal. He also admitted that he was told in office of the Superintendent of Land Records that record and proceedings had been sent back to the TILR and he should accordingly apply there. Further, he was also supplied with xerox copies of intimation sent to him and his father. He denied

perusing the documents during pendency of appeal. He also admitted that job of accused is to place file pertaining to the appeal before the Superintendent of Land Records and he also admitted that after dismissal of appeal, record is sent back to the TILR office.

7. **PW2** shadow pancha also narrated in his evidence regarding he being introduced the complainant, going through complaint, procedure of trap being explained and accompanying accused. In paragraph 4, he has narrated events that took place while he was in the company of PW2 in the office of Superintendent of Land Records. He narrated that after approaching accused, there was exchange of greetings and when complainant asked about whether certified copies as demanded by him are prepared, the accused allegedly told that he had kept certified copies ready and further asked whether he brought Rs.300/- as told to him in the afternoon. That, when complainant asked him whether he should pay the amount, accused asked him to pay and on handing over Rs.300/-, he accepted it and kept it in the left side pocket of shirt. He further stated that when the complainant went out of the office and while he was standing near table of accused, seeing him, accused at once removed amount from the left side pocket of his shirt by right hand and threw it under

the table and tried to run and was chased by raiding party and catch-hold of accused and this witness narrating about such events to the Investigating Officer. This witness, in the cross-examination itself, had admitted that accused, at that very moment, told that he did not demand amount from complainant and that complainant kept the amount in the left pocket of his shirt and he further threw the amount under the table.

While under **cross-examination**, though in paragraph no.12, he has denied suggestion that complainant thrust the amount in the pocket of accused, he has further admitted that when accused was going out of the office, he asked him whether he was going and he has allegedly answered that he was going for urinating. He admitted that immediately after apprehension, accused said to the Investigating Officer that he did not demand amount by way of illegal gratification. He also admitted that accused said to Investigating Officer that complainant forcibly inserted amount in the left side pocket of his shirt. He also admitted that currency notes were lying under the table.

8. **PW4** Shinde, Investigating Officer, in cross-examination, admitted about accused taken defence of forcibly inserting the

tainted currency in his shirt pocket.

Therefore, as submitted by the learned counsel for the accused, it does emerge that, here, firstly alleged documents sought by the complainant were not at all in the file of the office in which accused was working and therefore, there is no question of issuing the same by demanding money for the same.

9. Very complainant PW2, Sanctioning Authority PW1 as well as Investigating Officer PW4 categorically admitted that such documents were not in the file of office of accused so as to issue the same on demand. On the contrary, complainant, in his cross-examination, has admitted that he was upset on account of complaints filed by the neighbours and about receipt of notice from Municipal Council for removal of encroachment and he lodging complaint against his neighbours.

10. Further very specific defence of accused is that, he did not put up any demand and rather it is a case of thrusting. Though complainant refrained from stating about accused throwing currency under the table, as he had already left the table of accused to relay alleged necessary signal, PW3 shadow pancha, who was present there, has admitted that, after complainant left, accused threw the

currency notes under the table. Therefore, defence of thrusting has been probabalized. Moreover, witness has stated that appeal is already decided and all papers therein were despatched to Taluka Office and DW1 has been examined in such context.

Therefore, in the light of above evidence, defence has succeeded in probabalizing his defence, which is taken very promptly of which neither PW3 shadow pancha nor PW4 Investigating Officer disagreeing. Therefore, apparently there is merit in the submission that there is case of thrusting.

As regards to sanction is concerned, PW1 Sanctioning Authority, in examination-in-chief as well as in cross-examination, has admitted that he had used draft sanction for according sanction. There are many judicial precedents which discourage use of draft sanction and rather expects Sanctioning Authority to independently apply its mind to entire material placed before it.

11. Perused the impugned judgment and it appears that the learned trial Court has correctly appreciated the available evidence and has applied settled law while reaching to the findings, which are based on sound reasons. Therefore, no case being made out on merits, appeal deserves to be dismissed. Accordingly, following order is passed :

**ORDER**

Criminal Appeal stands dismissed.

**( ABHAY S. WAGHWASE )**  
**JUDGE**

SPT