



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

CRIMINAL APPEAL NO.512 OF 2005

The State of Maharashtra,
Through
Anti Corruption Department,
Dhule, District : Dhule

.... APPELLANT
(Original Complainant)

VERSUS

Prakash Somnath Nerkar,
Age : 41 years, Occu.: Jr. Engineer,
Panchyat Samittee Office, Amalner,
District : Jalgaon

.... RESPONDENT
(Original Accused)

....
Mr. D. J. Patil, A.P.P. for the Appellant – State
Mr. Tapan K. Sant, Advocate for the Respondent
....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 30/01/2025

PRONOUNCED ON : 05/02/2025.

JUDGMENT :

1. The appellant-State being aggrieved by the judgment and order dated 10/02/2005 passed in Special Case No.1 of 2001 by the learned Judge, Special Court, Amalner, District Jalgaon (hereinafter referred to as 'the learned trial court'), whereby the respondent / accused has been acquitted from the offence punishable under Section 7, 13(1)(d) r.w. 13(2) of Prevention of

Corruption Act, 1988 (for short the P.C. Act), has preferred this appeal.

2. According to the original complainant – Ankush, who was serving as a Gramsevak in Group Grampanchyat of village Nandgaon, Taluka Amalner, work for construction of drainage and school rooms was undertaken. The respondent / accused was serving as a Junior Engineer with Panchyat Samitee of Amalner at the relevant time and he was supposed to supervise the said construction work. On 15/05/2000 the complainant- Ankush (PW-1) met the respondent / accused in Panchyat Samitee Office and requested him to take notes in the measurement book and to sign on the valuation form. However, the respondent / accused demanded Rs.3,000/- from him for the said work. The complainant – Ankush was not able to pay the said amount of bribe, but the respondent / accused told him to give Rs.1,500/- on 22/05/2000 and remaining amount of Rs.1,500/- on receiving his monthly salary. The complainant - Ankush lodged report with Anti Corruption Bureau, Jalgaon and accordingly, a trap was laid and the respondent / accused was caught with bribe amount in the office on 23/05/2000. The learned trial court after conducting the trial, acquitted the respondent / accused. Hence, this appeal.

3. The learned APP submits that the respondent / accused was a Junior Enginner in Panchyat Samitee, Amalner and he was supervising the work for which he was supposed to give valuation certificate. He pointed out that all the witnesses have supported the prosecution case. Moreover, work was also pending with the respondent / accused and in fact the trap was successful but the respondent / accused was acquitted merely on the ground that sanction was not with application of mind.

4. On the contrary, the learned counsel for the respondent / accused supported the impugned judgment and submitted that there is no corroboration to the evidence of complainant – Ankush (PW-1) in respect of the alleged demand of bribe amount by the respondent / accused. He pointed out that no demand verification was made by the investigating machinery before sending the complainant – Ankush and panch witness to the office of the respondent / accused. He pointed out that the entire evidence of prosecution is not convincing and therefore, the learned trial court has rightly acquitted the respondent / accused. In support of his submission, he relied on various judgments as follows :

A) *Neerj Dutta vs. State of (Govt. of N.C.T. of Delhi), (2023) 4 SCC 731;*

- B) Rajesh Gupta vs. State through Central Bureau of Investigation, MANU/SC/0527/2022;**
- C) Achyutrao Dattatraya vs. The State of Maharashtra, 1992 SCC OnLine Bom 379;**
- D) Punjabrao vs. State of Maharashtra, (2002)10 SCC 371;**
- E) Olga Kozireva vs. Department of Customs, (2002) 10 SCC 373;**
- F) State of Orissa Through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jew, (2004) 8 SCC 40;**
- G) State of Rajasthan vs. Mohan Lal and others, (2009) 12 SCC 308;**
- H) State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede, (2009) 15 SCC 200;**
- I) State of Jharkhand and others vs. Jitendra Kumar Srivastava and another, (2013) 12 SCC 210;**
- J) Tryambak Lilaji Binnar vs. State of Maharashtra, 2002(3), Mh.L.J. 293;**
- K) Avinash Sitaram Garware vs. State of Maharashtra, 2008(1)Mh.L.J. (Cri.), 315 and**
- L) State of Maharashtra vs. Nanasaheb Bhikaji Tambe and others, 1992(2) Mh.L.J. 1539.**

5. Heard rival submissions. Perused the impugned judgment and documents on record. Also considered the judgments relied by the learned counsel for the respondent / accused.

6. On going through the impugned judgment, it is clearly evident that Mr. Joshi (PW-6), who had accorded the sanction Exhibit-24 on 13/02/2001, has admitted before the court that it was not the job of respondent / accused to issue valuation certificate and completion certificate of work done. Further, from the evidence of Yashwant Salunkhe (PW-5) it has been brought on record that the Deputy Engineer was authorized to issue valuation certificate and completion certificate and not the respondent / accused. As such, both these witnesses are saying that the respondent / accused was not entrusted with the work for which he allegedly made demand of bribe from complainant- Ankush (PW-1). Further, the evidence of Ramchandra Joshi (PW-6) definitely indicates that he did not ascertain the exact nature of work required to be performed by the respondent / accused and merely issued sanction for prosecution. Thus, the sanction order Exhibit-24 appears as an empty formality.

7. The evidence of complainant – Ankush (PW-1) is also not convincing as it is totally silent on the part of demand of bribe by the respondent / accused. There is no supporting evidence in respect of such demand by other witnesses or employees working in the Panchyat Samitee Office. The evidence of Prabhakar

Chaudhari (PW-7), Deputy Superintendent of Police, is also silent on the point of confirmation of demand made by the respondent / accused as there was no pre-trap verification of demand, which is definitely necessary to constitute the offence under Section 13(1)(d) r.w. 13(2) of Prevention of Corruption Act, 1988. Further, the investigating officer i.e. Prabhakar Chaudhari (PW-7) also failed to make any attempt to ascertain the demand of bribe money by making inquiry with the employees working in the office of the respondent / accused. There is absolutely no corroboration on the point of earlier demand of bribe money by the respondent / accused. The evidence of Kalyan Bharti (PW-2) i.e. a shadow panch, is also contradictory to the evidence of PW-1 on the point of demand of bribe money on 23/05/2000 i.e. on the day of trap.

8. It is extremely important to note that nothing has come on record that the respondent / accused was entrusted with the work for which the bribe amount was asked. Thus, the possibility cannot be ruled out that the complainant- Ankush (PW-1) might have tried to frame the respondent / accused by making such wild allegation. Thus, it appears that the learned trial court has acquitted the respondent / accused on the grounds such as invalid sanction, no proof of demand of bribe by the respondent / accused

and that no work as alleged was entrusted to the respondent / accused.

9. Admittedly, the Hon'ble Apex Court in case of **Neeraj Dutta** (*supra*), has observed that demand for illegal gratification and its acceptance must be proved beyond all reasonable doubts and that mere acceptance or receipt of illegal gratification without proof of demand, is not sufficient to constitute the offence under Section 7 or under Section 13(1)(d) of P. C. Act. Further in the case of **Rajesh Gupta** (*supra*) it is also reiterated that mere recovery of currency notes from the respondent / accused is not sufficient to constitute offence under Section 7 of the P. C. Act unless it is proved beyond reasonable doubt that accused voluntarily accepted the money, knowing it to be a bribe. Further, the learned trial court has also relied on the judgment of this court in the case of **Tryambak Binnar** (*supra*), wherein it is observed that it is necessary to bear in mind the importance of evidence of prior demand which if trustworthy makes the trap legitimate to eradicate corruption otherwise it would be an illegitimate trap. Therefore, considering all these observations as aforesaid and the evidence on record alongwith the impugned judgment it is clearly evident that the prosecution has not established the guilt of the respondent /

accused beyond all reasonable doubts, therefore, acquittal of the respondent / accused recorded by the learned trial court is quite reasonable and based on the latches in the evidence. As such, no interference is required in the impugned judgment and the appeal accordingly stands dismissed.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-