2025:BHC-AUG:28918

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

CRIMINAL APPEAL NO.12 OF 2006

Aganda s/o Kondiram Tribhuvan,
Age: 52 years, Occu: Service,
R/o Nagnepura, Near Peer Bazar,
Osmanpura, Aurangabad ….APPELLANT

VERSUS

The State of Maharashtra ….RESPONDENT

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Mr Nilesh S. Ghanekar, Advocate for Appellant
Mr G. O. Wattamwar, APP for Respondent/State

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 04 OCTOBER 2025

PRONOUNCED ON : 14 OCTOBER 2025

JUDGMENT :-

1. By this appeal, the appellant (accused) has challenged the judgment and order of conviction and sentence dated 15/12/2005, passed by learned Special Judge, Aurangabad in Special Case No.05/2004 convicting him for the offence punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for shot ‘the said Act’).

2. The prosecution story in short is as under :-

The appellant was working as Talathi at village Georai, Taluka Aurangabad. The informant, namely, Sampat Vitthalrao Bangar had given complaint in the Anti Corruption Bureau (ACB) office at Aurangabad on 04/12/2003 that on 05/12/2002, he had purchased plot No.86/P out of Gut No.3/P, situated at Georai, Taluka and Dist. Aurangabad from one Smt. Sapna Sharma of Nakshatrawadi, Aurangabad for Rs.10,250/-. Later on, since he was in need of money, he was intending to sell the said plot property. For the said purpose he wanted to obtain 7x12 extract of the said plot to be mutated in his name. Accordingly, he alongwith his friend Harishchandra Magre met the appellant/accused on 20/11/2003. The complainant requested him to effect mutation of the said plot in his name and also to issue 7x12 extract of the said plot in his name. The accused/appellant informed the complainant to submit photocopy of sale deed and Form No.4 signed by Smt. Sapna Sharma. It is alleged that accused had demanded Rs.1,500/- from the complainant. The complainant requested him to reduce the amount. However, the accused had stated that, for getting sanction mutation entry and for getting photocopy of the 7x12 extract, the complainant ought to pay Rs.1,500/-, otherwise he will not get the sanctioned mutation entry and copy of 7x12 extract.

The complainant, thereafter informed the accused that, for the time being, he is not having Rs.1,500/- and he will pay the same after doing the needful by accused. Upon that, the accused alleged to have asked the complainant to pay some amount whatever he possessed at that time. Since the complainant was having only Rs.500/-, unwillingly he paid Rs.500/- to the accused. On 03/12/2003, in the evening at 8.00 p.m., the complainant met accused at his house. At that time the accused alleged to have enquired, as to whether the complainant had brought remaining amount of Rs.1000/-. At that time, complainant replied that he could not collect the amount. Accused informed the complainant that still he has not prepared 7x12 extract by carrying mutation entry and asked him to come on 05/12/2003 upto 11.00 a.m. at his house or office alongwith remaining amount of Rs.1000/-. The complainant was not willing to pay the amount of bribe to the accused, and therefore, he approached the ACB office, Aurangabad. The complaint of the complainant was recorded as per his say. Thereafter, two panchas were called and trap was arranged by officer of the ACB, Aurangabad and the instructions as to how anthracene powder works were given to them. Thereafter, 10 currency notes of Rs.100/- were taken from the complainant and anthracene powder was applied to those currency notes. Those notes were kept in the left side chest pocket of complainant. During first visit of complainant and panch witnesses on 05/12/2003 at the house of accused, they could not meet the accused. On the same day, at about 11:45 a.m., they met the accused. Other members from the trapping party were present secretly around the office of accused and were waiting for signal given by complainant in token of acceptance of bribe amount by accused. In the afternoon, at 12:20 p.m., the complainant gave signal to trapping party in token of acceptance of bribe amount by accused from him. Immediately, members of trapping party rushed there. Panch No.1, who had accompanied with the complainant at that time had shown the accused as a person who had accepted the bribe amount from complainant. Thereafter, hands of accused and complainant were checked in the light of ultra violate lamp by the officers of the ACB. At that time, fingers of both hands of accused found shining due to anthracene powder. Thereafter, panch No.2 removed bundle of cash amount from the left side pocket of the shirt of accused. The numbers of those currency notes of Rs.100 were tallied with numbers of currency notes which were written in pre-trap panchnama. Those notes were also found shining in the light of ulta violate lamp. Accordingly, crime was registered against the accused at Osmanpura Police Station, Aurangabad.

3. After completion of investigation, charge-sheet is filed on 29/03/2004 and accused appeared and pleaded not guilty. Therefore, the charge vide Exhibit 4 were came to be framed against him. In support of the case, the prosecution has examined four witnesses. Witness No.1 i.e. P.W.1 Shri. Kishan Javale, R.D.C. was examined at Exhibit 11, who had accorded sanction by prosecution of accused. P.W.2 Sampat Bangar, original complainant was examined at Exhibit 14. P.W.3 Kishor Badgujar, who was panch witness and was accompanied with complainant while making payment of bribe was examined at exhibit 27. P.W.4 Anil Gaikwad, Police Inspector, ACB, Aurangabad, who had investigated the crime and lodged the complaint on behalf of the prosecution was also examined.

4. After considering the evidence adduced during the trial and hearing the learned Advocates for both the parties, learned Special Judge vide the impugned judgment and order dated 15/12/2005 held the accused guilty and convicted him for the offence punishable under Section 7 of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.1000/-. In default of payment of fine, further simple imprisonment for one month was awarded. The accused is also convicted for the offence punishable under Section 13 of the Prevention of Corruption

Act and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.1000/-. In default of fine, further simple imprisonment for one month was awarded.

5. Being aggrieved by the aforesaid judgment and order dated 15/12/2005, the appellant has approached this Court by filing present appeal.

6. Vide order dated 16/01/2006, this Court suspended the sentence awarded by the Sessions Court, till the final hearing and the appeal was admitted.

7. Heard learned Advocate Mr Ghanekar for the appellant and the learned APP Mr Wattamwar for respondent/State. I have been taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

8. Learned Advocate for the appellant submits that the appellant has been falsely implicated in the crime. He states that the learned Sessions Court has not considered the evidence under proper perspective and also not considered that evidence by prosecution was from interested witnesses. He further submits that, for a conviction, it is essential for the prosecution to prove that there is demand and

acceptance of the bribe amount towards illegal gratification by the public servant, and as such, having failed to do so, the appellant cannot be convicted. According to him, the appellant who was Talathi at that time, was entrusted with the work of recoveries of non-agricultural assessment, savings in National Bonds and other recoveries to the Government. He further states that complainant had visited office of accused first time and alleged that accused demanded copy of sale deed and Form No.4, when documentary evidence shows that, prior to incident, the appellant was in possession of sale deed and Form No.4 and he had taken entry in the mutation register, which was sanctioned by Revenue Officer on 24/10/2003. Thus, he submits that the complaint and the prosecution story in respect of demand is false. He then submits that, when the trap was laid for the accused/appellant, two persons, namely, Dayaram Ade and Sitaram Ade were already sitting in the office of accused at the time of incident. Both of them were present till catching of the accused. The said persons were sitting in front of the table of the accused, however, they had not examined by the prosecution. He then states that the complainant also stated in his cross-examination that the appellant/accused was canvassing both the persons to invest the amount in small savings and at that time, the accused/appellant also had asked him to invest the amount in the small savings. In that context, when the appellant asked the complainant as to whether is it true that he had been asked to invest in the National saving scheme, the complainant replied ‘Yes’. Thus, at the relevant time, discussion on the subject of investment in small saving was going on. Learned Advocate for the appellant pointed out another important aspect that the accused himself asked the complainant that his work is already done since long and why he did not come. The complainant replied that he could not come due to work. P.W.3 Kishor Badgujar, in his cross deposed that he had informed the Investigating Officer Shri. Gaikwad that prior to beginning of discussion of money, two persons were already sitting with the accused person. However, the Investigating Officer did not make any enquiry with him about the other discussion prior to opening the subject of money. The Investigating Officer has also admitted that the appellant/accused had asked the complainant intermittently as to whether whatever is saying is correct or not. The complainant and Panch No.1 have stated that, on some occasions, they replied ‘Yes’ and on some occasions, replied ‘No’. According to learned Advocate for the appellant, the prosecution is required to prove beyond a reasonable doubt that demand was towards illegal gratification and if the said burden is discharged by the prosecution, then presumption under Section 20 of the Prevention of

Corruption Act would be available. He submits that, in this case, since the prosecution has failed to prove that the appellant had demanded the amount towards illegal gratification, presumption under Section 20 is not available to the prosecution.

9. Per contra, learned APP submits that the prosecution has proved its case beyond reasonable doubt. He further submits that evidence of prosecution witnesses sufficiently shows involvement of the accused and learned Sessions Judge has rightly appreciated the evidence. He further submits that the appellant having committed the crime has been rightly came to be convicted by the learned Sessions Court. In support of his submissions, he relies on the judgment delivered by the Hon’ble Apex Court in the matter **Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi), AIR 2023 SC (CRI) 233** and submits that a public servant can be convicted under the Prevention of Corruption Act, 1988, even in the absence of direct evidence, if strong circumstantial evidence is available**.** He, therefore, vehemently argued that, no interference in the verdict delivered by the learned Sessions Court is warranted.

10. The Constitution Bench of the Hon’ble Apex Court in the matter of **Neeraj Dutta vs. State (supra)** held that, for recording

conviction under Sections 7 and 13 (1)(d)(i) and (ii) of the said Act, the prosecution has to prove the demand and acceptance of illegal gratification, either by direct evidence which can be in the nature of oral or documentary evidence or by circumstantial evidence, in the absence of direct or oral evidence. It is further held that under Section 7 of the said Act, in order to bring home the offence, there must be an offer, which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made, which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) (i) and (ii) of the said Act.

11. In the present case, the allegation is that, it was the accused, who was serving as public servant and discharging his duties as public servant, who demanded the gratification amount and accepted the same.

12. Section 7 of the said Act, deals with offence relating to public servant being bribed. The said Section is reproduced, as under:-

7. Offence relating to public servant being bribed. -

Any public servant who, -

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1. - For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration. - A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2. - For the purpose of this section,-

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party."

13. Section 13 of the said Act, deals with criminal misconduct by a public servant. The said Section is reproduced as under:-

"13. Criminal misconduct by a public servant. -

[(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b)if he intentionally enriches himself illicitly during the period of his office.

Explanation 1. - A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2. - The expression "known sources of income" means income received from any lawful sources.]

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”

14. In view of Section 13(1)(d)(i), if a public servant by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any valuable thing or pecuniary advantage without any public interest; or (e) and if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession of amount for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, he is said to have committed an offence under Section 13(1)(d) read with 13(2) of the said Act.

15. Having gone through the submissions of the learned Advocates for both the parties, it is crystal clear that, the appellant at

the relevant time was sitting with two persons and the said persons have not been examined by the prosecution. Talks as regards investing money in bonds was going on, and in the meanwhile, panch witness entered the room. The appellant had also informed the said two persons that he had also asked the complainant to invest in said savings bonds. PW-1 has also admitted in his cross that Talathis have been given target for recovering Non-agricultural Assessment, saving in National Bonds etc.

16. It is also to be stated here that the Complainant (PW2) came to be declared hostile and prosecution was permitted to put leading questions to this witness. However, learned Advocate for the appellant at the trial court had objected stating that this would give advantage to the prosecution for suggesting the story of trap. Therefore, the further examination-in-chief of the complainant PW-2 was after putting him leading questions. Prior to declaring him hostile, the complainant PW-2 stated that, in the examination-in-chief (held on 02/03/2005), since he was in need of 7/12 extract, on 04/12/2003, he met accused in his office and accused told him to bring Rs.1000/- on next day and accused also promised him to issue 7/12 extract. Therefore, on same date i.e. 04/12/2003, he went to the ACB office. Thereafter, his further examination-in-chief by way of putting leading

questions came to be held on 12/04/2005. In this examination-in-chief, complainant PW-2 states that accused had demanded Rs.1500/- and he had met him on 20/11/2003 for the first time and had paid him Rs. 500/- on the said date. Thereafter, he met accused on 03/12/2003 at his residence and on that day, he informed him to come his residence or office on 05/12/2003 with Rs.1000/-. However, in the cross-examination, the complainant admits that he had met the accused prior to lodging of complaint with ACB office. On that day, he has given Form No. 4 and copy of sale deed to accused. Accused asked him to wait for 15 days for objections, if any, and after the expiry of said 15 days period, he will obtain the signature of Circle Officer and will issue the copy of mutation. On that day, complainant had fairly admitted, that he had not paid any amount to accused. Thereafter, the complainant PW-2 further stated that he had paid Rs.1000/- to the accused on the day when 7/12 extract is issued to him. Thus, scrutiny of this evidence discloses that the complainant has not brought complete details of his total meetings with accused and he is suppressing about one meeting with the accused which is held in the month of October 2003. The complainant PW-2 states in his cross examination that two persons were already sitting in the office of accused. The accused informed those persons that he had asked him to invest Rs. 1000/- in small saving scheme. Thereafter, the accused asked complainant as to whether he had brought amount of Rs.1000/-. After giving amount of Rs.1000/-, the accused counted same carefully in front of those two persons already sitting in his office. It is also stated by the complainant PW-2 that, prior to giving of Rs.1000/- the accused had already prepared 7/12 extract in his name. He did not hear that accused had informed him that in the month of October, he had already taken the signature of Circle Officer. It is also specifically admitted by the complainant that accused had made inquiry with him as to why he has come so late in visiting his office.

17. The complainant was declared hostile and after the period of one month, his further examination-in-chief came to be recorded. In this context, there is also admission on behalf of the complainant that he was asked by the ACB Officer to say “yes” to every question put to him.

18. It has also come on the record that, prior to giving of Rs. 1000/-, the accused had already prepared 7/12 extract in the name of complainant. The said procedure was complied by the accused in the month of October 2003 and accused informed the witness that he has taken the signature of the Circle Officer. At the relevant time, the

accused had also asked the complainant as to why he came so late for collecting his 7x12 extract when his work is already done. According to the prosecution, the informant had met accused on 03/12/2003 and accused asked him to come on 05/12/2003. He had paid Rs.500/- on 03/12/2003 and asked him to come on 05/12/2003 with Rs. 1000/-. Preparing of 7x12 extract took place much earlier to the date of their alleged meeting and therefore, the accused would have asked him to come on 05/12/2003. This fact assumes significance.

19. In the light of the judgment of the Constitution Bench of the Hon'ble Apex Court in **Neeraj Dutta (supra),** for recording conviction, the prosecution has to prove demand and acceptance of illegal gratification, either by direct evidence, which can be in the nature of oral or documentary, or by circumstantial in the absence of direct or oral evidence. A prior demand by public servant, when accepted by bribe giver and in turn there is a payment made which is received by the public servant would be an offence of obtainment under Section 13(1)(d)(i) and (ii) of the said Act.

20. It is now well settled that offences under the said Act relating to public servants taking bribe require a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe

by a public servant and its acceptance by him, is sine quo non for establishing offences under the said Act.

21. Before averting to the evidence, it would be appropriate to refer well settled legal position regarding proof of demand by public servant and its acceptance.

22. The Hon’ble Apex Court in the case of **K. Shanthamma vs. The State of Telangana, (2022) 4 SCC 574,** by referring the judgment in the case of **P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr, (2015)10 SCC 152,** held that the proof of demand of bribe by a public servant and its acceptance by him, is sine quo non for establishing the offence under Section 7 of the said Act. The failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offences under Sections 7 and 13 of the said Act would not entail his conviction thereunder. The Hon’ble Apex Court has reproduced paragraph No.23 of its decision in the case of P. Satyanarayana Murthy (supra), which reads thus:-

> *“The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably th1e charge*

therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction."

23. After appreciating the evidence on record, there is no corroboration as to the earlier demand by the accused. As far as the demand, on the day of the trap, and the acceptance of bribe amount is concerned, the evidence of prosecution witnesses is not consistent, cogent and reliable one.

24. In the present case, as noted above, the evidence, as to the demand and acceptance, is not satisfactory and convincing and since proof of demand is sine qua non for convicting accused, in such cases, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt.

25. It is also well settled that, while deciding offences under the said Act, complainant's evidence is to be scrutinized meticulously. There could be no doubt that evidence of complainant should be corroborated in material particulars. The complainant cannot placed

on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

26. As far as applicability of presumption is concerned, the Hon’ble Apex Court in the case of **Neeraj Dutta vs. State (**supra) held that presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a Court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

27. In that view of the matter, the prosecution has clearly failed in establishing the case against the accused, and therefore, the appellant cannot be held guilty for the aforesaid crime. Hence, the following order is passed :-

ORDER

(I) The Criminal Appeal is allowed.

(II) The judgment and order of conviction and sentence dated 15/12/2005, passed by learned Special Judge, Aurangabad in Special Case No.05/2004 is hereby quashed and set aside.

(III) The appellant/accused is acquitted of the offence for which he was charged.

[SUSHIL M. GHODESWAR, J.]

sjk