



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

CRIMINAL APPEAL NO. 2 OF 2013

The State of Maharashtra,
Through Dy.S.P. Anti Corruption Bureau,
Jalgaon.

....Appellant

Versus

1. Pandurang Vishram Arke
Age : 50 yrs.
2. Shantaram Lotan Patil
Age : 30 yrs.
3. Pradeep Jagannath Patil
(Deceased)
All R/o. Parola, Tq.Parola,
Dist.Jalgaon.

.....Respondents
(Ori. Accused)

.....

Mr.N.D.Batule, APP for Appellant.
Mr.Rameshwar M.Bhagwat h/f. Mr.Ganesh P. Shinde, Advocate for
Respondent no.1.
Mr. Nasim R. Shaikh, Advocate for Respondent no.2.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 AUGUST, 2025

PRONOUNCED ON : 11 SEPTEMBER, 2025

JUDGMENT :-

1. Instant appeal by State seeks to challenge judgment and order of acquittal passed by learned Additional Sessions Judge, Amalner in Special Case No.1 of 2009 by which respondents stood acquitted from charge under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

BRIEF FACTS OF THE CASE

2. In nutshell, prosecution was launched against accused respondents for above charges on allegations that, accused nos.1 and 2 approached complainant PW1 Prakash on 03-10-2006 and informed him about receipt of complaint against him for carrying on the profession of Artificial Inseminator and veterinary Doctor respectively and that due to wrong medication, even live stock have died and therefore, complaint is to be registered and to desist from lodging report, it is the case of prosecution that there was demand of Rs.2,000/-, but on negotiations, it was reduced to Rs.1,000/- and it was further reduced to Rs.800/-. On receipt of report about demand of bribe, ACB authorities planned raid by constituting raiding party. PW1 Complainant and PW2 shadow pancha were given necessary instructions and the duo approached accused persons, they demanded bribe and further directed complainant to pay the same to accused no.3 on their behalf. Accused no.3 was apprehended with tainted currency after relay of predetermined signal. PW3 Investigating Officer lodged report, carried out investigation, completed the same, sought sanction to prosecute and after obtaining the same, chargesheeted both respondents for above charges.

3. Trial was conducted during which prosecution adduced evidence of PW1 Prakash, complainant, PW2 Vinod, shadow pancha, PW3 Dattatraya Ghuge, Investigating Officer.

Defence of accused was of false implication and about no demand of bribe raised and neither acceptance of bribe.

On appreciation of available evidence, learned Additional Sessions Judge, Amalner, reached to a finding that prosecution failed to bring home the charges and thereby acquitted the accused. Hence, the instant appeal.

SUBMISSIONS

On behalf of appellant State :

4. Learned APP apprised this Court about the factual background of the case as narrated above and would submit that both accused nos.1 and 2 had approached complainant and had demanded bribe for not registering complaint against him. There were negotiations on bribe amount and finally accused persons had agreed to accept Rs.1,000/-, which was further reduced to Rs.800/-. Learned APP pointed out that, prompt report to that extent was lodged by PW1 Prakash. Thereafter, ACB authorities summoned independent Panchas and issued necessary instructions and gave necessary

demonstration. That, pre-trap panchanama was drawn.

5. Learned APP further pointed out that PW1 complainant and PW2 shadow pancha had been to the office of accused. Both witnesses have deposed about approaching accused in their office and they taking complainant and pancha outside the office for handing over the bribe. Learned APP pointed out that accused no.2 was directed by accused no.1 to accept whatever amount is given. That, accused no.2 had directed complainant to pay amount to accused no.3, who was a Pan Stall owner and was acting at the instance of both accused nos.1 and 2. Learned APP pointed out that, as per directions of accused no.2, tainted currency was given to accused no.3 and he accepted the same. That, accused no.3 was apprehended raid handed. Thus, according to learned APP, trap was successful. He pointed out that, both aspects of demand and acceptance were existing in the evidence of PW1 complainant as well as PW2 shadow pancha. That, their evidence to that extent had gone unchallenged in the cross-examination. However, according to him, in spite of such evidence, learned trial Court has erred in holding that demand itself was not proved. Learned APP pointed out that, on instructions of accused no.2, PW1 complainant had paid tainted

currency to accused no.3, who accepted on behalf of accused persons. Therefore, charges were cogently proved. Learned APP took this Court through the impugned judgment and submits that there is erroneous appreciation of evidence. He submitted that PW1 complainant and PW2 shadow pancha were consistent, however, such crucial aspect has not been taken into account and hence, learned APP questions the maintainability and sustainability of the judgment and urges to allow the appeal by overturning the impugned judgment.

On behalf of respondent nos.1 and 2 :

6. Learned counsel for respondent no.1 and learned counsel for respondent no.2 pointed out that prosecution has miserably failed to prove their case. That, demand itself has not been cogently proved and it is evident from the testimony of very complainant as well as shadow pancha. It is pointed out that even there is no acceptance of any amount by either of the accused nos.1 and 2 as acceptance of amount is by accused no.3, who is already dead. It is pointed out that, there is nothing to suggest that accused no.3 was acting at the instance of accused no.1 and 2. Therefore, for all above reasons, it is submitted that prosecution has miserably failed and as such there is no illegality in the impugned judgment of acquittal.

EVIDENCE IN TRIAL COURT

7. In support of its case, prosecution has adduced evidence of in all three witnesses. Sum and substance of their evidence is as under :

PW1 Prakash Tapiram Patil is complainant. At exh.41, he deposed as under :

“I was serving as a Artificial inseminator and First Aid service in self employment scheme in Milk Union, Jalgaon from 2001 to 2008. I know accused No. 1 and 2. Accused No.1 Pandurang Arke was working as Animal Husbandry Dairy Development and Fisheries Officer at Tal. Parola and accused No. 2 Shantaram Lotan Patil was serving as a Animal Husbandry supervisor, PS. Parola

The accused had come on that day to make inquiry on account of giving complaint by gramin Patrakar against me. Accused told me that you are doing animal husbandry business without having valid and proper education. I told to accused that I have got completed diploma certificate and serving on behalf of Milk Federation Jalgaon. Accused told me you are doing animal husbandry your name should be register recorded and I have not recorded my name registration. However, Milk Federation Jalgaon has given me permission for doing the said business without registration of my name. Ad registration of 10 my name for doing the business my name registration is not necessary as per the Milk Federation Jalgaon. Accused told me that if he gave report against you in police station then police may arrest you for registration of the offence. I told to them that I am doing my legal work and you do not do anything against me. However, the accused demanded Rs. 2000/- saying that we will save you. I told to accused that Rs. 2000/- is more therefore, reduce it, then they said give Rs. 1000/-. I told both the accused I will pay withing 2 or 3 days. Thereafter both accused went away.

On 5.10.2006 I went to PS. Parola for my personal work. The

accused No. 2 Shri. Patil met with me and he asked to bring money. I told him that I could not make arrangement of money and I will pay within 2 to 3 days. Therefore, accused No. 2 told me that you may bring money without fail till 7.10.2006 otherwise responsibility will be casted on you. I did not pay money to accused. Therefore, I went to the office of Anti Corruption Bureau Jalgaon. Then I signed on my complaint. Thereafter PI Ghuge of A.C.P Jalgaon signed on it. Now shown to me my complaint, contents therein true and correct, it bears my signature I identify it. It is at Exh. 42."

PW2 Vinod Ramesh Sonawane is shadow pancha. At exh.46, he deposed as under :

"On 7/10/2006, we went to office of A.C.B., Jalgaon. Prakash Patil - complainant was present there and Shri. Sonar made introduction with each other. Prakash Patil narrated his oral complaint in our presence. Shri. Sonar told about written complaint of Prakash Patil. I read the same. The Complainant's written complaint and oral complaint of complainant was tallied. Thereafter, we panchas signed on Ex. 42.

After reaching Parola we halted the government vehicle on Bhadgaon road. We got down of the vehicle. Sonar again gave instructions. I myself and the complainant were directed to proceed on foot to Parola panchayat samiti office and accordingly the complainant and I myself proceeded to Parola Panchayat Samiti office. After reaching the office of accused, complainant greeted accused No. 1 by saying, "Namaskar R.K. Saheb." R.K., the accused No. 1 was sitting over a chair and behind him one Shantaram Patil, the accused No. 2 was sitting over another chair. Both the accused are present today in the court. Thereafter, the accused No. 1 asked asked the complainant as to what happened 20 about his work, complainant told that he has no complete money. Then the accused No. 1 R.K., told him that though the sum is not complete he can tender it to the accused No. 2 i.e. Shantaram Paril. Thereafter we were proceeding towards Shantaram, by that time, Shantaram stood from his chair and gave signal to accused No. 1 and thereby asked him to come outside of the office.

Thereafter, accused Nos. 1 and 2 proceeded outside the office and then I myself and complainant followed them. The accused Nos. 1 and 2 crossed the highway and stood near Paan stall. The said Paan stall was having tea-stall. I myself and the complainant went near both of them. Thereafter, accused No. 2 went behind the Paan stall and from there he came near us on motorcycle. Accused No.1 sat over his motorcycle and thereafter both of them proceeded towards Dhule. Thereafter we waited for them for 10 minutes. After 10 minutes they returned from from Dhule road. Both of them sat in Shyamsunder lodge which is adjacent to the Paan stall. Accused No. 1 was sitting over a bench and accused No. 2 was standing close to him. Accused No. 1 thereafter gave signal to us and called us inside Shyamsunder lodge. Accused No. 1 instructed accused No. 2 to accept whatever money is there though it is not complete. Thereafter accused No. 2 went outside side Shyamsunder lodge and therefore, complainant and I myself followed him. He halted near the Paan stall. We also went close to him. There was talk between complainant and accused No. 2. Accused No. 2 asked the complainant as to how much money he has brought. The complainant told that he has brought Rs. 800. Thereafter, the complainant removed sum of Rs. 800 from his pocket. Upon this, the accused No. 2 told the 10 complainant to handover the money to the person who is sitting over the Paan stall. Thereafter, the complainant handedover the sum to the person who was pointed out by the accused No.2, who was running the Paan stall. Said owner of Paan stall counted the said notes and kept in his pant's watch-pocket. Thereafter the complainant gave predetermined signal by scratching his head to the raiding party indicating that the money is accepted. Upon giving the signal, raiding party along with panch No. 2 came near the Paan stall and inquired with me as to whether money is demanded and accepted to which I told the raiding party members that the accused No. 2 directed to handover the money to the owner of the Paan stall and accordingly the owner of the Paan stall has accepted the money from the complainant. At that time, accused No. 2 was about to run. The members of raiding party nabbed him. They also nabbed the Paan stall owner.”

PW3 Dattatraya Karbhari Ghuge is Investigating Officer. His evidence is at exh.53.

ANALYSIS

8. In view of charge, it is incumbent upon prosecution to establish that there is demand i.e. by accused persons followed by acceptance. As usual evidence of PW1 complainant and PW2 shadow pancha is crucial. It is settled legal position that complainant being interested witness, there has to be sufficient corroboration from independent corner i.e. shadow pancha, who is suppose to be in the company of complainant at the time of both demand as well as acceptance.

9. In brief, case of the prosecution and complainant is that both accused, who were working in Animal Husbandry and Fisheries Department, demanded illegal gratification to desist from lodging report against complainant, who allegedly, without requisite qualification, was professing as Veterinary Doctor. It is further case that demand was of Rs.2,000/-, but subsequently it was reduced to Rs.1,000/- and further it was reduced to Rs.800/-. As complainant was not willing to pay bribe, he lodged report, resulting into planning and execution of trap.

10. Re-appreciated the entire evidence i.e. of both PW1 Prakash, complainant and PW2 Vinod, shadow pancha, who are examined at exh.41 and exh.46 respectively. Their examination-in-chief is already reproduced for ready reference. It is noticed that, according to complainant, on 03-10-2006, both accused visited their village and informed complainant about receipt of complaint against him. It is pertinent to note that, there are two accused, however, general and omnibus allegations are levelled that both accused questioned him and they both demanded bribe i.e. in chorus. Complainant has not stated, who amongst the two accused, said what and who bargained. Allegations of demand are thus attributed to both accused at one and the same time.

11. On carefully going through evidence of **PW1** Prakash, complainant and PW2 Vinod, shadow pancha, as pointed out by learned counsel by respondents, and as held by learned trial Court, the sequence of events narrated by both are not consistent since their visit to office of accused persons. According to complainant PW1 Prakash, in the office, on the relevant day, both accused nos.1 and 2 made gestures to come out of the office. Accordingly, they all came to a Pan Stall, thereafter, both accused proceeded on motorcycle

towards Dhule side and returned after one hour i.e. near the Pan Stall and thereafter, it is alleged that both accused went inside Shyam Sundar Lodge and PW1 complainant and PW2 shadow pancha both followed them. It is to be noted that they were not called as PW1 Prakash does not depose to that extent. According to PW1 Prakash, accused no.1 told accused no.2 that whatever complainant would give take it and thereafter, accused no.2 asked complainant to come out of the lodge and thereafter, accused no.2 allegedly told one person sitting in the Pan Stall that whatever he would give, the Pan Stall owner should accept and accordingly, amount was paid by PW1 complainant to Pan Stall owner.

12. If we visit evidence of shadow pancha **PW2** Vinod on above count, we find him stating that after reaching the office of accused, accused no.1 asked PW1 complainant as to what happened about his work, upon which PW1 complainant allegedly told that he does not have complete money, but still accused no.1 told that even though sum is not complete, he can tender it to accused no.2. The above is not the version of PW1 complainant. Such is not the manner of sequence of conversation between accused no.1 and PW1 complainant. According to PW2 shadow pancha, after reaching the

office, accused no.2 stood up from the chair and gave signal to accused no.1 and asked him to come out and after both accused nos.1 and 2 went out of the office, thereafter, this witness and PW1 complainant also followed them, crossed the road and stood near the Pan Stall and both, this witness and complainant, went near them. Thereafter, accused no.1 sat over the motorcycle brought by accused no.2 and they both proceeded towards Dhule and returned after 10 minutes and then both went to Shamsundar Lodge. According to him, that time, accused no.1 gave signal and called them inside the lodge and accused no.1 thereafter, instructed accused no.2 to accept whatever money is there, though it is not sufficient and so accused no.2 went out of the lodge, halted near the Pan Stall. There were talks between complainant and accused no.2 and accused no.2 asked complainant as to how much money he has brought and complainant told about carrying Rs.800/- and accused no.2 asked complainant to handover money to the person sitting in the Pan Stall, who accepted the money. Such is not the version of PW1 Prakash.

It is pertinent to note that, when accused no.2 was away from accused no.1, question arises how does he know what was the conversation between complainant and accused no.1 regarding questioning about how much cash was carried.

13. It is also come in the evidence of PW1 Prakash and PW2 Vinod that amount was directed to be paid to accused no.3, a Pan Stall owner, but he is dead. There is nothing to indicate that accused no.3 was aware that amount received by him from PW1 complainant was towards bribe.

14. Therefore, on reanalysis of evidence of PW1 Prakash and PW2 Vinod, it is emerging that, firstly, there is demand by two accused at the one and same time during the first meeting. During the day of trap, there is apparently no demand by accused no.1 and there are mere events of making gestures to PW1 complainant and PW2 shadow pancha to come out of the office. Both witnesses speak about both accused proceeding on motorcycle to Dhule. According to PW1 complainant, they returned after one hour, whereas according to PW2 shadow pancha, they returned after ten minutes. It is also emerging that, accused no.1 merely asking accused no.2 to take whatever amount is given and he does not speak of directions being given regarding amount to be paid to Pan Stall owner as is deposed by PW2 shadow pancha. Therefore, here there is no acceptance by accused no.1 or accused no.2. Recovery is from deceased accused no.3. However, as stated above, there is nothing to show that

accused no.3 acted as agent and knowingly accepted bribe on behalf of accused nos.1 and 2.

Consequently, here the essentials i.e. demand and acceptance are not cogently proved that too beyond reasonable doubt. For above reasons, both witnesses are not consistent regarding the sequence of events and on the point of actual demand. As stated above, neither of accused nos.1 and 2 have accepted the tainted currency. Therefor, with such quality of evidence, case of prosecution cannot be accepted.

15. Perused the judgment under challenge. In the opinion of this Court, the conclusion drawn by the learned trial Court is the possible view that could emerge even on complete re-appreciation of evidence. Bearing in mind the settled law while dealing with a appeal against acquittal, this Court finds no merits in the appeal so as to interfere. Accordingly, following order is passed :

ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE