



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

CRIMINAL APPEAL NO. 121 OF 2006

The State of Maharashtra

....Appellant

Versus

Bhimrao Bhaurao Halnor

Age: 49 years, Occu.: Service as
Awal Karkun in Tahsil Office at
Bhoom, Tq.Bhoom,
District Osmanabad.

.....Respondent

.....

Advocate for Appellant : Mr.S.M.Ganachari

Advocate for Respondent : Mrs. M A Kulkarni

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 31 JULY, 2025

PRONOUNCED ON : 11 AUGUST, 2025

JUDGMENT :-

1. In this appeal, State is assailing judgment and order dated 29-10-2005 passed by the learned Special Judge, Osmanabad, thereby acquitting respondent from charges under Sections 7, 13(1) (d) read with 13(2) of the Prevention of Corruption Act.

FACTS OF THE CASE IN BRIEF

2. In nutshell, case of prosecution in trial Court is that, complainant Mohan Namdeo Humbe had a cattle shed near his

residential house. In the night of 11-01-2000, the cattle shed along with live stock, grains and agricultural implements got gutted in the fire and he suffered loss to the tune of Rs.30,000/- to Rs.35,000/-. On 14-02-2000, he applied for compensation and approached accused, who was working as Awal Karkun in Tahsil Office. It is prosecution case, that, for doing the work of complainant, accused demanded Rs.2,000/- as bribe. On receipt of report to that extent, Anti Corruption Bureau (ACB) authorities, Osmanabad planned and arranged trap. PW2 Complainant and PW3 shadow pancha were given necessary instructions. PW2 Complainant was asked to hand over tainted currency on demand and PW3 shadow pancha was asked to accompany complainant and remain watchful of the events of demand and acceptance. On 28-04-2000, raiding party, PW2 complainant, PW3 shadow pancha proceeded to the office of accused. Accused asked complainant to accompany him to a hotel for tea and raised demand and asked complainant to keep the bribe amount in the handkerchief and he kept it in his pocket. Complainant relayed signal, followed by raid and apprehension of accused. After investigation, accused were chargesheeted and tried, which resulted into acquittal. Consequently, State has challenged judgment and order of acquittal passed by the learned Special Court.

SUBMISSIONS

On behalf of Appellant State :

3. Learned APP on behalf of State apprised this Court about foundational facts and seeks to challenge the impugned judgment primarily on the ground that demand is proved, acceptance is also proved as currency was found in the possession of accused. There is no denial or challenge to such extent. Traces of anthracene powder were detected establishing acceptance. According to him, thus, the essential ingredients for attracting the charges were available.

4. He next submitted that though PW3 shadow pancha did not support completely, according to him, so much part of the testimony of the shadow pancha, which supports prosecution case, can be relied and taken recourse to.

5. Learned APP pointed out that learned Special Judge also did not appreciate that PW1 Sanctioning Authority had categorically stated about receipt of papers, going through the same, and accorded sanction after application of mind. Thus, according to him, there was no hurdle in accepting sanction to be valid and proper.

6. He also pointed to the evidence of PW4 Investigating Officer

and would submit that, all events that took place since receipt of complaint from PW2 complainant till apprehension of accused, are reiterated by PW4 Investigating Officer thereby lending support to the testimony of PW2 complainant and as such according to him, this crucial aspect ought to have been considered by the learned Special Court and ought to have held charges to be proved, but as learned trial Judge failed to do so, he seeks indulgence by allowing the appeal.

On behalf of Respondent accused :

7. Learned counsel for respondent accused supported impugned judgment by placing written notes of argument on record.

In support of her submissions, learned counsel placed reliance on the rulings of the Hon'ble Supreme Court in the cases of *Jaswant Singh v. State of Punjab*, 1973 CRI. L. J. 664, and *Panalal Damodar Rathi v. State of Maharashtra*, 1979 CRI. L.J. 936. She also placed reliance on the decision of this Court in the cases of *Bhagwan Jathya Bhoir v. The State of Maharashtra*, 1992 CRI L.J. 1144; *Narayan Baban Ingle v. State of Maharashtra*, LAWS (BOM)-1993-4-74; *Ishwar Piraj Kalpatri and others v. State of Maharashtra and others*, 1993(1) Mh.LJ. 152; *Doma and another v. The State of Maharashtra*,

1981 CRI L.J. 653; Madhukar s/o Gulabrao Khadse v. The State of Maharashtra, 2002 ALL MR (Cri) 1106, and decision of Madras High Court in the case of D.Venkatasen v. The State, 1997 CRI L.J. 1287.

EVIDENCE IN TRIAL COURT

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

PW1 Surendrakumar Kashiram Bagade is Sanctioning Authority. At Exh.28, he deposed as under :

“On 16/9/2000 I received the file pertaining to Bhoom P.S. Crime No.8/2000 under the provisions of the Prevention of Corruption Act from S.P. ACB Aurangabad vide letter dated 11/9/2000. The file was consisting of a complaint lodged against the accused by one Mohan Namdeo Humbe. Pre trap panchanama, spot panchanama, FIR lodged against the accused by S.P. Suryawanshi, some statement of the witnesses and the documents. I minutely studied the file and applied my own mind. I found sufficient material to allow prosecution against the accused. Hence I issued the sanction order on 20/9/2000 for launching the prosecution against him. It is now shown to me. Its contents are correct. It bears my signature. Exh.29. Thereafter, I sent the sanction order to S.P. ACB, Aurangabad.”

PW2 Mohan Namdeo Humbe is complainant. At exh.30, he deposed as under :

“On 11/1/2000 at mid-night the cattle shed was seen burnt. Two Bullocks were teathered in the cattle-shed; One bullock was found dead and the other was found injured. The agricultural implements and the grains were found burnt. I had sustained the loss around Rs. 30,000/- to Rs. 35,000/-. I went to leet outpost and gave the information about it. The Talathi of leet village came to my field on 12/1/2000 and prepared the panchanama. The police had also come to the spot and prepared the panchanama.

2. On 14/2/2000 I went to Tahsil office Bhoom and gave an application for getting the compensation. I contacted the accused for 30 to 40 times and made a request to him to look after my work. The accused was avoiding to look after my application on one or other ground. He was saying that the works of the like nature cannot be done free of costs and he was demanding some amount from me. I told him that I was not having with me the amount and I can give him some amount after getting the compensation amount from the Government.

3. On 17/4/2000 I met the accused again in Tahsil office at Bhoom. He told me that he had already said that the works of the like nature cannot be done free of costs and therefore there was no reason to give the frequent visits to Tahsil office. The accused asked me to pay some amount to him so that he can get the compensation sanctioned from Tahsildar Bhoom. I asked him as to how much amount I was required to pay him for my work. The accused told that the sum of Rs. 2000/- were required to be paid to him. I asked him as to how I can arrange for this amount. The accused told me to arrange for the

amount in any case or else he would not attend to my work. I reluctantly agreed to pay him the sum of Rs. 2000/- and told him about my willingness to pay the amount to him. The accused told me that he would complete my work on 24/4/2000 and asked me to bring the sum of Rs. 2000/- on that day.

5. *On 25/4/2000 I went to Tahsil Office Bhoom and directly contacted Shri Payal, Tahsildar Bhoom and he told me that he had sanctioned the sum of Rs.17,000/- towards compensation in respect of the burn incident occurred in the cattle-shed. He asked me to collect the amount after giving the identification of any person. On that day, I could not meet any person who was knowing me.*

6. *On 26/4/2000 I went to Tahsil Office alongwith Shri.Bale, Circle Officer. On that day, Tahsildar paid me the sum of Rs.17,000/- as aid from the Government. Out of it, the sum of Rs.3500/- were paid as subsidy and the sum of Rs.13,500/- were paid as Term loan. I did not met the accused either on 25/04/2000 or on 26/04/2000 since I was knowing that he would take the sum of Rs.2000/- from me in any case. Therefore, I directly went to my native place.*

7. *In the context of that work I met the accused in Tahsil Office Bhoom on 27/4/2000. The accused became angry on seeing me and did not talk to me. Even then I ignored it and told him that I was in need of the copies of the papers pertaining to the burning incident. The accused told me that even though I was not entitled to get the compensation as per*

the rules, he made efforts to cover my case in the rules and that I collected the amount directly from Tahsildar office and without contacting him or without paying him any amount as agreed. I had gone to my native place. The accused told me that in future I may have some work in Tahsil office and he would see as to how my work would be done at Tahsil Office. At that time, no one else was present in Tahsil Office. I realized that unless the accused collect the sum of Rs.2000/- from me, he would not attend to my work in future at Tahsil Office. I also realized that he would ask others also at Tahsil Office not to look after my work. Hence, I told the accused not to dis-please and I would pay him Rs.2000/- and keep up my work. ”

PW3 Subhash Yeshwantrao Suryawanshi is the shadow pancha.

At exh.37, he deposed as under :

“ On 27/4/2000 at 4.00 p.m. myself and Abdul Khan had been to Anti corruption Bureau Osmanabad on the instructions by our superior officer. We gave our introduction and to Dy.SP Suryawanshi. He asked about our antecedents and enquired as to whether we were to act as the panchas in the proposed Trap. We gave our free consent. He instructed both of us to attend the Bureau on the next day at 7.00 am. There-after we left the Bureau.

3. *On 28/4/2000 at 7.00 am. We both attended the Bureau. We were introduced to the trap party members. The complainant Shri. Mohan Namdeo Humbe was present in the Bureau. He narrated the grievances against the It was as per his typed complaint at Ex. 36. Hence we both the panchas signed at*

the foot of it. The complainant gave four notes each of Rs. 300/- PC. Anande applied Anthracene powder on it. Blue shining was seen on both sides of notes under ultra violet lamp in darkness. PC Anande kept those notes in the left side pocket of the wearing shirt of complainant. The complainant was told to pay those notes only to the accused on demand. The anthracene powder bottle was kept in one envelope and the seals were affixed on it. I was asked to accompany the complainant and to go along with him to the office of the accused. The complainant was told that on acceptance of the amount by the accused, he should lift his cap on the head by left hand, give a jerk to it and again to put on the head. I was told to listen the conversation between the complainant and the accused and to see the place where the accused retain the amount. Pancha No.2 Khan was told to remain with the trap party members. The pre-trap Panchanama containing all these details was prepared in the Bureau. It is now shown to me. Its contents are correct. It bears my signature and the signature of other Panchas Ex. 38.

4. *We left the Bureau at 9.00 a.m. and proceeding by Govt. Jeep to Bhoom. The Jeep was parked near ITI Bhoom at 10.45 a.m. Dy.SP Suryawanshi re-issued instructions to all the members. Thereafter myself and complainant left by walk towards Tahsil office. The other members followed us by walk keeping the reasonable distance. Myself and complainant entered into Tahsil office at 11.00 a.m. Pancha No. 2 and other party member stood outside and in the campus of Tahsil office. The complainant alone went in the office of the accused. I was standing outside at that time. The accused was not present in the office. Therefore the complainant came out of the office. By*

that time, the accused came from outside and began to enter the office. He attended the work of about 5 to 6 persons. who were standing near his table. About 3 to 4 staff members were working in the said office. Thereafter the complainant and the accused came out of the office. They began to proceed towards the hotel for tea.. I was following them. I joined them. We all entered into Onkar Hotel. Complainant gave an order for tea. The waiter brought two cups of tea. Myself and the accused took tea in the hotel. I came out of the hotel. At that time the trap Party members went in the hotel and caught hold of the accused.”

PW4 Kalidas Shankarrao Suryawanshi is the Investigating Officer. His evidence is at exh.41.

APPRECIATION AND ANALYSIS

9. In brief, case set up by prosecution in trial Court is that, accused, who was working as Awal Karkun, demanded bribe of Rs.2,000/- from complainant to make him eligible for compensation.

10. Admittedly, in cases of such nature, it is incumbent upon prosecution to establish demand and acceptance. Prosecution has primary burden to prove above *sine qua non*. Complainant being an interested party, law expects sufficient corroboration from independent corner like that of shadow pancha. In the light of above

requirements, evidence is re-appreciated.

11. Sum and substance of evidence of **PW2** complainant at exh.13 is that he applied for compensation to Tahsil Office, Bhoom by tendering application on 14-02-2000. When he contacted accused, he was allegedly told that works of such nature cannot be done free of cost. Later on again when on 17-04-2000, he approached accused, he was again asked to pay some amount for getting compensation and on being asked about the quantum, it is alleged that demand of Rs.2,000/- was made and complainant was asked to come on 24-04-2000. On said date also, accused asked him whether amount has been brought. He further deposed that on 25-04-2000, PW2 complainant directly approached Tahsildar and learnt that amount of Rs.17,000/- has been sanctioned and to collect it. On 26-04-2000, he claims to have received Rs.17,000/- from Tahsildar. He deposed that he did not approach accused either on 25-04-2000 or 26-04-2000 and he directly went to his native. He deposed that, finding the compensation received by him to be inadequate, he again decided to apply to the Government and for the same, he again went to Tahsil Office on 27-04-2000 to collect papers. He claims that, at that time, he found accused to be annoyed for directly collecting compensation

from Tahsildar and claims that accused threatened him to see how his other work in Tahsil Office would be done in future.

PW2 Complainant claims that he **realized** that unless Rs.2,000/- is paid to the accused, his further work would not be done and therefore, he himself told accused that he would not displease him and would rather pay him Rs.2,000/- and finally, it was agreed to meet on 28-04-2000. But on 27-04-2000, he approached ACB and lodged complaint exh.32. Then he narrated about accompanied by PW3 shadow pancha and raiding party approaching accused, accused asking him to accompany to hotel and instructing him to keep the currency in the handkerchief and then pocketed it. He gave signal and raiding party apprehended accused.

This witness is subjected to extensive **cross-examination** wherein he has admitted that on 27-04-2000 and 28-04-2000, he did not submit application for copies at Tahsil Office. He also admitted that he had never given any application for additional aid to Government. In paragraph 19, he admitted that he, accused and shadow pancha entered the hotel at 11:05 a.m. but on the way accused did not ask him to pay the amount and was asking him to pay it in the hotel only. He admitted that accused also did not demand amount before taking tea. Rest is all denial.

12. **PW3** Subhash Suryawanshi, who was engaged to act as shadow pancha, as stated above, is examined at exh.37 and in initial cross-examination, he deposed about visiting ACB office, consenting to act as pancha, listening to the complainant's case, Dy. Sp. giving instructions, procedure of application of anthracene powder and he countersigning complaint lodged by PW2 complainant. He further deposed that, after reaching the office of accused, complainant alone went in the office of accused while he kept himself outside at that time. When accused came at a later point of time, complainant and accused both came out of the office. He claims to have followed them and joined them in the hotel for tea. He further deposed that complainant gave order of tea, waiter brought two cups of tea and he and accused took the tea and thereafter, he claims to have come out of the hotel and the trap party went inside the hotel and caught hold of accused. After further questioning him regarding the examination of handkerchief of accused and about interaction between accused and Investigating Officer, learned APP seems to have sought Court's permission to cross-examine his own witness, but he flatly denied that accused asked the complainant how much amount he has brought or about accused asking him whether he should pay the amount. He denied about accused asking complainant to pay the

amount. Rest all suggestions were denied by the witness.

13. From above discussed evidence, it is clear that firstly, PW2 complainant had already received compensation. His version is that he felt that the amount received by him to be inadequate and therefore, again approached Tahsil Office to seek additional aid from the Government and then claims to have found accused to be annoyed and even threatening to see complainant when he comes for further work in Tahsil. It is pertinent to note from his testimony that he on his own has formed opinion about he realizing that he needs to give complainant amount as demanded by him earlier. During his subsequent visit for additional aid, apparently there is no demand by accused, rather complainant himself had offered bribe. Thus, his such evidence clearly shows that PW2 complainant had already received the compensation and for further aid, he himself had offered bribe i.e. without any demand from accused. Even he has admitted in cross-examination that he had not tendered any application for additional aid.

Therefore, what is emerging is that, prior to last visit for additional aid, work of complainant was already over. This creates doubt about further alleged demand. Rather there is no demand by

accused on 27-04-2000 or 28-04-2000.

14. As stated earlier, PW2 complainant being interested party, it is necessary to see whether there is corroboration from independent witness i.e. PW3 shadow pancha, who accompanies complainant in such cases. Here shadow pancha PW3, though deposed about accompanying accused, he does not seem to be uttering any word about any demand raised by accused in hotel nor he deposed about any handing over of tainted currency or it being directed to be kept by accused in his handkerchief and thereafter, pocketing it. Having turned hostile, he was cross-examined, but nothing fruitful is yielded from such exercise. His testimony inflicts dent to prosecution case. Hence, both on the aspects of demand as well as acceptance, case of prosecution is weak.

15. Learned counsel for respondent has pointed out that stand of accused in trial Court is of thrusting of amount. There is no evidence regarding events that took place inside the hotel or at the counter. PW3 Shadow pancha had already come out of the hotel. PW2 Complainant has stated about alleged directions of accused to keep the tainted currency in the handkerchief, which was further on allegedly pocketed by him. However, there is no independent source

confirming such events. Waiter, owner of the hotel are not examined. Specific statement of accused is of thrusting and false implication.

16. Learned APP would also questions finding of learned trial Judge on the point of sanction order. However, on complete re-appreciation of evidence of PW1 Sanctioning Authority, it is clearly emerging that this witness has admitted about receipt of and use of draft while according sanction. Resultantly, there are reasons to doubt independent application of mind, more particularly, in view of admission by PW1 Sanctioning Authority regarding not specifying the documents verified by him or specifying reasons for according sanction.

SUMMATION

17. To sum up, here there is no corroboration to the PW2 complainant's evidence, PW3 shadow pancha is not party to the demand or acceptance. Primarily, PW2 complainant himself seems to have offered bribe rather than accused putting up demand during visit for additional aid. Thus, case of prosecution is surrounded by suspicion and is not proved beyond reasonable doubt.

18. Perused the judgment sought to be impugned. All required aspects on law as well as facts are touched by the learned Special Judge and findings are supported by assigning sound reasons. There is thorough analysis of facts as well as law. No patent perversity is brought to the notice of this Court for interference. Hence, the following order is passed :

ORDER

Criminal Appeal is dismissed.

(ABHAY S. WAGHWASE)
JUDGE