



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 70 OF 2012

The State of Maharashtra,
Through Dy.S.P. ACB, Jalgaon.

... Appellant
(Orig. Complainant)

Versus

Bhimrao Namdeo More,
Age : 45 years, Occu. : Service,
R/o. Pimpalgaon Hareshwar,
Tq. Pachora, Dist. Jalgaon.

... Respondent.
(Orig Accused)

.....
Mr. P. P. Dawalkar, Advocate for Appellant – State.
Mr. Joydeep Chatterji, Advocate for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 03 DECEMBER 2025

PRONOUNCED ON : 08 DECEMBER 2025

JUDGMENT :

1. In present appeal, there is challenge to the judgment and order dated 20.06.2011 passed by learned Ad-hoc District Judge-1, and Assistant Sessions Judge, Jalgaon in Sessions Case No.03 of 2008, by which, present respondent, who was charge-sheeted and tried for offence punishable under sections 7, 13(1)(d) r/w section 13(2) of the Prevention of Corruption Act, 1988 stood acquitted.

2. In nutshell, on report of PW1 Shailendra Gujar, ACB

authorities registered complaint and investigated it, wherein it was reported that, complainant had approached respondent police constable for copy of panchanama on account of his vehicle meeting with and accident, so as to enable him to claim compensation for damages from insurance company. It is alleged that, for issuing said panchanama, gratification to the tune of Rs.5,000/- was demanded. Rs.2,000/- were paid initially and before remaining amount was paid, PW2 lodged report with ACB authorities, who planned and executed trap, and after investigation charge sheeted accused and he was made to face trial before learned Ad-hod District Judge-1, Jalgaon. Said court appreciated the evidence and acquitted the accused. Hence, the instant appeal.

SUBMISSIONS

3. Learned APP would point out that, there was overwhelming evidence in support of the charge and prosecution has proved the case beyond reasonable doubt on the strength of evidence of PW2 Shailendra complainant and PW3 Sanjay shadow panch. That, their evidence remained intact on material count, but the same has not been correctly appreciated and by giving undue importance to minor contradiction, their testimonies are disbelieved.

4. Learned APP further submitted that, after receipt of complaint, PW4 Investigating Officer summoned the panchas, who were

introduced to complainant and there were apprised about the nature of the complaint and they were given necessary instructions to be followed during trap. He pointed out that pre-trap panchanama was also drawn, but the same also unfortunately not taken into account.

5. He further submitted that, evidence of PW2 complainant and PW3 shadow panch find support from the Investigating Officer and therefore case of prosecution ought to have been accepted as proved. He also invited attention of the court to the testimony of PW1 Santosh and would submit that, here, sanction is held to be valid, and therefore the only result expected was of conviction, however, the same did not happen and learned trial court acquitted the accused. According to him, it is due to improper appreciation and non consideration of legal position and so he urges to interfere by allowing the appeal.

6. Learned counsel for respondent accused supported the judgment and prayed to dismiss the appeal for want of merits.

EVIDENCE IN BRIEF IN TRIAL COURT IS AS UNDER

7. PW1 sanctioning authority at Exh.15 deposed about received papers from ACB authorities, examining the papers and according the sanction on 05.07.2008, which he identified to be at Exh.16.

While under cross, he admitted that he had received true copies of the case papers along with draft sanction. He is unable to state definitely whether he had come across documents of ownership of the vehicle. In paragraph 4 of the cross, he admitted that, due to oversight year of the order is wrongly written as 2007. He also admitted that, outward number and the date were noted by clerk. He admitted that, he did not put the date on the sanction order in his own handwriting. He admitted using draft sanction.

8. PW2 Shailendra is the complainant and in his testimony at Exh.25, he stated that, on 16.05.2007, his Maruti Omni van bearing No.MH-19-Y-882 met with an accident. He went there, noticed damage and thereafter contacted police station. According to him, at police station, he was told that, report has to be lodged by driver personally and therefore on next day, he took driver to the police station and contacted accused Bhimrao More and requested him to supply copy of panchanama in order to claim compensation. He further deposed that, accused asked him to pay Rs.5,000/- and on indulgence by one Vishwanath Koli Rs.2,000/- were paid and remaining amount of Rs.3,000/- were decided to be paid later on i.e. on 19.05.2007. He claims that, on said date also, he approached accused, who told him to pay the remaining amount,

which was assured to be paid in a day or two day, but instead complainant approached ACB authorities and filed report on 19.05.2017. He further deposed about ACB authority summoning panchas, introducing them and explaining the procedure of trap, application of anthracene powder and instructions were given to pay on demand and pancha was asked to watch the events. In paragraph 4, he has narrated the events of the day of trap that on suggestion of Investigating Officer, he initially made phone call to the accused, and after keeping the mobile on speaker mode, he talked to accused. According to him, accused asked whether he has brought money and suggested to come to meet him at Ganesh STD booth by side of Varkhedhi bus stand. There around 11:20 a.m., accused came on motorcycle. Once again, he claims to have demanded panchanama, but he was told that there is requirement of writing on a stamp paper regarding handing over custody of the vehicle and thereafter accused allegedly put up demand of money and on amount of Rs.3,000/- being handed over, it was duly accepted, followed by relay of signal and apprehension of accused.

Initial cross is regarding ownership of the vehicle, wherein he admitted that he has purchased the vehicle from one Sanjay Patil and he was registered owner. Then he corrected and stated that he took custody of the vehicle from Pravin Patil along with documents. He is

unable to state the name of the insurer and admitted not approaching insurance company. He answered that he had lodged report in the police station regarding the accident at 8.00 am of 17.05.2007. He admitted that one panchanama was prepared on 17.05.2007, but he is unable to give names of panchas. Omission is brought to the extent that he had called Vishwanath Koli, who had paid Rs.2,000/- to the accused. He answered that, in the ACB office he had narrated the incident to Dy.S.P. who had further dictated the same to the typist. Rest of the cross is on the point of visit to the STD booth, its owner to be present there and both complainant and accused having discussion there. He admitted that he learnt that accused going to Pachora on the day of incident. Rest is all denied.

9. PW3 Sanjay Patil is the shadow panch. He in his evidence at Exh.28, in paragraph 2 deposed about being introduced to complainant, who narrated that he was in need of copy of spot panchanama and that concerned police not ready to give it and there was rather demand of money to supply a copy of panchanama and complainant told about Rs.2,000/- already paid and Rs.3,000/- was remaining and report being lodged to the ACB. Regarding events of trap he stated that, he, complainant and raiding party proceeded to Varkhadi and there Dy.S.P. Sonar asked complainant to contact accused on mobile and he

accordingly contacted accused and kept the mobile on speaker. He deposed that, complainant told accused that he is arrived and he is in need of documents and further asked where he should come to collect the same. Upon which accused asked him to come at STD booth near Varkhedi bus stand and thereafter they all accordingly went to Varkhadi bus stand. Then, he stated when he and complainant went to the STD booth, there were talks between complainant and owner of the STD booth Tiwari. According to him, said Tiwari informed that accused has asked them to wait and after sometime, accused came, sat on the chair while they were standing and complainant told that he had brought the amount and he should handover the documents to him. On demand by accused Rs.3,000/- were handed over by complainant, which was accepted, followed by signal given by complainant and raiding party apprehending accused.

In cross, he has admitted that during their visit to ACB office on 21.05.2007, he does not remember whether there was written complaint and the same was gone through. He is unable to remember whether complainant handed over any documents of vehicle to ACB; whether complainant had shown any documents about his ownership of vehicle to ACB; whether Dy.S.P. Sonar made inquiry with complainant; whether accused was having mobile and what was his number; he is

unable to remember whether ACB has recorded his statement. He is unable to state whether complainant had told owner of the STD booth Mr. Tiwari that there is requirement of execution bond. He is also unable to remember whether Tiwari was present after arrival of the accused. He denied about accused telling complainant regarding executing bond. He admitted that, before his testimony, he was given a copy of panchanama before adducing evidence.

Learned counsel for respondent would point out that the same is not permissible and he seeks reliance on judgment of this court in the case of ***Suresh S/o. Purushottam Ashtankar v. The State of Maharashtra and Anr.*** reported in *2015 ALL MR (Cri.) 4243*, wherein there is again reference of judgment of this court in the case of ***Sharad Namdeorao Shirbhate v. State of Maharashtra*** reported in *2006 (2) Mh.L.J.(Cri) 1210*. On visiting the above rulings, the Hon'ble Division Bench of this court by taking two above referred rulings has clearly held that it is not permissible to handover documentary evidence to the witness before entering the witness box. Therefore, testimony of such witness cannot be taken into account for above reasons.

10. PW4 is the Investigating Officer. In examination-in-chief, he narrated the events since arrival of complainant till filing charge-sheet.

While under cross in paragraph 10, he admitted that complainant did not hand over him RC book or insurance policy and that the vehicle stood in the name of Sunil Patil. He also admitted that, on the day of accident, insurance policy of that vehicle was in the name of Sunil Patil itself and further admitted that, only the person in whose name insurance policy stands, he is entitled for getting compensation. He further admitted that it was transpired during investigation that, it was Tiwari, who had made phone call to the accused and had called him there and said Tiwari was also present at the time of trap.

ANALYSIS

11. On re-appreciating the above evidence, it is clearly emerging that, firstly, there is no evidence that initially after demand of Rs.5,000/-, Rs.2,000/- were paid in presence of Vishwanth Koli and remaining amount of Rs.3,000/- were agreed to be paid later on. In cross of complainant, omission is brought regarding informing ACB authorities about Vishwanath Koli paying Rs.2000/- to accused. Vishwanath Koli is not examined by prosecution for the best reasons known to him. When it has come from the evidence of very Investigating Officer that neither vehicle nor insurance papers stood in the name of complainant, there is no question of he to be entitled to receive any compensation for which there was said to be panchanama and for issuing the same, there was said to be demand. Therefore, very motive to seek gratification itself is

rendered doubtful.

12. On placing evidence of PW2 complainant and PW3 shadow panch in juxtaposition, it is noticed that, according to PW2 complainant when at the instance of Investigating Officer, telephone call was made to the accused on the day of trap, during such telephonic conversation itself accused has allegedly put up demand of money. However, PW3 shadow panch, in his testimony, has not uttered about any demand on telephone when accused had allegedly called complainant at STD booth. Rather, it is further coming in the evidence that, it is Tiwari, who had telephoned accused and called him at STD booth, therefore, evidence of crucial witness is not consistent. According to PW2, accused came on motorcycle on Pimpalgaon road and came in the STD booth, sat on the chair and it is complainant, who himself seems to have told accused that he has brought the amount and that accused should handover the documents. Such testimony of this independent witness goes to show that even prior to any demand, complainant himself has declared that he has brought the money. Again, PW3 shadow panch, who is considered as independent and crucial witness, in his cross has virtually refused to answer all suggestion by stating that he does not remember whatever events took place and were suggested during cross. Therefore, even shadow panch has not supported the prosecution wholeheartedly.

13. As regards to sanction is concerned, the aspect of distinct year of the sanction order and there being mistake therein and further admission of sanctioning authority referring the draft sanction, creates doubt about application of mind while according sanction.

For all above reasons, case of prosecution is surrounded by doubts on material counts,

14. Perused the impugned judgment, the same is on appreciation of complete substantive evidence of witnesses. The view taken by learned trial court is the only possible view that could emerge even on re-appreciation. No patent perversity or illegality brought to the notice, this court refrains from granting the same. Hence, the following order is passed :

ORDER

The Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)