



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

CRIMINAL APPEAL NO. 694 OF 2008

The State of Maharashtra
Through P.I. Anti Corruption Bureau,
Nanded.Appellant

Versus

Shaikh Moin S/o Suleman
Age: 35 years, Occu.: Talathi,
Sajja Sindkhed, Tq.Mahur,
Dist.Nanded.Respondent

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APP for Appellant : Mr.S.P. Joshi
Advocate for Respondent : Mr. H.I.Pathan
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19 SEPTEMBER, 2025

PRONOUNCED ON : 22 SEPTEMBER, 2025

JUDGMENT :-

1. State hereby assails judgment and order dated 01-12-2006 passed by the learned Special Judge, Nanded in Special (ACB) Case No.16 of 2004, acquitting present respondent from charges under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

FACTS GIVING RISE TO TRIAL

2. Complainant PW1 Suresh approached accused (respondent

herein), who was working as Talathi for taking entry in the revenue record on the basis of sale deed. According to prosecution, in spite of repeated visits of complainants, his work was not done. Finally, accused demanded Rs.2,000/- to carry out necessary entry and on negotiations, accused agreed to accept Rs.1,500/- as illegal gratification.

As complainant was not willing to pay bribe, he lodged complaint (exh.12) with ACB authorities. ACB authorities summoned independent pancha PW2 Wakharkar and introduced and apprise him to PW1 complainant. Necessary instructions were given. PW2 Pancha was directed to accompany complainant at the time of demand and acceptance and PW1 complainant was further asked to relay predetermined signal on acceptance.

3. Accordingly, PW1 complainant was accompanied by PW2 shadow pancha to the office of accused. There, accused enquired about bribe amount and it was duly handed over by PW1 complainant followed by relaying predetermined signal. Thereafter, ACB staff came inside the office. Accused was apprehended, and on investigation, tried before learned Special Judge, who on appreciation of prosecution evidence, reached to a finding that

prosecution failed to bring home the charges and thereby acquitted accused.

Feeling aggrieved by the above decision, State has come up in appeal.

SUBMISSIONS

On behalf of appellant State :

4. Learned APP took this Court through the evidence of PW1 complainant, PW2 shadow pancha, PW3 sanctioning authority and PW4 Investigating Officer and submits that there is cogent, reliable and consistent evidence regarding bribe demanded by accused for doing official work. According to him, both PW1 complainant and PW2 shadow pancha are consistent and corroborating to each other. Even evidence of PW4 Investigating Officer was sufficient to draw inference of guilt and as such, according to learned APP, it was a fit case for allowing the prosecution case. However, according to learned APP, learned trial Court failed to consider and appreciate evidence, more particularly evidence of PW1 complainant and PW2 shadow pancha and erred in acquitting the accused. Hence, he seeks interference at the hands of this Court by allowing the appeal.

On behalf Respondent Accused :

5. Per contra, supporting the judgment of the learned trial Court, learned counsel for accused pointed out that there is no trustworthy, reliable and legally acceptable evidence in support of the accusations. He pointed out that here demand itself has not been proved. Rather according to him, it is an act of deliberate thrusting of money without there being any demand. Therefore, according to him, essentials of establishing the charge being absent, there is no illegality or perversity in the order of acquittal and he prays to dismiss the appeal for want of merits.

EVIDENCE IN TRIAL COURT

6. In support of its case, prosecution has adduced evidence of five witnesses, which includes complainant, shadow pancha, sanctioning authority and Investigating Officer.

In view of nature of charge, crucial evidence is of PW1 complainant and PW2 shadow pancha, who are said to be party to the act of demand as well as acceptance. It would be appropriate to reproduce evidence of PW1 complainant and PW2 shadow pancha accordingly.

PW1 Suresh Rupsing Rathod is complainant. At exh.11, he deposed as under :

“1. I own 13 acres of land at my village. 7 acres of my land is ancestral and I have purchased another 5 acres of land from Rukinibai Lalsing Rathod. It was purchased before two years. The sale deed was registered. The said land was to be mutated in the name of my brother and therefore, I took copy of sale deed to accused he was Talathi. I requested the accused for mutation in the name of my brother. I met with accused at Kinwat. Accused told that sometime would be required for mutation. I handed over the papers to accused and then went to him for 2 to 3 times. Accused told that further time would be required. Accused then demanded Rs.1500/-. I told accused that I would give the money later on as I was not having the same then and there.

2 I then came to office of Anti Corruption Bureau Nanded and lodged my complaint against accused alleging that accused demanded money for effecting mutation. My complaint now shown to me is the same. It bears my signature. Contents thereof are true and correct. Complaint is at exh. 12. I was called by ACB officer on next day morning. ACB officer prepared a plan in ACB office by smearing powder to currency notes. I had produced those currency notes consisting of 15 currency notes of Rs. 100/- each. Pre trap panchanama was prepared in ACB office. Panch witnesses were present for that panchanama

3 After pre trap panchanama, myself, both panch and ACB staff went to village Sindkhed. We reached there at 11.00 am. I went to the office of accused and wished him. One panch witness was present with me. I told accused that I had brought the money, and to give mutation extract to me. I then gave money to accused but accused told me to come after sometime. Accused accepted the money. I then came outside the office and gave agreed signal to raiding party. ACB staff came inside the office and caught hold the accused. On arrival of ACB staff, I was asked to stay outside. I was not willing to give money to accused. Accused before court is same.”

PW2 Pandurang Ganpatrao Wakharkar is shadow pancha. At exh.13, he deposed as under :

"01. On 24-6-2004 I was called in the office of ACB Nanded. Abdul Hamid was present with me. ACB officer shri Pathak informed about the trap. We were asked to come on 25-6-2004 at 6 p.m. Accordingly, we went to the ACB office on 25-6-2004 at 6 p.m. Complainant Suresh Rathod, ACB Officer Pathak and staff were present. Demonstration of characteristic of anthracene ultra violet lamp was shown and I was told about the trap to be laid at Shindkhed. Complainant produced 15 currency notes of 100 rupees each. Anthracene powder was smeared to those currency notes, and the amount was kept in the pant pocket of complainant. I was instructed to remain present with the complainant. Complainant was instructed to give bribe money to the accused only on demand. Complainant was instructed to give signal to raiding party by giving three jerks to his handkerchief. Panchnama of pre-trap was prepared in ACB office: Panchanama now shown to me bears my signature. Contents thereof are true and correct. The panchanama is at Exh.No.14.

02. After pre-trap panchanama, we left ACB office at about 7 to 7.30 a.m. and proceeded by jeep to Shindkhed. We reached Shindkhed at about 11.15 a.m.

03. The jeep was stopped near a river at some distance from village. Myself and complainant went ahead to Talathi office by walk. Rest of the members from raiding party stayed at some distance. Shri Sheikh was Talathi in that office. Complainant wished the Talathi. Accused before court was the Talathi. Complainant enquired about his work of 7/12 extract. Complainant asked if his work was completed. Accused asked the complainant about money. Complainant told that he had brought the money. Accused then took out one file from his cupboard, and put on table. Accused then completed the remaining work by making some signatures. Complainant then kept the amount of Rs.1500/- (bribe money) in the hands

of accused. Accused kept that money in the back pocket of his pant with his right hand. Complainant came out side the room and gave agreed signal by giving jerks to the handkerchief thrice. Members from raiding party rushed there. PSI Hashmi caught hold both hands of accused. Shri Pathak gave his introduction. The numbers of currency notes of bribe money tallied with the numbers noted in pre-trap panchanama. Other four person were sitting in the office room and they were asked to go out. The currency notes were checked under the light of ultra violate lamp, Greenish shining was seen on the currency notes. PHI Hashmi took out the bribe money from the pant pocket and the pant was given to the accused. The pant from the person of accused was checked under the light of ultra-violate lamp. Shining was seen to the pocket of the pant. The pant was seized. Detail panchanama of the trap was prepared on the spot.

04. The file of complainant Rathod was seized. After seizure of file, our signatures were obtained. I put my signature on the panchanama. Panchanama now shown to me is the same. Contents thereof are true and correct. Panchanama is at Exh.No.15. I can identify the currency notes if shown to me.”

ANALYSIS

7. On analyzing above evidence and on re-appreciation of the same, it is evident that PW1 complainant himself appears to have informed accused about he bringing money and subsequently, handed it over. It is pertinent to note that, there is no demand by accused on the relevant day. Thus, in absence of any demand, even if tainted currency found in possession of accused, case of prosecution of demand and acceptance of bribe to attract the charges cannot be accepted and law is fairly settled on such point.

8. Learned counsel for respondent has pointed out that, it is a case of deliberate thrusting for false implication. He also took this Court through the cross-examination faced by PW2 Wakharkar, shadow pancha.

PW2 shadow pancha in cross-examination admitted that he is unable to recall the events which took place on the day of trap. He also admitted that he cannot give details of talks took place between complainant and accused regarding the record. He also answered that, on enquiry about bribe money, accused was shocked. He further admitted that, ACB Officer did not record his statement. Therefore, though this witness stated about accompanying PW1 complainant to the office of accused, his above answers does not lend support to the prosecution case. He was a crucial witness. In light of above answers, prosecution case cannot be said to be proved beyond reasonable doubt.

9. Perused the judgment under challenge. Bearing in mind the settled principles while dealing with appeal against acquittal, this Court does not find any patent perversity so as to interfere in the impugned judgment. PW1 Complainant's evidence has inflicted serious dent to the prosecution case, as he in examination-in-chief

itself stated about he himself handing over bribe amount even before demand being raised by accused. For such reasons, there being no merits in the appeal, the same deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal is dismissed.

(ABHAY S. WAGHWASE)
JUDGE