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crapl-112-2009,j.

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

CRIMINAL APPEAL NO. 112 OF 2009

Suryakant Prabhakar Hattekar,
Age : 50 years, Occupation
Service, R/o H.No. 96, Income
Tax Colony, Jalna, Taluka
and District Jalna.
died through his L.Rs.

..APPELLANT
(Orig. Accused)

1-A. SMITA SURYAKANT HATTEKAR,
Age – 65 years, Occupation : Homemaker,
R/o : Flat No.1, Pushpanajali Residency,
Sonal Nagar, Railway Station Road, Old Jalna.

1-B. DHANSHRI AKSHAY KULKARNI,
Age – 37 years, Occupation : Homemaker,
R/o : Flat No.A-203, Gut No. 127, Blue
Bells Apartment, Borhadewadi, Moshi,Pune.

1-C. ASHWINI SURYAKANT HATTEKAR,
Age – 34 years, Occupation : Homemaker,
R/o : Flat No.1, Pushpanajali Residency,
Sonal Nagar, Railway Station Road, Old Jalna. **..APPELLANTS**

VERSUS

State of Maharashtra

...RESPONDENT

...

Advocate for the Appellants : Mr. Joydeep Chatterji.
APP for the Respondent/State : Mrs. Uma S. Bhosale

...

CORAM : SUSHIL M. GHODESWAR J.,

Reserved on : 28.11.2025

Pronounced on : 24.12.2025

ORAL JUDGMENT :

1. Heard Mr. Joydeep Chatterji, learned counsel on behalf of the appellant and Mrs. Uma S. Bhosale, learned APP on behalf of respondent/State.
2. This appeal was admitted and the appellant has been released on bail on 04.03.2009.
3. The Appellant has challenged the impugned judgment and order dated 27.01.2009 passed by the learned Judge, District Court, Jalna on 27.01.2009 in Special Case No.18/2007(PCA). Vide said order, the appellant came to be convicted under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act,1988. (in short 'P.C.Act') and sentenced to suffer one year rigorous imprisonment and fine of Rs. 1,000/- (Rs. One Thousand only), in default one month R.I. under section 7 of P. C. Act, and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 1,000/- (Rs. One Thousand only), in default one month R.I. under Section 13(1)(d) read with Section 13(2) of the P. C. Act.

4. The prosecution case is as under :-

(a) PW-1/ complainant (Sayyed Afsar Sayyed Nawab) had entered into an agreement to purchase 2 acres of land situated at Kharpudi from Samiya Begum and that agreement was executed on 7.4.2006. An amount of Rs.15,000/- was paid to Samiya Begum as an earnest money. After 10 days, the complainant Sayyed Afsar paid remaining amount of consideration of Rs.1,00,000/- to Samiya Begum and got executed the sale deed to the extent of 1 acre. The complainant/PW-1 Sayyed Afsar came to know later on that Samiya Begum had executed a sale deed in respect of same land in favour of one Balu Madhavrao Dabhade due to which dispute arose. It resulted into knocking doors of the Civil Court. The matter was sub-judice.

(b) Balu Dabhade subsequently sold that 1 acre disputed land to Suresh Ambadas Kulkarni by registered sale deed. Shri. Suresh Kulkarni informed the complainant about such transaction and his possession. The PW-1 complainant went to Tahsil Office, Jalna and moved one objection application for effecting mutation entry in favour of Suresh Ambadas Kulkarni and that matter was sub-judice before Tahsildar, Jalna. After 5 to 6 dates Tahsildar, Jalna disclosed to the complainant that his Taba Pavti is not registered document, whereas document of Suresh Kulkarni is registered sale deed and he is required

to take mutation entry on the basis of registered sale deed. Due to which the PW-1 complainant filed one transfer petition in Collector Office, Jalna so as to transfer his case to any other Tahsildar since he has no faith on Tahsildar, Jalna.

(c) After 2 to 3 days, PW-1 complainant met with the appellant/ accused, who was dealing with his transfer petition. The complainant requested to the appellant/ accused to put up his transfer petition before the Collector, Jalna for necessary orders by looking urgency in the matter. The accused called the complainant on the very next day when he demanded Rs.1500/- to the complainant. Complainant requested to the accused to reduce the figure, but the accused refused to reduce his figure and stick up to his demand. Complainant gave Rs.500/- to the accused. Accused asked to the complainant to come back after 3 to 4 days because of holidays to Collector Office with arrangement of remaining amount of Rs.1000/-. The complainant was not willing to satisfy his demand of money.

(d) Therefore, the PW-1 complainant went to the Anti Corruption Bureau, Jalna and lodged complaint against the appellant/ accused for demanding bribe of Rs.1000/-. His complaint came to be recorded. PW-3 Police Inspector D.M. Yerule called the complainant on the next day at Anti Corruption Bureau, Jalna. However, he was asked

to come on the next day because of work load with PI Shri. Yerule. As per instructions of PI PW-3 Shri. Yerule, the PW-1 complainant again came to Anti Corruption Bureau, Jalna when PI Shri. Yerule asked him when the remaining amount of Rs.1000/- was to be paid. The complainant disclosed to PI Shri. Yerule that after 3 to 4 days remaining amount of bribe was to be paid to the accused. The complainant made available Rs.1000/- to be given to the accused as a bribe. PI Shri. Yerule called upon two panch witnesses. PI Shri. Yerule applied anthracene powder to the currency notes/bribe amount and shown demonstration in ultraviolet lamp. PI Shri. Yerule gave instructions to the complainant, two panch witnesses about trap.

(e) On 05.05.2007 at about 11.30 a.m., the PW-1 complainant, two panch witnesses along with PW-3 PI Shri. Yerule and members of trap party arrived at Collector Office, Jalna. The complainant met with the accused in Collector Office, Jalna in presence of panch witness Shivaji Chavan [PW.2]. At that time, 3 to 4 persons were sitting around the table of the appellant/ accused and the accused asked to the PW-1/ complainant that they will go to canteen situated in the campus of Collector Office, Jalna. Both of them came to canteen. Panch witness PW-2 Shivaji Chavan followed them. The appellant/ accused asked the complainant whether he had brought money and complainant replied

that he had brought money. The appellant/ accused asked the complainant to give money and accordingly complainant gave him Rs.1000/-. The appellant/ accused put it in his pocket. When the complainant gave signal to PW-3 PI Shri. Yerule, he was caught raid handed. The accused was taken to computer room in Collector Office, Jalna so as to take his search. Bribe amount of Rs. 1000/- was recovered out of the pocket of accused in presence of panchas. In the darkness with the aid of ultraviolet lamp both hands of accused were examined. Anthracene powder was noticed on both hand fingers of accused. Currency note numbers of bribe amount were tallied. PI Shri. Yerule prepared in detail panchnama in presence of two panch witnesses. One copy of spot panchnama was made available to the accused.

(f) Police Inspector Shri. Yerule came to Taluka Jalna Police Station and lodged FIR on behalf of the State under Sections 7, 13(1) (d) read with Section 13(2) of the Act. On the basis of first information lodged by PI Shri. Yerule, Cr. No.3014/2007 came to be registered at Taluka Jalna Police Station. PI Shri. Yerule obtained sanction order from the competent authority. After completion of investigation, the charge-sheet came to be filed.

5. The Trial Court has framed charge against the appellant/accused vide Exh.6 for the offence under Sections 7, 13(1)(d) read with Section 13(2) of the Act. The accused pleaded not guilty and claimed to be tried. The prosecution has examined in all three witnesses, namely, the complainant PW-1 (Sayyad Afsar Sayyad), PW-2 Shivaji Chavan (panch witness) and the Investigating Officer PW-3 D.M. Yerule. The statement of accused under Section 313(1)(b) of the Code of Criminal Procedure came to be recorded. After hearing both the sides, the learned Special Judge, Jalna, vide the impugned judgment and order dated 27.01.2009 has convicted the appellant as above. Hence, this appeal against the conviction.

6. According to Mr. Chatterji, learned counsel for the appellant, the prosecution has failed to establish the guilt of the present appellant in this crime. The appellant has neither demanded money nor accepted the same from the PW-1 complainant. The complainant forcibly put money in his pocket in the canteen when police caught him. According to Mr. Chatterji, prima-facie the amount was forcibly put to the pocket of accused. He further submitted that the prosecution also failed that the alleged demand was towards any illegal gratification. He also further contended that there is variance in the

testimonies of the prosecution witnesses as regards taking out a bribe amount found in possession of the appellant/ accused. PW. 1 - complainant stated that it was Police Inspector Yerule (PW.3) who found money in the pocket of the appellant/ accused. However, PW.3- Yerule, in his statement deposed that he has instructed panch No.2 to take out the money from the left side pocket of shirt of the accused. Accordingly, the said panch took out the money and other articles. PW- 2 panch witness deposed that P .I. Yerule (PW.3) who asked panch witness No.2 – Amarsing Pardeshi to take out money out of the shirt pocket of the accused and accordingly, panch witness took out the money out of the shirt pocket of the appellant /accused. The learned advocate further states that the learned Special Judge without considering the evidence on record, has convicted the appellant. As such he prayed for quashing and setting aside the impugned order. He further submits that the prosecution witnesses have not corroborated with each other. The evidence of the prosecution witnesses have not been scrutinized. It is revealed that they have not corroborated to each other on the aspect of demand, acceptance and recovery.

7. *Per contra*, Mrs. Uma S. Bhosle, learned APP strongly opposed the instant appeal. According to her, the prosecution has

sufficiently proved its case beyond reasonable doubt. She submitted that the evidence of prosecution witnesses is sufficient to inflict conviction upon the appellant under Sections 7, 13(1)(d) read with Section 13(2) of the P. C. Act. She submitted that as per the statement of P.W.1 -complainant, the accused wanted to transfer his mutation petition from one Tahsildar and was asked to pay an amount of Rs.1500/- so as to put the matter before the Collector, Jalna for necessary orders. According to the learned APP, the learned Special Judge has considered the evidence in proper perspective and as such, the impugned judgment and order dated 27.01.2009 is, therefore, correct and proper and same requires to be maintained by dismissing the appeal.

8. After hearing the learned counsel for the parties, I have perused the record minutely. It is evident that the charge vide Exhibit 6 was framed against the appellant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P. C. Act. In order to prove the said charge, the prosecution was required to establish that the appellant while discharging his public duty, demanded illegal gratification to the PW-1 complainant and the same has been offered. The amount so offered is also required to be proved

by the prosecution. So also, it needs to be proved that the appellant has accepted the same amount and further the same amount is recovered from him. So as to prove the aforesaid charge, the prosecution is required to establish that there was demand and acceptance on the part of the appellant/ accused. It was also required to be proved that the said demand was towards illegal gratification other than legal remuneration as a motive or reward to induce a public servant by doing his aforesaid duty. If the above aspects are proved by the prosecution then only it can be said that the accused has committed the offence under Sections 7, 13(1)(d) read with Section 13(2) of the P. C. Act.

9. In this case, if the evidence of all the prosecution witnesses is scrutinized, it is found that the prosecution could not prove the said demand, acceptance and recovery of the tainted amount of the appellant. On perusal of the evidence of P.W. 1 - complainant Sayed Afsar s/o Sayed Nawab, he admitted that he filed transfer petition in Collector Office at Jalna so as to transfer his case to any other Tahsildar, since he had no faith on the Tahsildar. He was asked to meet the appellant. The appellant is alleged to have demanded him Rs. 1500/- towards the payment of bribe for putting file of P.W.1 before Collector. During the trap, P.W. 1 - Sayed Afsar s/o Sayed Nawab is alleged to have

made payment of Rs.1,000/- and thereafter, he gave signal to P.W.2 Shivaji. Accordingly, PW-3 Mr. Yerule caught hold the appellant. P. W. 1 complainant stated that when P.W.3 Yerule had caught hold appellant, at that that time he was accompanied with him. Thereafter, P. I. Shri Yerule took the money out of the pocket of the appellant in his presence. The said statement is not supported by PW.3- Yerule. However, in cross-examination of P. W. 1 complainant, he has stated that it was the appellant/ accused who picked out money out of his shirt and after counting the same, has given it to PW.3 P. I.Yerule. P.W.1-complainant has also admitted in his cross-examination that the appellant told PW-3 P. I. Shri Yerule on two occasions that the money was forcibly put into his pocket. Then, there is an omission in respect of the evidence given by PW.1-Yerule while lodging the complaint before the police that he has stated that he had met with one Rakhe and one inward-outward clerk had asked him to approach the appellant. He has also admitted that for the first time his file reached to the table of the appellant on 27.04.2007.

10. The evidence of P.W.2 also cannot be said to be supportive to the prosecution. Panch witness Shivaji Chavan (P.W.2) who is alleged to have been with the trapping team, stated that he along with the

complainant PW- 1 and the appellant/ accused left the table of the appellant for having a cup of tea. They went to canteen where, the work of tile polishing was going on through machine and there was huge noise and PW-2 could not properly hear the conversation between the PW-1- complainant and the appellant. Therefore, this witness cannot be said to have supported the prosecution as he could not hear the demand from the appellant. On the aspect of recovering the money from the pocket of the appellant, this witness PW-2 has stated that it was P. W. 3 Shri Yerule who asked the panch witness Amarsing Pardeshi to take out the money out of the shirt pocket of the accused and accordingly, the said witness Amarsing Pardeshi took out money from the pocket of shirt of accused. Thus, neither on the aspect of the conversation between the complainant and appellant/ accused, nor on the aspect of recovery, this witness would support the prosecution. However, the evidence of PW-3 I.O. Shri Yerule if examined, it reveals that the voice recorder which was put separately in the pocket of PW.1 – complainant could not found to have any recorded conversation.

11. With the aforesaid quality of evidence, the prosecution cannot be said to have absolutely proved its case beyond reasonable doubt. First of all, the prosecution has failed to establish by recording

appropriate evidence against the appellant that he was entrusted duty to put up the matter before the Collector so that application of complainant P.W. 2 could have been transferred to any other Tahsildar. Without establishing the aforesaid aspect, the appellant cannot be said to have entrusted the said work before the Collector. This fact would go to the root of the matter for the reason that the appellant is alleged to have demanded the bribe amount from P.W.1 so as to place his matter before the Collector. There is no oral evidence as well as documentary evidence which discloses that the appellant was entrusted with such type of task of placing the matter before the Collector. Hence, as this constitutes vital aspect of the prosecution case, therefore, the charge under Section 7 and 13(1)(d) read with 13(2) of the P. C. Act cannot be said to be proved against the appellant.

12. As discussed hereinabove, there is no corroboration to P.W.1 – complainant either by the P.W. 2 or by the P.W.3. P.W.-1 complainant is an interested witness. His evidence is required to be minutely scrutinized by the Trial Court and unless and until he gets corroboration of independent witnesses, his evidence ought not to have been relied upon. As the prosecution has failed to establish beyond all reasonable doubt that the appellant has demanded the amount of bribe,

same came to be accepted by him voluntarily and it came to be recovered from him, the Trial Court has committed an error in passing the impugned order of conviction.

13. In view of the above discussion, the conviction of the appellant/ accused cannot be said to be justified. Hence, the following order:

[i] The Criminal Appeal is allowed.

[ii] The impugned order dated 27.01.2009 passed by the learned Special Judge, Jalna in Specail Case (ACB) No. 18/2007 is hereby quashed and set aside and the appellant is acquitted from the charge levelled against him.

[iii] Fine, if any paid, be refunded to the appellant.

(SUSHIL M. GHODESWAR)
JUDGE

shp/-