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

CRIMINAL APPEAL NO.91 OF 2007

Dadasaheb s/o Dagdurao More,
Age: 42 years, Occu: Service,
R/o. PWD Sub Division, Georai,
Taluka Georai, Dist. Beed

....APPELLANT

VERSUS

State of Maharashtra

....RESPONDENT

.....
Mr Joydeep Chatterji, Advocate for Appellant
Ms A. S. Mantri, APP for Respondent/State

.....

CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 04 DECEMBER 2025

PRONOUNCED ON : 24 DECEMBER 2025

JUDGMENT :-

1. By this appeal, the appellant/accused prays for quashing and setting aside the judgment and order of conviction and sentence dated 03/03/2007, passed by the learned Special Judge, Jalna, Dist. Jalna in Special Case No.10/2004 (PCA), convicting him for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the said Act').

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2. The prosecution case in brief is as under :-

(a) The complainant Trimbak was serving in the Public Works Department, Sub-division at Mantha as a Chowkidar [watchman] since 1997. His Head Office is at Jalna and his pay bills were prepared and encashed at Jalna. So also, his service record i.e. his service book is also maintained in the Head Office at Jalna. He had received a copy of the service book, however, necessary entries in it were not entered since the year 2000, and therefore, in October 2003, he went to Head Office, Division No.2, Public Works Department at Jalna and met appellant/accused Dadasaheb More, who was serving as a Junior Clerk in that office and entrusted with taking the entries in the copy of service book. Accused Dadasaheb told him to come to that office in March 2004 and he would take the entries in that service book till then. Hence, on 04/03/2004, complainant went to the office of accused and met him. Accused then said that the entries in copy of service book were not taken since the year 2000 and also some entries, in the original service book are also yet to be taken which are necessary for releasing the annual increments and the time bound promotion to complainant. Appellant/accused assured that he would take all the entries in the service book, but demanded Rs.1500/- from him. Complainant told that he had no such money. Accused said that

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the GPF bill of the complainant was encashed and the complainant should receive the GPF amount and pay him Rs.1500/- so that he would complete the entries in the original service book as well as in the copy of the service book within two days. One Mr Mundhe, Bill Clerk in that Sub-division informed on 04/03/2004 that the cheque of GPF bill was not encashed. Hence, accused asked the complainant to come to his office with Rs.1500/- on 06/03/2004. The accused also obtained the signature of complainant on 04/03/2004 itself on a Register showing the acknowledgment of the service book by complainant.

(b) Since complainant Trimbak was not willing to pay such amount to accused, he approached the Anti Corruption Bureau office at Jalna on 05/03/2004 and informed the above incident to P.I. Dhananjay Yerule, who reduced the complaint of Trimbak at Exh.25 and decided to lay a trap. Hence, he called two panchas, namely, Pralhad Devgundhe PW-1 and Azizkhan Pathan [not examined], both serving in the Office of the Superintendent, Agriculture Office at Jalna, to his office and directed them to come on the next day as panch witnesses during the trap. Accordingly, both panchas and complainant Trimbak all again went to the Anti Corruption Bureau at Jalna in the

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morning of 06/03/2004. P.I. Dhananjay Yerule then introduced complainant and both panchas with each other and told them that anthracene powder and ultra violet rays would be used during the trap. He also explained to both panchas and complainant the properties of anthracene powder and ultra violet rays. Complainant produced 15 currency notes of Rs.100/- each before P.I. Dhananjay Yerule PW.4 for being used as a bribe amount during the trap. The printed numbers of those notes were noted down and anthracene powder was applied to all of them and those notes were wrapped in a paper and also handkerchief and put in the left chest pocket of shirt of complainant with a direction to handover the amount to accused only, if the accused would demand them as a bribe amount for the above work. If the accused would accept the above amount as a bribe, the complainant was directed to pass signal to police. The amount was to be handed over on demand in presence of panch Pralhad PW.1. Pralhad PW.1 was also directed to accompany the complainant to the office of accused and supervise the talks would take place between them and to reproduce them before the police when asked. Another panch Azizkhan was also directed to accompany the trapping party and see what would happen. A detailed pre-trap panchnama was accordingly held at Exh.19.

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(c) In the afternoon, P.I. Dhananjay Yerule PW.4 carried complainant and both panchas near the office of accused and directed the complainant and panch Pralhad PW.1 to proceed to the office of accused. Accordingly, complainant and panch Pralhad went to the office of accused at about 11.50 noon, whereas another panch and police party waited near that building.

(d) When complainant met accused in that office in presence of panch Pralhad and asked about his work, the accused asked the complainant whether he had brought the amount of Rs.1500/- as asked by appellant. The complainant then told that he would pay the amount on receiving his GPF advance amount. Thereafter, the complainant received the GPF advance amount after a while, which he put in the backside of his pant pocket. The accused again demanded the amount of Rs.1500/-for him for the work of complainant. The complainant took out the above tainted notes from his left chest pocket of shirt and handed over the notes by taking out them from wrapped paper and accepted-handkerchief. Accused accepted the said tainted notes, counted them and took some currency notes from his pocket and put these tainted notes in his right pant pocket, in presence of panch Pralhad. The complainant then passed the pre-determined signal

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regarding acceptance of the tainted notes as bribe by accused to raiding police, which immediately rushed to the spot and caught accused on the spot. Police introduced themselves with accused and also introduced both panchas and complainant and directed accused to disclose his name and address. On the direction of PI Dhananjay Yerule PW.4. the another panch Azizkhan took out all the articles from the backside pocket of pant of accused. Then the necessary test for anthracene powder under the ultra violate lamp was carried out on the fingers of trapping party, panchas, complainant and accused one after another and so also on the currency notes found with the possession of accused and taken out by another panch, and the inner part of the back pocket of pant of accused. The fingers of both hands of accused as well as on the right hand of complainant and inner part of back pocket of pant of accused were found shining of anthracene powder. So also, printed numbers of the notes taken out from the pocket of pant of accused tallied with the printed numbers noted down in the pre-trap panchnama. Those notes also gave shining of anthracene powder under the flash of ultra violate lamp. Some documents from the possession of accused were verified and the xerox copies of those documents were taken by P.I. Dhananjay Yerule. Seizure panchnama of all the articles and post trap panchnama were held.

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(e) Accordingly, P.I. Dhananjay Yerule carried accused and both panchas and his companions to Sadar Bazaar Police Station at Jalna, where he lodged complaint at Exh.41 for the above incident against appellant, which was registered under crime bearing C.R. No.3055/2004. P.I. Dhananjay Yerule held the investigation of the crime and then forwarded the papers to his superior i.e. the Superintendent of Police, Anti Corruption Bureau at Aurangabad for obtaining necessary sanction for prosecuting the accused.

3. On completion of investigation, P.I. Yerule filed charge-sheet against appellant/accused in the Court. Thereafter, the charge came to be framed against appellant/accused at Exhibit 3 for the offence punishable under sections 7, 13(1) (d) read with section 13(2) of the said Act. Appellant pleaded not guilty and claimed to be tried. The defence of the accused is that of total denial to the case of prosecution. Accordingly, his plea was recorded at Exh.4. The defence of the accused is that of total denial to the case of prosecution. The specific defence of the accused from his statement under section 313 of the Code of Criminal Procedure is that complainant had obtained hand loan from him and when he started demanding the said amount, the complainant did not like it and falsely involved him in this crime, and, therefore, he accepted that amount.

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4. In order to bring home guilt against accused, the prosecution had examined in all four witnesses. Panch witness No.1/Pralhad Maruti Devgundhe (PW-1) was examined at Exhibit 11; complainant Trimbak Pandurang Ghode (PW-2) was examined at Exh. 24; Sanctioning Authority/Ravindra Raghunath Kedge (PW-3) was examined at 27 and Investigating Officer, P.I. Dhananjay Mahadeo Yerule (PW 4) was examined at 33. Besides this oral evidence, the prosecution had relied on the documentary evidence viz. Complaint, spot panchnama, service book of complainant, pre-trap panchnama (Exh.19), arrest panchnama of the accused (Exh.20), panchnama of unsealing (Exh.21), sanction order (Exh.28) and complaint of P.I. Yerule (Exh. 41).

5. After recording the evidence and hearing the Advocates for the parties at length, learned Special Judge, Jalna vide the judgment and order dated 03/03/2007 in Special Case No.10/2004 convicted appellant/accused for the offence punishable under Section 7 of the said Act and sentenced to suffer rigorous imprisonment for one years and to pay fine of Rs.1,000/-, in default to pay fine, to suffer further rigorous imprisonment for one month. He was further convicted for the offence punishable under Section 13(1)(d) read with Section 13(1)(2) the said Act and sentenced to suffer rigorous

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imprisonment for one years and to pay fine of Rs.2,000/-, in default to pay fine, to suffer further rigorous imprisonment for one month. Both the sentences of imprisonment were directed to be run concurrently. Being aggrieved by the said impugned judgment and order of conviction, the appellant has approached this Court in the present appeal praying for quashing and setting aside the same.

6. Heard learned Advocate Mr Chatterji for appellant and learned APP Ms Mantri for respondent/State.

7. Mr Chatterji, learned Advocate for the appellant submits that the learned Sessions Court miserably failed to consider the evidence brought by the prosecution in proper perspective and therefore, the conviction of the appellant is illegal and liable to be set aside. He then submits that the prosecution has failed to prove that the appellant had taken a bribe and also failed to procure the valid sanction as contemplated under the Act. In support of these submissions, Mr. Chatterji relied upon the following judgments :-

(i) Dattatraya Jagannathrao Zombade Vs. The State of Maharashtra, 2021 ALL MR (Cri.) 1349;

(ii) State of Maharashtra Vs. Gopal Ambadas Gawali, 2020 ALL MR (Cri.) 1501;

(iii) Kishan Irbhaji Waghmare Vs. State of Maharashtra and another (Criminal Appeal No.322/2007 delivered on 03/03/2022).

(iv) Ramdas Waman Tadge Vs. State of Maharashtra, 2019 ALL MR (Cri.) 1833.

8. Mr. Chatterji further submits that even otherwise the prosecution also miserably failed to prove that appellant/accused has demanded bribe/ illegal gratification to perform the public duty. If the testimony of PW-2 is perused it reveals that he had approached the appellant/accused to carry out certain entries in his service book. The appellant accused was entrusted with the said work of taking entry in service book in the public Department. The complainant when approached to him on 04/03/2004, he requested him to carry out the entries in his service book, however, the appellant asked him to pay Rs.1500/-. Instead of paying, he directly approached to the Anti Corruption Bureau, Jalna. PW-4 Dhananjay Yerule, recorded his complaint as per Exhibit 25 and asked him to come on next date i.e on 06/03/2004. On 06/03/2004, two persons namely, Devgundhe and Pathan were called and accordingly, after completing the formalities, they decide to lay trap on the appellant. Accordingly they went to PWD office, Jalna at about 10:15 to 10:30 a.m. There is serious omission in the testimony of the prime witness PW-2/complainant.

According to him, when he went to the office and met accused, he saluted him, but in return the appellant accused asked him whether he had brought the amount. The said witness PW-2 in his cross examination has stated that he had told the Police that appellant had asked him whether he had brought amount when he saluted him, but the same is not recorded by the police. Thus, the basic contention as regards demanding the bribe amount is itself not coming in the form of strong evidence. Moreover, PW-2 states that he had paid amount to appellant on 06/03/2004 in presence of Munde, however, the said Munde has not been examined by the prosecution. PW-1 Pralhad Devgundhe, who is shadow panch had admitted in his evidence that the accused had given the statement to the police after the trap. The accused had stated therein that complainant had obtained hand loan of Rs.1500/- from him and the said amount had been returned to him.

9. Learned Advocate for the appellant also invited attention of this Court to the question No.52 recorded under the provisions of Section 313 of the Code of Criminal Procedure in which, the present appellant answered that the complainant had obtained hand loan from him and many others, and when he started demanding back the said amount, the complainant did not like it and falsely involved him in this crime. Thus, the defence tried to claim that the amount of bribe was

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not illegal gratification, on the contrary, it was repayment of hand loan. The evidence of panch witness Devgundhe PW-1 is also challenged on the ground that, on various aspects he has failed to corroborate with the other witness. The learned advocate for the appellant, therefore, prays for allowing the appeal and setting aside the impugned conviction.

10. On the other hand, the learned APP has strenuously supported the impugned judgment and submitted that the learned Special Judge has rightly convicted the appellant. In view of strong evidence on record, no interference is called for in the impugned judgment. The appeal is liable to be dismissed.

11. After hearing the learned advocates for the respective sides at length, I have perused the record minutely. As far as sanction accorded in this case is concerned, Mr Chatterji has rightly pointed out that PW-3 /Ravindra Kedge, who is the sanctioning authority, had admitted in cross examination that the sanction order is prepared as per the draft of sanction order forwarded to him by the Police. This clear admission itself is sufficient to hold that the sanction order is illegal and therefore, on account of not procuring valid sanction, the conviction of the appellant is required to be set aside. PW-3 while

issuing the sanction order has not applied his mind. The said PW-3 again admitted that he could not say whether the copies of original service book were included in police investigation papers or not? If the testimony of PW-3 Ravindra is minutely scrutinized, in the year 2004 he was serving as Superintending Engineer in the Public Works Department. He had received all the investigation papers of the crime registered against the appellant from the office of Anti Corruption Bureau, Jalna. In one line, he had stated that he studied all those documents and came to the conclusion that it was necessary to accord sanction for prosecution of the accused. What is material to state here is that in his cross examination, he had admitted that he cannot say even after seeing the papers before the Trial Court as to whether or not the copies of the original service book and its copies were included in the police investigation papers for his perusal. He also admitted that whether or not entry in service book and its copies pertaining to complainant were updated till date of trap. Before the Trial Court, after verifying the record, PW-3 stated that entries pertaining to the increment in pay dated 01/03/2002 were taken in the service book prior to the trap. He further stated that the police had sent him a draft of the sanction order and he candidly admitted that he prepared the said sanction order as per that draft. What is missing in the said

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sanction order is an application of mind by this very witness P.W.-3 which is the sanctioning authority. Mr Chatterji has rightly relied upon the pronouncements wherein it has been observed that according the sanction to prosecute a particular public service is not an empty formality and it should be passed after perusing the complete record and after having been satisfied that the concerned employee has committed offence under Section 7 or 13(i)(d) of the said Act, the said authorities are required to pass the sanction order. Therefore, in the instant case, since there is no proper sanction order by the sanctioning authority, hence the prosecution has virtually failed to obtain the valid sanction order against the appellant.

12. As far as the demand and acceptance of bribe is concerned, the omissions in the evidence of PW-1 Devgundhe have been duly proved by the defence in view of the evidence of PW-4, who stated that panch Devgundhe had not stated during the panchnama of scene of offence that the accused went to the Cashier twice or thrice while that panchnama was being recorded. So also, the panch Devgundhe had also not stated before PW-4 that he was near when the accused called the complainant and the accused asked the complainant to pay the amount as told by him and get the service book. Panch Devgundhe had also not stated before PW-4 that the accused put the

accepted notes mixed with the notes with him. Thus, the testimony of PW-1 panch witness not found to be trustworthy and on account of demand, he is not supporting the prosecution case.

13. PW-4 Dhananjay Yerule, Investigating Officer had admitted in his cross examination that the complainant had not told him in his complaint that accused had called him on 05/03/2004. He had also not stated that during the spot panchnama that he saluted the accused and accused asked him as to whether he had brought the amount. Thus, there being no appropriate corroboration from the witnesses as regards his demand is concerned and therefore, the conviction of the present appellant cannot be sustained.

14. The basic requirement of demand is required to be proved beyond all reasonable doubt. In order to prove the charges for the offence punishable under Section 13(1)(d) r/w Section 13(2) of the PC Act, the proof of demand of illegal gratification is absolutely necessary as it is *sine qua non* of the offence. If the prosecution fails to prove this demand of illegal gratification, the charge against the appellant therefore, for the aforesaid offences would fail. It is clearly established in several judgments delivered by the Hon'ble Supreme Court including the judgment in ***Neeraj Dutta vs. State (Govt. of NCT***

of Delhi) reported in (2023) 18 SCC 251, that mere possession and recovery of currency notes from the possession of the accused without proof of demand would not establish the offence under Section 13(1)(d) r/w Section 13(2) of the P.C. Act. In absence of proof of demand and illegal gratification and use of corrupt or illegal means to obtain any valuable or pecuniary advantage, it cannot be said that the offence of taking bribe is proved. Thus, the proof of demand has been held to be indispensable ingredient. Therefore, failure on the part of prosecution to prove demand and illegal gratification, would be fatal and mere recovery of the amount from the appellant/accused would not entail his conviction for the said offences.

15. It is settled law that the statutory presumption under Section 20 of the said Act can arise only after the prosecution proves the foundational fact of 'demand'. In the present case, as the testimonies of prosecution witnesses do not establish any demand of illegal gratification by the accused, the presumption under Section 20 cannot be invoked. This legal position is laid down in ***B. Jayaraj v. State of A.P.* (2014) 13 SCC 55**, ***P. Satyanarayana Murthy v. D.I.G. of Police* (2015) 10 SCC 152**, ***N. Vijayakumar v. State of T.N.* (2021) 3 SCC 687** and recently in ***Neeraj Dutta v. State* (2023) 18 SCC 251**.

Therefore, mere recovery of tainted currency notes is insufficient to sustain conviction.

16. In view of the foregoing discussion, I am of the view that the prosecution has failed to establish the ingredients of offences charged against appellant beyond reasonable doubt. Consequently, **this Criminal Appeal is allowed** and the judgment and order of conviction and sentence dated 03/03/2007, passed by the learned Special Judge, Jalna, Dist. Jalna in Special Case No.10/2004 (PCA), is quashed and set aside. The appellant/accused is acquitted of the said offence. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded to appellant. The record and proceedings be sent back to the concerned Court.

[SUSHIL M. GHODESWAR, J.]

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