IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 239 OF 2015
WITH CRIMINAL APPLICATION NO. 2364 OF 2025
IN APPEAL/239/2015

The State of Maharashtra
Through Dy.S.P., Anti Corruption
Bureau, Ahmednagar. ….Appellant

Versus

Dilip Jaywant Pathak
Age: 47 years, R/o. Ranjangaon,
Tq. Newasa, District Ahmednagar. …..Respondent
(Original Accused)

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APP for Appellant : Mr.S.A.Gaikwad
Advocate for Respondent : Mr. N.B.Narwade

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 DECEMBER, 2025
PRONOUNCED ON : 11 DECEMBER, 2025

JUDGMENT :-

1. In this appeal at the instance of State, there is challenge to the judgment and order dated 30-10-2012, passed by learned Special Judge (ACB), Shrirampur in Special Case (ACB) No.188 of 2009 thereby acquitting the respondent from charges under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act.

FACTS OF CASE IN BRIEF

2. In short, case of prosecution in trial court was that PW1 complainant, in the backdrop of partition of land Gat no.402, among relatives, approached Taluka Inspector of Land Records (TILR) office for measurement of land and he claims to have deposited requisite fees. However, according to him, cadastral surveyor/present respondent avoided to carryout measurement and rather for doing said work demanded Rs.4,000/- bribe. Complainant initially paid Rs.200/- and it was agreed that remaining amount would be paid later on. As complainant was not willing to pay bribe, he approached ACB authorities and lodged complaint exh.27 followed by investigation, planning of trap, executing it, apprehending accused and on completion of investigation, chargesheeting accused for above charges.

After appreciation of oral and documentary evidence, by judgment and order dated 30-10-2012, learned trial Judge recorded a finding that prosecution failed to prove the charges by adducing cogent and reliable evidence and therefore, acquitted the accused. Hence, the instant appeal by State.

SUBMISSIONS

On behalf of appellant/State :

3. Learned APP took exception to above judgment by submitting that there is improper appreciation of evidence on the part of trial Court. According to him, there was clear demand of bribe to complainant and part amount was paid and thereafter, complainant immediately approached ACB and had lodged report, on the strength of which, ACB authorities summoned independent panchas. He pointed out that said pancha was made aware of the grievance of the complainant and he had accompanied complainant, who carried the tainted currency to be paid on demand. That, after inviting attention of this Court to evidence of both these witnesses, he would submit that, both complainant and shadow pancha are consistent and they have both deposed about accused raising demand and even accepting it. Thus, according to learned APP, essential ingredients for attracting charges are very much available in the prosecution evidence.

4. According to learned APP, testimony of above two witnesses, in spite of lengthy cross-examination, has remained unshaken on the material counts and therefore, according to him, there was no reason to not accept their testimonies, but according to him, learned trial

Court failed to do so.

5. He further criticized the judgment of trial Court for holding sanction to be invalid and also took this court through the evidence of PW2 Sanctioning Authority and would submit that said witness was appointing and removing authority of accused and he had testified to that extent. That, said witness had further testified that he had studied the investigation papers and on due satisfaction, had accorded sanction and therefore, according to learned APP, learned trial Court ought to have held sanction as valid. Learned APP seeks reliance on the decision of Hon'ble Apex Court in *Vinod Kumar Garg v. State (Government of NCT of Delhi), (2020) 2 SCC,88*.

6. Lastly, he submitted that learned trial court failed to consider the available evidence in correct perspective and also failed to consider the settled legal position and so he urges to allow the appeal by setting aside the impugned judgment passed by the trial court.

On behalf of Respondent/Accused :

7. In answer to above, learned counsel for respondent/accused would support the impugned Judgment and order by pointing out

that here prosecution has miserably failed to prove very essential requirement of demand that too from the testimony of very complainant. He also pointed out that testimony of complainant has been shattered in the cross-examination and therefore, according to him, the testimony was rightly found to be unworthy of credence. He further pointed out that, at the first count, prosecution has not got verification of demand done. That, PW3 shadow pancha does not lend support to the testimony of the PW1 complainant and therefore, when there was sufficient doubt about the amount demanded to be nothing but bribe, trial Court committed no error in refusing to accept the case of prosecution. He added that amount demanded was towards measurement fees and nothing beyond.

8. Learned counsel also supported the observations of the trial Court as regards to sanction is concerned and also took this court through evidence of PW2 Sanctioning Authority, more particularly his cross-examination and would submit that said authority had not studied required investigation papers and had not applied its mind to the case of prosecution before according sanction and therefore, the same being mechanical, he justified the finding of the learned trial Court about sanction to be invalid. For above reasons, he urges that

there is no reason to disturb the impugned judgment, more particularly, when there is acquittal on merits.

EVIDENCE IN TRIAL COURT

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

PW1 Shaukat Chhanu Pathan, is complainant. He deposed at exh.26. Relevant part of his deposition is as under :

"1. There was partition amongst ourselves mutually in respect of my share and shares of my uncles. 4

2. To get the exact area I had been to T.I.L.R Office for measurement of the lands. Accordingly I had filed the application for measurement on 14-5-2009. The said application was filed jointly by me and my 3 uncles. The measurement fee of Rs.2500/- was deposited by me.

3. The staff in TILR did not give me the proper information for which I was to visit frequently to the said office. One of the staff member disclosed me that the Saheb has been transferred and one lady officer has resumed and therefore, I should meet her. Accordingly I met the said lady officer. Said lady officer told me to meet Shri. Pathak as my case has been assigned to him. I met Shri. Pathak. Shri. Pathak then told me that he has no time and I should see him later on. I met him 15-20 days. He told me that he will measure the land however for the measurement some money is required. He had demanded Rs.4,000/- to me. I told to Shri. Pathak that I had already deposited the necessary charges Rs.2500/- towards the measurement and I *am unable to give Rs.4,000/- as I had no money. Shri. Pathak then told me that whatever amount I had deposited but the Saheb has been transferred. Pathak told me that. I must give money otherwise there would be no measurement. On that day I paid Rs.200/- to Shri. Pathak. I was not willing to give Rs. 200/- to him. Shri. Pathak then told me that remaining amount should be given to him within 25-30 days.*

4. Pathak then told me that I should bring the balance amount at 10 a.m. on 16-8-2009 and then he would show me the notices. Pathak told me that unless money is given no work will be done and he told me that he will not take more amount from me. I was to give Rs.2000/- to Pathak on 16-8-2009. The remaining balance amount Rs.1,800/ was to be paid at the time of measurement. I was not willing to pay Rs.2000/- as bribe to the accused Shri. Parhak. I then approached to the Anti Corruption Bureau and lodged complaint. It is at Exh.27."

PW2 Dileep Divakar Kshirsagar is the Sanctioning Authority. He deposed at exh.28. Relevant part of his deposition is as under :

"2. *I was empowered with to appoint and remove the accused at that time. I had received letter from ACB for the purpose of accord sanction. I had perused the investigation papers. I perused and studied the investigation papers. I found substance on the report of ACB and therefore I accorded sanction to prosecute the accused. Accordingly I passed the order. Now I am producing the said order (O.C). It bears my signature. Contents therein are correct. It is at Exh.30.*"

PW3 Ravindra Sadashiv Kulkarni is shadow pancha. He deposed at exh.32. Relevant part of his deposition is as under :

"3. Shaukat then disclosed his grievances to us. He is having ancestral

land and it is to be partitioned amongst him and his uncles for which the said land required to be measured. He has filed an application for measurement at Newasa in TILR office properly. He has deposited fee on 14-5-2009. The measurement work is assigned to Shri. Pathak (accused). Though he requested for the measurement but Shri. Pathak is avoiding. Shri. Pathak has made demand of Rs.4000/-for measurement. He is not willing to pay the amount. Inspite of that he has paid Rs.200/- on 13-7-2009 to him. On 16-7-2009 he has to pay Rs.2000/- for measurement and then remaining balance would be paid after the measurement.

6. Shri. Dhopavkar, both the panchas, staff and the complainant proceeded to Newasa by Government vehicle. We left Ahmednagar at 8 a.m. on 16-7-2009. Before proceeding to Newasa pre-trap panchanama was drawn in ACB office Ahmednagar. Now I am shown the said panchanama.

8. On 16-7-2009 I alongwith the complainant proceeded by walk to the office of TILR. We both were followed by Dy.SP Shri. Dhopavkar, panch No.2 Tambe, PI Shri. Somwanshi, PN Shri. Javale and other police staff. I alongwith the complainant went to the office of TILR. The main office was found locked. The complainant then made call on his mobile phone. The complainant then disclosed me that he had contacted to accused Pathak and accused Pathak will arrive within short time. After few minutes one person arrived there who opened the gate of the office. The complainant again made call on his cellphone and disclosed me that accused Pathak is coming there and he had told him to wait there. After some time a person who had wore white shirt and black pant arrived on motorcycle there. The complainant told him by saying Namaskar Pathak Saheb. He accepted the respect given by the complainant. Therefore I came to know that he is the person by name Pathak.

9. Thereafter the complainant and accused Pathak went Inside the office by talking. The office had a big hall. There were number of tables. The accused Pathak sat on the table which was infront of toilet. Then

> *complainant Pathan inquired about his work with accused Pathak. Accused Pathak then told to the complainant that date of measurement is fixed on 23-7-2009 and showed a letter to him. The said letter was sent by under certificate of posting. The accused Pathak asked to the complainant whether he has brought Rs.2000/ as agreed. And if brought give him. The complainant replied him that he has brought. Accused Pathak by raising his right hand infront of the complainant Pathan told him to give. Then the complainant took out the tainted currency notes kept on the left side of his shirt pocket by his right hand and hold infront of the accused Pathak. The accused Pathak took the money by his right hand and kept in the right side pant pocket. Then the complainant Pathan went out of the office.*"

PW4 Vijay Raghunath Dhopaokar is the Investigating Officer. His evidence is at Exh.49.

ANALYSIS

10. Here, on re-appreciating the evidence, in short, it seems to be the case of complainant and prosecution that, complainant and his uncles had tendered joint application on 14-05-2009 for carrying out measurement of land Gat no.402 owned by his father and uncle. It is his case that, the said work was not done and therefore, he approached a lady officer, who directed him to accused/present respondent to whom work of measurement was said to be assigned.

PW1 Complainant deposed that, he met accused 15-20 times for the work of measurement and finally, he was allegedly told that for measurement, some money is required. He claims that, there was demand of Rs.4,000/- to him. However, when he told that he had already paid measurement charges to the tune of Rs.2,500/-, accused allegedly told him that he must pay, otherwise there would be no measurement and accordingly, he gave him Rs.200/- and agreed to pay remaining amount later on. He claims to have met accused on 13-07-2009, who again told him that unless money is given no work can be done and so complainant agreed to give Rs.2,000/- on 16-07-2009 and was allegedly told that remaining amount of Rs.1,800/- would be paid after measurement. As he was not willing to pay bribe, he lodged complaint exh.27. Then he deposed about arrival of panchas, introducing them to him, his complaint and causing signature and drawing pre-trap panchanama. He deposed about procedure of application of anthracene powder and instructions given by the Investigating Officer regarding the main trap. He claims that when they entered in the office of the accused, as accused was not present, he himself made a phone call and accused allegedly told him that he would reach within 5 minutes and he accordingly reached there. After sitting in a room, accused sat on his table and then accused told him to "give the money as agreed" and accordingly, he gave Rs.2000/- which accused took and thereafter, complainant went out to relay predetermined signal.

While under **cross-examination**, in paragraph 17, he has admitted that there are 3 types of measurements i.e. simple measurement, urgent measurement and most urgent measurement and measurement of his land Gat no.402 was urgent measurement. He admitted that during his several visits to TILR office at Newasa, he had not met accused. (Thereafter, evidence recording seems to be adjourned as Court time was over i.e. on 03-10-2011 and it was resumed on 05-10-2011).

In paragraph 19, complainant is unable to state when accused took charge and whether measurement work was assigned to accused on 11-06-2009. He is not in position to state whether 3 months had lapsed since deposit of measurement charges. He admitted that he never raise any grievance to the higher authorities. He is unable to give rates of simple measurement, urgent measurement and most urgent measurement. He is also unable to state whether his uncle had deposited Rs.1,000/- for his own land and Rs.500/- towards three sub divisions of the land.

Surprisingly, in paragraph 20 he admitted that, he cannot state the date and time when he met accused. He is also unable to state whether cellphone number of accused was 9922285530 or not. He is unable to state whether he telephoned accused on 11-07-2009. He is unable to recollect when he made 2-3 calls to accused regarding measurement before 13-07-2009. He is also unable to recollect whether he telephoned accused on 13-07-2009.

In paragraph 21, he is unable to state whether notices had been despatched by accused to all concerned regarding proposed measurement dated 13-07-2009. He is also unable to state whether accused told him that date of measurement was fixed on 23-07-2009, but subsequently in paragraph 22, he admitted about accused disclosing him date of measurement fixed on 23-07-2009. He admitted that he had told accused that on 16-07-2009, he will bring the amount and will deposit in the office.

In paragraph 25, he clearly admitted that he personally never filed measurement application and is unable to recollect stating in the complaint regarding depositing Rs.2,500/- towards measurement charges. He is unable to assign reason as to why in his complaint it is not mentioned that in spite of depositing money for measurement fees, the TILR did not measure land. He answered that he did state in the complaint that accused told that he must pay money otherwise measurement will not be done, but he is unable to state why it is not appearing in his complaint. He further answered that he did state in his complaint that on 16-07-2009, accused asked him to bring remaining amount. Rest is all denial.

Therefore, the manner of cross-examination of complainant renders the case of prosecution doubtful as since adjournment of the evidence, complainant has virtuality not supported prosecution and has merely answered stating that he does not remember to whatever he is asked regarding the events took place at the time of main trap. More importantly in cross-examination, this crucial witness clearly admitted about not stating in the complaint regarding accused asking him to pay amount and on failure, no work would be done.

11. **PW3** Ravindra Sadashiv Kulkarni is the shadow pancha and his evidence is at exh.32. He deposed that complainant disclosed about his grievances to them, having ancestral land and it is to be partitioned amongst him and his uncles and for the said purpose, land needs to be measured. Complainant had filed application for measurement at Newasa in TILR office and deposited fees on 14-05-2009. Measurement work was assigned to accused and though he was requesting accused for measurement of land, accused was avoiding. He deposed that, accused demanded Rs.4,000/- for measurement. He was not willing to pay, however, he paid Rs.200/-

on 13-07-2009. On 16-07-2009, he was suppose to pay Rs.2,000/- for measurement and then remaining balance to be paid after the measurement. He further deposed that, Deputy Superintendent of Police, ACB, both panchas, staff and the complainant proceeded to Newasa by Government vehicle. They left Ahmednagar at 8 a.m. on 16-07-2009. Before proceeding to Newasa, pre-trap panchanama was drawn in ACB office, Ahmednagar. He identified the said panchanama.

In paragraph 8, witness deposed that on 16-07-2009, he along with complainant proceeded to the office of TILR by walk. They both were followed by Dy.S.P., panch no.2, Investigating Officer and other Police staff. He stated that he along with complainant went to the office of TILR. The main office was found locked. The complainant then made a call on mobile phone of accused. The complainant than disclosed to this witness that he had contacted to accused and accused would arrive within short time. He stated that, after few minutes, one person arrived there, who opened the gate of office. The complainant again made call on cell phone of accused and disclosed this witness that accused was coming there and he had told him to wait there. After some time, a person, who had wore white shirt and black pant arrived there on motorcycle. The complainant communicated accused by saying *Namaskar*. Accused accepted the respect given by the complainant. Therefore, this witness came to know that he was the person by name Pathak.

Regarding the main trap, in paragraph 9, this witness stated that after arrival of accused, complainant enquired about his work, upon which accused told him that date of measurement is fixed on 23-07-2009 and also showed him a letter and thereafter, accused asked complainant whether he has brought Rs.2,000/- as agreed and if yes, then to give it to him and accordingly, complainant gave the tainted currency, which was brought.

However, in **cross-examination**, in paragraph 22, he admitted regarding not mentioning in his statement that complainant Pathan enquiring with accused about his work and he further admitted that he also did not mention in the statement that accused Pathak asked complainant whether he brought Rs.2,000/- as agreed.

Therefore, above version of this witness about accused demanding Rs.2,000/- is apparent improvement, which is not stated by this witness in his statement. For above reasons, aspect of very demand itself has come under shadow of doubt. Here, as pointed out by learned counsel for respondent, no verification of demand has been done by the Investigating Officer.

12. As regards to submission about validity of sanction is concerned, according to learned APP, sanction is perfectly valid, but the same is incorrectly appreciated.

PW2 Sanctioning Authority at exh.28 deposed that he was empowered to appoint and remove the accused and about receiving papers from ACB for according sanction. He stated that he studied investigation papers and he found substance and therefore, he accorded sanction.

However, in **cross-examination** he has admitted about not receiving papers regarding very application of complainant pending before TILR authorities. He also admitted about not receiving documents from ACB showing measurement proceedings pending before the surveyor prior to the assigning the said work to accused and he also admitted not enquiring to that extent. He also admitted about not perusing the 7/12 extract of the land of which measurement was to be done. He admitted that for legal measurement, consent of co-sharer including the persons, who applied for measurement, is necessary and that if there are more than one co-sharer, the entire land is to be measured.

Thus, what transpires from above evidence is that, this witness has not been supplied with entire investigation papers like application for carrying out measurement, about assignment of measurement to the accused,

13. Learned APP has sought reliance on decision in *Vinod Kumar Garg* (supra). In the said judgment itself, Hon'ble Apex Court has dealt with law governing validity of sanction for prosecution of accused and has held that, what the law requires is the application of mind by Sanctioning Authority on the material placed before it to satisfy itself of *prima face* case that would constitute the offence and mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in failure of justice or has been occasioned thereby. It is further observed that, Section 19(1) is matter of procedure and it does not go to the root of jurisdiction and once cognizance has been taken by court under CrPC, it cannot be said that invalid police report is foundation of jurisdiction of court to take cognizance.

In above case before Hon'ble Apex Court, PW1 carefully examined material placed before him and had granted sanction. He was not questioned about receipt of any report or statement under Section 161 CrPC. In the same judgment, the Hon'ble Apex Court referred to its earlier judgment in the case *Mohd.Iqbal Ahmed v. State of A.P. (1979) 4 SCC 172* in which it has been held that "*what the court has to see is whether or not sanctioning authority, at the time of giving sanction, was aware of the facts constituting the offence and applied its mind to the same*".

Here PW2 Sanctioning Authority has candidly answered in the cross-examination that ACB, Ahmednagar, has not sent him documents pertaining to application for measurement to TILR or about measurement proceedings pending and he also admitted in cross-examination that he also did not enquire personally with whom the proceedings were assigned to. He admitted not perusing 7/12 extract of land of which measurement was to be done. Such answers show that incomplete material has been taken into account before according sanction and for the said reason also, sanction cannot be said to be on due application of mind.

14. For above reasons, case of prosecution not being proved beyond reasonable doubt, and when with such quality of evidence, very aspect of demand has come under shadow of doubt, it being not corroborated by PW3 shadow pancha, an independent witness, the very case of prosecution comes under shadow of doubt. The view

taken by the trial Court is the possible view that could emerge even on re-appreciation of available evidence.

No case being made out on merits, appeal deserves to be dismissed. Accordingly, following order is passed

ORDER

(I) Criminal Appeal stands dismissed.

(II) Pending Criminal Application is also disposed of.

(**ABHAY S. WAGHWASE**)
JUDGE

SPT