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

CRIMINAL APPEAL NO.262 OF 2005

Shamkant Vasudeo Kulkarni,
Age: 49 years, Occu: Clerk
in MSRTC, Jalgaon, R/o 14,
Baliram Peth, Jalgaon
since died, through L.Rs.

1-A. Bhagyashri Shamkant Kulkarni,
Age: 69 years, Occu: Homemaker,
R/o: Plot No.3/B, Khat Karkhana Road,
Shivaji Nagar, R. Y. Park Makara,
Jalgaon

1-B. Yamini Shamkant Kulkarni,
Age: 33 years, Occu: Business,
R/o: Plot No.3/B, Khat Karkhana Road,
Shivaji Nagar, R. Y. Park Makara,
Jalgaon

....APPELLANTS

VERSUS

The State of Maharashtra
(Through Surendra Anantrao Kulkarni,
Pachora, in Cr.No.3014/2003
of Jilha Peth P.S., Jalgaon

....RESPONDENTS

.....

Mr Joydeep Chatterji, Advocate for Appellants
Ms Uma S. Bhosale, APP for Respondent/State

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 27 NOVEMBER 2025

PRONOUNCED ON : 17 DECEMBER 2025

JUDGMENT :-

1. By this appeal, the appellant/accused (deceased) prays for quashing and setting aside the judgment and order of conviction and sentence dated 28/03/2005, passed by the learned Special Judge, Jalgaon, Dist. Jalgaon in Special Case No.06/2003, 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').

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

Complainant Surendra Kulkarni was running a luxury bus No. MH-20-F-9054 from Pachora-Jalgaon-Pachora and the appellant/accused was one of the members of the squad of special check of the S.T. Department. The complainant had employed two drivers, namely, Pratap Patil and Subhash Patil and two cleaners, namely, Vivek Kulkarni and Jagdish Patil on his luxury bus. The R.T.O. authorities and the squad of S. T. Department sometimes used to inspect the luxury buses and cases were filed against erring buses. Complainant was suffering much due to such actions of the authorities. Therefore, he approached appellant/accused and requested him to overlook his luxury bus from such actions. Appellant/accused assured

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complainant that no case will be filed against his luxury bus, however for that purpose he demanded Rs.1,000/- per month, which was to be paid before 15th day of each month. Complainant agreed to pay the amount to the accused, however, he could not pay the same within that period. Therefore, on 17-6-2003, appellant/accused, along with Motor Vehicle Inspector intercepted his luxury bus near Akashwani Centre, Shirsoli and inquired with the driver of the said bus, namely, Pratap Patil and demanded relevant documents in relation to bus from him, who accordingly produced the same. Out of them, they picked up the driver's licence and fitness certificate of the vehicle and returned rest of the documents to the driver. Thereafter, they issued a false memo to the driver Pratap Patil, alleging some deficiencies in the documents. When the complainant received those information from his driver, he approached appellant/accused on the same day evening at his residence and expressed his grievances. The accused told complainant that if he does not pay the amount in each month, such cases would be filed against his luxury bus. He further told that, if the complainant paid the amount on the next day, the documents which were seized would be returned and no such case would be filed in future. Accordingly, complainant promised appellant to pay the amount on the next day. However, as the complainant was not willing to pay any bribe to the

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accused, he approached to the Anti Corruption Bureau (ACB) office, Jalgaon and lodged the complaint against appellant/accused.

3. Police Inspector Mukunda Mahajan recorded complaint of complainant and decided to arrange a trap against the appellant/accused. He called two panchas from the office of Civil Hospital, Jalgaon and asked them to remain present on the next day at 7 a.m. On the next day, complainant and panchas visited the office of ACB, Jalgaon at 7 a.m. Complainant narrated his complaint before the panchas and they also went through it. Complainant produced bribe amount of Rs.1000/-. Police Head Constable Chavan applied anthracene powder thereon and showed a demonstration under the ultraviolet light. The serial numbers of the currency notes were recorded and complainant and panchas were given necessary instructions. A pre-trap panchnama was prepared in the office of ACB. Thereafter, all the members of the raiding party proceeded in a jeep towards to R.T.O. Office, Jalgaon. The complainant and panch no.1 went inside the office and inquired about the accused, but he was not present there. Complainant contacted appellant/accused on phone and he called him at his office. Thereafter, they all went to the S.T. office and complainant again contacted accused on phone. After some time, accused came and met complainant. Then they went to a nearby tea-

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stall for a cup of tea, where accused demanded bribe amount and complainant gave that amount to the accused, which was accepted by him. Complainant given signal to the members of the raiding party and they raided the accused and caught hold his hands. Appellant/accused was taken to a nearby Traffic Police office where necessary procedure was followed and after-trap panchnama was prepared there.

4. Accordingly, P.I. Mukund Mahajan, lodged complaint in the Zilla Peth, Police Station against accused which was registered under crime bearing C.R. No.3014/2003. He arrested accused under a panchanama. After obtaining sanction for prosecuting the accused from the competent authority, P.I. Mahajan carried out investigation and obtained sanction order and on completion of investigation, filed charge-sheet against appellant/accused in the Court.

5. Charges came to be framed against appellant/accused at Exh.8 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. Accordingly, his plea was recorded at Exh.9. 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 the complainant gave him

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Rs. 1,000/- for depositing fine amount in the Office of the R.T.O. office on his behalf, as he was out of station for about 15 days and, therefore, he accepted that amount.

6. In order to bring home guilt against accused, the prosecution had examined in all four witnesses viz. complainant Surendra Kulkarni (PW-1) was examined at Exh. 13; Panch Bhangsing Ojna Padvi (PW-2) was examined at Exh.18; Sanctioning Authority/Pramod Namdev Patil (PW-3) was examined at Exh.29 and Investigating Officer, P.I. Mukund Mahajan (PW 4) was examined at Exh.35. Besides this oral evidence, the prosecution had relied on the documentary evidence viz. Complaint (Exh.14), Pre-trap panchanama (Exh.19), after-trap panchanama (Exh.21), explanation of accused (Exh.22), arrest panchanama of the accused (Exh.23) panchanama of unsealing of anthracene bottle (Exh.24), letter of Divisional Controller of M.S.R.T.C., Jalgaon, dated 21-6-2003 (Exh.30) and complaint of P.I. Mahajan, (Exh. 38).

7. After recording the evidence and hearing the Advocates for the parties at length, learned Special Judge, Jalgaon vide the judgment and order dated 28/03/2005 in Special Case No.06/2003 convicted appellant/accused for the offence punishable under Section 7 of the said Act and sentenced to suffer rigorous imprisonment for two

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years and to pay fine of Rs.2,000/-, in default to pay fine, to suffer rigorous imprisonment for six months. 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 imprisonment for two years and to pay fine of Rs.2,000/-, in default to pay fine, to suffer rigorous imprisonment for six months. 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.

8. Heard learned Advocate Mr Chatterji for appellant and learned APP Ms Bhosale for respondent/State.

9. Learned Advocate for appellant/accused submits that the impugned judgment and order is contrary to law and based on non-application of mind, which is liable to be quashed and the prosecution has failed to prove its case beyond reasonable doubt. He then submits that the learned Sessions Court has committed a grave mistake in convicting the appellant without considering the material evidence available on record. He then submits that the prosecution has failed to prove the necessary ingredients of Sections 7 and 13(1)(d), 13(2) of

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the Prevention of Corruption Act. According to him, there is no sufficient and corroborating evidence on record as regards demand, motive and acceptance of bribe. He then submits that evidence of PW-1/complainant is not consistent with complaint and as such, it cannot be relied upon. According to him, complainant did not stated before the Trial Court as regards demand of Rs.1,000/- p.m. for not taking action against his luxury bus. He also submits that, 15 days prior to incident, appellant had refused to take bribe from complainant. He further submits that the prosecution case is itself not clear on account of previous demand. He then submits that, according to the complainant, the appellant had taken some documents pertaining to the complainant's bus and asked the R.T.O. to take action against the complainant. However, this fact was not proven as there was no evidence to that effect, despite a memo being issued by the appellant regarding the complainant's luxury bus on 17/06/2003, and the appellant having retained some documents, because the bus driver was not examined. Thus, according to him, demand of a bribe cannot be established. He then submits that, according to complainant, he had given documents to appellant and appellant assured him that he would convince the R.T.O. authorities to reduce the penalty and asked complainant to bring Rs.1000/- to R.T.O. office next day. However,

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complainant had stated in his cross-examination that he had paid Rs.1000/- to appellant for penalty as per memo and appellant had not demanded Rs.1,000/- as bribe, which ultimately vitiates the case of prosecution. According to learned Advocate for appellant, no prosecution witnesses stated that after paying Rs.1000/- as a bribe by complainant to appellant, complainant demanded documents of his luxury bus from appellant, which according to complainant were retained by appellant. He then submits that, even if it is assumed that the appellant accepted bribe, however, he could have received the bribe amount at his home or his office, but not at the R.T.O. office.

10. Learned Advocate for the appellant then submits that the sanctioning order for prosecution of appellant/accused is issued in a mechanical manner and perusal of the same discloses that the same is issued without application of mind. The sanctioning authority ignored as to whether appellant had in his custody the documents of luxury bus of complainant, or not? The said authority, after going through the documents, only reiterated that the appellant, by misusing his position, has received illegal gratification. As such, according to learned Advocate for appellant, on the aspect of sanction order also, the impugned order is incorrect and therefore, appellant deserves to be acquitted. With all these submissions, learned Advocate for the

appellant submits that the prosecution has failed to prove the guilt against the appellant beyond reasonable doubt, and thus, prays for allowing of the present appeal.

11. *Per contra*, learned APP Ms Bhosale appearing for the respondent/State has strenuously supported the impugned judgment and order passed by learned Special Judge. She submits that there was motive for appellant to accept bribe from complainant and thus the prosecution has established its case beyond all reasonable doubts and appellant has failed to prove his defence. She also submits that the testimonies of complainant and panch witnesses corroborate with each other and the same cannot be disbelieved. According to her, learned Special Judge, after analyzing evidence brought on record in proper perspective, has rightly delivered the impugned judgment and order and has rightly convicted the appellant. There is no scope of interference in the impugned judgment. She, therefore, prays for dismissal of the present appeal.

12. After hearing learned advocates for the parties and after going through the details of the prosecution case as well as record and proceedings minutely, most vital aspect which is required to be considered is that, whether appellant/accused was really authorized

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with public duty as defined under the said Act. The case of the prosecution based upon a theory that appellant was employee of Maharashtra State Road Transport Corporation. He was in the flying squad meant for taking action against the private luxury buses alongwith R.T.O. The existence of such flying squad has never been brought on record by the prosecution. Even otherwise, it is very strange that department like MSRTC in order to secure or promote its business will join hands with the R.T.O. office thereby forming a flying squad to stop said private luxury buses, which are saddled with more passengers and after taking action against them, extra passengers driven to the buses of MSRTC. The composition of such flying squad is unknown since MSRTC department itself is involved in public transport activities being run through Corporation, in which State is having share. The appellant was member of said flying squad, and therefore, complainant who was running private luxury bus had approached to the appellant for reducing challan amount which was imposed upon him by such flying squad. It is also not clear as to whether the appellant was in a position through the department circulars to reduce such amount, which is being levied or imposed by the R.T.O. The prosecution having failed to produce before the Trial Court such necessary circulars as regards constituting flying squad,

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just to secure or promote its own business, and that too, infringing of constitutional rights of luxury buses to run their business.

13. The sanction order for prosecution of appellant is in typical form. There is no specific words as to which documents the sanctioning authority had perused for sanction it. It states only that after going through the documents, the sanctioning authority is satisfied that the appellant, by misusing his position, has received illegal gratification and sanction was accorded. In whole sanction order, it is nowhere mentioned that the sanctioning authority had received which documents for sanction and on the basis of which documents it had accorded sanction. It is also clearly indicates that, while according sanction, no mind came to be applied and the same is issued in a very casual and mechanical manner. On this ground also, the prosecution case gets vitiated.

14. Even otherwise the prosecution has failed to prove its case beyond reasonable doubt as the witnesses have not corroborated with each other and moreover, their testimonies suffer from material omissions. When the evidence of the complainant is perused, particularly his complaint at Exh. 14, it reveals inconsistencies with his testimony and consequently, the complainant himself is an

untrustworthy witness. Complainant in his evidence had stated that the R.T.O. officers alongwith the S.T. officers used to inspect their vehicles. The S.T. is to remove the excess passengers from luxury buses and used to make their arrangement in the S.T. buses. Complainant believed that the appellant being R.T.O. officer, would help him for not taking action against his luxury bus. On 17/06/2003, when his driver was driving luxury bus on a specific route, one R.T.O. officer had stopped his bus and had issued a memo to the driver of complainant. According to complainant, the said memo is given by R.T.O. department and he contacted with appellant who was employed in MSRTC and who assured him to have talk with the R.T.O. personnel for convincing them about not to take action against his luxury bus. At the same time, the appellant also asked to bring Rs.1000/-. Since complainant was not willing to pay him bribe of Rs.1000/-, he approached the ACB officer and accordingly trap was laid. During trap, he gave the bribe amount to the appellant and requested him to set right the problem. He himself had admitted in his evidence that he had been to accused with a view that he would advise the R.T.O authorities for not taking action against his private luxury bus. However in this case, the prosecution has not brought the memo, which was issued by the R.T.O. department to the driver of the

complainant/PW-1. The prosecution has also not examined the said driver to whom the said memo was issued. Moreover, there is omission as regards complainant had stated to the police that the accused had told him that he would talk with the R.T.O. authorities and asked him to bring Rs.1000/-. Even more significantly, in his cross-examination, complainant had also admitted that he had given amount of Rs.1000/- to the appellant for depositing penalty as shown in the memo. He further stated that *“It is true that we the luxury bus owners were having grievances against the S.T. Department. It is true that the accused has not demanded Rs.1000 to me as a bribe.”* In that view of the matter, the basic claim as regards demand and acceptance by the appellant completely fails.

15. 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 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.

16. 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.

17. 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 28/03/2005, passed by the learned Special Judge, Jalgaon, Dist. Jalgaon in Special Case No.06/2003, 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 appellants (legal heirs of deceased appellant). The record and proceedings be sent back to the concerned Court.

[SUSHIL M. GHODESWAR, J.]

sjk