



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

**CRIMINAL APPEAL NO. 263 OF 2005**

Kailas s/o Shankar Ghule,  
Age; 36 years, Occ; Service,  
'R/o; E-2/6, H-11, Mayurnagar,  
HUDCO, Aurangabad,  
Taluka and District Aurangabad.

...APPELLANT

**VERSUS**

The State of Maharashtra.

...RESPONDENT

...  
Advocate for the Appellant : Mr. A.M. Tandale  
APP for Respondent-State : Mr. Vivek M. Lomte  
...

**CORAM : SUSHIL M. GHODESWAR, J.**

**Date for Reservation : 18.11.2025**  
**Date of Pronouncement : 27.11.2025.**

**JUDGMENT :**

1. Being aggrieved by the judgment and order dated 30.03.2025 passed in Special Case No. 13 of 2003 by the learned 2nd Special Judge (P.C.), Aurangabad, convicting the appellant for the offences under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, the appellant has preferred this appeal.

2. The prosecution case in brief is as under :

Appellant Kailas Shankar Ghule, who was working as temporary clerk in City Survey Office, Aurangabad stood tried for the offence of demanding and accepting bribe of Rs. 120/-, from the Complainant PW-2, Durgasingh Suryawanshi as illegal gratification while discharging his duty as Public Servant. The prosecution story in short is that, in February, 2003 PW-2 Durgasingh was in need of "Touch Map" of his ancestral house bearing City Survey No. 3265 for transferring the said house in the name of his father on account of death of his grand-father. Hence, PW-2 Durgasingh applied for copies of the said "Touch Map" on 28.02.2003 in the office of Land Records at Aurangabad. The application for copy was referred to the accused Kailas Ghule who was working as temporary Clerk in the said City Survey Office, Aurangabad. Accordingly, PW-2 Durgasingh approached accused Ghule for further action. Accused Kailas accepted said copying application and directed the Complainant to come on next day. Since there was holiday for next two days, therefore, PW-2 Complainant went to the office of Land Records on 03.03.2003. At 3.00 p.m. he met appellant Kailas and asked what had happened to his work of obtaining copies. The appellant/accused told him that his work would cost Rs. 100/- for the Government and another Rs. 100/- for himself and asked him to pay Rs. 200/-. It is the case of PW-2- Complainant that he was ready to pay Rs. 100/- towards Government charges but he was not willing to pay Rs. 100/- towards bribe. He then asked the appellant/accused to do work and told him that now he had no such

amount to pay. There upon the appellant/accused alleged to have told the PW-2 Complainant to come on next day with Rs. 190/-. PW-2 Complainant then showed his willingness to pay said amount and returned from that office.

On feeling that the appellant is claiming Rs. 90/- extra towards illegal gratification, PW-2 Complainant went to the office of Anti Corruption Bureau at Auragnabad and narrated the incident to the Inspector PW-4 Anil Gaikwad. Said PW-4 Gaikwad has reduced his complaint into writing at (Exh. 15). The Inspector, PW-4 Gaikwad, decided to lay trap on accused under the belief that the appellant would be accepting illegal gratification of Rs. 90/- from the Complainant. He, accordingly, called two panchas namely Pandhari and Popat Dhanedar. After completion of all the formalities and after giving proper instructions/understanding to all panchas, the raiding party consisting the Complainant, panchas and Inspector Anil Gaikwad with their team proceeded to City Survey Office on Aurangabad. The PW-2, Complainant and PW-3 Pandhari (Panch) then approached the appellant/accused. PW-2- Complainant then asked the appellant as to what has happened about his copying work. The appellant/accused asked the PW-2 Complainant whether the amount has been brought by him, on that PW-2 Complainant took out tainted notes from his left chest pocket of shirt and offered it to the appellant/accused. The appellant/accused accepted those notes by his right hand fingers and then he counted all notes and

took out a copy of document to be given to PW-2 Complainant. He then separated a note of Rs. 50/- and a note of Rs. 20/- out of the tainted notes and further he took out another note of Rs. 10/- from his left chest pocket of shirt and asked the Complainant to hand over that note to one Vitthal Suryawanshi, who was sitting nearby. Accordingly, he took out Rs. 80/- and the documents were handed over, then Suryawanshi prepared a receipt of Rs. 75/- and obtained signature of the PW-2 Complainant on it and gave a map of "Khate Khat" to the Complainant. After coming out of the office, the PW-2 Complainant gave signal to the raiding party, accordingly inspector Mr. Anil alongwith along with his team entered the room of the appellant/accused with another panch Popat. The amount of Rs. 120/- was taken out from the chest pocket of shirt of the appellant/accused. After collecting tainted notes from the left chest pocket of the shirt of the appellant, that shirt pocket was showing blue shining of Anthracene Powder, when it is checked under the ultra violate lamp. After completing trap, Inspector Mr. Anil lodged complaint at Exh. 41. After completion of investigation, the charge-sheet came to be filed against the appellant/accused for the offence under Sections 7 and 13(1) (d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

3. Vide Exhibit 5, the charge came to be framed against the appellant and the appellant/accused pleaded not guilty to the charge and claimed to be tried. His defence is of total denial. During the trial

the prosecution has examined as many as four witnesses. During the evidence, the prosecution has examined PW-1 Vikram Bhujangrao Khedkar, at Exhibit-11, who is the sanctioning authority. After recording of the evidence and hearing the parties, the learned Special Judge (PC) Aurangabad has convicted the appellant under Section 7 of the PC Act and sentenced him to suffer RI for one year and to pay fine of Rs. 1,000/-, in default, R.I. for one month. He is further convicted under Section 13 (1) (d) punishable under Section 13 (2) and sentenced to suffer R.I. for one year and to pay fine of Rs. 1,000/- and in default, to undergo RI for a month. The appellant has challenged this judgment and order in this appeal.

4. Mr. Tandale, learned Counsel for the appellant, submitted that the Sanctioning Authority has not applied its mind while according sanction. The Sanctioning Authority has not even bothered to go through the record and there is no subjective satisfaction of the said Sanctioning Authority to arrive at conclusion and accord sanction to prosecute the appellant/accused. He also pointed out crucial evidence of PW-1 sanctioning authority that the appellant Kailas is not Government servant. He had also admitted in his cross-examination that at the relevant time, the appellant/accused Kailas was not entitled to Dearness Allowance, leave facilities and other facilities which are available to other Government servants. The said witness again stated that the appellant Kailas is not entitled for any pay scale and that he was not entitled to

claim any right as like any other Government Servant. The crucial aspect, by way of admission of this witness as stated in his cross-examination, is that while according sanction he has not inquired from the City Survey Office as to how much fees was necessary for the copying fee which the Complainant was required to pay towards obtaining copies and also that how much amount of bribe was accepted by the appellant/accused. Further, this witness has also admitted that PW-2 Complainant had submitted as many as total three applications for obtaining copies, which are exhibited at Exhibit 13 dated 25.02.2003, Exhibit 14 dated 27.02.2003 and Exhibit 15 dated 04.03.2003 respectively. However, the Complainant while preferring complaint dated 04.03.2003 has mentioned the dates of coping applications dated 25.02.2003 and 27.02.2003 only.

5. Mr. Tandale, learned Counsel for the appellant vehemently submitted that the prosecution itself is not sure as to how much amount was towards the copying charges and how much amount towards bribe. According to him, the prosecution has not proved the charge under Section 13 (1) (d) punishable under Section 13 (2) of the Prevention of Corruption Act, which itself requires to be established that the appellant/accused has accepted the amount as illegal gratification and mere acceptance and recovery of the amount from the appellant is not sufficient. In order to attract the ingredients of the aforesaid offences, it was necessary for the prosecution to establish that what were the

charges towards getting copy and what was the amount accepted towards bribe, which was accepted by the appellant. He, therefore, submitted that the entire prosecution case is illegal and therefore, the appellant deserves to be acquitted.

6. In support of his submission, Mr. Tandale, learned Advocate for the appellant, has relied upon the following judgments:-

- "i) P. Satyanarayana Murthy v. Dist. Inspector of Police and Anr. - AIR 2015 SC 3549, (Full Bench, Supreme Court),*
- ii) C.M. Girish Babu V. C.B.I. Cochin, High Court Kerala – AIR 2009 SC 2022 (Supreme Court),*
- iii) M.K. Harshan Vs. State of Kerala – (1996) 11 SCC 720,*
- (iv) C.B.I. v. Ashok Kumar Aggrawal – AIR 2014 SC 827 (Supreme Court),*
- (v) Ram Prakash Arora v. The State of Punjab – AIR 1973 SC 498,*
- (vi) State of Maharashtra Through C.B.I. v. Mahesh G. Jain – 2014 ALL SCR 177,*
- (vii) Panalal Damodhar Rathi v. State of Maharashtra- AIR 1979, SC 1191,*
- (viii) B.Jayaraj v. State of A.P. - 2014 ALL SCR 1619,*
- ix) Mukhtiar Singh (Since Deceased) Through his Legal Representative v. State of Punjab - (2017) 8 SCC 126."*

7. *Per contra*, learned APP Shri Lomte appearing for the respondent/ State has strenuously supported the impugned judgment and order passed by learned Special Judge. According to him, 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. He, therefore, prayed for dismissal of the present appeal.

8. After hearing learned advocates for the parties, I have gone through the record and proceedings of the case minutely. The record reveals that the prosecution has examined PW-2 Complainant Durgasingh at Exhibit 17. The said witness, who is the Complainant, had not stated clearly as to how much charges were being paid towards obtaining copies and how much amount was towards bribe. The said PW-2 Complainant has admitted in his cross-examination that he had applied in the office of City Survey Office for getting copies prior to 28.02.2003. He has also admitted in his cross-examination that he had not obtained any information prior to 28.02.2003 as to how much amount of copying fees is required for getting copies. He again admitted that he did not obtain any information till the appellant Kailash was caught, as to how much amount of copying fees he would require to pay. He admitted that he has applied vide another application for getting copies of two other documents and the appellant did not give him the exact figure of copying charges by calculation. However, he gave the estimated charges in round figure. Thus, learned advocate Mr. Tandale is right in submitting that since the demand is required to be proved beyond all reasonable doubts by the prosecution, it is necessary to point

out as to how much amount is towards bribe and how much amount is towards the Government charges/fees towards supply of copies. Neither PW-4-Investigating Officer, nor PW-2- Complainant have taken efforts to establish the claim that out of Rs. 190/- amount, how much amount was towards the Government charges and how much amount was towards the bribe.

9. The prosecution has also tried to establish its case by examining PW-3 Pandharinath, who was a shadow panch during the trap. However, the said shadow panch is declared hostile witness. The said witness was declared hostile by the prosecution and in his cross-examination at the hands of prosecution, nothing fruitful could be extracted from the evidence of said witness. As such, said witness is not supported the prosecution story.

10. Considering the evidence brought on record, the prosecution has not justified in establishing the charges against the appellant. In order to prove the charges for the offence punishable under Section 13 (1) (d) punishable under 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 judgments cited

by learned advocate for the appellant 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) punishable under 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 offence punishable under Section under Section 13 (1) (d) punishable under Section 13 (2) of PC Act.

11. In view of the discussion in foregoing paragraphs, the prosecution having failed to prove the said charges against the appellant, the appellant deserves to be acquitted. Consequently, this Criminal Appeal is allowed and the impugned judgment and order is quashed and set aside. The appellant/ accused is acquitted for the said offence. As the appellant is on bail, he need not surrender. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded. The record and proceedings be sent back to the concerned Court.

**(SUSHIL M. GHODESWAR, J.)**