



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 316 OF 2005

The State of Maharashtra,
Through Public Prosecutor,
High Court Bench at Aurangabad.

... Appellant

Versus

Bhagwat Maruti Kale,
Age 43 Years, Occupation Service,
As Asst. Education Inspector,
Zilla Parishad, Osmanabad.

... Respondent
[Orig. Accused]

.....
Mr. S. M. Ganachari, APP for the Appellant-State.
Mr. Prashant M. Nagargoje, Advocate for the Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 17.07.2025

Pronounced on : 23.07.2025

JUDGMENT :

1. This is a State Appeal wherein the judgment and order dated 29.01.2005 passed by the learned Special Judge, Osmanabad in Special Case (A.C.) No. 16 of 2001 is assailed on account of acquittal of present respondent from offence under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 [for short, "PC Act"].

PROSECUTION CASE, IN BRIEF, CAN BE SUMMARIZED AS UNDER :

2. PW1 complainant was working as a Junior Professor. His father was anemic and had taken treatment in two hospitals, for which expenses were incurred. For reimbursement of the same, complainant had submitted bills, however, present respondent who was concerned clerk of relevant Section, raised some technical objections on the point of submission of documents and even asked the complainant to bring Rs.1,000/- as illegal gratification. Report of this was lodged by the complainant, as a result of which, ACB authorities planned and executed trap and apprehended the accused. After he was chargesheeted, he was made to face trial before learned Special Court, Osmanabad vide above Special Case during which, prosecution based its case on the evidence of in all five witnesses.

3. Defence case set up was of false implication. After recording statement under Section 313 of Cr.P.C., case was tried and on appreciation of the evidence, learned trial Judge reached to a finding that prosecution has miserably failed to bring home the charges and that, there was no satisfactory evidence to prove the charges, and ultimately extended benefit of doubt and accused came to be acquitted. Hence, the appeal.

SUBMISSIONS

On behalf of the State :

4. Learned APP would appraise this Court about the factual background of the case and then would submit that, repeatedly complainant had approached accused for clearing the medical bills. That, there was clear demand of bribe to do the needful. That, Rs.1,000/- was the demand and as complainant was not willing to pay bribe, he lodged prompt report and ACB authorities, who took prompt action by arranging panchas, giving necessary instructions, drawing pre trap panchanama, instructing complainant to hand over tainted currency on demand and PW3 (shadow pancha) was specifically instructed to be watchful about the evidence. Accused put up a demand in presence of PW3 shadow pancha and after its acceptance, signal was relayed and accused was apprehended with currency. Therefore, all required evidence was made available by the prosecution. However, according to learned APP, there is incorrect appreciation and analysis of the evidence.

5. Learned APP, took this Court through the impugned judgment and would submit that, in para 12 it has clearly come that there are traces of anthracene powder to the fingers as well as palm of the

accused. That, the only inference that can be drawn is that, there is acceptance. That, PW2 shadow pancha was party to the demand and he has deposed to that extent. Therefore, all requirements for bringing home the charges were very much existed.

6. Learned APP also took this Court through the evidence of the sanctioning authority and would submit that, the authority, who was empowered to appoint and remove accused, has testified at Exhibit 28. That, there was study of all material gathered during investigation and only thereupon, sanction has been accorded.

7. Learned APP pointed out that benefit of doubt has been accorded by learned trial court only because shadow pancha was standing in line along with accused and was not in a position to see the act of acceptance. However, according to learned APP, even if there is inability on the part of the shadow pancha to personally see the acceptance, the traces of anthracene powder noticed on apprehension of accused are indicative of the fact of acceptance. Therefore according to him, learned trial court has incorrectly appreciated the evidence on record. Hence he seeks indulgence by setting aside the impugned judgment and allowing the appeal.

On behalf of the Respondent-accused :

8. In answer to above, learned counsel for the respondent took this Court through the defence taken in trial court, which is reflected in the statement recorded under Section 313 of Cr.P.C., more particularly question no. 96, and would submit that complaint is motivated. That, there was a misbelief with the complainant and other employees that salary for the month of March was not received by them only because of present accused and therefore, they were annoyed. That, there is admission to that extent. Thus, it is his submission that there is apparently false implication on account of annoyance.

9. As regards to quality of evidence and responsibility of prosecution to discharge the primary burden of proving its case, it is his submission that, pancha witness, who is crucial witness and whose corroboration is essential in cases of such nature, had not supported prosecution. That, he had retracted from the prosecution story, inflicting serious blow to the prosecution case which had collapsed only after the evidence of PW2 shadow pancha.

10. As regards the sanction is concerned, he pointed out that unless there is valid sanction, prosecution of a Government servant is insignificant and valueless and therefore, he would take this Court through the sanctioning authority and would submit that, there is total non application of mind by the sanctioning authority. He pointed out that, drafts submitted by the ACB authorities had been put to use and that this witness admitted that it was his first time to accord sanction and repeatedly, at the behest of the ACB authorities, corrections were carried with the sole intention to implicate the accused by hook or by crook. That, learned trial court therefore was correct in observing that there is total non application of mind. According to him, for above reasons, learned trial Judge has committed no error in refusing to accept the case of prosecution and rather, given benefit of doubt. Thus, learned counsel expects similar treatment be given to the prosecution case in appeal.

EVIDENCE BEFORE THE TRIAL COURT

11. It seems that prosecution has examined in all 5 witnesses to proves its case. Their role and status and relevant portion of their evidence can be reproduced as under :

PW1 Mohan Kale is the complainant. His evidence is at Exhibit 16.
Relevant portion of his evidence is as under :

“2. I have been serving as Jr. Professor in Sripatrao Bhosale Junior College, Osmanabad since 5.8.1995. I know the accused. He is serving as a Assistant Education Sub Inspector in Zilla Parishad, Osmanabad. I prepared the medical file pertaining to the expenses incurred for the treatment of my father and submitted it through Principal of Jr. College in Z.P. Office to the concerned division. I met Shri Thombare Jr. Clerk from Zilla Parishad on 3.4.2001 and requested him to pass the bill at the earliest. I contacted Shri Thombare Jr. Clerk as per his say on three to four times by the margin of one or two days.

3. On 23.5.2001 I contacted Shri Mashalkar, Higher Secondary Education Officer in Z.P., Osmanabad at about 12.00 noon. I made an inquiry about medical bill to him. He told me to contact the concerned clerk and thereafter took me towards the said clerk. I was not knowing his name at that time. Later on, I came to know his name as Shri. Kale. Shri Kale checked my file and told that it was properly maintained. However, he found three sheets not submitted in the said file. He also told me that the necessary certificate to be issued by principal of the college also was not submitted along with the bill. He asked me to make the compliance on those deficiencies. Shri Kale clerk is the accused and now present in the court. I asked him as to whether after the requisite compliance the medical bill would

be passed and sanctioned. At that time he told me that I would be required to pay him Rs.1000/- for sanctioning the medical bill submitted by me. He asked me to contact him on the next day i.e. 24.5.2001 by making compliance and to bring the sum of Rs.1000/- for making payment to him. I asked him whether it was a prescribed fee by Govt. He told me that it was not a Government fee, but the amount is required to be paid as usual. He also told me that in case I refused to pay him Rs.1000/- then he would not send my medical bill to pay unit for sanction. Therefore, reluctantly I was prepared to pay him Rs.1000/-. In fact, I had no intention to pay the bribe amount to the accused.

4. On 24.5.2001 at 12.00 noon I went to Anti Corruption Bureau (ACB) Osmanabad. I narrated the grievances against the accused to Shri Shepal, Dy.S.P. He got it typed as per my version. Thereafter, I read over its contents. The contents were as per my own grievances and correct. Hence I signed at the foot of the complaint. The complaint now shown to me is the same. It is at Ex. 17.

5. ...

6. ...

7. ... After the pre trap panchanama was prepared, myself pancha No. 1 Ashtekar, left Anti Corruption Bureau on Scooty and came to Education Dept. Z.P. Osmanabad at about 4.30 p.m. or so, and pancha no.1 Ashtekar went in the office of the accused. He was not found on his chair. Therefore, we both

came out of the office. We sat on the heap of stones. After some time I told panch No. 1 Ashtekar to accompany me in the office of the accused. We both again entered into the office of the accused and found him present there. I offered salute to accused. I asked the accused about the progress of the work. The accused told me that compliances were made and he asked me to come out of the office and joined him for tea. Myself, pancha No.1 Ashtekar and the accused came out of the office. The accused asked me whether I have brought the amount and I told him that I had brought it. The accused then told me to accompany him on a motor cycle. I told him that my maternal uncle was with me and therefore, cannot accompany him. We then went in the canteen from Zilla Parishad. I paid Rs. 6/- at the counter as tea bill. The accused asked me to leave my uncle and to come to his office alone. He then told me to pay the amount as settled on 23.5.2001. The accused thereafter alone went in his office. I asked pancha no. 1 Ashtekar to stand near the door and I alone went inside the office of the accused. The accused then asked me to pay Rs. 1000/- to him so that he can pass the bill and send it to pay unit. At that time pancha No. 1 Ashtekar was standing near the door of the office. I then removed the sum of Rs. 1000/- to which anthracene powder was applied from the right side pocket of my wearing pant, and paid it to the accused. He collected it by his right hand. The accused saw pancha no 1 Ashtekar standing near the door and therefore he at once threw those notes collected from me in the dustbin. I came out of the office and gave the signal to the members of the raiding party by moving my right hand on the head. The members of the raiding party at ones reached the

spot. Shri. Shephal asked pancha no. 1 Ashtekar as to who accepted the amount. Ashtekar pointed out his finger towards the accused. The members of the raiding party then gave their introduction to the accused. P.C. Shirure caught hold the hands of the accused. I was asked by Shephal to stand outside the office and not to touch any article. I came out of the office.

8. After some time Dy. S.P. Shephal again called me in the office of the accused. My wearing pant was checked under ultra violet lamp and blue white shining was seen on the right side pocket of my wearing pant. My hands were checked under ultra violet lamp blue white shining appeared on the fingers of my right hand. Pancha No. 2 Mishra took my personal search. The amount of Rs. 44/-was found with me. The amount was checked under ultra violet lamp and there was no blue white shining on it. Afterwards I returned back to home. The accused before the court is the same, to whom I have paid the amount.

PW2 Pralhad Rathod, who was Deputy Director of Education, Aurangabad Division Aurangabad, was the sanctioning authority. His evidence at Exhibit 28 reads as under :

“1. I have been serving as Deputy Director of Education Aurangabad Division Aurangabad since 2.6.01 The Osmanabad district was coming under Aurangabad Divn. during the year 2001. The accused was serving as Asstt. Deputy Education Inspector in Zilla Parishad Osmanabad in the year 2001. Deputy Director of Education is the appointing and removing authority of Asstt. Deputy Education Inspectors.

2. On 27.8.2001 I received letter No. Gr/00/Osmanabad/2001/2887 dated 27.8.2001 from Superintendent of Police, Anti Corruption Bureau (ACB) Aurangabad for perusal of the papers in Osmanabad City police station crime no. 32/2001 under Sections 7, 13 (1) (d) R/W 13(2) of the Prevention of Corruption Act, 1988 for according the sanction against the accused for launching the prosecution under the provisions of the prevention of Corruption Act. The file was consisting of the papers running into page no. 1 to 203. It was consisting of the complaint lodged by one Mohan Patilbuo Kale, pre trap panchanama, spot panchanama, statement of the witnesses and the FIR lodged against the accused by Dy. S.P. Shephal. I studied the entire file. I found a substance in the allegations made against the accused. Prima facie case subsisted for according the sanction order. Hence I issued the sanction order for launching the prosecution against the accused under the provisions of the Prevention of Corruption Act on 27.8.01. Now I am shown the sanction order. Its contents are correct. It bears my signature Ex. 29.

PW3 Padmakar Ashtekar has acted as shadow pancha. At Exhibit 36, he has deposed as under :

1. ...

2. On 24.5.2001 at about 12.30 p.m. to 1.00 pm. Deputy Engineer instructed me and Ganesh Mishra Jr. Clerk from our

office to attend at Anti Corruption Bureau (ACB) Osmanabad for some confidential work. We reached ACB office at 1.45 p.m. We gave our own introduction to Dy. S.P. Shephal. Thereafter, Dy, S.P. gave our introduction to the members of raiding party. He also introduced the members of the raiding party to us. One unknown person was there present in his office. Dy.S.P. Shephal asked us to hear his grievances. The said person narrated his grievances and the same were as per his typed complaint at Ex. 17. Hence myself and other pancha Mishra signed at the foot of the complaint. Now I am shown the signature of myself and other pancha Mishra at the foot of Ex. 17. They are the same.

3. I was asked to go alongwith the complainant in Z.P. office and to hear the conversation between complainant and the accused. Complainant was told to open the talk regarding the nature of his work and only on demand by the accused to pay the amount to him. I was asked to hear the conversation between the accused and complainant and keep a watch at the place where the accused keeps amount.

4. After the pre trap panchanama was over, myself and complainant Kale proceeded on scooty towards Z.P. office. Some members of the raiding party came by Auto rickshaw and the remaining members came by Govt. jeep. We must have reached near the compound wall of Z.P. office at about 4.15 p.m. Myself and Kale entered into Z.P. office at 4.20 p.m. The complainant Kale showed me the place of sitting of the accused.

However, the accused was not present at that time in the office. Hence we came out of the office and sat near the well which is near the compound wall of Z.P. Campus. after 5 minutes again we both entered into the office of the accused. The accused was present and busy in his work in the office. The complainant offered salutes to the accused and asked regarding medical bill of his father. Accused then told that he would discuss about it outside the office and left for canteen. The accused and complainant began to proceed towards the canteen side and I was following them. The distance between us was about 2 to 3 foot. While proceeding towards canteen, the accused asked the complainant as to whether he had brought the amount. The accused then told the complainant to accompany him towards the canteen on a motorcycle. The complainant told him that his maternal uncle also had come with him and therefore he requested the accused to take a tea in the canteen which was near to the campus of Z.P. office. Thereafter, myself, accused and the complainant went in the canteen. The complainant and the accused sat on one bench and I sat on other bench. I was introduced by the complainant as his maternal uncle to the accused. The accused asked the complainant to instruct him to stand outside his office. We took tea and the complainant paid the bill at the counter. The complainant and accused began to proceed towards his office. I was following them. The complainant and accused together went in the office. I was standing outside the room near the doors. Some talk took place between the accused and the complainant. I did not listen it. The complainant then removed the tainted money and tendered before the accused by his right hand. Complainant was standing

between me and the accused and therefore I could not see as what events took place. However, I saw that the tainted money was in the dust-bin. The complainant then came out of the office and gave a signal to the members of the raiding party. On seeing it all the members of the raiding party reached at the spot and caught hold of the hands of the accused.

PW4 Kalidas Suryawanshi		
and		are the Investigating Officers.
PW5 Dilip Shephal		

12. Case of prosecution is rested on the evidence of above five witnesses. Gist of the prosecution case is that, accused had demanded Rs.1,000/- for clearing medical bills of complainant. After hearing learned APP, it is emerging that exception has been taken to the judgment of learned trial court primarily on two grounds i.e., firstly, non consideration of consistent and corroborative evidence of PW1 complainant and PW3 shadow pancha; and secondly, in spite of sanction being valid, trial court holding it to be without application of mind.

13. On above lines, if evidence of complainant and shadow pacha is put to minute scrutiny and on meticulous re-appreciation, it is emerging that there is no dispute that complainant was working as

Junior Professor in a collage, and further there is no dispute about he tendering medical bills towards treatment of his father. Complainant and shadow pancha have allegedly approached accused after hearing necessary instructions from the Investigating Officer.

14. Complainant, in his substantive evidence at Exhibit 16 has stated that, when he and shadow pancha approached accused, accused allegedly informed complainant that compliance is made and that they should go for tea and accordingly he, pancha and accused went to take tea and at that time, it is alleged that, accused asked whether he brought the amount. Then accused asked complainant to accompany him on motorcycle, to which this witness answered that he was with shadow pancha, who was introduced to accused as his maternal uncle, and therefore he cannot accompany accused. He further stated that after taking tea, accused has asked him to leave his uncle and to come to the office alone, after which complainant alone went to his office. He claimed that he had asked shadow pancha to stand near the door and that he would alone go inside the office where accused asked him to pay Rs.1,000/-. At such point of time, pancha was standing near the door of the office. Complainant offered Rs.1,000/- which accused collected in his right hand, however, after seeing shadow pancha at the doors, accused threw down the currency

notes in the dustbin. Signal was relayed and raiding party came at once.

While under cross, complainant in para 11 has answered that, accused had demanded the amount while going out of the office and accused had put up such demand in a very low voice. He answered that he felt that accused was demanding bribe amount. This shows that complainant has entertained just a feeling of demand being made. Again, on visiting cross of PW1 complainant at para 16, it is emerging that he deposed that when he approached accused, at that time accused did not demand any amount from him and they together went to take tea in the canteen. However, according to him, while proceeding to canteen, accused demanded amount from him on the road itself. He further answered that he did not pay the amount to the accused at that time because according to him, accused had told him that as long as shadow pancha was with him, he would not accept the amount from him. He also admitted in para 17 that, while in the canteen also, accused did not put up demand from him. He further stated that after going out of the canteen and while proceeding towards office, accused asked him to keep the shadow pancha outside. He admitted that after reaching Zilla Parishad office, his backside was towards the doors of the office and at that time, shadow

pancha was standing near the doors of the office and that, shadow pancha met him within five minutes after he paid the amount of the accused. This answer clearly suggests that shadow pancha was not present when the amount was paid to the accused. He again answered in cross that accused has demanded amount in Zilla Parishad office in low voice. In para 18, he has admitted that accused was not authorized to either pass or reject the bill.

15. In cases of such nature, complainant being interested party, law expects sufficient corroboration from shadow pancha and courts generally insist for corroboration from the independent pancha witness, more particularly when other circumstances also cannot be taken aid of.

16. PW3 shadow pancha, in his evidence at Exhibit 36, has stated about being summoned by the ACB authorities, introduced to the complainant, going through the complainant, causing signature over it, being party to the instructions given by the ACB officer with specific instructions to accompany complainant to remain watchful about the events. He also deposed about going with complainant to the office of accused, and this witness too, in examination-in-chief itself, has stated that after approaching accused, complainant asked

regarding medical bill of his father and that time, accused told that he would discuss about it outside the office and left for tea and only accused and complainant were proceeding towards the canteen and he claims to be following them. He further deposed that at that time, accused asked complainant as to whether he has brought the amount. Thereafter, he himself, complainant and accused went to the canteen and complainant introduced this shadow pancha to accused as his maternal uncle. In the canteen, he claims that, accused and complainant occupied one bench whereas, he himself occupied another bench. He also stated in chief itself that, at that point of time, accused had asked complainant to instruct shadow pancha to stand outside his office, but he claims to have followed them and was standing outside the room near the doors. It is to be noted that complainant has claimed that shadow pancha was at the doors of the office of accused, whereas this witness stated that he was outside the office, but near the door. He, in chief itself, stated about some talks taking place between accused and complainant. Such deposition shows that shadow pancha is oblivious about the nature of conversation between accused and complainant. In chief itself, he categorically stated that he did not listen to the conversation. Further, according to him, complainant was standing between him and accused and therefore, he could not see the sequence of events but he

saw the tainted currency in the dustbin. In chief again, he stated that he did not know as to who threw tainted currency in the dustbin.

17. It seems that thereafter, learned APP has sought permission of the court to cross PW3 finding him not supporting prosecution version, but nothing of any use to the prosecution has been elicited from him.

18. Therefore, on critical analysis of the evidence of complainant and shadow pancha, here, it is emerging that complainant and shadow pancha are not consistent. Shadow pancha has not at all supported prosecution on crucial aspect, because in chief itself he has stated that he did not listen to the conversation, which raised doubt about any demand being raised. Secondly, when conversation between complainant and accused was taking place, he was outside the office near the door and he further answered that he could not see the act of accused accepting currency and further throwing it in the dustbin. Therefore, on such count, prosecution story is rendered doubtful.

19. Second ground of attack on behalf of learned APP is that, in spite of there being valid sanction, learned trial court disbelieved the

evidence of PW2.

20. PW2 is the sanctioning authority, who is examined at Exhibit 28 and his designation was Deputy Director of Education. Even in appeal, there is no challenge about competency of PW2 to accord sanction to prosecute. However, serious contest is on the aspect of application of mind while according sanction. PW2 claims about receiving papers from ACB office seeking sanction to prosecute. He also claims to have studied the entire papers and after getting satisfied, claims to have accorded sanctioned Exhibit 29.

While under cross at the hands of defence, this witness has stated that he issued sanction order on 28.08.2001. However, the Dy. Superintendent of Police, Anti Corruption, vide a communication with him, pointed some deficiencies and asked him to remove the same and to resend the sanction order and accordingly, he issued corrected sanction order on 25.10.2001. He placed on record said communications at Exhibits 32 and 33. But again sanction order was received back by his office for removing some more defects and deficiencies and therefore, he made necessary corrections and on 05.11.2001, after removing those defects, he again sent the sanction order Exhibit 34. He further answered that again on 06.11.2001 the

sanction order was received back from ACB Osmanabad for removing defects and deficiencies and he again corrected draft sanction order and sent it to ACB on 05.12.2001 vide Exhibit 35. He admitted that after going through the entire correspondence between his office and office of ACB, it could be gathered that sanction issued by him dated 28.08.2001 was found to be defective and he made necessary corrections and finally dispatched rectified sanction order on 05.12.2001. In further cross para 5, he has candidly admitted about receipt of draft of sanction order from ACB office. He also candidly admitted to be unaware of the provisions of the PC Act. He also admitted that, if a person of the rank of Superintendent of Police, ACB is aware of the provisions of the PC Act and since a draft sanction order was sent by a person holding said post, he found it in prescribed format and therefore, after putting signature on it, he sent it back to the office. He further admitted that in the event if he could not have received draft sanction, in that case, there would have been difficulty for him to send sanction order correctly. He also admitted about issuing new sanction order, after removing all defects and deficiencies, to ACB office finally on 05.12.2001, but date of sanction order was not changed.

21. Therefore, taking such answers given in the cross into consideration, there is no manner of doubt that sanction order is prepared and rectified by the ACB authorities and there is total non application of mind independently by PW2.

22. In view of the above discussion, the view taken by learned trial court while answering this point cannot be faulted at. There is no merit in the arguments advanced before this Court so as to interfere with the well analyzed and well reasoned order. Hence, the following order :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]