IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

CRIMINAL APPEAL NO.404 OF 2005

Sk. Afsar Sk. Mohammad,
Age: 46 years, Occu: Service,
Talathi, Sajja Jogwada,
Tq. Jintoor, Dist. Parbhani ….APPELLANT

VERSUS

State of Maharashtra,
Through Shri. R. S. Khakale,
Deputy Superintendent of Police
Anti-Corruption Bureau,
Parbhani ….RESPONDENT

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Mr Mayur Subhedar, Advocate h/f Mr Ajay S. Deshpande, Advocate for Appellant
Ms A. S. Mantri, APP for Respondent/State

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 25th NOVEMBER 2025
PRONOUNCED ON : 03rd 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 16/05/2005, passed by the learned Special Judge, Parbhani in Special Case No.10/2002, 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 shot ‘the said Act’).

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

Complainant/PW-1 Lokadiba Punjaji Kokate is resident of Sawargaon, Tq. Jintur and is working as a labourer. His Father who was *Karta* of the family consisting of complainant and others, died on 29/08/2001. Punjaji was residing with complainant at the time of his death. Appellant/accused Shaikh Afsar Shaikh Mohammad was serving as a 'Talathi' at Sajja, Jogwada at the relevant time. The complainant in the month of September 2001 approached the accused/appellant and enquired regarding grant-in-aid under Social Security Scheme payable to him on account of death of his father. According to the complainant, accused demanded Rs.2,000/- from him for getting sanction of Rs.10,000/- in his name under the said scheme and collecting documents required by it. Initially, complainant/PW-1 showed his inability to pay the amount, as it was excessive amount, however, accused was not ready to reduce the amount. Thereafter, complainant approached the accused on 25/04/2002. On that day, the appellant/accused insisted for paying amount of Rs.2000/- for the said work. Again when on 30/04/2003, complainant approached the accused and after discussion, some settlement regarding amount took place and accused reduced the amount to Rs.700/- for doing said work. Since complainant was not willing to pay the bribe amount, he approached the Anti-Corruption Bureau Office (A.C.B. office), Parbhani, where he met PW-7/Ramesh Sakharam Khakale, who was working as a Deputy Superintendent of Police at the relevant time. The said PW-7/Investigating Officer Ramesh Khakale recorded grievance of complainant at Exhibit 25. Thereafter, he issued letter to the Town Planning Office, Parbhani for availing of two employees from Government Department to act as Panchas. Accordingly, two employees, namely, Ganpat Limbaji Panchal i.e. PW-3 and one Prashant Moralwar (not examined) have attended the A.C.B. office. After completing all the formalities and recording of necessary panchnama, each and every members were given requisite instructions by PW-7/Investigating Officer. He decided to lay trap on accused/appellant. Accordingly, he left alognwith raiding team on 30/04/2002 at 2.00 p.m. At 3.15 p.m. they reached there. The complainant/PW-1 and panch Ganpat Panchal/PW3 entered in a building of Talathi office and went on the first floor by staircase passing through the shop namely, ‘National Kirana Stores’. All other raiding team members were kept vigil on the premises. At about 03.50 p.m., the complainant came out of said premises and gave pre-planned signal. As per signal, all the members of raiding team went on first floor. PW-7 enquired panch Ganpat Panchal as to who demanded and accepted bribe. Panch Ganpat pointed his finger towards the appellant. Accordingly, the said amount came to be recovered from the accused and after completing the formalities, PW-7/Ramesh Khakale, Investigating Officer filed complaint at Police Station, Jintur against the appellant. On the basis of said complaint crime bearing C.R. No.3020/2002 came to be registered against the appellant for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The accused came to be arrested under arrest panchnama. All the investigation papers were sent for obtaining sanction to prosecute the accused. PW-2/Annasaheb Marotirao Shinde, Sub Divisional Officer, Sailu accorded sanction to prosecute the accused. After completion of investigation, charge-sheet came to be filed against the accused/appellant on 18/09/2002. The appellant/accused pleaded not guilty to the charge and claimed to be tried. His defence is of total denial. The charges came to be framed at Exh.06.

3. During the trial, the prosecution has examined as many as seven witnesses. PW-1 Lokadiba Punjaji Kokate, who is complainant was examined at Exhibit 24. PW-2/Annasaheb Marotirao Shinde, Sub Divisional Officer, who accorded sanction to prosecute the accused, was examined at Exhibit-80. PW-3/Ganpat Limbaji Panchal, serving

as Tracer in the Town Planning Office, Parbhani, who was Panch witness No.1 was examined at Exhibit-49. PW-4/Uddhav Dadarao Tirthe was independent witness and examined at Exhibit-53. PW-5/Dawoo Laxman Rathod was the eye witness and was examined at Exhibit-55. PW-6/Vinod Vishnulal Jaiswal who had prepared the map of the spot was examined at Exhibit-56. PW-7/Ramesh Sakharam Khakale, who was the Investigating Officer of the case was examined at Exhibit-63. Accused also examined defence witness, namely, Shaikh Atik Shaikh Afsar/DW-1/son of the appellant at Exhibit-81. After recording the evidence and hearing the learned Advocates for the parties, the learned Special Judge Parbhani, vide order dated 16/05/2005 in Special Case No.10/2002 convicted the appellant/accused for the offence punishable under Sections 7 and sentenced to suffer rigorous imprisonment for two year and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for three months. He was further convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for two months. Both the sentences of imprisonment were directed to be run concurrently. Being aggrieved by the impugned judgment and order of conviction, the appellant has approached this Court in the present appeal praying for quashing and setting aside the same.

4. Heard Mr Subhedar, learned Advocate holding for Advocate Mr Deshpande for appellant and learned APP Ms Mantri for respondent/State.

5. Learned Advocate for the appellant submits that the impugned judgment and order passed by the learned Special Judge is contrary to the evidence on record. He then submits that the prosecution has failed to establish its case as per the charges framed against the appellant and to prove the necessary ingredients of Sections 7 and 13(1)(d), 13(2) of 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.

6. Learned Advocate for the appellant then submits that the relation between complainant and appellant were cordial, and complainant had also invited the appellant on 13th day rituals of his father. The claim of the complainant for grant-in-aid was not considerable under any scheme of Government, and therefore, appellant showed his inability to help him in getting assistance under

the scheme. He then submits that the complainant had taken grocery items of Rs.700/- on credit for 13th day rituals of his father from grocery shop, namely, National Kirana Stores, which is of son of the appellant, namely, Sk. Atiq. After demand of the said money from the complainant by Sk. Atiq and the appellant, the complainant did not pay that amount for a considerable period. He invites attention of this Court to invitation card given to appellant by complainant of 13th day rituals of his father. He also invites attention to relevant credit bill for grocery of Rs.700/- showing balance amount with the complainant. He further submits that, annoyed by the demand by appellant for credit bill of Rs.700/- and also on account of appellant is not helping him in getting grant-in-aid under the Government scheme, the complainant filed false complaint against appellant before the A.C.B. office.

7. The learned Advocate for the appellant further submits that there is variance in deposition of complainant and his complaint. He then submits that the testimonies to aforesaid witnesses do not show that it is the appellant, who is guilty of aforesaid offences and charge against him. He then submits that the sanction which accorded by PW-2 / Sub Divisional Officer Annasaheb Shinde is not after recording the grounds of satisfaction. The said witness has virtually admitted that he had received draft sanction order from the S.P./A.C.B.

office, Nanded. In his deposition, he has clearly stated that he received certain documents, namely, compliant, pre-trap panchnama, panchnama after the trap, statements of witnesses recorded during the investigation, etc. from the office of A.C.B./S.P., Nanded and had not specifically mentioned grounds of his satisfaction in the sanction order. He has also not mentioned the documents which prompted him to accord sanction order, which he did not feel it necessary. He further admitted that under the 'National Family Benefits Scheme', the Government used to sanction financial aid to the family below poverty line in the case of death of major member of the family. However, he is not aware whether the forms under the said scheme are kept with the Panchayat Samiti, Grampanchayat, Gramsevak, Municipal Council, Corporation and Zilla Parishad etc. He further submits that death certificate of dead person also required for the purpose of availing benefits of said scheme. He also admitted that Talathis are only used to process the application under the said scheme. Mr Subhedar, learned Advocate for the appellant, therefore, vehemently argued that the sanction is not valid as it has been held in numerous judgments delivered by the Hon'ble Apex Court that the prosecution case against the appellant fails if the sanctioning authority did not apply its mind to all relevant facts and materials before granting the sanction for prosecution. He then submits that PW-3, PW-4, PW-5 who have been examined at Exhibit Nos.49, 53 and Exhibit-55 are the independent eye witnesses, however, they have not supported the prosecution case and thus, according to him, prosecution did not get support from any independent witnesses. He also submits that the shadow witness who was alongwith PW-1/complainant also did not support the prosecution case on the aspect of complainant paying bribe of Rs.700/- to the accused.

8. Learned Advocate for the appellant also submits that the defence also examined one witness to discard the evidence of prosecution. According to him, complainant had purchased the grocery items run by son of appellant worth Rs.700/-. That grocery were purchased for performing 13th day ritual of the father of the complainant. The defence has tried to brought on record the invitation card of 13th day ritual of the father of the complainant as well as bill of Rs.700/-. According to the defence, the said amount of Rs.700/- is paid by the complainant to him. Therefore, learned Advocate for the appellant submits that the appellant has successfully removed the presumption of provisions under the Prevention of Corruption Act, however, the prosecution has failed to shift the burden upon the appellant.

9. In support of his submission, learned Advocate for the9 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."***

10. 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 Mantri appearing for the respondent/State has strenuously supported the impugned judgment and order passed by learned Special Judge. 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, prayed for dismissal of the present appeal.

12. After hearing learned advocates for the parties, I have gone through the record and proceedings of the case minutely. Upon perusal of the documents, it can be seen that the complainant had invited appellant for his father's 13th day rituals and had also purchased grocery of Rs.700/- on credit basis from the shop of son of the appellant. It shows that the relations between the complainant and appellant were cordial. Even on demand from the appellant, the complainant did not pay the said amount for a long period. The complainant had also approached the appellant for assistance in getting benefits of Social Security Scheme from Government on account of his father's death. Appellant was entrusted only with the role to submit the applications with the Committee under the said scheme. Complainant was not having eligibility for getting said benefits and

therefore, appellant could not assist him in the said work. Because of these reasons i.e. demand of credit bill and not assisting the complainant in getting benefits of the said scheme, the possibility of filing false complaint by the complainant against the appellant cannot be ruled out.

13. It is also required to be noted that PW-2 / Annasaheb Shinde, Sub Divisional Officer, Sailu who accorded sanction to prosecute the accused was examined at Exhibit-36. In his deposition, he had admitted that he received the draft of sanction order from the S.P./A.C.B. office, Nanded. He also admitted that the documents which he received from the said office prompted him to accord sanction and he did not mention specifically the grounds of his satisfaction in the said sanction order, as he did not feel it necessary. He also admitted that the Government used to sanction financial aid to the family below poverty line in the case of death of major member of the family, however, he is not aware, whether the forms under the said scheme are kept with the Panchayat Samiti, Grampanchayat, Gramsevak, Municipal Council, Corporation and Zilla Parishad etc. He also admitted that the death certificate of dead person is also required for the purpose of availing benefits of said scheme. He also admitted that Talathis are only used to process the application under

the said scheme. Upon perusal of the sanction order which is at Exhibit 30, it appears that the recitals used in the said sanction order discloses that there is at all no any substantive satisfaction or application of mind or expression of application of mind. It is regular draft of the sanction order and only date-wise events of the incident. As such, bare perusal of it, it can be seen that the sanctioning authority, who had passed the said sanction order, had considered all the material forwarded to it by the concerned A.C.B. office and after examining it minutely, the said authority had formed opinion and upon being satisfied by the said opinion, has issued the said sanction order.

14. It is also required to be noted that the complainant in his deposition at Exhibit-24 had stated that he has paid Rs.700/- to the accused/appellant after removing the said amount from his left chest pocket by his right hand, whereas the shadow panch/Ganpat Panchal in his deposition at Exhibit 49 had deposed that complainant/PW-1 removed amount from the pocket of his trouser and gave it to the accused. Thus, both the complainant and shadow panch PW-2 did not support the prosecution on the aspect of paying bribe of Rs.700/- and they are not supporting each other as regards from where the complainant took out money and paid to the accused. As such, there being no corroboration of witnesses. In that view of the matter, the

prosecution is not getting support from these witnesses as they are not supporting the prosecution case. Independent witnesses PW-3, PW-4, PW-5 who have been examined at Exhibit Nos.49, 53 and Exhibit-55 also have not supported the prosecution case. By catena of judgments, it is well settled that in such cases, testimony of the independent witnesses must be kept at higher pedestal than that of the shadow witnesses, since shadow witnesses are the Government employees. Thus, prosecution did not get support from any independent witnesses also.

15. The defence witness DW-1/Sk. Atik Sk. Afsar, son of appellant who had examined at Exhibit-81 also deposed that complainant had purchased the grocery items from his shop worth Rs.700/- on credit for performing 13th day ritual of the father of the complainant. The documents like invitation card of 13th day ritual of the father of the complainant as well as bill of Rs.700/- of purchasing grocery by complainant support his deposition. There is a possibility of the complainant paying the said bill amount of Rs. 700/- to the appellant. The crucial point to consider is the act of complainant. Complainant alleged that appellant demanded Rs.2000/- in September 2001, however, at that time, complainant did not approach the A.C.B.

office. It was only when the amount was reduced to Rs.700/-, he approached the A.C.B. office. It was only because the appellant would be accepting the amount believing that the complainant is returning the amount of grocery which he had purchased from his son’s shop.

16. It is pertinent to note that under the provisions of Prevention of Corruption Act, it is the prosecution to establish beyond reasonable doubt that there is valid demand and acceptance by the accused. Unless there is concrete evidence available against the accused, the prosecution cannot be said to have proved its case beyond reasonable doubt. In that view of the matter, it is clear that the prosecution has certainly failed to prove its case against the appellant beyond reasonable doubt.

17. Considering the evidence brought on record, the prosecution is 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 said 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 (supra) 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 said 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.

18. 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 dated 16/05/2005, passed by the learned Special Judge, Parbhani in

Special Case No.10/2002, 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 is quashed and set aside. The appellant/ accused is acquitted of the said offences. 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.]

sjk