



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

CRIMINAL APPEAL NO.434 OF 2005

The State of Maharashtra,
Through Anti Corruption Bureau,
Jalna

... APPELLANT
(Original Complainant)

VERSUS

Bapurao Ramdas Patil,
Age : 43 years, Occu.: Service
as a Police H.C. B.C. Bi,727,
Police Station, Ambad,
Tq. Ambad, District : Jalna

... RESPONDENT
(Original Accused)

....
Mr. D. J. Pati, APP for the Appellant-State
Mr. Satej S. Jadhav, Advocate fro the Appellant
....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 11/02/2025

PRONOUNCED ON : 03/04/2025

JUDGMENT :

1. The appellant / State through Anti Corruption Bureau, Jalna, has preferred this appeal against the acquittal of the respondent / accused from the offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act'), recorded by the learned Special Judge, Jalna in Special Case No.5 of 2002 dated 05/03/2005.

2. As per the case of the prosecution, the complainant – Sakharam Rustum Mandal, resident of Ambad, was running his vehicle Tempo Trax No.Mh-21-W-196 on Jalna to Ambad Route for 10 to 12 months before the incident, for carrying passengers. The respondent / accused was attached to Ambad Police Station at the relevant time and he made frequent demands of Hapta from the complainant, failing which he threatened the complainant to park the vehicle at Ambad Police Station. On 07/03/2002 at about 7.00 a.m. the complainant was present at Ambad bus-stand with his vehicle. At about 10.00 a.m. the complainant and his friend Natha Rathod, resident of Masai Tanda, was waiting for his turn. The respondent / accused came there and shouted at the complainant as to why he parked his vehicle at bus-stand as he had not paid Hapta. The respondent / accused also told the complainant to take the vehicle to the police station. Accordingly, the complainant parked his vehicle in the compound of Ambad Police Station. The complainant at the relevant time, requested the respondent / accused for not lodge a false case against him, but the respondent / accused demanded bribe of Rs.1,400/- for not to issue a challan on his vehicle. Though the complainant was unable to pay the amount, but promised the respondent / accused to pay the same on next day i.e. 08/03/2002. Then the complainant

lodged the report with Anti Corruption Bureau Office, Aurangabad on 07/03/2002 and accordingly Deputy Superintendent of Police Mr. Idhate told the complainant to come on next day. Accordingly, on 08/03/2002 at about 7.30 a.m. the complainant and panchas appeared in the Anti Corruption Bureau Office at Aurangabad and the trap was set. Thereafter, at about 9.30 a.m. on the same day, the complainant, panchas and members of raiding party started from Aurangabad and reached at Ambad at about 11.30 a.m. It was revealed that the respondent / accused was at Z. P. High School, Ambad and accordingly, when the complainant and panchas approached him there, he demanded the bribe amount and accepted the same. Thereafter, the raiding party caught the respondent / accused on the spot alongwith the bribe money and subsequent formalities were done. The complaint was lodged against the respondent / accused and after investigation, the respondent / accused was charge sheeted for the aforesaid offence. The learned trial court i.e. the learned Special Judge, Jalna though conducted the trial, but acquitted the respondent /accused. Hence, this appeal.

3. The learned APP submits that the complainant has deposed as per the prosecution story and stated that the respondent /

accused had demanded bribe of Rs.1,400/- for not to register crime against him in respect of Tempo Trax, which was kept in the Ambad Police Station. He pointed out that the trap was successful and Anthracene powder was also detected on the fingers of the respondent / accused. The evidence of the panch witness i.e. panch No.1 also corroborated the version of the complainant. Therefore, when the respondent / accused was caught with the bribe money, the learned trial court erroneously acquitted him from the serious offence. He pointed out that the learned trial court acquitted the respondent / accused merely on the ground that the omissions and contradictions in the evidence of the complainant and panch witness could not be brought on record due to the death of investigating officer as the FIR lodged by him. The learned APP pointed out that the complaint lodged by the complainant is very much proved and therefore, the aforesaid reason for acquittal hardly matters. According to him, the independent witnesses i.e. PW-3 and PW-4, who were on Bandobast at the time of acceptance of the bribe amount, have in fact supported the prosecution case. The learned APP also pointed out that PW-6 i.e. the police personnel, who carried out partial investigation, has also deposed about the establishment of guilt of the respondent / accused. He pointed out that the learned trial court had also considered the

sanction accorded being a valid one. He further, pointed out that the defence of the respondent / accused that the bribe amount was in fact thrust into his pocket, is highly improbable since the fingers of the respondent / accused had also shown presence of Anthracene powder. Thus, he contended that the learned trial court should have convicted the respondent / accused. As such, he prayed for setting aside the acquittal of the respondent / accused. In support of his submissions, the learned APP relied on following judgments:

- A) *Neeraj Dutta vs. State (Government of NCT of Delhi), (2023) 4 SCC 731 and***
- B) *State of Karnataka vs. Chandrasha, 2024 Scc OnLine SC 3469.***

4. On the contrary, the learned counsel for the respondent / accused heavily supported the impugned judgment. According to him, there was motive available for the complainant for making a false accusation against the respondent / accused. He pointed out that the learned trial court has properly appreciated the contradictions and omissions in the evidence of the complainant as well as panch No.1 as regards the demand and acceptance of the bribe amount. He pointed out that the prosecution has failed to establish the initial demand by the respondent / accused as the

person, who had accompanied the complainant at the relevant time i.e. his friend Natha Rathod, is not examined by the prosecution. He also pointed out that due to lapse of time, the respondent / accused must have been retired now and therefore, considering his age, benefit of doubt be given to him even if some incriminating evidence is there on record. Thus, he prayed for dismissal of the appeal.

5. Heard rival submissions. Also perused record and proceedings of the original case alongwith the impugned judgment.

6. On going through the impugned judgment, it is evident that the learned trial court has mainly acquitted the respondent / accused from the charges levelled against him on the ground that there were contradictions between depositions of the complainant (PW-1) and panch No.1 (PW-2) in respect of the demand and acceptance and due to death of partial investigating officer Deputy Superintendent of Police – Idhate, the material omissions and contradictions came on record in the evidence of complainant, could not be verified from the FIR (Exhibit-34) lodged by the said partial investigating officer. It is mainly observed by the learned trial court that the initial demand of the bribe amount made to the

complainant – Sakharam, was not proved by the prosecution by examining the person in whose presence it was made by the respondent / accused.

7. Admittedly, the learned APP has relied on the judgments mentioned above. The Hon'ble Apex Court in the case of State of **Karnataka vs. Chandrasha** (supra) has made following observations.

“24. We are conscious of the fact that in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the appellate Court would not be justified in setting aside the acquittal merely because the other view is also possible. In the present case, the recovery of bribe amount from the respondent having been proved, the explanation offered by the respondent in the absence of any concrete material, is clearly of the wall. Once the aspects of ‘demand’ and ‘acceptance’ of the bribe amount having been established beyond doubt, in our opinion, no two views are possible in the matter and thus, the approach adopted by the High Court is perverse and liable to be interfered with.”

In the said judgment reliance is also placed on the observation of earlier judgment of the Hon'ble Apex Court by its

Constitution Bench in the case of ***Neerja Dutta vs. State (Government of NCT of Delhi)*** (supra). It has been held in the case of ***Neerja Dutta*** (supra) that for recording conviction under Sections 7, 13(1)(d), the prosecution has to first prove the demand and acceptance of illegal gratification either (1) by direct evidence which can be in the nature of oral evidence or documentary evidence, or (2) by circumstantial evidence in the absence of direct oral and documentary evidence. The learned APP thus, submitted that in the instant case, the prosecution had established the demand and acceptance of the bribe amount by the respondent / accused. However, for that purpose whether there was direct evidence of such demand and acceptance, the entire evidence on record is to be scrutinized. Further, it has to be seen that whether there is any circumstantial evidence for drawing presumption of demand and acceptance of the bribe amount, in absence of such direct evidence.

8. According to the prosecution case, the respondent / accused had demanded the bribe amount of Rs.1,400/- on 07/03/2002 for releasing his vehicle and for not to lodge police case against him. However, the prosecution did not bring on record the supporting evidence to its case of alleged demand on 07/03/2002. The

investigating officer has stated about the extract of register at Exhibit-39 dated 07/03/2002 . On going through the same, it is evident that one Police Constable – Patole, Badge No.182 of Ambad Police Station had, in fact, filed a case against the vehicle of the complainant as it was standing in ‘no park zone’. Thus, it was not the accused, who had challaned the vehicle of the complainant on the said day. Further, it is the case of the complainant that for releasing his vehicle, the respondent / accused had demanded bribe of Rs.1,400/-. However, the document Exhibit-43 i.e. NC No.701 of 2001 indicates that the same was filed under the provisions of Motor Vehicles Act against the complainant and a fine of Rs.500/- was imposed on the complainant. Thus, before the alleged incident of demand of the bribe on 07/03/2002, there was a grudge in the mind of the complainant against the respondent / accused, who had imposed a fine of Rs.500/- on the complainant. Therefore, the possibility of involving the respondent / accused in a false crime is very much on record. So far as the demand of the bribe amount is concerned, admittedly, there was no panchanama of demand verification at pre-trap stage. Further, though the complainant stated that the respondent / accused, on 07/03/2002, had demanded the bribe amount of Rs.1,400/- for releasing his vehicle at bus-stand Ambad in presence of his friend

Shri Natha Rathod, but it is extremely important to note that the prosecution did not record the evidence of said Natha Rathod nor he is examined to support the version of the complainant in respect of initial demand. As such, the evidence in respect of initial demand in absence of pre-trap demand verification panchnama, definitely appears doubtful.

9. Further, there are also discrepancies amongst the prosecution witnesses in respect of the proceedings of trap. Though the complainant – Sakharam (PW-1) deposed as per the prosecution story, but in the cross-examination certain material contradictions and omissions are brought on record. Moreover, it also revealed that the complainant – Sakharam (PW-1) tried to exaggerate the facts. Unfortunately for the prosecution Deputy Superintendent of Police – Idhate, who had conducted partial investigation and lodged report, died before giving evidence. The additions which the complainant – Sakharam (PW1) made in his evidence, could not be brought on record. It is specifically mentioned by the complainant – Sakharam (PW-1) that when he along with panch went in search of the respondent / accused towards school, Dy.S.P. – Idhate was also with them. However, it is not at all mentioned in the complaint (Exhibit-27). Further, it is

also not mentioned in the complaint (Exhibit-27) that there was conversation between himself and the respondent / accused and he told the accused about short of funds. Further, complainant – Sakharam (PW-1) deposed that he did not depose portion mark 'A' from his complainat and portion mark 'A' from his statement before police, which was favourable to the prosecution.

10. Further, so many vital things, which are additionally stated by the complainant – Sakharam (PW-1) that he told the respondent / accused to release the vehicle by accepting Rs.500/- and that the accused has registered NC and he asked the accused to supply the copy of the same for which the accused refused, are not mentioned in the complaint (Exhibit-27). Further, it is specifically admitted by the complainant – Sakharam (PW-1) that there were around 100 persons present in the campus of the said school and he introduced panch No.1 as 'Maharaj' when the respondent / accused made enquiry. However, panch No.1 – Balkrishna (PW-2) made no reference about the presence of around 100 persons in the school. On the contrary, he stated that police personnels were standing in the campus of the said school and the respondent / accused was sitting on a chair in the mob of police. This panch No.1 did not say anything about he being

introduced to the respondent / accused as 'Maharaj'. Further, though both these witnesses namely complainant – Sakharam (PW-1) and panch No.1 Balkrishna (PW-2) stated about the demand, but they have deposed differently on the point of acceptance. According to panch No.1 – Balkrishna (PW-2) the respondent / accused demanded the bribe amount from the complainant and after getting the same, counted it first before keeping in his shirt's pocket. However, the complainant's evidence is silent on the aspect of counting of currency notes. Therefore, considering these contradictions on material aspects, it is highly difficult to believe that the respondent / accused had demanded the bribe and accepted the same.

11. Admittedly, the bribe amount was recovered from the accused, but it is the defence of the respondent / accused that it was forcibly inserted into his pocket at the instance of Dy.S.P. – Vidhate. It is equally important to note that the complainant, panch witness and Dy.S.P.- Idhate had in fact tried to search for the respondent / accused, who was not initially found in the police station. They made inquiry and went to the school where the respondent / accused was on Bandobast duty. Thus, it appears that they searched and followed the respondent / accused. It is

now settled in various judgments of the Hon'ble Apex Court that mere recovery of the bribe amount cannot be taken as proof of demand unless it is established by the cogent evidence to that effect. In the instant case, there is no reliable evidence in respect of the initial demand made by the respondent / accused. Further, in absence of demand verification panchnama at pre-trap stage, the evidence of complainant as well as panch No.1 as regards the demand, is not convincing due to various contradictions and omissions as mentioned above.

12. It is also important to note that the prosecution has also examined two police personnels i.e. Manohar (PW-4) and ASI - Mansing (PW-5). Manohar (PW-4) was on Bandobast duty on the day of the alleged trap at Z. P. School, Ambad. Though he deposed as per the prosecution story in his chief-examination, but in the cross-examination itself he has admitted that he was about 1000 feet away from the respondent / accused when the complainant entered in the campus. Thus, it was highly impossible for Manohar (PW-4) to gather as to what conversation took place between complainant- Sakharam and the respondent / accused in respect of demand and acceptance of the bribe. He has deposed that on the very day of trap, Dy.S.P.- Idhate had recorded his statement.

However, on going through the record, it is clearly evident that the statement of this witness was recorded by police on 05/04/2002 and on 08/03/2002. It is to be noted that ASI- Mansing (PW-5) has deposed in his cross-examination that Dy.S.P. – Idhate typed his complaint on his typewriter itself, but panch No.-1 Balkrishna (PW-2) deposed that there was one typewriter in the police station and one typewriter was called from out side to complete the post trap formalities. Thus, in respect of the alleged FIR (Exhibit-34) there is no reliable evidence on record.

13. It is highly surprising that Namdeo Chavan (PW-3), who was on Bandobast duty at Z. P. School on the day of trap, though deposed as per the prosecution story, but in the cross-examination he admitted the fact that the respondent / accused made demand of money from the complainant towards 'Hafta', is missing from his statement. It is extremely important to note that this witness has clearly stated in his cross-examination that Dy.S.P. – Bhokare made contact with him in police station – Ambad on telephone on various occasions and threatened him to give statement as per his say, otherwise he would have to lose his service. Further, he has specifically admitted in the cross-examination itself that no talks and transactions took place between the complainant and the

respondent / accused in his presence. Thus, such admissions on the part of this witness definitely rendered the prosecution case doubtful. Moreover, it can be seen as to how far the investigating officer went to implicate the respondent / accused in a false crime.

14. Thus, considering all these aspects, it has definitely come on record that there was enmity between the complainant – Sakharam (PW-1) and respondent / accused on account of earlier imposition of fine amount. Further, considering the entire evidence of the prosecution witnesses jointly, it reveals that there are many contradictions among the prosecution witnesses as regards the demand and acceptance. Further, for recovery of the bribe amount the evidence of panch No.2, who was an independent witness, has not been adduced. As such, in absence of any concrete material on the aspect of demand and acceptance of the bribe amount, the observation made by the Hon'ble Apex Court in the case of **State of Karnataka vs. Chandrasha** (supra) cannot be applicable in the instance case. Moreover, there is also no satisfactory circumstantial evidence on record as regards the demand and acceptance of illegal gratification at the hands of the respondent / accused. Therefore, there is no reason to interfere with the

acquittal recorded by the learned trial court. In the result, the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-