2025:BHC-AUG:35084

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.469 OF 2006

Sudhakar s/o Bhausaheb Gavade
Since deceased through his LRs:
(Amended & LRs. added as per order
dated 15/01/2021 passed by this Court
in Criminal Application No.2363/2020)

1. Smt. Manorama wd/o Sudhakar Gavade
   Age: 75 years, Occu: Nil.
   R/o: Plot No.212, Mamata Niwas,
   Shahu Nagar Road, Near Pach Dodown,
   Navin Gavthan, Kedgaon, Ahmednagar,
   Tq. & Dist.: Ahmednagar.

2. Mukesh s/o Sudhakar Gavade
   Age: 44 years, Occu: Labour,
   R/o: As Above.

… Appellant/ Accused No.1

- VERSUS -

The State of Maharashtra.

… Respondent

…

Shri M.A. Tandale, Advocate a/w Shri Shrikant Mundhe, Advocate, for the appellant/ accused.
Ms. Anuradha S. Mantri, APP for the respondent/ State.

…

WITH
CRIMINAL APPEAL NO.475 OF 2006

Shridhar Nathu Kate.
Since deceased and his L.Rs.
Brought on record as per the
order of this Court dated 03.11.2023.

Through his L.Rs.:-
Anil S/o Shridhar Kate,
Age : 53 years, Occ : Legal Practitioner,
R/o Pathardi, Tq. Pathardi,
Dist. Ahmednagar.

...Appellant/ Accused No.2

- VERSUS -

The State of Maharashtra.

… Respondent

…

Shri N.K. Kakade, Advocate h/f Shri A.N. Kakade, Advocate for the appellant/ accused.
Ms. Anuradha S. Mantri, APP for the respondent/ State.

…

WITH
CRIMINAL APPEAL NO.478 OF 2006

Mahadev Sahebrao Abhang,
Age : 34 years, Occ : Business,
R/o Pathardi, Tq. Pathardi,
Dist. Ahmednagar.

...Appellant/ Accused No.3

- VERSUS -

The State of Maharashtra.

...Respondent

…

Shri Shrikant Mundhe, Advocate, for the appellant/ accused.
Ms. Anuradha S. Mantri, APP for the respondent/ State.

…

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 09 December 2025
Pronounced on : 15 December 2025

JUDGMENT :-

1. Since these three appeals arise out of the common judgment and order of conviction, therefore, they are being decided by this common judgment.

2. By these three appeals filed under Section 374(2) of the Code of Criminal Procedure (for short, 'the CrPC'), the appellants/ accused Nos.1 to 3 challenge the judgment and order dated 14.06.2006 passed by the learned Special Judge, Ahmednagar, in Special Case (A/C) No.5/2000 by which, the appellants/ accused have been convicted and sentenced as under:-

(a) The appellant/ accused No.1 (Sudhakar Gavade) is convicted for the offence punishable under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). He is sentenced to undergo R.I. for one year and to pay fine of Rs.3,000/- and in default, to suffer R.I. for one month. Accused No. 1 is further convicted for the offence punishable under section 7 of the PC Act and is sentenced to undergo R.I. for six months and to pay fine of Rs.2,000/- and in default, to undergo R.I. for one month. Both substantive sentences of accused No.1 are directed to run concurrently.

(b) The appellant/ Accused No.2 (Shridhar Kate) is convicted for the offence punishable under Section 13(2) r/w 13(1)(d) of the PC Act and is sentenced to undergo R.I. for one year and to pay fine of Rs. 2,000/- and in default, to undergo R.I. for one month. He is further convicted for the offence punishable under section 12 of the PC Act and is sentenced to undergo R.I. for six months and to pay fine of Rs. 1,000/- and in default, to undergo R.I. for one month. Both substantive sentences of accused No. 2 are directed to run concurrently.

(c) The appellant / accused No.3 (Mahadeo Abhang) is convicted for the offence punishable under section 12 of the PC Act and is sentenced to undergo R.I. for six months and to pay fine of Rs.2,000/- and in default, to undergo R.I. for one month.

3. The brief facts leading to filing of the present appeals are as under:

(a) The prosecution case is that accused Nos.1 and 2 were public servants. Accused No.1 (Sudhakar Gavade) was serving as Tahsildar, Pathardi, and Accused No.2 (Shridhar Kate) was working as a Peon under him. Accused No.3 (Mahadeo Abhang) was running a hotel in the adjoining premises of the Tahsil Office at Pathardi. The complainant (PW-1) Shivaji Vishwanath Kurhe, was running a fair price shop at village Raghu-Hivare, Taluka Pathardi, since 1991. It is alleged that in September 1999, accused No.1 called him and demanded ₹500/- per month as bribe. The complainant expressed inability, stating that his profit margin was low. It is further alleged that in November 1999, after depositing amounts through challans, the complainant submitted the permit to the godown and was entitled to receive goods through door-to-door transport, but he did not receive the goods. Upon inquiry, the Supply Inspector, Mr. Pawar, informed him that during inspection he found the shop closed, therefore, he submitted a report, and accordingly the Tahsildar ordered attachment of the shop to the fair price shop at another village Mandve. The complainant thereafter met Accused No.1, who told him to come after Diwali if he wanted his licence back.

(b) It is further case of the prosecution that the complainant visited the office of Accused No.1 on 13.12.1999 at about 2.00 p.m. Accused No.1 called Mr. Pawar and instructed him to obtain in writing certain applications from the complainant. Accordingly, Mr. Pawar obtained two written applications, one regarding leave dated 15.10.1999, and another for attaching the fair price shop in his name dated 08.12.1999. Mr. Pawar asked him to meet on 15.12.1999. Thereafter, on 15.12.1999 at about 4.00 p.m., the complainant met Accused No.1 and Mr. Pawar. Accused No.1 told that he knew what was required to be done to get the shop restored. Accused No.1 demanded ₹5,000/- for returning the fair price shop. When the complainant expressed inability, accused No.1 insisted that unless the amount was arranged, it would be difficult to restore the shop. Accused No.1 instructed that ₹1,000/- be paid after two days and the remaining ₹4,000/- after the shop is reopened.

(c) The complainant thereafter, approached the Anti Corruption Bureau on 16.12.1999 and lodged the complaint. The Deputy Superintendent of Police Shri Kazi recorded the complaint, and requisitioned the two panchas from the Zilla Parishad office. The complainant was asked to return on the next day. On 17.12.1999, the complainant and the panch witnesses attended the ACB office. They were introduced to each other.

The complaint was read over, explained, and signed. The complainant produced the trap money. Anthracene powder and the functioning of the ultraviolet lamp were demonstrated. Necessary instructions were given and a pre-trap panchanama was prepared.

(d) The complainant, panchas, and raiding party proceeded towards the residence of the accused. At around 10.00 a.m., Accused No.2 (Peon) and one driver, Sunil Bhabad, were present. They informed that accused No.1 had gone to Ahmednagar and would return shortly. At about 1.30 p.m., a message was received that accused No.1 had arrived at the Government Rest House, Tisgaon. The driver brought him back around 2.00 p.m. Without halting at his residence, accused No.1 went to his office. The complainant, panch, and accused No.2 also went to the office. It is alleged that accused No.1 called the complainant inside, and the panch witness also entered. The complainant stated that he had brought the amount. Accused No.1 rang the bell and called Accused No.2. When accused No.2 entered, accused No.1 instructed him to accept ₹1,000/- from the complainant. The complainant, panch, and accused No.2 then stepped out. Accused No.2 took them to the hotel belonging to accused No.3 and instructed the complainant to pay the amount as directed by accused No.1. The complainant removed the tainted currency notes and held them before accused No.2. accused No.2 accepted the amount, counted it, and handed it over to accused No.3/ hotel owner Abhang. Accused No.3 counted the notes with both hands and kept them in the watch-pocket of his trousers. The complainant signaled the raiding party. The raiding party apprehended Accused Nos.2 and 3. Under ultraviolet light, anthracene powder was detected on their hands and on the watch-pocket of Accused No.3's trousers. The tainted amount was recovered from his person and tallied with the numbers noted earlier. The relevant articles, including the trousers of accused No.3, were seized. A detailed post-trap panchanama was prepared.

(e) Thereafter, Dy.S.P. Kazi (PW-3) thereafter went to Pathardi Police Station and lodged the FIR, which was registered as Crime No.21/1999. The accused were arrested.

(f) As accused Nos.1 and 2 had retired, no sanction was accorded. Therefore, the charge-sheet was filed. The charge was framed at Exhibit 32 and the accused pleaded not guilty and claimed to be tried. In order to prove the guilt of the accused, the prosecution has examined three witnesses, namely, PW-1 complainant Shivaji Kurhe at Exhibit 38, PW-2 Mahendra Joshi, who is panch witness and PW-3 Anis Ahmed, Investigating Officer. After recording evidence and hearing the appellant and prosecution side, the learned Special Judge was pleased to pass the impugned judgment.

4. Learned advocate Shri Tandale appearing for the appellant in Criminal Appeal No.469/2006 submitted that the appellant (Sudhakar Gavade) was working as Tahasildar at the relevant time and the prosecution has not obtained the sanction under Section 19 of the PC Act. Previous sanction is essential for the prosecution by virtue of Section 19 of the PC Act. According to him, the Trial Court ought not to have taken cognizance of the offence punishable under Sections 7, 12 and 13 of the PC Act. The prosecution has miserably failed to procure the sanction, which is mandatory before initiating the prosecution against the public servant. Therefore, the learned Trial Court ought to have discharged the accused on this count alone.

5. Apart from the aspect of obtaining sanction, learned

advocate Shri Tandale submitted that the prosecution has also failed to prove its case of valid and proper demand and acceptance beyond reasonable doubt. According to him, though the complainant PW-1 was instructed not to offer the amount of bribe without demand from the appellant, however, he is alleged to have informed the appellant that he had brought the amount of bribe. Therefore, there is no valid demand from the appellant to the complainant and so also, there is no valid acceptance from the appellant. The complainant PW-1 himself has stated in his evidence that when he along with the raiding team had gone to meet the appellant, at that time, the meeting of Talathis was going on. Thus, in presence of other persons, it was highly impossible that the appellant has made any demand to the complainant. Not only this, but the PW-3 I.O. has also admitted in his cross-examination that there were other persons present in the office of the Tahasildar. He has recorded the statements of some of them, however, those witnesses have not been examined by the prosecution. Moreover, the I.O. PW-3 has deposed that though he has recorded the statement of one Pawar during investigation, but the prosecution has not examined the said Pawar. In view of such prosecution evidence on record, according to Shri Tandale, the demand as alleged by the prosecution is, therefore, admittedly not proved. Shri Tandale, therefore, submitted that the learned Special Judge committed grave error by convicting the appellant as it has not properly appreciated evidence brought on record. The prosecution has failed to prove guilt of the appellant beyond reasonable doubt.

6. Learned advocate Shri Kakade appearing for the appellant/ accused No.2 (Shridhar Kate) as well as learned advocate Shri Mundhe appearing for the appellant/ accused No.3 (Mahadeo Abhang) have adopted the submissions of the learned advocate Shri Tandale. In addition, they submitted that there is no demand from either of the accused. There is no oral or documentary evidence of demand on record, except bare statement of the complainant. The prosecution has neither proved the demand nor acceptance beyond all reasonable doubts. There is no previous sanction obtained in case of the accused Nos.1 and 2. According to them, the prosecution has virtually failed to prove that the demand is made by the accused and mere acceptance of amount is not sufficient to prove the demand. The prosecution witnesses have not corroborated each other. As such,

learned advocates submitted that the appeals need to be allowed and the appellants be acquitted.

7. In support of their submissions, the learned advocates for the appellants have relied upon the following judgments:-

(a) A. Karunanithi vs. State, AIR 2025 SC (Criminal) 1250.

(b) Pradeep Purshottam Pimperkhede vs. The State of Maharashtra, 2014 (3) Mh.L.J. (Cri) 248.

(c) K. Subba Reddy vs. State of Andhra Pradesh, AIR 2008 SC 106.

(d) M.R. Purushotham vs. State of Karnataka, 2014 AIR (SCW) 5740.

(e) State of Punjab vs. Labh Singh, (2014) 16 SCC 807.

8. *Per contra*, learned APP strongly opposed the submissions of learned advocates for the appellants. According to the learned APP, since accused Nos.1 and 2 had already retired, therefore, the sanction from the competent authority was not

obtained. Therefore, on the aspect of not obtaining sanction from the competent court, the Trial Court was justified in recording evidence and convicting the appellants. According to the learned APP, the statements of witnesses proved the guilt of the appellants beyond all reasonable doubts and, therefore, their evidence cannot be discarded. Learned APP has strenuously supported the impugned judgment and order passed by learned Special Judge. The 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 appellants. There is no scope for interference in the impugned judgment. Learned APP, therefore, prayed for dismissal of the present appeals.

9. After hearing the submissions of learned advocates, with their assistance, I have gone through evidence on record carefully. As regards the aspect of sanction, Section 19 of the PC Act itself clearly provides that no court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority. In this case, it is

clear from the prosecution evidence that when the FIR bearing Crime No.21/1999 was registered with the Pathardi Police Station on 17.12.1999, accused Nos.1 and 2 were in service in the Revenue Department i.e. at the relevant time, accused No.1 was working as Tahasildar and accused No.2 was working as Peon. As per the prosecution, subsequently, accused Nos.1 and 2 got retired and therefore, the prosecution has not obtained previous sanction from the competent authority. When the case pertains to the alleged corruption at the hands of the accused, while they were in service, the prosecution has to obtain previous sanction form the competent authority under Section 19 of the PC Act, which is provision is mandatory in nature. The applicability of Section 19 will be depending upon the date of offence. If the public servant commits offence while in office, then it is absolutely clear that the prosecution cannot be launched without previous sanction even if he is retired. The reasons behind this is that the sanction under Section 19 of the PC Act is offence based and not status based. Therefore, retirement of the government servant will not remove the requirement of sanction under Section 19 for the acts done during his service tenure. In ***State of Goa v. Babu Thomas, (2005) 8 SCC 130***, ***State of M.P. v.***

Virender Kumar Tripathi, (2009) 15 SCC 533, State of Maharashtra v. Mahesh G. Jain, (2013) 8 SCC 119 and ***State of Punjab vs. Labh Singh, (2014) 16 SCC 807***, the Honourable Supreme Court in unequivocal terms has observed that the sanction under Section 19 of the PC Act is mandatory if the accused was public servant at the time of commission of offence, regardless of his retirement. It is also made clear that the requirement of sanction depends on the status of the accused on the date of offence and not on the date of cognizance. It is also equally important that if the Court takes cognizance without valid sanction, the entire trial is vitiated. Therefore, the sanction under Section 19 of the PC Act is mandatory in nature. As such, taking cognizance without valid sanction, vitiates the trial as held in ***Nanjappa v. State of Karnataka, (2015) 14 SCC 186***.

10. As far as the aspect of demand is concerned, it is apparent that in view of the admission of PW-1 complainant and PW-3 I.O. in their deposition that the meeting of Talathis was going on and there were other persons in the office of the Tahasildar, the submission of the learned advocates for the appellants as regards availability of independent witnesses on the

spot, assumes significance. The learned advocates for the appellants are right in submitting that in presence of other persons, it was highly impossible that accused No.1 had made any demand to the complainant. Therefore, failure on the part of the prosecution in not examining independent witnesses to prove the demand, destroys the prosecution case. There is mere statement of the complainant about demand made by accused No.1. There is no corroboration in testimonies of PW-1, PW-2 and PW-3 on the point of demand.

11. 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 accused 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 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. Therefore, failure on the part of prosecution to prove demand and illegal gratification, would be fatal and mere recovery of the amount from the accused would not entail his conviction for the said offences.

12. It is settled law that the statutory presumption under Section 20 of the PC Act can arise only after the prosecution proves the foundational fact of 'demand'. In the present case, as the testimonies of PW-1, PW-2 and PW-3 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.

13. In view of the foregoing discussion, I am of the view that the prosecution has failed to establish the ingredients of offences against the appellants beyond reasonable doubt. Consequently, **all these three Criminal Appeals are allowed and the impugned judgment and order is quashed and set aside.** The appellants/ accused are acquitted for the said offences. Appellant (Sudhakar Gavade) and appellant (Shridhar Kate) have passed away. As the appellant (Mahadeo Abhang) is on bail, he need not surrender. The bail bonds stand cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded to the appellant (Abhang) and the legal heirs of the deceased appellants. The record and proceedings be sent back to the concerned Court.

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