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

CRIMINAL APPEAL NO.668 OF 2005

Machindra S/o Dattatraya Surwade (Died)

Through his widow

Shobha Machindra Surwade

R/o. N-9, K-55/1 Pawan Nagar,

HUDCO, Aurangabad.

... Appellant

Versus

The State of Maharashtra

... Respondent

.....

Mr. A.C. Deshpande, Advocate for Appellant

Mr. P.K. Lakhotiya, APP for Respondent – State

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 17 MARCH 2025

PRONOUNCED ON : 03 APRIL 2025

JUDGMENT :-

1. In this appeal, the appellant takes exception to the judgment and order dated 31.08.2005 passed by the learned 2nd Additional Sessions Judge, Aurangabad, in Special ACB Case No.18 of 2003, thereby recording guilt and convicting the appellant for offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act.

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PROSECUTION CASE IN BRIEF

2. PW1 received compensation on account his land being acquired for Dhamangaon percolation tank. Consequently, on receipt of notice, he had approached the present appellant for issuance of cheque. It is alleged that, for issuance of cheque of compensation, present appellant demanded 5% of the cheque amount as an illegal gratification. As PW1 complainant was not willing to pay bribe, he approached Anti-Corruption Bureau and lodged report, on the basis of which, PW4 Investigating Officer planned and arranged trap. PW3 shadow pancha was called. Tainted currency was handed over to be paid on demand. Complainant and pancha were appraised about the procedure of trap and instructions were given to pay tainted currency on demand and thereafter rely signal after acceptance of bribe.

3. Accordingly, on 07.04.2003, shadow pancha PW3 and complainant PW1 both approached appellant, and when complainant demanded cheque, appellant as well as co-accused demanded the amount. Tainted currency was kept on a paper as instructed by appellant. He accepted the said currency and kept in the drawer, and thereafter, pre-determined signal was relayed and raiding party apprehended accused.

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4. Investigating Officer PW4 lodged complaint Exhibit 28, carried out investigation and after gathering evidence, accused was chargesheeted and finally tried vide Special Case No. 18 of 2003. Vide judgment and order dated 31.08.2005, prosecution case was accepted and guilt and conviction was recorded. Such judgment is the subject matter of the instant appeal.

SUBMISSIONS

On behalf of appellants :

5. At the outset, learned counsel for the appellant submitted that, appellant-convict is no more and present matter is being prosecuted by his heirs.

6. Briefing the case of prosecution, learned counsel for the appellants pointed out that there is apparently false implication. That, there is no convincing evidence about demand. That, no demand verification panchanama is drawn. That, complainant and shadow panch are not consistent on material point. He further pointed out that, there is no anthracene powder was traced on the hands of accused, and therefore, there is no acceptance. That, amount allegedly seized by the Investigating Officer is from the drawer and not from the person of appellant. He pointed out that apart from the above amount of alleged

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bribe, there was other currency was also found in the drawer. Therefore, case of prosecution is not convincing. That, trial Court did not appreciate the same.

7. Lastly, he submitted that even sanction was improper for want of application of mind. Still, according to him, learned trial court has accepted the case of prosecution. According to him, learned trial court failed to consider and appreciate the defence of accused and straightway accepted the prosecution case.

Consequently, according to him, there is erroneous appreciation of evidence and as such, according to learned counsel, the said judgment cannot be held justifiable, and therefore, he seeks indulgence at the hands of this Court by allowing the appeal.

On behalf of State :

8. Per contra, learned APP while supporting the judgment, pointed out that, there was demand as well as acceptance. That, PW1 and PW3 i.e. complainant and shadow panch are consistent. That, there is unshaken testimony of complainant as well as pancha witness about demand and acceptance. That, all

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necessary ingredients were available and there being both, demand as well as acceptance, charges were held to be proved. According to learned APP, there is correct appreciation and no infirmity or perversity in the same, and hence she prays to dismiss the appeal for want of merit.

STATUS AND ROLE OF PROSECUTION WITNESSES

9. In support of its case, prosecution has examined as many as six witnesses. The sum and substance of their evidence is as under :

PW1 Nabab Raju Patel, is the informant. He deposed at Exhibit 11 as under:

“1. I have agricultural land at Dhamangaon. It's block Number is 432. I have one acres land in it.

2. Out of my block no.432, 3 acres area was acquired for Dhamangaon percolation tank, about 5-6 years ago. I received the advance compensation of Rs 24,000/- Then I came to know that I was to receive still more amount for it. for that. I came to the office of The collector at Aurangabad about 2 years ago. I met there Surwade and claimee the cheque of the amount. That Surwade is not present before the court as an accused. Surwade then said me that I would have to pay the amount else I would not get the cheque of the amount He claimed 5% amount. I told him that I had no amount and then I returned to my village.

3. 3-4 days thereafter, again I came to the collector office at Aurangabad and met Surwade and claimed the cheque amount. Then he asked me as to whether I had brought the amount I told him that, I had got the amount but it is less then he claimed and he should wait, Surwade then asked me to bring the amount and a revenue stamp, I was not willing to pay the amount, and hence, I went to old Tahsil building. It

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was the office of Anti corruption. I met there with Mendke. I told him that Surwade was not paying amount to me and he was claiming amount to me for that. He was to pay the amount of compensation for acquiring my land for percolation tank. I also told Mendke that, I was not willing to pay amount to Surwade. Mendke reduced my complaint on the paper. Mendke then called two person as panchas. They were Ingle & Shinde They were not known me. Mendke told me their names. I also told Mendke that, I agreed Surwade to pay 2,500/- I was not willing to pay this amount also to Surwade. Then I pay the amount of 2,500/-all currency notes of Rs.100/-each to Mendke. Rupees 117/- remained with me. Mendke then smeared a powder to all above currency notes of Rs.2,500/- He also noted down the number of those currency notes. I do not know why Mendke smeared powder to those currency notes. Mendke then kept all those currency notes of No.2,500/- in my left cheats pocket of my shirt. Mendke also told me that on going to collector office, I should tell Surwade that, I have brought the amount and on his claiming, the amount I should pay the above amount of 2,500/-to him and if Surwade could accept it. I should give a signal to Mendke who would be in nearby area by scratching backside of my head by my left hand, I again say that Mendke told me hat I should give signal by rubbing my handkerchief to left side of my face, if Surwade would accept the amount, Mendke also instructed Ingle and Shinde that they she should give hint to my action, again say that, Mendke told us that Ingle panch would accompany whereas Shinde panch would be with Mendke.

4. Then myself, Mendke, Ingale and Shinde and companions of Mendke all went to the office of the collector by about 5.30 p.m. by a jeep vehicle. Now I am shown the complaint dtd. 7/4/2003,

Q. Whether you have signed on this complaint ?

Ans: Yes

Q. Whether it's contents are true ?

Ans: Yes.

Complaint is exhibited as Exh. 12 while lodging my complaint I had given to Mendke a notice, 3 revenue stamps and a 7/12 extract, Now I am shown a xerox copy of a notice and 7/12

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extract. They are the copies of documents filed by me. I again say that, we halted our jeep near the road signal near collector office. Myself and Ingle got down there and went on our feet to the office of the collector. The rest persons followed us. Then went to the office of the land acquisition officer on the first floor in that building. There I went to Surwade who was sitting in his chair. After saluting me he asked me to sit down. I sat in a chair. Ingle was the behind me. I told Surwade That, I brought the amount and he should give the cheque of the amount. I again say that, on my sitting in the chairs Surwade asked me whether. Thad brought the amount. I said 'Yes' Surwade then game me a paper. I took out the notes kept in my left chest pocket of shirt and kept them on the paper. Surwade then took that paper with notes and kept them in the drawer of his table. Surwade also asked me as to whether I have brought revenue stamp I told that. I had brought it. I handed over that stamp to Surwade. Surwade kept it with him and did nothing. I again say that, surwade affixed that stamp in his file and obtained my signature on it. I came out of that office and gave signal. Now I am shown documents marked by letters 'A' to 'C' They are xerox copies of the documents on which I have signed. on my giving signal, Mendke and his men came there. Shinde also came there. Ingle showed as who was Surwade. Mendke and his men caught hold of Surwade. Ingle also told that, the amount was in the drawer of a table. I again say that, Ingale said that, Surwade accepted the amount and kept it in the drawer. Mendke told that, he was anti corruption officer and made Surwade to sit down. Ingle then took the amount from that drawer. I stood by about 10-15 ft. away in that room. A panchanama was held there. I was told that, the panchanama was-held-there, & then my signatures were taken.

Q. Whether your personal examination was done ?

ANS: Yes, my hands were examined.

My left hand gave coloured shining when it was flashed under a torch. Nothing else was examined. I a-gain say that, I do not remember as to which of my hand was examined. Thereafter nothing was examined from me.

*Q. Whether you do not was examined
remember as to what else part of you.*

Ans: Nothing was examined.

The person who accepted the amount is now sitting before the

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court as accused. I received my about currency notes back to me. ”

PW2 V. Radha, District Collector, was the sanctioning authority.

She deposed at Exhibit 14 as under:

“1. Since 2001 till January 2004 I was working as a collector of Aurangabad, As a collector I could appoint or remove the person of Awwal Karkaun Grade within my District. During my above tenure Machhindra Dattatraya Surawade was working as Awwal Karkun in the office of the Special Land Acquisition Office at Aurangabad.

2. On 1/7/2003 I received the papers in crime no.3022 of 2003 from the Superintendent of police Anti Corruption seeking my accord for the prosecution of accused under the prevention of corruption Act. After receipt of the papers, I gone through all those papers as well as heard accused Machhindra and thereafter considering all of them I accorded my sanction to the prosecution sought. I might have given the accord in the first week of August, 2003. Now I am shown the sanction order. It is the same. It bears my signature & its contents are true. It is at Exhibit 15.”

PW3 Vinayak Ingle, acted as shadow pancha. He deposed at

Exhibit 21 as under:

“1. Since June 2000 to June 2003 I was working as a shop Inspector at Aurangabad.

2. On 4/7/2003 our Assistant commissioner of Labour directed me and Limbaji Shinde to go to the office of Anti Corruption Bureau at Aurangabad as panch witness. Limbaji Shinde then was attached to the office of the Deputy commissioner of Labours at Aurangabad as a clear. Then myself and Limbaji Shinde went to the office of the Anti Corruption Bureau at Aurangabad at about 2.30 to 3.p.m. As police officer Mendke met us there and informed that he wanted to lay a trap in connection with a Anti Corruption case and asked us to work as panchas. Then myself and Limbaji agreed for it.

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5. *At about 4.30 p.m. myself, Limbaji, complainant Sk. Nabab and police staff all left Anti Corruption Bureau office by a Jeep vehicle and reached near the Traffic signal near the square near collectorate office at Aurangabad. Myself and Sk. Nawab got down from that Jeep vehicle, and proceeded on feet and at to the office of the special Land Acquisition officer which was situated near the office of collector in collectorate compound, The rest persons were behind us. On entering that office Sk. Nawab showed me by gesture and said that. that fellow was Surwade. That Surwade is now sitting that fellow was Surwade. That Surwade is now sitting before the court as an accused, Myself and SK. Nawab then met Surwade, Sk. Nawab saluted Surwade saying "Namaskar Surwade replied it saying "Namaskar and asked Sk. Nawab to sit in a chair. Accordingly Sk. Nawab sat in the chair. I stood near Sk. Nawab, Sk, Nawab then asked as to whether his cheque was ready. Surwade then asked as to whether the amount asked by him was brought. SK. Nawab replied in the affirmative saying yes. Surwade then half a paper in his pal near the drawer of table and gave signal to Sk. Nawab by gesture to put the amount on that paper. SK. Nawab then took out the above tainted notes from his left chest pocket of shirt and put on the above paper Surwade then folded that paper with those notes and put is in his drawer of table. Thereafter Sk. Nawab went out of that room. After about 5 minutes police staff came there."*

PW4 Sanjiv Mendke, PI, (ACB), was the Investigating Officer.

ANALYSIS

10. PW1 Nabab Raju Patel, who is examined at Exhibit 11, deposed about his land situated in block No.432, and it being acquired for Dhamangaon percolation tank about 5 to 6 years back. That, he received advanced compensation. He learnt that, he is about to receive more amount, and therefore, he came to

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collector office and met the present appellant for issuance of cheque. He deposed that, present appellant told him that he will have to pay an amount or else he will not get the cheque, and he will have to pay 5% of the cheque amount. It is alleged that, after 3 to 4 days, when he again visited the Collector office, appellant again asked him whether he brought the amount. Therefore, as he was not willing to pay, he approached Anti-Corruption Bureau, and lodged complaint (Exhibit 12). He deposed at Exhibit 11 that, Anti-Corruption officer called panchas, and they were given necessary instructions and trap was planned. Accordingly, he and shadow panch Ingle approached present appellant in his office. Appellant asked him whether he has brought the amount. Therefore, he took out the tainted currency from the left pocket of the shirt and kept in the paper, and appellant accepted the paper with notes and kept it in the drawer. Thereafter, he came out of the office and gave signal. Raiding party came and came and shadow panch Ingle shows who accepted the money and appellant was caught.

11. On visiting the cross, nothing damaging has been brought to disbelieve his above substantive evidence given in chief. He merely accepted that paper, in which tainted currency was kept, which was taken from the appellant. Rest of the testimony about

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demand and acceptance has not been touched in the cross, nor brought under shadow of doubt.

12. PW3 shadow panch Vinayak Ingle in his evidence at Exhibit 21, deposed about being called at ACB office, introduced to complainant, aware about the nature of complainant and instructions were given by ACB officer, currency being tainted by application of anthracene power. He also stated that, he signed over the complaint as well as panchanama, and around 04:30 p.m., he claims to have accompanied complainant to the Collector office, Aurangabad. After entering the office, he and the complainant were asked to sit by the appellant. After exchanging greetings, while this witness was standing near complainant, in his presence, complainant asked appellant whether cheque is ready and he was counter question by appellant, whether amount asked by him was brought, and after complainant answered in affirmative, then appellant was given paper and made gestures to keep amount in it. Complainant took out cash from his left pocket of shirt and kept in the paper. The paper was then folded, and subsequently, kept in the drawer. Thereafter, complainant gave signal and raiding party came there. He further points out to the raiding party that amount kept in the drawer.

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13. On visiting cross of PW3 shadow panch, it is noticed that nothing adverse or contrary to the case of prosecution has been brought. Moreover, cross in paragraph 11 clearly shows that there is no serious challenge to his testimony.

14. Therefore, both PW1 complainant and PW3 shadow panch are consistent about visit paid to office of appellant. Initially, complainant demanded cheque and appellant questioning whether amount has been brought, and amount was being taken from the left pocket and kept in a paper and it was kept in the drawer by the appellant.

15. Therefore, regarding demand and acceptance, both witnesses are consistent and in spite of being cross-examined, there evidence has remained intact. Therefore, essential ingredients for attracting charges the provisions of PC Act are available in the evidence of PW1 and PW3.

16. Prosecution has also examined PW-2sanctioning authority. His evidence is at Exhibit 14. He has stated that, he was working as Collector and as such had authority to appoint and remove. He claims to have received papers and he had studied the same and accorded the sanction. He has denied that without

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application of mind and without going through the papers sanction has been accorded. Therefore, there is a proper sanction.

17. To sum up, on complete re-appreciation of evidence, complainant is having full of support from PW3 shadow panch. They both are consistent about demand as well as acceptance. Even though there is extensive cross to above extent, their evidence has remained intact. Mere absence of anthracene powder is not a ground to discard the prosecution case, more particularly, when the accused directed the complainant to place currency in paper and then placed it in a drawer. Apparently, recovery is from the drawer of the table, which was in possession of the appellant, and this is not disputed. Evidence of sanctioning authority is regarding studying the papers and granting sanction. Consequently, there is no infirmity in the prosecution evidence to doubt the same.

18. Perused the judgment under challenge. Apparently, learned trial court has correctly appreciated the testimonies of PW1 and PW3 and has correctly held that, required ingredients for attracting the charges are available in the prosecution evidence. This Court is also of the considered opinion that view

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taken by the learned trial Court is a possible view that could be emerging on re-appreciation of evidence so also no case is made out on merit to interfere. Hence, I proceed to pass the following order :

ORDER

The Criminal Appeal is dismissed.

**ABHAY S. WAGHWASE,
JUDGE**

S P Rane