



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 495 OF 2008

The State of Maharashtra,
Through P.I. (R.E. Karhawate),
Anti Corruption Bureau,
Ahmednagar, Complainant -
Shailesh Vasant Pendbhaje,
Age : Major, Occu. : Jr. Engineer,
R/o. Sanjayani Bhavan,
Ganeshnagar, Sangamner,
Dist. Ahmednagar.

... Appellant
(Orig. Complainant)

Versus

Shri Sayyad Mohammad Aarif
Mohammad Hanif, Age : 32 years,
Occu. : Service as Asstt. Engineer,
Grade-II, R/o. House No.103,
MIG/2, Hudco Colony, Manmad.

...Respondent.
(Orig. Accused)

.....
Mrs. P. V. Diggikar, APP for Appellant - State.
Mr. M. A. Tandale, Advocate for Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11 DECEMBER 2025

PRONOUNCED ON : 18 DECEMBER 2025

JUDGMENT :

1. State hereby challenges the judgment and order of acquittal dated 30.04.2007 passed in Special Case No. 1 of 2004, whereby original accused/present respondent was acquitted from the charge under sections 7, 13(1)(d) r/w section 13(2) of the Prevention of Corruption Act.

2. In short, facts giving rise to the prosecution case are that, PW1 complainant, who had bagged Government Contractor registration, on completion of work, tendered a bill to the tune of Rs.76,000/-. Accused a Junior Engineer, who was responsible for verifying the work, issued bill of Rs.56,000/- only and complainant received only Rs.54,000/-. When questioned, it is alleged that, accused told that, work is not completed, but assured to re-forward bill of Rs.15,000/-, if bribe amount of Rs.1,500/- is paid. As PW1 was not willing to pay bribe, ACB was approached vide complaint Exh.29 followed by arranging of trap, executing it and apprehending accused and charge sheeted him.

At trial, prosecution had adduced evidence of complainant, shadow panch, sanctioning authority, Investigating Officer and Deputy Engineer of P.W.D..

On appreciation of oral and documentary evidence, learned trial court acquitted the accused. Hence, the instant appeal.

SUBMISSIONS

On behalf of Appellant – State :

3. Learned APP pointed out that, here, there was demand of Rs.1,500/- bribe for clearing the bill of work undertaken by PW1 complainant. That, on report to that extent, ACB authorities

summoned panchas, introduced them to complainant, all of them were explained and demonstrated the procedure of trap. That, thereafter complainant had approached accused while in the company of shadow panch. As on demand of bribe by accused and as directed by accused, PW1 had kept tainted currency in the handkerchief of accused, who later on pocketed it. That, after relay of necessary signal, raiding party apprehended accused. That, tainted currency was rapped in the handkerchief of accused during said search. Thus, according to her, offence was complete and prosecution had established the charges of both, demand as well as acceptance.

4. She would further submit that, testimony of complainant and shadow panch was consistent, but the same has not been appreciated and by merely accepted the defence of accused about planting of money while accused has allegedly parted for a while from the company of complainant and shadow panch. According to her, there is no foundation to said defence, and therefore, according to her, learned trial court ought not to have accepted the defence, more particularly when currency was in the possession of accused. Thus, according to her, there is improper appreciation of both, evidence and law and so she urges to interfere by allowing the appeal.

On behalf of Respondent :

5. Per contra, learned counsel for accused would support

the findings by pointing out that, it is a pure case of false implication. According to him, neither demand nor acceptance is proved. He pointed out that, it has come in the evidence of both, complainant and shadow panch, that accused and complainant had visited house of accused for bringing documents, at that time there was no demand even when no one was around, and therefore, he expresses surprise from there could be any demand in the office in presence of others. He would submit that, complainant had planted tainted currency in the handkerchief of accused when he had been to ease himself i.e. with ulterior motive to falsely implicate. That, said defence was also taken by way of written say after answering section 313 of Cr.P.C. He lastly submitted that, accused is already held innocent by virtue of acquittal and therefore, he urges to apply the principles governing law on acquittal and prays to dismiss the appeal.

SUBSTANCE OF THE EVIDENCE ON RECORD

6. For proper appreciation and comprehension, it would be fruitful to reproduce the very testimonies of relevant witnesses i.e. PW1 complainant and PW2 shadow panch in verbatim as has been stated in witness box in trial court.

PW1 Shailesh is the complainant. Relevant portion of his evidence at Exhibit 28 is as under :

“1. I got work of repair of Govt. Quarters at Shrirampur. I received work order to that effect. I met the Engineer Mr. Sayyad at Shrirampur. I received work order to that effect. I met the Jr. Engineer Mr. Sayyad at Shrirampur in respect of said work. I accompanied him at the site of the work. He shown me the site and explained the work. He showed me the estimate cost of the work. It was of Rs. 76,000/ and some odd amount. I started the work in March 2002 and completed the same in the next month I spent about Rs 75,000/- for the said work. I met the accused and reported about completion of my work and requested to prepare bill after verifying the work. Accordingly we took measurement of the work. He sent bill of Rs 56,000/. After deduction, I received an amount of 54,000/- against the work. Thereafter, I met the accused and asked him why the complete bill was not prepared. He told that work was not completed. Even then he shown his readiness to prepare bill provided I pay him Rs.1500/-. I told him that I had no money and left. In February 2003 I received phone call from the accused. Again he called me at Shrirampur and told that the work was not done properly. In spite of that he would prepare the bill, if I pay him Rs.1500/-. Therefore, I was waiting for the bill till April. However no bill was received at Sangamner. Again I met the accused and requested him to prepare bill. He again told me that he would not prepare my bill unless I pay him Rs. 1500/-. He asked me to come with amount on 08.04.03 and promised to prepare the bill. I realized that the accused would not prepare a bill unless, I pay him bribe. Therefore on 7th I approached to ACB office at Ahmednagar. It was bill of Rs. 19,000/- I lodged complaint with ACB Ahmednagar. It is now shown to me is the same. It bears my sign. Contents therein are correct. It is at Exh.29.

.... When we entered in the office we saw accused was sitting in his office. I offered him Namaskar. I inquired about my bill. I introduced the panchas as my elder brother with the accused. In respect of my bill accused told that some measurements were still to be taken. He told that the measurement book was at his home & he told me let us bring the measurement book. Therefore, myself other pancha accompanied him, we came out of the office. Jadhav was asked to wait there and I accompanied the accused on his motor bike to his house. On reaching there accused went in his house and brought measurement book. Again we came in the ground in front of office of accused where panch Jadhav was standing. Again we three entered in the office. Again I asked him about the bill. The accused then asked me whether I have brought the amount as he has told about. I replied that I have brought money. The accused asked me to pay the same. He then took out handkerchief from the pocket of his pant and placed the same in front of me and asked me to keep the money in the handkerchief. Thereafter accused put the handkerchief in his right side pant pocket after I kept money therein.”

PW2 Arjun is the shadow panch. Relevant portion of his evidence at Exhibit 46, is as under :

“1. On inquiry the person gave his name as Shailesh Vasant Pendbhaje. He told that he is civil Engineer and Contractor R/o Sangamner. He told that as he could not get any job, he started working as a contractor and had undertaken PWD work from PWD office at Shrirampur. He told that he received the said work in 2001 and he completed the work in April 2002.

The work he had undertaken for an amount of Rs. 76,698/- He told that for execution of the said work he was required to spend is 75000/-. He told that accused who was then Jr. Engineer PWD prepared bill of Rs.56,000/- for the said work He had completed the entire work. He told that he received Rs. 54,347/- by cheque. He further told that he inquired with the accused about the less amount of bill. The informant approached the accused and asked about less amount of bill. It is alleged that the accused demanded Rs.1500/- and assured to prepare the bill of entire amount.

.... After the pre-trap panchnama, we both the panchas complainant and the members of raiding party started from Ahmednagar to come to Shrirampur via Babhaleshwar by a jeep. For some time we halted in the Govt. rest house at Babhaleshwar. Again the instructions were given to we both the panchas and to the informant about the raid. Thereafter, we started to come to Shrirampur from Babhaleshwar rest house. We reached to Shrirampur. The jeep was parked in front of Shrirampur Rly. Station. Then myself and complainant walked towards the office of the accused. The other panch and members of raiding party followed us keeping sufficient distance. Myself and Complainant then entered in the office of PWD. The complainant then addressed to a person by saying Namaskar Sayyad Saheb. The accused also reciprocated him. From the said conversation I realized that he was the Jr. Engineer Mr.Sayyad who was sitting in the chair. Complainant asked the accused about his work. Accused told that he had not done the work properly. However, he told that after completion ion of some entries he would prepare his bill. For that purpose he told that the documents are at his home. He asked the complainant. Let us bring the documents from his home. By saying so accused complainant and myself

came out of the office. Outside the office motorcycle of the accused was there. The complainant then asked me to wait there and they would bring the papers. Then accused and complainant went by motorcycle and I was waiting there. Panch no.2 then came to me and asked me who was the person who accompanied the complainant and where they had gone. I told him that he was the same Jr. Engineer and they had gone to his house to collect the papers in respect of the work of the complainant. After about half an hour they returned back to me. Then we all entered in the office of the accused. Accused occupied the chair. He told the complainant that he had not done the work properly. In spite of that he told that he would prepare the bill. He then asked the complainant whether complainant had brought money as asked by him. Complainant replied that he had brought an amount of Rs. 1500/- as per his say. The accused then asked the complainant to pay the amount. Thereafter the accused took out handkerchief from his right pant pocket. He unfolded the fold of handkerchief and he asked the complainant to put the amount on the handkerchief. Accordingly, the complainant then took out the fold of tented amount by his right hand from his left shirt pocket and he put the tented amount of Rs.1500/- on the handkerchief of the accused which accused was holding in his hand. Accused then folded the handkerchief around the tented amount and put the fold in his right pant pocket.”

ANALYSIS

7. Re-appreciated and re-evaluated the substantive evidence of prosecution witnesses, more particularly PW1 complainant and PW2 shadow panch.

From the testimony of complainant PW1, it is emerging that he claims to have been allotted work of repairs of government quarters on 10.09.2001. It is his case that, he completed work worth Rs.75,000/- and some odd amount in 2002. According to him, accused a Junior Engineer, took the measurement, but sent bill worth Rs.56,000/- only and even after deductions, he claims to have received Rs.54,000/-, and therefore, he questioned accused, who, allegedly told him that work is not completed. However, according to complainant, accused still showed his readiness to prepare bill provided he is paid Rs.1,500/-. Therefore, apparently first demand is of March 2002 itself. Complaint is not lodged immediately regarding bribe amount. Witness claims that, in February 2003, he again received phone call from accused, calling him at Shrirampur saying that work has not been done properly. But, in spite of that, he would prepare the bill, if amount of Rs.1,500 is paid. Therefore, this amounts to be the second demand, but no complaint is lodged at such point of time. Witness claims that he was waiting for the bill till April and so he again met accused and requested him to prepare the bill, but again accused said that unless he is paid Rs.1,500/-, he would not prepare the bill, and therefore, finally complainant claims that he realized that unless amount was paid, accused would not prepare the bills, and therefore, on 07.04.2003, he approached ACB and lodged complaint at Exh.29.

8. Such discussion shows that, for almost two years, there is no complaint for demanding bribe of the work done in 2001-2002. On his complaint Exh.29, ACB authorities seem to have planned trap and also claims to have executed it in 08.04.2003.

9. PW1 complainant and PW2 shadow panch testified that when accused was approached in his office on the day of main trap, again accused expressed that work is not done properly and allegedly took complainant on his two wheeler motorcycle to his home from office to bring measurement book. Evidence of prosecution witnesses shows that, both complainant and accused seems to have returned from the house of complainant with the alleged measurement book after half an hour and by such time PW2 shadow panch was kept waiting at the office of accused. Apparently, while complainant was alone in the company of accused during above half an hour and visit to the accused, as pointed out, there is no demand. Even shadow panch PW2, in paragraph 3 of his cross, has admitted that during first visit of that day, accused had not raised any demand of money. Thus, it is emerging that, there is no demand in the meeting which held in the office of accused between him and both PW1 complainant and PW2 shadow panch.

The aspect of demand has cropped up after complainant

and accused had returned from the office. Both PW1 complainant and PW2 shadow panch also admits that, immediately after returning from home, accused had again expressed displeasure for not completing the work properly. However, both witnesses PW1 complainant and PW2 shadow panch deposed about demanding Rs.1,500/-, taking out his handkerchief, directing a complainant to place bribe amount in the folded part of handkerchief and after it was kept, he again kept back the handkerchief in his pocket.

10. Specific defence taken by accused is that, while his handkerchief was kept on the table, surreptitiously and without his knowledge, tainted currency was inserted and planted in his handkerchief. There are suggestions to both, PW1 complainant and PW2 shadow panch, while under cross though the same are denied. Relevant portion of statement of accused at Exh.84, in translated form, is as under :-

“Even that I will not demand the amount of bribe in private, I will demand it in the presence of prosecution witness and the said amount, as a precaution I will not accept in the hand, will accept in the handkerchief, the said narration too contradictory to the rule of natural behaviour.

To the contrary, when we came to the office, the complainant kept the amount of bribe, without my demand, in the folds of the handkerchief kept on the table without my attention, this point proven clear completely from the

statement of the prosecution witness, is also my humble submission. The panch witness Arjun has clearly admitted in his cross-examination, in paragraph 3, at page number 9, that it is true that when the ACB officers questioned him about the bribe amount, he told them that, the amount was kept in a folded handkerchief and the panchnama (official report) marked at Exhibit 49 also proves that the said bribe amount was found inside the folded handkerchief. If as per the narration of the complainant, I accepted the bribe in the folded handkerchief, after I demanded the bribe, then there was no purpose of the Panch witness to tell that the bribe amount is kept in the folded handkerchief. Furthermore, I had stated at the very moment the incident occurred that the complainant himself had placed the money in the folded handkerchief, and this fact has also been acknowledged by the witness, Arjun. Therefore, it is my humble submission that the prosecution has failed to prove the crucial fact that I demanded a bribe and subsequently accepted it in this case.”

(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

11. Another distinct feature of this case is that, even when main trap was planned and executed on 08.04.2003, statement of neither PW1 complainant nor PW2 shadow panch, is recorded on the same day. Rather, supplementary statement of PW1 complainant is recorded on 09.04.2003 regarding accused raising demand and directing complainant to place bribe amount in his handkerchief. Therefore, as submitted by learned counsel for accused, there are reasons to hold that this supplementary statement is crafted at later

point of time to suit the case of prosecution. Even statement of independent panch, is not recorded on the same day i.e. on 08.04.2003 and even not recorded on 09.04.2003 when statement of complainant was recorded, rather it is recorded on 10.04.2003. Delayed recorded supplementary statement and statement of PW1 complainant and PW2 shadow panch, renders doubt about the prosecution story.

12. There is force in the submission of learned counsel and also it does emerge from the evidence of complainant that when initial demand was raised in March - April 2001, as well as alleged demand made at Sangamner in February 2003, there is no reporting and directly by stating that complainant had called him with assurance to resubmit the bill of work done in 2001 and that time raised demand seems to have been developed in April 2004. This aspect also creates doubt about the motive and intention of complainant. Traces of anthracene powder are admittedly not found on the fingers of accused. As stated above, his specific defence is that when he had kept handkerchief on the table and had moved away, there was planting of tainted currency behind his back. There are suggestions in this direction to both the witnesses though they are denied.

13. It is settled position that, accused has merely set up a defence and he is not expected to prove it in the manner in which prosecution is expected to discharge the burden of proving. Accused is merely expected to probabalise his defence and the above distinct features, renders his defence probable.

14. Another feature as pointed out by learned counsel for accused is, here, there is no demand verification got done.

15. This court has re-appreciated the entire evidence as well as perused the impugned judgment. The view of learned trial court seems to be the probable view that could emerge on appreciation of such quality of evidence. Coupled with this and also bearing in mind the settled principle of law while dealing with case of acquittal, this court is not permitted to substitute its own view with that of trial court, it being pure case of benefit of doubt, the same is required to be extended. Hence, the following order is passed :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)