



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

CRIMINAL APPEAL NO.673 OF 2005

The State of Maharashtra,
Through Police Station Ajintha,
Aurangabad, District Aurangabad

... APPELLANT
(Ori. Complainant)

VERSUS

Ginandeo s/o Mahadu Bagul,
Age : 51 yeas, Occu.: P.H.C.
Police Station, Ajinath,
District : Aurangabad

... RESPONDENT
(Original Accused)

.....

Mr. R. B. Dhaware, APP, for the Appellant-State
Ms. M. N. Bagwe h/f Mr. C. P. Sengaonkar, Advocate for the
Respondent

....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 06/02/2025.

PRONOUNCED ON : 12/02/2025

JUDGMENT :

1. The appellant / State has challenged the judgment and order dated 21/04/2005, passed by the learned Special Judge (P. C.), Aurangabad [hereinafter referred to as 'the learned trial court'] in Special Case No.11 of 2002, whereby the present respondent i.e. original accused Ginandeo Mahadu Bagul, has been acquitted from offence punishable under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'P.C. Act').

2. According to the complainant Bajirao Kakde (PW-1), he was a resident of village Ghatambri. He purchased one field in Gut No.60 in the name of his wife. He was taking water from the field of Suryabhan Giri i.e. Gut No.61. One Yusuf Ismail was the owner of adjoining land. On 09/11/2001 there was a scuffle between Suryabhan and his wife with Yusuf Ismail, his wife and mother. Yusuf Ismail and others threatened Suryabhan of dire consequences if the complainant passes through their field. Complainant Bajirao had already lodged report against Yusuf Ismail and his family members in Ajintha police station.

3. Thereafter, on 02/01/2002 the present respondent / accused called Bajirao in the police station. At that time, the respondent / accused threatened Bajirao for arresting him and filing chapter proceeding against him as he was responsible for the dispute between Suryabhan and Yusuf Ismail. The respondent / accused demanded bribe of Rs.500/- from Bajirao for not to be prosecuted or arrested. The complainant Bajirao then unwillingly agreed for payment of Rs.200/- after 2-3 days. Thereafter, the complainant lodged a report with Anti Corruption Bureau, Aurangabad, who set up a trap and caught the respondent / accused alongwith the bribe amount. The learned trial court after conducting the trial,

acquitted the respondent / accused from the aforesaid offences. As such, this appeal.

4. The learned APP strongly submitted that the prosecution has established demand of bribe and its acceptance by the accused. Further, according to him, the complainant and panch No.1 – Aouchit Gadekar (PW-2) have corroborated each other on material aspects and therefore, the learned trial court should have convicted the respondent / accused.

5. On the contrary, the learned counsel for the respondent / accused vehemently argued that there was no complaint against the complainant Bajirao and therefore, there was no occasion for the respondent / accused for arresting him or filing a chapter case against him. He pointed out that the very genesis of the case is doubtful since there was no verification of demand. Moreover, there are contradictions in the evidence of complainant as well as panch witness- Gadekar. She pointed out that the complainant himself admitted in the cross-examination that the respondent / accused had not demanded any bribe amount in the first visit. Further, she also pointed out that the investigating officer admitted in the cross-examination that the complainant or panch witness

never entered into the room wherein the bribe amount was allegedly given to the respondent / accused. She relied on following judgments :

- A) *State of Punjab vs. Madan Mohan Lal Verma, (2013) 14 SCC 153;***
- B) *Ashok Kumar Bhagchand Wardhani vs. State of Maharashtra, 2003(1) Mh.L.J. 131 and***
- C) *P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SCC 151.***

6. Heard rival submissions. Also perused the entire record and proceedings alongwith the impugned judgment. Also considered the citations relied upon by the learned counsel for the respondent / accused.

7. On going through the evidence of complainant Bajirao it is evident that prosecution is claiming that respondent / accused demanded amount of bribe from the complainant for not to arrest him in connection with dispute between Suryabhan and Yusuf Ismail. However, it is not in dispute that no complaint was pending against the complainant in the police station of respondent / accused. On the contrary, it has come on record that complainant

Bajirao had in fact filed a report against Yusuf and others but no enquiry of the same was made. The complainant Bajirao Kakade has clearly admitted in his cross-examination that he was annoyed against the respondent / accused for not taking action on his report. Further, according to the prosecution, the respondent / accused had called the complainant with bribe money in Ambhai Bazzar at Grampanchyat Office. However, there is a variance in the evidence of the complainant and panch witness as regards the demand and acceptance of the bribe.

8. According to the complainant, when he went to Grampanchyat Office, Ambhai, the respondent / accused came there at about 12.30 p.m. He met with him and wished him and they sat in the office. According to him, the respondent / accused asked him whether he had brought money and thereafter he went to inner room alongwith panch- Gadekar and gave the tainted currency notes to him, which he accepted with right hand and then with left hand he kept it in back pocket of his pant. Thereafter, the raiding party caught hold the respondent / accused and recovered the tainted notes. Thus, as per the complainant, the respondent / accused in very first meeting made demand and accepted the same at about 12.30 p.m. Thus, it is clearly evident that there was no

verification of demand at pre-trap stage, which is essential to secure conviction under Section 7 of the P. C. Act.

9. Not only this, but Gadekar (PW-2) i.e. panch witness, who accompanied the complainant, has deposed differently. According to him, when they went to Ambhai Bazzar in Grampanchyat Office, they met the respondent / accused at 12.30 p.m. for first time, but at that time the respondent / accused told them that he had some work of attending warrant and come after some time and therefore, they came back in the weekly market. As such, there was no demand in the first meeting on the part of the respondent / accused. This witness further stated that at about 1.30 p.m. when they again went to the Grampanchyat Officer, the respondent / accused and another person were sitting there and at that time the respondent / accused asked the complainant – Bajirao Kakade about whether he had brought bribe amount and 7/12 extract. He has stated that the respondent / accused and complainant Kakade had gone in the adjoining room, whereas he stood at the door of that room. Therefore, this witness has deposed differently than the complainant. The complainant in his cross-examination has already admitted that the respondent / accused had never demanded bribe at first time. There is no verification of demand in

presence of panchas at pre-trap stage. Moreover, there is material contradiction in the evidence of complainant and panch Gadekar. Complainant has not stated anything about the acceptance of alleged bribe amount by the respondent / accused on second occasion.

10. It is significant to note that the complainant was already annoyed with the respondent / accused as the respondent / accused did not take any action against Yusuf Ismail on the report of complainant. Further, it is extremely important to note that the investigating officer i.e. Rameshwar Thorat in his cross-examination has clearly admitted that the complainant and panch – Gadekar had never gone into the room of Village Development Officer. Thus, if it is taken as a truth, then the entire theory of prosecution of receiving of bribe amount from the complainant by the respondent / accused in the said room is falsified. Moreover, though this witness has stated that there were few chairs and table in the office of Village Development Officer, but in the map drawn in panchnama, no chairs are shown in the said room. Moreover, the place of panch No.1- Gadekar was shown to be at the door of said room, therefore, it was very difficult for panch No.1 to ascertain whether the respondent / accused demanded the bribe amount

and received the same from the complainant. Thus, considering the material contradictions among the depositions of the prosecution witnesses as mentioned above, a possibility of framing the respondent / accused at the hands of the complainant cannot be denied. When two views are possible then the view favourable to the accused, needs to be chosen.

11. It is significant to note that the Hon'ble Apex Court in the case of ***P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another*** (*supra*) has observed that actual proof of demand is necessary for conviction and if the demand is not proved, then mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand. In the instant case also, there was no demand by the respondent / accused as admitted by the complainant in the cross-examination at very first instance. Even when the complainant and panch witness met the respondent / accused at Ambhai Bazzar, there also in first meeting there is no evidence of demand on the part of the respondent / accused. Therefore, the evidence of prosecution on the aspect of demand is not convincing and reliable. As such, the respondent / accused is definitely entitled for benefit of doubt. Thus, the acquittal recorded

by the learned trial court appears appropriate and hence the present appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-