



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

CRIMINAL APPEAL NO.225 OF 2004

Dr.Jagannath s/o Rangnath Kakade,
Age : 52 years, Occu: Service,
R/o Aurangabad.

...Appellant/ accused No.1

-VERSUS-

The State of Maharashtra.

...Respondent

AND

CRIMINAL APPEAL NO.261 OF 2004

Ashok Seetaram Ambhore,
Age : 40 years, Occ : Service,
R/o Nav-Jeevan Colony, HUDCO,
N-11, F-4/8, Aurangabad,
Tq. and Dist. Aurangabad.

...Appellant/ accused No.2

- VERSUS -

The State of Maharashtra.

...Respondent

...

Shri Nilesh S. Ghanekar, Advocate for the appellant/ accused
No.1 in Criminal Appeal No.225/2004.

Shri R.S. Deshmukh, Senior Advocate a/w Shri V.A. Chavan,
Ms. Ashwini S. Deshmukh and Ms. Meenal S. Deshmukh, for the
appellant/ accused No.2 in Criminal Appeal No.261/2004.

Shri N.R. Dayama, APP for the respondent /State/ prosecution.

...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 09 October 2025

Pronounced on : 17 October 2025

JUDGMENT :-

1. Since both these appeals arise out of the same impugned judgment, they are being decided by this common judgment. In this judgment, for the sake of convenience, the parties are referred to in their original capacity i.e. the appellant (Dr.Jagannath Rangnath Kakade) as accused No.1, the appellant (Ashok Seetaram Ambhore) as accused No.2, the respondent/State of Maharashtra as the prosecution State and PW-3 Pandit Alanjkar as complainant.

2. The impugned judgment and order in these appeals is dated 01.04.2004 passed by learned Special Judge, Aurangabad, in Special Case No.30/1998, which reads thus:-

“1. *The accused no.1 Dr. Jagannath Rangnath Kakade is hereby convicted for the offence punishable under sec. 7 of Prevention of Corruption Act and sentenced to suffer S.I. for 6 months with a fine of Rs. 3000/-i/d to suffer S.I. for 2 months.*

2. *He is further convicted for the offence punishable under sec. 13(1)(d) r/w 13(2) of Prevention of Corruption Act and sentenced to suffer S.I. for one year with a fine of Rs.3000/- i/d to suffer S.I. for four months.*

3. *Both the substantive sentences to run concurrently*
4. *The accused no.2 Ashok Seetaram Ambhore is hereby convicted for the offence punishable under sec. 12 of Prevention of Corruption Act and sentenced to suffer S.I. for 6 months with a fine of Rs. 3000/- i/d to suffer S.I. for 2 months.*
5. *Accused no. 2 and 3 are acquitted for the offences punishable under scc. 14 of Prevention of Corruption Act.*
6. *A bail bond of accused no.3 Suresh Waghule stands cancelled.*
7. *A complainant Pandit Alanjkar is returned the amount of Rs.9000/- as against the tainted notes on 9.10.1997, hence the tainted notes of Rs. 9000/- be credited to the State Treasury.*
8. *A pant and the amount of Rs. 600/- attached from accused Ambhore be returned to him after the period of appeal is over.”*

3. Brief facts leading to filing of these appeals can be summarized as under:-

As per the prosecution story, PW-3 complainant Pandit Alanjkar was working as Police Constable at Aurangabad Headquarter and while on duty, he met with an accident on 05.07.1995. He was hospitalized initially at Government

Hospital and thereafter, in private hospital, namely, Kamal Nayan Bajaj Hospital. He underwent treatment till 09.02.1996 and he lost both legs despite having spent huge amount on treatment. According to PW-3 complainant, the medical bill of Rs.93,000/- was submitted for reimbursement to the office of Superintendent of Police (Rural), Aurangabad. The said medical bill was forwarded to the office of Civil Surgeon, Aurangabad for sanction, where accused No.1 Dr. Kakade was working as Civil Surgeon, accused No.2 Ambhore was working as clerk and accused No.3 Waghule was working as peon. When the complainant met accused No.1 Dr. Kakade, he told him to meet accused No.2 Ambhore. When the complainant met accused No.2 Ambhore, he told him that he will have to pay 10% of the bill amount. On 04.04.1997, when the complainant met accused No.1, accused No.2 Ambhore was present. The complainant then met accused No.3 Waghule, who asked him to pay 10% of bill amount for getting approval from accused No.1 Dr. Kakade. Accused No.1 Dr. Kakade also told the complainant that if he pays 10% of bill amount, then only he will sign on bill. Therefore, the complainant lodged complaint (exhibit 29) on 07.04.1997 with Anti Corruption Bureau.

4. According to the prosecution, on 15.04.1997, the panchas were called and pre-trap panchanama (exhibit 40) was made. Accordingly, trap was laid and accused No.2 Ambhore was caught hold while accepting bribe. Therefore, FIR bearing Cr.No.3016/1997 (exhibit 73) was registered under Sections 7, 12, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, against the accused.

5. After completion of investigation, the charge-sheet was filed. The case was committed for trial to the Special Court. The charge was framed and read over to the accused, to which, the accused pleaded not guilty and claimed to be tried. The prosecution led oral as well as documentary evidence consisting of 14 witnesses. After hearing both sides and considering evidence on record, learned Special Judge, Aurangabad, passed the impugned judgment and order dated 01.04.2004. Hence, both these appeals by accused Nos.1 and 2.

6. Learned advocate Shri Ghanekar appearing for accused No.1/ appellant in Criminal Appeal No.225/2004 submitted that learned Special Judge has not properly appreciated evidence on record and has erroneously convicted

accused No.1. His first and foremost submission is in respect of the sanction granted for prosecuting accused No.1 Dr. Kakade. According to him, there is no proper sanction granted for prosecuting accused No.1 as the same is granted by the authority, which is not competent to remove accused No.1 from service. According to him, proper sanctioning authority is the Chief Minister of State of Maharashtra. However, PW-1 Kamlakar Sankhe, who granted sanction for prosecution of accused No.1, was working as Under Secretary to the Government of Maharashtra. The role of Under Secretary was only to sign on the communication for communicating the sanctioning order. Sanction can be proved either by examining sanctioning authority or by proving original sanction. According to learned advocate, in this case, the original sanction is in the form of notings of all authorities and final approval given by the Chief Minister. Therefore, the prosecution has failed to prove the sanction order. According to learned advocate, though PW-1 Kamlakar Sankhe claimed to be sanctioning authority, however, he was working as Under Secretary to Government. PW-1 admitted in his cross-examination that on the appointment order of accused No.1 Dr. Kakade, there was signature of the Secretary

and the Under Secretary is subordinate to the Secretary. Therefore, no subordinate officer to appointing authority can remove the public servant from service and therefore, the sanctioning authority should be the authority, who can remove the public servant. As such, PW-1 being subordinate to the Secretary, he cannot remove accused No.1 from service and therefore, he cannot be said to be sanctioning authority. As per delegation of powers, the Secretary rank officials are only empowered to sign on behalf of the Government and, therefore, they cannot be said to be sanctioning authority.

7. The second limb of submission of Shri Ghanekar is that evidence of the complainant (PW-3) regarding first demand on 29.03.1997 is not being corroborated by any other evidence. The complainant has suppressed the fact of presence of Police Head Constable Bhople, who was suspended constable. In his cross-examination, PW-3/ complainant admitted that on 29.03.1997 suspended Police Head Constable Bhople was with him and one Gaikwad, who was driver of accused No.1, was known to him. However, the prosecution has failed to corroborate the allegation of first demand on 29.03.1997 by

recording evidence of Bhople or driver Gaikwad. According to learned advocate Shri Ghanekar, even in respect of the second alleged demand of 04.04.1997, the complainant PW-3 in his cross-examination stated that in all, he visited the office of Civil Surgeon on three occasions, one with Bhople and two times with panch witness and Bhople was not present on 04.04.1997. Learned advocate Shri Ghanekar vehemently submitted that as per evidence of the complainant PW-3 himself, his first meeting along with Bhople was on 29.03.1997 and thereafter, he visited on two occasions on 07.04.1997 and 11.04.1997 and thereafter, with panch witness on 15.04.1997. Therefore, cross-examination of PW-3/ complainant falsifies his meeting with accused No.1 on 04.04.1997 and therefore, demand allegation of this date appears to be fictitious and imaginary. There are material omissions as regards demand evidence. Only material which is against accused No.1 is regarding demand of 04.04.1997. The complainant is untrustworthy witness as he has suppressed the fact of previous refused by accused No.1 and also the fact of presence of constable Bhople along with him on 29.03.1997. On 07.04.1997, there is no meeting with accused No.1 and, therefore, there is no evidence of demand against accused No.1.

According to learned advocate Shri Ghanekar, as regards incident dated 15.04.1997, there is no corroboration by witnesses as regards presence of two more persons in the cabin of accused No.1. Accused No.1 was examining patient and two persons were present in his cabin. However, evidence of the complainant is not corroborated with the panch witness PW-5 Nilkant Dake. There are material omissions in the evidence of PW-5 Nilkant Dake. Therefore, there is no strong evidence against accused No.1 Dr. Kakade. He, therefore, prayed for acquittal of accused No.1.

8. In support of aforesaid submissions, Shri Ghanekar has relied upon following judgments :-

(a) **Mohd. Iqbal Ahmed vs. State of A.P., 1979 AIR SC 677.**

(b) **The State of Maharashtra vs. Sanjivkumar Bapurao Wadikar and others**, Criminal Writ Petition No.539/2016 along with other petitions at Aurangabad Bench, decided on 17.04.2017.

(c) **Nivrutti Ganpati Sadekar vs. State of Maharashtra, 2019 (1) Mh.L.J. (Cri) 355.**

(d) **Waman Malhari Jambhulkar vs. The State of Maharashtra, 2019 (2) Mh.L.J. (Cri.) 543.**

(e) **Suresh Purushottam Ashtankar vs. The State of Maharashtra**, Criminal Appeal No.408/2012, Nagpur Bench,

decided on 31.10.2014.

9. Learned Senior Advocate Shri Deshmukh appearing on behalf of accused No.2/ appellant in Criminal Appeal No.261/2004 submitted that as far as sanction in case of accused No.2 Ambhore is concerned, PW-2 Dr. Prakash Sathe, who is sanctioning authority to accused No.2, has admitted that he has not seen the appointment order of accused No.2. The appointment order of accused No.2 is also not exhibited. Accused No.2 had no official work of the complainant PW-3. It was accused No.1 Dr. Kakade, who was assigned to do official work of sanctioning of bills of the complainant. Learned Senior Advocate Shri Deshmukh has also taken me through the entire evidence of PW-3 complainant, to submit that there is improvement as regards meeting of the complainant with accused No.2 Ambhore and sometimes, the complainant stated that he met accused No.2 Ambhore once and some times, he stated that he met him on two to three occasions. PW-3 complainant has admitted in his evidence that he was instructed to pay tainted notes to accused No.1 Dr. Kakade only. Moreover,

he was also not knowing as to which clerk in the office of accused No.1 Dr. Kakade was dealing with the work of sanctioning medical bill and leave. PW-3 complainant has admitted that he had never gone to the office between 07.04.1997 till date of trap and on the day of verification, he directly went into the cabin of accused No.1 Dr. Kakade. PW-3 also categorically admitted that accused No.2 Ambhore told him that he had no concern with that money and not to pay the same to him and pay it to accused No.1 Dr. Kakade. It is specifically admitted by PW-3 that accused No.2 Ambhore was not prepared to take money and PW-3 had complained against accused No.1 Dr. Kakade only.

10. Learned Senior Advocate Shri Deshmukh has taken me through evidence of all witnesses to point out discrepancies. He pointed out evidence of PW-4 Janardhan Sonawane, who is shadow panch for verification and he candidly stated that accused No.2 Ambhore did not demand money and told the complainant to meet accused No.1 Dr. Kakade for work. PW-5 Nilkant Dake, who is shadow panch for trap, stated in his evidence that the complainant met him on 15.04.1997 for the

first time and he was not interrogated by the police in his presence. PW-5 admitted that no instructions regarding accused No.2 Ambhore were issued, nor his name was referred in the office of Anti Corruption Bureau and it was only decided to meet accused No.1 Dr. Kakade. Learned Senior Advocate Shri Deshmukh, therefore, submitted that trap was decided to be led only on Dr.Kakade and accused No.2 was not at all in picture. Shri Deshmukh has also invited my attention towards evidence of PW-13 Tandale, Investigating Officer, who admitted in his evidence that during the course of investigation, he was aware of the fact that accused No.2 Ambhore was not authorized to grant medical bill. He had never asked the complainant to talk with accused No.2 Ambhore. Learned Senior Advocate Shri Deshmukh, therefore, submitted that there is no evidence at all against accused No.2 as regards demand. He submitted that mere recovery from accused No.2 is not sufficient to bring guilt home and, therefore, accused No.2 cannot be held liable for conviction at any costs. He, therefore, prayed for acquittal of accused No.2.

11. In support of his above submissions, learned Senior Advocate Shri Deshmukh has relied upon following judgments:-

(a) *Neeraj Dutta vs. State (Government of NCT of Delhi), (2023) 4 SCC 731.*

(b) *P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SCC 152.*

12. *Per contra*, learned APP appearing for the State/prosecution has strongly opposed the prayer of the accused. The evidence on record clearly proves beyond all doubts that the accused are guilty and they have been rightly convicted by learned Special Judge. Demand as well as acceptance is proved and there is corroboration of evidence to that effect. He, therefore, prayed for dismissal of appeals.

13. After hearing the submissions of learned advocates, I have gone through evidence on record minutely. The points that arise for determination are: (i) Whether, the sanction accorded for prosecution of the appellants is valid in law? And (ii) Whether, the prosecution has proved the demand and acceptance of illegal gratification beyond reasonable doubt?

14. As far far as sanction granted by PW-1 Kamlakar

Sankhe for prosecuting accused No.1 Dr. Kakade is concerned, admittedly the appointing authority of accused No.1 Dr. Kakade is the Secretary of Government whereas, the sanction is accorded by PW-1, who was Under Secretary and not competent to remove accused No.1 Dr. Kakade. Therefore, sanction accorded by PW-1 Under Secretary is no sanction. Under Section 19(1)(c) of the Prevention of Corruption Act, sanction can be accorded only by the authority competent to remove the public servant from office. PW-1 being an Under Secretary was subordinate to the appointing authority (Secretary, Health Department), and hence, not competent to remove the accused. Therefore, sanction is invalid.

15. It is well settled that under Section 19(1)(c) of the Prevention of Corruption Act, 1988, a valid sanction for prosecution must be accorded by the authority competent to remove the public servant from service. The object of this requirement is to afford protection to honest officials from frivolous prosecution and to ensure that the competent authority, after due application of mind, considers the material before according sanction. The Hon'ble Supreme Court in ***Mohd. Iqbal***

Ahmed (supra) has held that sanction must be by the appointing or removing authority, and any sanction granted by an officer subordinate thereto is void. In the present case, PW-1 Kamlakar Sankhe, who was only an Under Secretary, was admittedly subordinate to the Secretary who was the appointing and removing authority of accused No.1. Hence, the sanction accorded by PW-1 is without jurisdiction and vitiates the entire prosecution against accused No.1.

16. Insofar as sanction granted by PW-2 Dr. Prakash Sathe for prosecuting accused No.2 Ambhore is concerned, PW-2 sanctioning authority has not applied mind while according sanction. PW-2 admitted in his evidence that he has not seen the appointment order of accused no.2. He also admitted that accused No.2 Ambhore had no official work with the complainant. As regards accused No. 2 Ambhore, the sanction accorded by PW-2 Dr. Prakash Sathe also suffers from non-application of mind. The sanctioning authority must, before according sanction, peruse the relevant records and satisfy itself that a *prima facie* case exists. In **State of Karnataka v. Ameerjan**, (2007) 11 SCC 273, and **State of Maharashtra v. Mahesh G. Jain**,

(2013) 8 SCC 119, the Hon'ble Supreme Court has emphasized that a sanction order passed mechanically, without examining the materials or understanding the nature of allegations, is invalid. In the present case, PW-2 candidly admitted that he had not seen the appointment order of accused No.2 and was unaware of his official duties. This admission clearly establishes that the sanctioning authority did not apply its mind to the facts of the case, rendering the sanction invalid and vitiating the prosecution against accused No.2.

17. As far as demand as against accused No.1 Dr. Kakade is concerned, the prosecution has failed to prove that accused No.1 has demanded or accepted money. The amount has been admittedly accepted by accused No.2 Ambhore. Whether, accused No.1 Dr. Kakade has made any demand to the complainant is not established by the prosecution by adducing strong evidence. The prosecution is required to prove the case beyond reasonable doubt.

18. Insofar as demand in respect of accused No.2 Ambhore is concerned, the prosecution has failed to establish the demand made by accused No.2 beyond all reasonable doubts.

PW-2 Dr. Sathe has admitted in his evidence that accused No.2 had no official work of the complainant. There are discrepancies in evidence of PW-3 complainant about demand made by accused No.2. PW-3 admitted in his evidence that accused No.2 Ambhore told him that he had no concern with that money and not to pay it to him and he was not prepared to accept money. Even evidence of PW-4 Sonawane and PW-5 Dake categorically admitted that accused No.2 did not demand money. PW-13 Tandale Investigating Officer also admitted that accused No.2 was not authorized to grant medical bill. There is no corroborative evidence for the alleged demand by accused No.2 Ambhore.

19. The settled position of law, as laid down by the Hon'ble Supreme Court in *Neeraj Dutta (supra)* and *P. Satyanarayana Murthy (supra)*, is that proof of demand of illegal gratification is an essential part for establishing the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. Mere recovery of tainted money, unaccompanied by proof of a prior demand, is not sufficient to convict the accused. The prosecution must prove beyond

reasonable doubt that the accused not only demanded but also accepted or obtained the gratification as a motive or reward for doing or forbearing an official act.

20. In view of the discussion above, in absence of valid sanction, the entire prosecution stands vitiated. Even otherwise, on merits, the prosecution has failed to prove the foundational fact of demand. The prosecution has failed to prove its case beyond reasonable doubt. Hence, the impugned judgment of conviction dated 01.04.2004 passed by the learned Special Judge, Aurangabad in Special Case No.30/1998 is, therefore, quashed and set aside. The appellants are acquitted of all the charges. Bail bonds stand cancelled. Fine, if paid, shall be refunded to the appellants. The Criminal Appeals are, accordingly, allowed.