



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.366 OF 2004

Baburao Khanduji Satdive,
Age : 50 years, Occupation : Service,
R/o Gautamnagar, Ghati,
Aurangabad, District : Aurangabad.

...Appellant/ accused

- *Versus* -

The State of Maharashtra.

...Respondent/ State.

...

Shri Joydeep Chatterji, Advocate for the appellant/ accused.
Shri Vivek M. Lomte, APP for the respondent/ State.

...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 25 November 2025

Pronounced on : 05 December 2025

JUDGMENT :-

1. By this appeal filed under Section 374(2) of the Code of Criminal Procedure (for short, 'the CrPC'), the appellant/ accused challenges the judgment and order dated 17.04.2004 passed by the learned Special Judge, Jalna, in Special Case No.8/1999 by which, he has been convicted for offence punishable under Section 7 of the Prevention of Corruption Act (for short, 'the PC Act') and he is sentenced to suffer rigorous

imprisonment for one year and to pay fine of Rs.500/-, in default of payment of fine, he is directed to suffer further rigorous imprisonment for one month. He is also convicted for the offence punishable under Section 13(2) r/w 13(1)(d) of the PC Act and is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- and in default, to suffer rigorous imprisonment for one month. Both the sentences were directed to run concurrently.

2. The brief facts leading to filing of the present appeal are as under:

(a) The prosecution case is that the complainant, Sanjiv Nivrutti Kamble (PW-1), lodged complaint (Exh.31) at Anti Corruption Bureau office (ACB), Jalna on 13.01.1999, alleging that the appellant/ accused demanded illegal gratification for returning the refund amount legally due to him. It is stated in the complaint that the complainant was a B.Ed student during 1997-1998 at Vasantrao Naik Shikshan Prasarak Mandal, Jalna, having obtained admission through recommendation from Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. After completing the B.Ed., he took admission for M.Sc. Course in the

said college. The complainant had deposited Rs.300/- with the University by demand draft. When fees were increased, he deposited an additional Rs.5000/- after taking admission. Being a Scheduled Caste student, he is entitled for scholarship and his fees so paid would be refunded to him. The amount of Rs.6,322/- was sanctioned to the complainant from the District Social Welfare Office, Jalna and which was to be paid to him through his college. Therefore, the complainant's brother contacted the appellant/ accused regarding refund of fees. The appellant informed that the refund had been sanctioned and asked him to contact the college. Accordingly, the complainant met the Principal on 04.01.1999, but the Principal stated that no communication regarding refund had been received.

(b) On 05.01.1999, the complainant met the accused and narrated the discussion with the Principal. The accused asked him to bring a letter from the college. The complainant then contacted the college clerk, Sarjerao Vanjare (PW-3), and both of them met the accused at the District Social Welfare Office, Jalna. The accused instructed that a letter be submitted for all eligible students. After asking the complainant to wait outside, the accused allegedly told clerk Vanjare PW-3 that the complainant

must pay Rs.500/- to get his work done. PW-3 Vanjare conveyed the demand to the complainant, and both returned to the college to prepare the list of eligible students.

(c) The complainant again visited the office on 11 and 12 January 1999, but the accused was on tour. On 13.01.1999, the complainant met the accused at 10 a.m. The accused took him to a tea stall, informed him that the college letter had been received, and reiterated the demand communicated by Vanjare PW-3. On the complainant expressing inability to pay Rs.500/-, the accused allegedly asked him to pay Rs.100/- immediately and Rs.200/- by afternoon, assuring that the work would be done thereafter. The complainant, unwilling to pay bribe, approached the ACB and lodged complaint Exh.31.

(d) Dy.S.P. Tandale (PW-4) recorded the complaint and secured two panch witnesses — Ramesh Patil (PW-2) and Madhukar Harkal. After the complaint was read and verified, the complainant produced items in his possession, including Rs.225/-. Dy.S.P. Tandale retained Rs.200/- for the trap, treated the currency notes with anthracene powder, and prepared the pre-trap panchnama (Exh.20).

(e) The raiding party left the office at around 4 p.m.,

and the complainant and Panch No.1 were instructed to meet the accused. They met the accused, who discussed the complainant's work and showed certain papers. All three had tea at a nearby tea-stall. On their way back, near the urinal, the complainant enquired again about his work, and the appellant/ accused asked whether he had brought the money. The complainant then gave the tainted currency notes to the accused, who accepted them and kept them in his pocket.

(f) On the predetermined signal, the raiding party apprehended the accused. His hands, pocket, and the currency notes showed bluish fluorescence under ultraviolet light, and the note numbers matched the pre-trap panchnama. The complainant and panch witness statements were recorded, spot panchnama (Exh.33) was drawn, and PW-4 Dy.S.P. Tandale lodged complaint Exh.39, completed investigation, obtained sanction (Exh.26), and filed the charge-sheet.

3. The charge for offences under Sections 7 and 13(1) (d) r/w 13(2) of the PC Act was framed. The accused pleaded not guilty. His defence is one of total denial, asserting that the

complainant forcibly inserted the tainted currency notes into his pant pocket near the urinal, and that the ACB falsely implicated him. In order to prove the guilt of the appellant, the prosecution has examined in all four witnesses, namely, PW-1 complainant Sanjiv Kamble, PW-2 Ramesh Patil, who is panch witness, PW-3 Sarjerao Vanjare, who is college clerk and PW-4 Dy.SP Tandale. After recording evidence and hearing the appellant and prosecution side, the learned Special Judge was pleased to pass the impugned judgment.

4. Learned advocate appearing for the appellant 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. Learned advocate submitted that 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 at the time of recording their evidence. On the point of demand, PW-2 shadow panch Ramesh Patil has not corroborated with the testimony of

PW-1 complainant. According to learned advocate for the appellant, the prosecution is trying to prove the demand through independent witness PW-3 Vanjare. Though the said witness is crucial as the first demand was made by the appellant through this witness, however, his testimony cannot be believed as he is not trustworthy witness. When the PW-1 complainant and PW-3 Vanjare had been to the Social Welfare Office and met the appellant, at that time, according to PW-3, it was the appellant who asked the complainant to go outside the room after their discussion. However, in his cross-examination, PW-3 stated that he himself had asked the complainant to go outside the room. There is also no corroboration as regards coming back to the college from the office of Social Welfare. PW-1 complainant deposed that after initial talks with the appellant, the complainant and PW-3 had returned to the college. However, PW-3 in his cross-examination has admitted that the complainant never accompanied with him when he proceeded towards the college. Learned advocate for the appellant submitted that there are lot of omissions and contradictions in testimonies of the prosecution witnesses.

5. Learned advocate for the appellant further submitted that the testimony of PW-1 complainant is also not trustworthy and the same cannot be considered to prove the case of demand. PW-1 deposed that when he along with panch No.1 had been to the office of Social Welfare, the appellant had demanded Rs.200/- near urinal. However, in the testimony of PW-2 shadow panch, no talk took place at the office of the appellant in connection with the work. PW-2 further stated that no talk took place while proceeding for tea and till reaching at urinal. Therefore, there is no corroboration of testimonies of PW-1 and PW-2. Therefore, the prosecution failed to prove the demand itself. As such, learned advocate submitted that the prosecution has failed to prove guilt of the appellant. The appeal needs to be allowed and the appellant be acquitted.

6. *Per contra*, learned APP strongly opposed the submissions of learned advocate for the appellant. According to learned APP, the statements of witnesses proved the guilt of the appellant 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. According to him, 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 appellant. There is no scope for interference in the impugned judgment. He, therefore, prayed for dismissal of the present appeal.

7. After hearing the submissions of learned advocates and with their assistance, after going through evidence on record carefully, it is apparent that the witnesses have not supported each other on the point of demand. Thus, there is no corroboration in testimonies of PW-1, PW-2 and PW-3 on the point of demand. PW-3's version regarding communication of the alleged demand is hearsay, therefore, such evidence cannot prove the fact of demand unless independently corroborated. The basic requirement of demand is required to be proved beyond all reasonable doubt. 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 appellant 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. Thus, the proof of demand has been held to be indispensable ingredient. Therefore, failure on the part of prosecution to prove demand and illegal gratification, would be fatal and mere recovery of the amount from the appellant/accused would not entail his conviction for the said offences.

8. 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.

9. In view of the foregoing discussion, I am of the view that the prosecution has failed to establish the ingredients of offences against the appellant beyond reasonable doubt. Consequently, **this Criminal Appeal is allowed and the impugned judgment and order is quashed and set aside.** The appellant/accused is acquitted for the said offence. As the appellant is on bail, he need not surrender. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded. The record and proceedings be sent back to the concerned Court.