



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

CRIMINAL APPEAL NO. 512 OF 2004

The State of Maharashtra,
Through - P.S. Kranti Chowk,
Aurangabad.

....Appellant

Versus

Pruthuvakar Vadkavatil Balarunan
Age: 40 yrs., Occu.: Traffic Supervisor,
Ashok Tours and Travels, Hotel
Aurangabad Ashok, Aurangabad.

....Respondent
(Ori. Accused)

.....

Advocate for Appellant : Mr.N.D.Batule

Advocate for Respondent : Mr. Joydeep Chatterjee

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 25 JULY, 2025

PRONOUNCED ON : 31 JULY, 2025

JUDGMENT :-

1. State hereby takes exception to judgment and order dated 05-04-2004 passed by learned Special Judge, Aurangabad, in Special Case No.26 of 1998 acquitting accused from charges under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act.

FACTS OF CASE IN BRIEF

2. Present respondent was chargesheeted by Anti Corruption

Bureau (ACB), Aurangabad on the premise that complainant's father Ramchabilasing submitted a tender for package tour floated by Indian Tourism Development Corporation (ITDC). His tender was accepted and tour was conducted from 10-10-1997 to 30-10-1997 and again on 12-10-1997 to 31-10-1997. Towards said tour, on account of uses of two coaches, cheques for the tour amount were released towards 75% amount. Son of Ramchabilasing namely Virendrasing Thakur, who was a Driver in ACB Aurangabad, approached accused, who was a Traffic Supervisor, with a request to release the cheques. It is the case of prosecution that accused demanded bribe of Rs.4,000/- to do the needful. Virendrasing lodged complaint (exh.16) with ACB, Aurangabad on the strength of which ACB authorities planned and arranged trap, issued necessary instructions to complainant and shadow pancha and raiding party accompanied both of them and kept themselves waiting in lay for receipt of signal from complainant regarding acceptance of bribe and thereafter, on receiving signal, they apprehended accused.

ACB Officer lodged report exh.33 for above charge and after completing investigation, and after obtaining sanction, accused was tried by learned Special Court, who after conducting trial and on appreciating evidence, held that prosecution failed to make out a

case as evidence on behalf of prosecution was not found to be worthy of credence and hence, present accused came to be acquitted.

Feeling aggrieved by the same, State has preferred instant appeal.

RIVAL CONTENTIONS

On behalf of appellant State :

3. Learned APP appearing on behalf of appellant would point out that there is no dispute about service of accused. That, there is further no dispute that father of complainant was to receive cheque for the tours conducted by him. It is pointed out that when complainant himself approached seeking issuance of cheque by tendering bill, it is alleged that, demand of Rs.4,000/- was raised. Complainant himself has lodged report about bribe being demanded and his complaint was duly noted. It is further pointed out that in presence of Superintendent of Police, there was telephonic conversation. Thus, there was demand of bribe.

4. Learned APP further pointed out that in presence of shadow pancha, who is examined as PW2, there was again demand as well as acceptance. That, ACB authorities on conducting raid, noticed traces

of anthracene powder. Thus, according to learned APP, there is both demand as well as acceptance.

5. It is pointed out that, evidence of PW1 complainant is completely supported by PW2 shadow pancha and therefore, full proof case was made out, however, learned trial Judge failed to consider and appreciate the same and disbelieved prosecution version. According to learned APP, there is improper appreciation of evidence. Hence, learned APP seeks indulgence of this Court by allowing the appeal.

On behalf of respondent - accused :

6. Countering the above submissions, learned counsel for respondent pointed out that prosecution has miserably failed to make out the case. He pointed out that, in fact father of the complainant, who had filled tender and allegedly succeeded in the same, has not been examined. He pointed out that, defence taken in trial Court is that complainant's father had borrowed Rs.5,000/- as hand-loan from accused and said amount was returned. That, there was conversation in this regard to which PW2 shadow pancha was a party. He pointed out that in cross-examination, PW2 shadow

pancha has candidly admitted to that extent. Learned defence counsel pointed out that accused has also examined defence witness, who was working in the Accounts Department. Learned counsel pointed out that, it is clearly emerging from the evidence that PW2 shadow pancha was not in the company of complainant and accused at the time of alleged incident. Therefore, there is no corroboration to the testimony of complainant, who had no locus to file complaint. For above reasons, he urges to dismiss the appeal for want of merits.

EVIDENCE IN TRIAL COURT

7. In support of its case, prosecution has adduced evidence of in all three witnesses. Sum and substance of their evidence is as under :

PW1 Virendrasing Ramchabilasingh Thakur testified at exh.15 that he worked as Driver in ACB at Nagpur. He deposed about tenders filled by his father with ITDC Aurangabad, both being accepted and his father receiving cheque towards 75% amount and he deposed that he came to Aurangabad at the instance of his father and had approached accused and accused allegedly asked him to pay amount for the work to be done. He claims to have initially paid accused Rs.1,000/- but further demand of Rs.3,000/- was raised,

however, he paid Rs.2,000/- and agreed to pay Rs.1,000/- more at the time of final bill and even issued cheque towards remaining Rs.1,000/-. He further deposed about telephonic contact being done with accused. There was said to be demand of 5% of the bill amount, however, complainant offered to pay bribe @ 3% of the bill amount and so he lodged report exh.16. In his further evidence, he has narrated the events which took place in the ACB office and necessary instructions being given to him and shadow pancha and about instructions to go together to the office of accused and handing over tainted currency on demand.

In paragraph 6 of the examination-in-chief he narrated events took place in the office i.e. ITDC office at Aurangabad and testified that he and shadow pancha Mahd. Faiyyaz accompanied accused to the Accounts Office. He deposed that while standing in varanda, accused asked him to give Rs.5,000/-. Accordingly, he held tainted currency before him, which was accepted by accused and necessary signal was relayed.

In **cross-examination**, he has admitted that, he does not know when his father had submitted quotation. He admitted that his final bill was after deduction of 5% service tax, but at the time of quotation, service tax was not in force. He answered that, under his

own signature, he did not tender any application. He answered that, when he came to Aurangabad, while on leave, he had cheques signed by his father, but he admitted about not stating about it in the report. He admitted about not having talks with his father about demand of accused for 5% extra charge. He answered that, telephonic conversation between him and accused was recorded in the cassette. However, he submitted that when he met Investigating Officer, he did not disclose about talks between him and accused to be recorded in cassette. He admitted that there was no direct talk between him and accused before making report. He answered that there was no verification done prior to trap. In para 16 he answered that accused had place to sit in the lobby near the recaption whereas Accounts Section was 150 meters away from the reception. **He admitted that there were no talks about money at the counter of accused and further admitted that there were no talks about money till they went to old wing and also admitted about not telling accused about money being brought.**

8. **PW2** Mohd. Fayyas Mohd. Umar shadow pancha after deposing being summoned from ACB to act as pancha, being introduced to complainant, going through his written complaint, deposed about

procedure of application of anthracene powder done by ACB to the currency and drawing panchanama exh.25. Regarding the events at the office of accused, he deposed that he and complainant walked to the hotel, complainant took him to the left side of the office, where a person was sitting and showed that person papers and said person told that file was lying in the Accounts Section and they accordingly went there. In examination-in-chief itself he stated that when three of them went towards Accounts Section, while standing in the corridor, **complainant told accused that he had brought money, on which said person told him to give saying that henceforth, work would not be done if there is no clarity in the approach and then complainant handed over tainted currency to that person, who put it in his pocket and thereafter they went to Accounts Section, after which, complainant went to transmit signal from the corridor while he and accused went in the Accounts Section and raiding party approached accused.**

While under **cross-examination**, in paragraph 7, he admitted that **there were no talks between complainant and accused till they reach corridor of the old building.** He further stated that ACB Officer asked accused about the money and accused told that **he had received his money which Thakur had borrowed.**

PW3 is the Investigating Officer.

ANALYSIS

9. On analyzing above evidence, here it is clearly emerging more particularly from the answers given in the cross-examination by PW1 complainant himself as well as PW2 shadow pancha that there is no demand at the first instance from accused. Complainant appears to have on his own accord declared about he carrying money. Even independent witness PW2 shadow pancha has stated that he was not party to the conversation between accused and complainant. Therefore, there is no corroboration to the evidence of complainant on the point of demand. Apparently, PW2 shadow pancha was not present as it has come in his evidence that he was standing in corridor and both complainant as well as PW2 shadow pancha admit about there to be no conversation between complainant and accused regarding bribe amount. With such evidence, very aspect of demand comes under shadow of doubt.

10. Learned counsel for respondent accused submitted that father of complainant, who had filled tenders and was to receive bills, has not been examined. It is also further surprising and difficult to

comprehend how complainant has tendered cheque under the signature of his father during initial conversation. Though it is a case of complainant that in presence of Superintendent, Central Bureau of Investigation, Nagpur, there was telephonic conversation regarding demand, such electronic evidence of conversation is not before the Court.

11. Learned counsel for respondent pointed out that amount accepted by accused was the money, which was borrowed by father of complainant, and was so duly accepted. He invited attention of this Court to the cross-examination of PW2 shadow pancha, who candidly admits that the amount handed over during conversation revealed to be return of hand loan. Very Investigating Officer in cross-examination also has admitted about immediate statement given by accused on apprehension that the amount received was repayment of borrowed money. Statement of accused, after immediate arrest, is also part of record. Thus, there is another reason for doubting the demand of illegal gratification.

12. Perused the judgment under challenge. Learned trial Judge apparently appreciated evidence of PW1 complainant, PW2 shadow

pancha and that of PW3 Investigating Officer and has observed that case of prosecution is not worthy of credence. Sound reasons are assigned for above findings. No infirmity or perversity is brought to the notice of this Court. Consequently, no case on merits being made out for interference, appeal deserves to be dismissed. Accordingly, I pass following order :

ORDER

Criminal Appeal stands dismissed

(ABHAY S. WAGHWASE)
JUDGE