



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 264 OF 2017

The State of Maharashtra

...Appellant

Versus

1. Dattatraya Nana Salunke,
Age: 41 years, Occp.: Service,
As Awwapl Karkoon, Sanjay Gandhi Yojna,
Additional Charge – Circle Officer,
Kolegaon, Tq. Shrigonda, Dist. Ahmednagar
R/o Shivajinagar, Tq. Shrigonda,
Dist. Ahmednagar.

2. Swapnil Pradip Holkar,
Age: 27 years, Occp.: Service,
Kamgar Talathi, Bhangaon,
Tq. Shrigonda, Dist. Ahmednagar
R/o. Behind Mahadji Shinde Vidyalaya,
Shrigonda, Tq. Shrigonda,
Dist. Ahmednagar

...Respondents

- Mr. P. P. Dawalkar, APP for the Appellant/State
- Mr. S. M. A. Jahagirdar, Advocate for the Respondent No. 1
- Mr. T. S. Lodhe, Advocate for Respondent No. 2

CORAM : ABHAY S. WAGHWASE, J
RESERVED ON : NOVEMBER 11, 2025
PRONOUNCED ON : NOVEMBER 14, 2025

JUDGMENT :

1. Instant appeal is by State on account of acquittal of present Respondent by learned Special ACB Court, Ahmednagar in ACB Case No. 15/2014 acquitting present Respondents from charges under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988

2. Facts in brief giving rise to prosecution is as under:

PW – 2 Complainant ran brick kiln. On 17.07.2014 both accused, who are revenue officers, allegedly paid visit to it, carried out measurement of the earth/soil and telephoned complainant, who was at Arangaon, that there is excess earth noticed to be stored and that he would be required to pay fine of Rs. 1,60,000/-. According to prosecution, complainant questioned regarding levying of fine and at that time, it is alleged that accused no.2, who had made telephone call, told complainant that he will require to give Rs. 80,000/- for compromising the matter. As PW 1 was not interested in paying bribe, he lodged report at Exh. 26, on the basis of which ACB planned trap and on completion of investigation, charge-sheeted the accused made to face trial.

3. In Trial Court prosecution is rested on documentary evidence and as well as testimony of four witnesses i.e. PW 1- Sanctioning Authority; PW 2 - Complainant, PW - 3 Shadow Panch, PW 4 - Investigating Officer.

4. After hearing both sides and on appreciating and analyzing the evidence, learned Trial Court reached to a finding that prosecution has failed to bring home the charges and thereby acquitted the accused. Precisely, said judgment and order of acquittal is now taken exception by filing instant appeal.

SUBMISSIONS

5. Learned APP apprised this Court about the story of prosecution and would also take this Court to the testimony of PW 2 and PW 3, who, according to him, are complainant as well as shadow panch. He pointed out that these both witnesses have testified about demand verification being initially got done and subsequently trap being set and thereafter they both unanimously speak about both accused available in the office. That, both accused in presence of both these witnesses had initially carried out discussion. He pointed out that initially accused no. 1 apart from making gestures by rubbing his thumb to the index finger asked about the money and when it was to be paid by complainant, he was directed to pay it to accused no.2. That, amount was accepted by accused no. 2 and he kept it on the table and thereafter pre-determined signal was laid and both accused were apprehended. Thus, according to learned APP, there is both demand as well as acceptance, however, same has not been correctly appreciated by learned trial court.

Learned APP further submitted that investigating machinery has applied for sanction to PW 1 who is appointing as well as reporting authority of both accused and such authority had studied the investigation papers and had thereafter accorded sanction. Such authority is also examined. That, investigating officer who carried out investigation has also

narrated the sequence of events since complaint till filing charge-sheet but the same has not been considered by trial judge.

Learned APP would pointed out that accused were caught red handed. However, merely by commenting on the conduct of the accused, prosecution is disbelieved. There was both pre-trap panchnama a well as post trap panchnama and prosecution witnesses have stuck to the story of prosecution throughout. There was no need to doubt the credibility of such evidence and therefore, learned APP urges to interfere by allowing the appeal by setting aside the impugned judgment.

6. In answer to above, learned counsel for accused would submit that prosecution failed to bring home charges. According to him, alleged demand was on telephone but no CDR has been gathered. Secondly, according to him, when panchnama of excess earth being possessed then that was already forwarded to the higher authority, and it being duly informed to the complainant, there was no question of putting any demand. He pointed out that amount which is referred to by the witnesses pertains to the fine of holding excess earth. That, challan to that extent has already been drawn but it was snatched by complainant. That, immediately after the episode of alleged trap, both accused had tendered say Exhs. 36 and 37. That, shadow panch in his cross has admitted regarding above stand taken by accused. Moreover, according to them, alleged demand is by gestures.

PW 2 and 3 are not consistent on alleged episode of demand on the day of trial. He pointed out that there are material omissions and as such, evidence of PW 2 and 3 is unworthy of credence.

7. He further pointed out that sanctioning authority has failed to apply its mind and that surprisingly said sanction order carries signatures of entire staff when only sanctioning authority was expected to accord sanction by causing signature. For all above reasons, he urges to dismiss the appeal for want of evidence.

8. In the light of above submissions, evidence on record is re-appreciated. PW 1 seems to be sanctioning authority. PW 2 seems to be complainant and PW 3 seems to be shadow panch, whereas PW 4 seems to be investigating officer. In the light of nature of accusations, evidence of PW 2 and 3 assumes significances and, therefore, the same is meticulously analyzed.

PW 2 complainant, who is examined at Exh. 25, has testified that he runs a brick kiln and according to him, while he was at Arangaon, both accused, who had come to visit his brick kiln, had carried out weight and measurement of the earth available there and it is his testimony that accused no. 2 made him telephone call and informed about 1700-1800 excess brass earth/soil and further informed about requirement of fine to be paid to the tune of Rs. 1,60,000/-. He claims questioning accused no. 2 and

thereafter it is his case that for compromise Rs. 80,000/- were demanded and therefore, he lodged report Exh. 26. He also testified about procedure of trap being explained to him as well as PW 3 shadow panch and they both also proceeding for pre trap verification. According to him, at that time, initially accused no. 2 was approached and later on, accused no.1 arrived, they both had discussion and according to him, accused no. 2 had informed that accused no.1 instructed him to take merely Rs. 80,000/- instead of Rs. 1,25,000/- as is taken from others and, therefore, they went back to ACB office.

9. He further submitted that on the day of trap when he and panch visited the office of accused both of them were present and after greeting them, accused no. 1 allegedly rubbed his thumb to the index finger and made inquiry about the money and accused no.1 pointed to accused no. 2 and he too made similar gesture after which currency was handed over to accused no. 2, who accepted it and kept on table followed by signal given by complainant to raiding party and both accused being apprehended.

While under cross, in paragraphs 9, 10, 11 there are questions pertaining to the year since when brick kiln was being run, whether royalty was paid and whether any previous panchnama was drawn in the year 2013-2014. In paragraph 11 he has denied any notice being issued to him to pay/deposit of royalty to the tune of Rs. 1,01,840/-. He denied both accused

coming and serving notice on 18.07.2014 and further answered that he was not present on the spot but to further question answer is that his servant refused to accept notice. Such answer goes to show that PW 2 was served with notice. In paragraph 13 of the cross he has admitted about accused no. 1 informing about video shooting of the panchnama to be conducted in presence of police patil and said video being forwarded to the Collector on whats app. Therefore, question arises is whether when once panchnama is complete and it is forwarded to the higher authority, where is the question of accused persons putting up demand by way of bribe.

10. In paragraph 16 of the cross material omissions are brought in his statement as well as in complaint regarding informing ACB officer about accused no. 2 making him phone call and informing about 1700-1800 brass earth found and requirement of fine of Rs. 1,60,000/- required to be paid. He also admitted that he denied such quantity of earth available and further questioning as to how fine of Rs. 1,60,000/- could be levied.

11. He also admitted that there is material omission about accused saying to him that Rs.80,000/- would be required for compromising the matter. In paragraph 17 of the cross this witness has admitted that he met accused, he himself on his own accord had told them about bringing Rs.80,000/- i.e. even prior to the demand. I.O. has admitted that such above text is not stated by complainant and as such, omissions stands proved.

12. PW 3 is also a crucial witness and it is only when this witness corroborates complainant in cases of such nature, case of prosecution becomes worthy of credence. PW 3 is examined at Exh. 29 and he also testified about being called to act as panch, being introduced to complainant, confronted with complaint Exh. 26 and he signing over it. He also deposed about accompanying PW 2 for panchnama of verification by carrying voice recorder. To that extent, he has deposed it in paragraph 5. Events of the day of the trap are narrated by him that after complainant greeted both accused discussion took place between them about Rs.80,000/- and that complainant himself informed that he is present as per instructions even yesterday and he deposed about accused no. 1 making gestures by rubbing his thumb over his index finger and thereafter complainant removing the currency and holding it in his right hand but at that time accused no.1 instructed him to give the same to accused no. 2 who accepted it and then kept it on the table.

As regards to above events are concerned, PW 2 and PW 3 are not consistent as PW 2 had deposed that after accused no. 1 made gestures by rubbing thumb over his index finger at that time itself he pointed towards accused no. 2 and directed complainant to pay him the amount, whereas PW 3, as stated above, has not stated about it and has rather stated that after accused no. 1 made gesture at that time itself complainant took

out the money and after it was offered he was directed to accused no. 2. Admittedly, currency was seized from the table. The events narrated by PW 2 and 3 show that there were gestures made and there is no demand. Prosecution witnesses none other than complainant himself has admitted that on the day of trap there was no demand by any of the accused. As stated above, evidence of PW 2 and 3 is carrying material omissions. PW 3 in his cross has admitted that both accused gave explanation Exhibit 36 and 37 regarding challan of Rs.80,000/- being paid and it being snatched by complainant from the hands of accused no. 2. Therefore, his testimony probablises of defence that amount accepted that day was towards fine vide challan and not towards bribe.

13. Remaining two witnesses are sanctioning authority and I.O. As pointed out, sanctioning authority has admitted that apart from his own signature there are signatures of other staff assisting him that too on very sanctioning order. I.O. has also admitted in cross in paragraph 19 that he did not conduct investigation regarding preparation of challan. Thus, there is serious lapse on the part of investigating machinery in spite of specific say of accused to that extent. Even in paragraph 21 of the cross I.O. has admitted that in the complaint PW 2 had not stated about phone call received from accused no. 2 informing about excess quantity of earth being found at the brick kiln and requirement of fine to the tune of Rs. 1,60,000/- to be paid

and on his questioning, he was offered to pay Rs. 80,000/- for compromising the matter.

14. As pointed out, though pre trap verification panchnama was drawn by allegedly recording voice, 65(b) certificates are not made part of the charge-sheet and are not before the Court.

15. With above quality of evidence, it cannot be said that prosecution has discharged its burden of proving its case beyond reasonable doubt.

16. After considering the impugned judgment, this Court is more than convinced that entire evidence has been correctly appreciated. Relevant provisions and requirements of the Corruption Act are dealt with and discussed by learned Trial Court. Even settled law has been taken into account before according acquittal. There is no merit in the Appeal. Hence, appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)