



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

CRIMINAL APPEAL NO. 452 OF 2014

The State of Maharashtra
Through Dy.S.P, Anti-Corruption Bureau,
Nandurbar.

....Appellant

Versus

Kailas Onkar Mohite
Age: 42 years, Occu.: Service,
R/o. 214, Patelwadi, Nandurbar,
Originally R/o. Deur Budruk,
Tq. & Dist.Dhule.

....Respondent
(Ori. Accused)

.....
APP for Appellant : Mr.S.M.Ganachari
Advocate for Respondent : Mr. N.L.Chaudhari
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10 JULY, 2025

PRONOUNCED ON : 21 JULY, 2025

JUDGMENT :-

1. In this appeal, State is assailing judgment and order dated 24-12-2012 passed by the learned Additional Sessions Judge and Special Judge, Nandurbar, thereby acquitting respondent from charges under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

BRIEF FACTS OF THE CASE

2. Complainant PW2 Sitaram, who set law into motion, was at relevant time, serving as *Kendra Pramukh* (Center Head) of Zilla Parishad Primary School at Borpada. Under Government scheme of providing nutritious food, bills were required to be drawn and tendered to Block Development Officer, Panchayat Samiti, Nawapur. PW2 Complainant had forwarded consolidated bill in the office of Panchayat Samiti through one of the Teachers of the school namely Vilas More, who approached present accused, who was working as a Teacher, but was on deputation in Zilla Parishad to assist Extension Officer and was responsible to verify the bills. On 30-03-2010, complainant learnt through Vilas More that accused told him that there are technical mistakes in the bill and as such bill cannot be sanctioned and further allegedly told that bribe of Rs.2,500/- would be required for correcting and encashing the bills. Complainant personally visited accused on 01-04-2010, but again he too was allegedly told that there are several technical mistakes and unless he receives Rs.2,500/- as bribe, mistakes would not be allowed to be rectified. As complainant was not willing to pay bribe, he approached Anti Corruption Bureau (ACB) and lodged complaint resulting into planning of trap, its execution, apprehending accused.

After investigation, accused was chargesheeted and tried by learned Additional Sessions Judge and Special Judge, Nandurbar, who was pleased to appreciate the oral and documentary evidence and finally recorded finding and opinion that prosecution failed to prove its charges and by order dated 24-12-2012 acquitted the accused from charges under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act. It is the above acquittal, which is taken exception to by the State by filing instant appeal.

SUBMISSIONS

On behalf of State :

3. Sum and substance of arguments advanced by learned APP is that there is no dispute that complainant and accused were working as Kendra Pramukh (Center Head) and Teacher respectively in Zilla Parishad School. There is no dispute about the assignments with them and respondent original accused dealing with verification of consolidated bills under the nourishment scheme floated by the State Government. Learned APP pointed out that bills were duly tendered through another Teacher Vilas More and there was initial demand of Rs.2,500/- through him by way of illegal gratification. When complainant learnt about it, he too had approached accused, but under the garb of some technical mistakes, there was demand of

bribe to him also of which prompt complaint was lodged.

4. Learned APP submitted that before chargesheeting accused, ACB authorities had obtained sanction. PW1 Kulkarni, Sanctioning Authority was examined, who had studied the investigation papers and then accorded sanction, which was after due application of mind. He further pointed out that PW2 and PW3 are complainant and shadow pancha respectively. They both are consistent regarding receiving instructions and guidance from ACB authorities about laying of trap and manner of its execution. Learned APP pointed out that pre-trap panchanama was drawn. That, both PW2 complainant and PW3 shadow pancha unanimously narrated the events of the day when they both together visited accused. That, there was clear demand regarding which they both deposed. That, they also withstood extensive cross-examination and their evidence as regards to demand has remained unshaken. He further submitted that aspect of acceptance is proved from the traces of anthracene powder on the hands of accused. That, with such quality of evidence, PW2 complainant and PW3 shadow pancha had fortified the case of prosecution, however, the same has not been correctly appreciated by learned trial Judge.

5. Learned APP further submitted that as the foundational facts are proved, learned trial Court ought to have employed and taken recourse to Section 20 of the Prevention of Corruption Act, regarding presumption to return the guilt. Accused had failed to rebut the presumption or onus, which fell upon him, still it is his submission that, learned trial Judge ignored such evidence of sterling quality.

6. He further submitted that while answering questions under Sections 313 of the Code of Criminal Procedure, accused had no satisfactory explanations and answers and chose to remain quite, which indicates his involvement as well as guilt. According to learned APP, learned trial Court had adopted hyper technical approach and has highlighted minor discrepancies. That, such approach has resulted into acquittal. Lastly, he submits that the learned trial Judge has failed to appreciate evidence adduced by prosecution in its correct perspective and erred in acquitting accused and hence, he prays for interference by allowing appeal.

On behalf of Respondent / Accused :

7. In answer to above, learned counsel for accused submits that prosecution has miserably failed to establish the charges. That, evidence of crucial witnesses like PW2 complainant and PW3 shadow

pancha is not consistent on various counts and learned trial Court has meticulously compared testimonies of these two witnesses, the answers given by them in cross-examination, as well as cross-examination faced by the the PW4 Investigating Officer. That, there are several serious doubts about prosecution version. That, evidence of PW2 complainant does not lend support to PW3 shadow pancha though they were both together. He would emphasize that, in this case, very crucial aspect of demand has not been cogently proved.

8. Supporting the analysis of evidence of PW1 Sanctioning Authority done by the learned trial Judge, he would submit that there is total non application of mind. That, PW1 Sanctioning Authority has merely used draft sanction without properly reconsidering the documents. That once sanction itself is not valid, very prosecution gets vitiated.

9. He lastly submitted that, it is surprising to note that bill in question was duly cleared on 31-03-2010 itself and therefore, there was no question of putting up demand subsequently. For the more reason, it is his submission that case of prosecution comes under shadow of multiple doubts and case being not proved beyond

reasonable doubt, he supports acquittal accorded by learned trial Judge and rather he prays to dismiss the appeal for wants of merits.

EVIDENCE IN TRIAL COURT

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

PW1 Ramchandra Govindao Kulkarni is Sanctioning Authority.

At exh.7, he deposed as under :

“1. I am working as Chief Executive Officer in Zilla Parishad, Nandurbar from 5th September 2010. On 16/4/2010 Parimalsingh was the Chief Exe. Officer. He was CEO from 28/9/2009 to June 2010. After taking charge of my post, letter of Dy. SP Nandurbar dt. 16/4/10, now shown to me, was placed before me. The letter now shown to me is office copy of the same. It is marked Exh.8. My predecessor had forwarded information of the accused Kailas Onkar Mohite, who was working as Junior Clerk in our office. The accompanying documents are copies of record of our office.

I identify signature of Parimalsing on letter dt. 19/5/10. (With consent of Adv. Vora, marked Exh.9 collectively). After transfer of Parimalsing, Addl.CEO Mr.Bari held the charge of CEO from 7th June 2010 to 1/8/2010. Thereafter, the charge of CEO was held by DD Shinde, Addl.CEO Dhule from 2/8/10 to 27/8/10. Thereafter, Mr. Bari held the charge from 28/8/10 to 5/9/10. Mr. Bari

handed over regular charge to me.

2. Thereafter, letter of S.P .Anti Corruption, Nashik dt. 17/7/10 received by our office on 2/8/10 was placed before me. The said letter bears endorsement & signature of Shri Bari dt.28/7/10. It is marked Exh.10. Along with said letter I received of all documents of investigation including panchanamas and statements. I studied all those papers. I came to conclusion that there was sufficient material against the accused Kailas Mohite that he had demanded and accepted bribe of Rs.2500/-. Hence, as per my letter dt, 10/11/10 I granted sanction. The sanction order dt. 10/11/10 now shown to me bears my signature; the contents are correct. It is marked Exh.11.”

PW2 Sitaram Goga Chaudhari is the complainant. At exh.14, he deposed as under :

“I was serving as Kendra Pramukh (Head of the Centre) of Zilla Parishad Primary School at Borpada Tal: Nawapur from December 2000 to May 2011. There were 17 schools under the supervision of Borpada School. It was my job to collect bills of 17 schools of nutritious food, attendance allowance, and to prepare consolidated bill of all schools and to submit it to Block Educational Officer, in Panchayat Samiti at Nawapur The said used to be forwarded by Panchayat Samiti to Zilla Parishad Nandurbar. Whenever such bills were granted, corresponding amounts used to be credited to the accounts of Head Masters of various schools. On or about 29 or 30 March 2010 I sent consolidated bill of payments for nutritious food to Block Educational Officer Panchayat Samiti

Nawapur Mr. Chitte through our teacher Vilas More from Borpada school. Vilas More told me on 30th March that our consolidated bill was forwarded by Panchayat Samiti Nawapur, to Zilla Parishad Nandurbar, through him. He told me that he presented the said bill to Kailas Mohite, who was a teacher deputed in Zila Parishad to assist Extension Officer, Mr.Potdar. Kailas Mohite is the accused present before the Court. On the evening of 30th March, 2010 Vilas More told me that he was told by the accused that there were technical mistakes in the consolidated bill and therefore, the said bill would not be received. Mr.More told me that accused demanded bribe of Rs.2,500/- for correcting the bill and receiving the same for encashment.

2. On 01/04/2010 at 10.30 a.m. I personally meet the accused Kailas Mohite in Zilla Parishad Office Nandurbar. The accused told me that there were several technical mistakes in the bill. He told me that unless he would receive Rs.2,500/- as bribe, he would not get those mistakes corrected and the bill presented. Since I was not getting any commission or money from the Government, for providing nutritious food from the money received, I was reluctant to pay any bribe to the accused. Since I felt that I would be required to pay the bill amount of Rs.1,00,000/- to Head Masters, I showed willingness to pay the bribe to the accused. Then I decided to report the matter to the Anti Corruption Bureau (ACB). After 11:00 a.m. on the same day, I went to ACB Office and meet Dy. S.P. Sangle saheb. I narrated the incident to him and gave it in writing. He recorded it on computer and signed the print out. The FIR now shown to me is the same.”

PW3 Devidas Bhagwan Kokate is shadow pancha. At exh.17, he deposed as under :

“I know the accused. He is Kalias Shankar Mohite. He was a teacher and was working on deputation in the office of Education Officer, Primary Schools, Zilla Parishad Nandurbar. The schools were getting grants for supplying nutritious food to the students. All Head Masters of Primary Schools were submitting their bills to B.D.O. through Head of the Centres and the consolidated bills submitted by the heads of the centres were forwarded to Education Officer, Zilla Pafishad. I learnt the procedure from informant Sitaram Chaudhari”

PW4 Sanjay Chandrarao Sangle is the Investigating Officer.

ANALYSIS

11. On hearing both the sides, here there seems to be serious contest on following aspects; **Firstly**, want of valid sanction to prosecute and **Secondly**, testimonies of PW2 complainant and PW3 shadow pancha to be inconsistent.

In the light of above points emerging from contest, re-appreciated and reanalyzed the entire evidence.

FIRST POINT – VALIDITY OF SANCTION

12. As regards to first point of validity of sanction is concerned, on one had learned APP finds no fault or infirmity in the testimony of PW1 Sanctioning Authority as according to him, there is complete application of mind. On the contrary, learned counsel for respondent would vehemently submits that there is non-application of mind and it is so evident on three counts i.e. failure to mention or specify the documents allegedly received and studied by him and secondly, admission about use of draft sanction received from ACB authorities and thirdly no satisfactory explanation for blank spaces in the sanction order exh.11.

In the light of above objections, evidence of PW1 Kulkarni, answers given by him in cross-examination and very sanction order are visited. As pointed out, it is apparent from evidence of PW1 Kulkarni that he merely deposed about studying the papers and has not narrated or given details or particulars of the documents allegedly studied by him. His cross-examination shows that he has used draft sanction. Even trial Court, while appreciating and analyzing the evidence of PW1 Kulkarni, has rightly noted that, in the sanction order, name of Sanctioning Authority is inserted by “ink”

which is distinct from the other contents suggesting insertion. There is no explanation for the said addition. Therefore, there is considerable doubt about independent application of mind, which is crucial while according sanction. Therefore, there are reasons to doubt the sanction for want of care and application of mind.

SECOND POINT – CONSISTENCY IN EVIDENCE

13. The second point raised by learned APP is that there is consistency in the evidence of PW2 complainant and PW3 shadow pancha on material counts and core of prosecution case has remained unshaken. Such submissions are countered by learned defence counsel.

Evidence of **PW2** Sitaram, complainant is at exh.14 and that of **PW3** Devidas, shadow pancha is at exh.17.

According to **PW2** complainant, when he was accompanied by PW3 shadow pancha on relevant day, PW2 asked accused to carryout necessary corrections over the bill and to forward the same. It is his further testimony that, at that time, accused questioned whether he had brought Rs.2,500/- as told to him in the morning to which PW2 affirmed and took out tainted currency and handed over to accused, who allegedly accepted it, counted it, and then kept it in the right

side of the cupboard, after which complainant went out and relayed the signal and raiding party entered and on examination, there were traces of anthracene powder to the hands of accused.

PW3 Devidas, shadow panch in his examination-in-chief has narrated about hearing the conversation between PW2 complainant and accused i.e. upto the point of PW2 complainant asking accused to rectify alleged mistakes, after which accused allegedly asked whether he brought the money and then PW2 complainant handing over tainted currencies to the accused, who accepted it and thereafter, accused kept the currency in the cupboard, followed by relay of signal and arrival of raiding party.

Now, if **cross-examination** of above two witnesses i.e. PW2 and PW3 is re-appreciated, in paragraph 14, **PW2** complainant has answered that after accepting the tainted currency, accused kept it in the cupboard and when he left the spot, at that time, the cupboard was still open. Accordingly, initially it was closed but subsequently it was opened and money was kept there. Whereas **PW3** shadow pancha in paragraph 4 of his examination-in-chief itself has stated that, after accepting the tainted currency, accused kept the notes in the cupboard i.e. in the third compartment and while PW2 complainant went out, he himself stayed there to keep watch on

accused. But in further examination-in-chief he has deposed that Mr.Yeshwant Pawar, another pancha, on his pointing out, took out the notes from the cupboard, there were five currency notes of Rs.500/- denominations and subsequently those notes were kept in an envelop and seized.

PW3 shadow pancha, in paragraph 6 of the cross-examination, has stated that, after accepting the amount, accused put the amount in an envelop and then kept the envelop in the cupboard, whereas PW4 Investigating Officer in his cross-examination has stated that, when he entered in the cabin of accused, at that time cupboard was closed. PW3 shadow pancha does not speak about cupboard being closed by accused when PW2 complainant went to relay signal. PW4 Investigating Officer claims that when he came inside the cabin of the accused, at that time, cupboard was in closed condition.

Therefore, regarding the events, which took place in the cabin, PW2 complainant, PW3 shadow pancha and PW4 Investigating Officer are not consistent. If version of PW3 shadow pancha is believed that, after accepting tainted currency, accused initially kept it in envelop and then kept it in cupboard, then when PW4 Investigating Officer made other pancha witness namely Yeshwant Pawar open the cupboard and take out the tainted currency and

thereafter, if according to PW3 shadow pancha, PW4 Investigating Officer further kept the said currency after noting its numbers and denominations in another envelop, which admittedly neither PW3 shadow pancha nor PW4 Investigating Office claimed of sealing currencies at the spot in a distinct envelop carried by PW4 Investigating Officer, question arises is that where is the envelop, which according to PW3 shadow pancha, was used by accused for parking tainted currency after its acceptance. Therefore, for above reasons, case of prosecution, as pointed out to this Court and as observed by the learned trial Court in its judgment, comes under considerable shadow of doubt.

14. Though learned APP tried to submit that learned trial Court has been critically hyper technical, in cases of such nature, even minor infirmities do count. Even, crucial witnesses like Vilas More to whom there was allegedly first demand as well as another panch namely Yeshwant Pawar, who allegedly removed tainted currency from the cupboard, are not examined. These witnesses were infact material witnesses, more particularly, in the light of above infirmities noticed in the prosecution evidence.

SUMMATION

15. To sum up, here firstly, while according sanction, draft sanction has been put to use suggesting non-application of independent mind by Sanctioning Authority. Secondly, evidence of PW2 complainant and PW3 shadow pancha as well as that of PW4 Investigating Officer are at variance on material counts, which goes to the root of the case. For said reasons, judgment and order of acquittal passed by the learned trial Court cannot be faulted at. Accordingly, I pass following order :

ORDER

Criminal Appeal is dismissed.

(ABHAY S. WAGHWASE)
JUDGE