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

**CRIMINAL APPEAL NO.749 OF 2024
WITH
CRIMINAL APPLICATION NO.3771 OF 2024
IN CRIMINAL APPLICATION NO.3461 OF 2024
IN CRIMINAL APPEAL NO. 749 OF 2024**

Smt. Sunita Dattatray Gopewad,
Age: 35 years, Occu.: Service,
R/o. Rahim Colony, Himayatnagar,
Tq. Himayatnagar, Dist. Nanded. ... Appellants

Versus

The State of Maharashtra
Through Police Station Himayatnagar,
Tq. Himayatnagar, Dist. Nanded. ... Respondent

.....
Mr. C.D. Biradar, Advocate for Appellant
Mr. P.K. Lakhotiya, APP for Respondent – State
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 14 FEBRUARY 2025
PRONOUNCED ON : 06 MARCH 2025

JUDGMENT :-

1. In this appeal, the appellant takes exception to the judgment and order dated 31.07.2024 passed by the learned Additional Sessions Judge-1, Bhokar, in Special ACB Case No.02 of 2016, thereby recording guilt and convicting the appellant for offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act.

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PROSECUTION CASE IN BRIEF

1. Prosecution case in nutshell is that, PW-1, an agriculturist was in need to borrow crop loan, and accordingly on 26.05.2016, had approached present appellant at Tahsil office, for issuing copies of mutation entry. Appellant allegedly asked him to bring Rs.200/-. Not willing to comply, PW1-informant lodged report with Anti Corruption Bureau vide Exhibit-26. PW4-Investigating Officer, summoned PW2 pancha and gave them necessary instructions. He also gave voice recorder in possession of complainant and they both were made to approach appellant and to record the conversation. When PW1-complainant and PW-2-shadow pancha both together visited the Tahsil office, that time appellant demanded money, and it was assured to be paid at later point of time. Thereafter, Investigation Officer planed raid, handed over tainted currency, and both, PW1-complainant and PW2-shadow pancha, again visited Tahsil office on 30.05.2016. There, demand was made and tainted currency was handed over and it was accepted and necessary signal was relayed. Appellant was apprehended. Again, PW4 lodged report and carried out investigation after obtaining sanction.

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2. The case was committed for trial. On appreciation of evidence, learned trial Judge recorded above conviction. The same is now taken exception to, by filing instant appeal.

SUBMISSIONS

On behalf of appellants :

3. Learned counsel for appellant-accused pleaded innocence and false implication. That, amount demanded was towards charges of copies and there was no demand of illegal gratification. That, initially sanction was not granted. That, there is no forensic report about voice sample. Further, learned counsel submits that, even otherwise, demand being of only Rupees Two Hundred, doctrine of triviality comes into play. Furthermore, there are contradictions between testimony of complainant and shadow pancha. That, specific grounds to that extent are raised in the appeal memo, more particularly, ground Nos. (x), (xvi) and (xviii). According to him, the case was not proved beyond reasonable doubt and thus he prays that appellant being a lady, deserves to be acquitted by allowing the appeal.

On behalf of State :

4. In answer to above, learned APP submitted that there was

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demand of illegal gratification. That, prompt complaint was lodged. That, verification was done, trap was laid and it was successful, during which there was demand as well as acceptance. Therefore, all necessary ingredients for attracting the charges being available, according to learned APP, there is no infirmity in the findings and conclusion reached by the learned trial Court.

STATUS AND ROLE OF PROSECUTION WITNESSES

5. In support of its case, prosecution has examined as many as six witnesses. The sum and substance of their evidence is as under :

PW1 Madhav Rajaram Thote, is the informant. He deposed at Exhibit 25 as under:

“On 26-05-2016 I had given a complaint to ACB office, Nanded. I have 3 acres 7 gunthas agricultural land bearing gut no.225. I used to take crop loan every year and I want to take the said crop loan from State Bank of India branch Himayatnagar. For the crop loan I was needed a copy of mutation entry. Thereafter I had been to Tahsil office Himayatnagar and given 7/12 extract and holding of my land to clerk Gopewad madam. I requested her to give me urgent copy then Gopewad madam told me to wait out of office. After ten minutes I again approached her and then again she told me to wait for some time. After ten minutes I again approached her then Gopewad madam became angry and she shown two fingers and demanded me Rs. 200/-. She told me that she will give me a copy under the arch of temple on Kinwat road near the gate of Tahsil office. Thereafter I had not been approached to Gopewad madam on that day. Thereafter I immediately went to Nanded and by going in ACB office given complaint against Gopewad madam. Complaint is now shown

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to the witness, it is in my handwriting, it is the same. It bears my signature. Its contents are true and correct. It is marked as Exh. 26.

2. *On 26-05-2016 at about 5.30 p.m I had been to ACB office, Nanded. I met Shri Pedgaonkar ACB officer and one constable. Thereafter they called two persons to act as panch witnesses. One madam and one person came there. Thereafter I have given written complaint. ACB officer Pedgaonkar told me I have to remain present at 7.00 a.m on 27-05-2016. Therefore I made halt at Nanded and approached in ACB office on 27.05.2016 at 7.00 a.m. At about 7.45 a.m we departs from ACB office and at about 11.00 a.m we reached near railway gate Himayatnagar and we stopped there. ACB officer Pedgaonkar gave instructed me and panch no.1 and 2 to go with me. Karnewar, Bhatt madam, Gajulwar Police constable I myself instructed to go to office of the accused and to meet Gopewad madam. Gajulwar kept voice recorder to my baniyan pocket for recording by switch on. At that time Gopewad madam was not present office. We made inquiry of Gopewad about her presence with another madam. She told that Gopewad had gone for training and she was not coming on that day. Therefore we returned back near railway gate Himayatnagar. Gajulwar removed digital voice recorder from my pocket and digital voice recorder was played and recording was heard by witnesses. Again I was called by ACB.*

3. *On 30.05.2016 I came to Railway gate Himayatnagar. ACB office Pedgaonkar given instructions to go with Karnewar and if the accused has demanded bribe then I should not give the amount but tell her that I will give the bribe after some time. Digital voice recorded was switched on and kept in my Baniyan packet by Shri. Gajurwar. Myself and Karnewar proceeded to Tahsil office and Gajulwar stopped just away from Tahsil. Myself and Karnewar entered into the office of accused and accused present in the office. I asked the accused*

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whether my work of mutation entries has been completed. She asked me as I had agreed to come on 25th but did not come. Then I told her that due ill health I went to my native. Accused told me that six rupees each in all I have to pay Rs.120/-. At that time I told her that I have no money I will pay later on. The accused told me that I have to pay the amount of Rs.120/- to take my documents. Thereafter, I return back where the police jeep parked. The recording machine was switched on and Pedgaonkar Saheb heard the recording. The ACB officer applied anthracene powder to currency notes two notes having denomination of Rs.10/-and one hundred rupees given to me. The said amount Rs. 120/- is kept in front packet of my shirt. Shri Pedgaonkar further told me to ask receipt of payment from accused. Thereafter we had been to the office of Tahsil. Madam asked who is another person, I told her he is teacher in our village. Accused told me that give application for obtaining certified copies of mutation entry. I told that I had given application on 26/05/2016 to Shri. Wankhede Saheb. The said application now shown to me. It bears my signature. Its contents are true and correct. It is marked at Exh. 28. Thereafter accused told me that I have to Rs.120/- (sixty rupees for each document). Thereafter I have given the currency notes having anthracene powder were given to the accused and made demand of receipt but madam told me wait outside the office. Thereafter, I removed my Rumal which was caught hold to my head and made indication as agreed by moving Rumal. Madam obtained my signature on back side of receipt. Thereafter, I demanded the receipt. She told me I have go out side and then I come out side. Thereafter, raiding party entered into the office and caught hold the hands of accused. Later on, I sat outside the office.”

PW2 Vasant Karnewar acted as shadow pancha. He deposed at

Exhibit 36 as under:

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"01. I joined Maharashtra Jeevan Prdhikaran as a Senior Clerk in 1985. I was transferred to Zilla Parishad Nanded in the year of 2005. On 06.06.2016, I was transferred to the office at Parbhani. On 26.05.2016, I was present on duty at Zilla Parishad, Nanded. On that day, a letter was received from the Anti-Corruption Bureau, Nanded to the Chief Executive Officer, Zilla Parishad, Nanded. The letter that was shown to me now is the same. 01. I joined Maharashtra Jeevan Prdhikaran as a Senior Clerk in 1985. I was transferred to Zilla Parishad Nanded in the year of 2005. On 06.06.2016, I was transferred to the office at Parbhani. On 26.05.2016, I was present on duty at Zilla Parishad, Nanded. On that day, a letter was received from the Anti-Corruption Bureau, Nanded to the Chief Executive Officer, Zilla Parishad, Nanded. The letter that was shown to me now is the same.

02. The Chief Executive Officer of the General Administration Department, Shri. Shivaji Kapate, had given me a written order to appear at the office of the Anti-Corruption Department, Nanded. This order shown to me is the same. That order contains my name and is signed by Shri. Shivaji Kapate. It has been given exhibit number 37. As per this order, I was released from work on 26.05.2016 to appear at the concerned office after noon. After being released from work, I reached the Anti-Corruption Office at 05.30 in the evening. There I met Police Inspector Shri. Pedgaonkar. I told him that I was appearing as per the order. He gave me a letter to appear at his office on 27.05.2016 at 07:00 in the morning. This letter shown to me is the same. It is signed by Shri. Pedgaonkar and me. It has been given exhibit number 38.

03. In accordance with the said letter, I appeared at the Anti-Corruption Office on 27.05.2016 at 07.00 am. At that time, Bhat Madam was also present. We both met Mr. Pedgaonkar Saheb. Mr. Pedgaonkar Sir has introduced both of us to the complainant Mr. Madhavrao Thote who was sitting there. Thereafter, Mr. Pedgaonkar Sir asked the complainant to tell his complaint before us. Thereafter, the complainant told us that, he needs a copy of the mutation entry to take a loan for agriculture and in that regard, Gopewad Madam, clerk of the said office has demanded two hundred rupees and since the said demand is high, I am not able to pay and therefore I am filing a complaint. I have seen the said complaint and signed it. The complaint which is now shown to me at exhibit No. 26 is the same. It has my signature on it. It also has the signature of

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another Panch, Mrs. Bhat. Similarly, the complainant and Mr. Pedgaonkar Sir also have signatures.

04. Mr. Pedgaonkar told us that he wanted to go to Himayatnagar with his team with the voice recorder and other materials. Mr. Pedgaonkar Sahib recorded the voice of the complainant and us and showed it to us. The recording was recorded on a memory card. Before recording, they showed us that the memory card was blank. We left the office at 08:00 in the morning and reached 10.30 near the railway track at Himayatnagar in the morning. There was Mr. Pedgaonkar gave instructions to all of us. He instructed me that you go and meet the Gopewad madam of the tehsil office with the complainant and listen carefully to what the complainant says to the Gopewad madam and what the Gopewad madam says to the complainant and come and tell us what was happen.

05. After about half an hour near the railway tracks, I, the complainant and the Rajurwad police left towards for the Tehsil office. Rajurwad switched on the voice recorder and kept it in the complainant's vest pocket and Rajurwad was stay there. The complainant and I went to the tehsil office. We both went into the record room in that office. There we inquired as to whether there was a madam. The staff there told us that madam was not present and she had gone out of town. The employee told us that they would be arriving on Monday. So, we came out and went to where Rajurwad had stayed. As soon as we reached there, Rajurwad switched off the voice recorder. The complainant, Rajurwad and me went to Mr. Pedgaonkar sir. At that time, it was approximately 12:30 pm. They asked us to tell them what had happened. I told them all facts. Thereafter, Mr. Pedgaonkar sir played us the voice recorded in the voice recorder. Then Mr. Pedgaonkar asked us to appeared at the 08:00 Anti-Corruption Office, Nanded, on Monday morning. He also gave a letter in this regard. We started back from Himayatnagar at around 1 pm. We reached the Anti-Corruption Bureau in Nanded at 4: 30 p.m. On reaching the office, police personnel Idalgave took out a memory card from the voice recorder and put it in an envelope. He sealed it and took our signatures on it. Mr. Pedgaonkar sir prepared a Panchnama accordance with the sequence of the incidence which was took place on that day. I read over it first. It was written as it was happened. I signed it. This is the Panchnama that has just been shown to me. It is signed by Mr. Pedgaonkar sir, Mrs. Bhat and me. The contents are correct. The exhibit

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no.39 has been given to it. This is the same letter which was given to me for appear on Monday that has been shown now. It is signed by Mr. Pedgaonkar and me. The exhibit No. 40 has been given to it.

06. I reached the Anti-Corruption Office, Nanded at 08.00 in the morning on 30.05.2016. We all are left at 09.00 in the morning from there. At 11.00 in the morning, we came near the railway gate at Himayatnagar. The complainant was present there. There the instructions were given to us by Mr. Pedgaonkar as same as previously given. At 11.45 in the morning, along with the complainant and Rajurwad, I left for the Tahsil office. The other persons stayed there. Outside the Tahsil office, Rajurwad switch on the voice recorder and put it in the complainant's vest pocket. Rajurwad stayed outside. The complainant and I went to the Tahsil office. At that place we went to Gopewad madam. The complainant pointed to Gopewad Madam and told me that, she was Gopewad Madam. At there the complainant asked Gopewad madam, whether the work was done? Madam replied to the complainant that, "Your application has not come to me". Then, the complainant told the madam that, the application had been submitted to the Inward Section. Then, the madam asked the complainant to bring that application. After saying this, the complainant took me to the Inward section. Then the complainant took his application from the staff of the Inward Section and thereafter we went to Gopewad madam with bring that application. The complainant handed over the application to Gopewad madam. Thereafter Gopewad madam told the complainant that you will have to pay Rs. 60/- each for two copies totaling have to pay Rs.120/-. Then the complainant told Gopewad madam, "I don't have that much money. I'll go out and bring that amount. On this, Gopewad madam told the complainant, "Come quickly with the money and take the copies." After saying this, the complainant and I came out from the office and went to Mr. Rajurwad. When we reached there, Mr. Rajurwad switched off the voice recorder. Thereafter we three of us went to Mr. Pedgaonkar Sir. At that time was approximately 1: 30 a.m.

07. Mr. Pedgaonkar asked me about the incident in front of witness No. 02. I told him everything that happened in detail. Then Mr. Pedgaonkar took the voice record from Mr. Rajurwad and switched it on and the recording played it before us. At there Mr. Rajurwad prepared the script of that conversation. The fact that I told and the script of the conversation revealed

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that, Gopewad madam demanded a bribe. Therefore, Mr. Pedgaonkar decided to set a trap.

08. The vehicle was stopped near the railway track at Himayatnagar. He told us in the vehicle that; trap is to be set up. Similarly, he told us who would go to that place. It was then decided that the three of us i.e. the complainant, myself and Police Naik Gajualwad would come near the tehsil office and the other team members would follow us. We went as it was decided. We three of us stopped outside of the Tehsil Office and Shri. Gajualwad opened the voice recorder from the mobile and turned it on and kept it in the pocket of the vest of the complainant and he himself stopped at that place. Thereafter, I and the complainant went to Tehsil office at 1.40 in the afternoon. At that time the complainant told me that the woman sitting in the revenue room is Gopewad Madam. After that, we both went to the revenue room. The complainant then asked the madam if the work was done. At that time, the madam told the complainant that the price of your two copies is 120 rupees, did you bring the money? Then the complainant replied that he did not have that much money, he would pay it later. Thereafter, we went outside the room and then Shri. Gajulwad switched off the voice recorder from the complainant. After that we went to that place where the vehicle was stopped. Then Pedgaonkar asked us about the incident. I narrated the incident in detail. Shri. Pedgaonkar then carried out a panchnama in the vehicle for setting up a trap. He took out a bottle of Anthracene powder from the article with him and told us that the currency note glows in ultraviolet light when the powder is applied to the currency notes. He demonstrated it to us. He applied the powder to the hands and paper and showed it in the sun light. At that time there is no glow on the hands and paper. Thereafter, he closed the door of the vehicle and applied the black cloth and then the Ultra violet light casted on hands and paper. As the light casted on it, the glowing blue colour is visible. Then he asked us to wash the hand on which he showed the practical and also destroyed the paper. The hands are of Shri. Iradgawe and he washed it clean. After that he again showed the hands of Shri. Iradgawe in the Ultra violet light, at that time we didn't see anything. Then they decided for setting up trap.

09. Then he placed one 100/- rupees currency note and two 10/- rupees currency notes on the white paper and written down its serial numbers on that same paper and obtain our

signature on it. After that, he applied Anthracene powder to the currency notes and folds it and put it in the left pocket of the shirt of the complainant. After that, I, Shri. Gajulwad and the complainant, along with other members of the trap went near the gate of Tehsil office. Shri. Gajulwad stopped near the gate and I along with complainant went to the revenue room in Tehsil office. We went to that place where Gopewad madam sat in the revenue room. At that time the complainant said to Gopewad madam that he has brought the money and two copies should be given to him. So saying, the complainant took out the money from the pocket and given in the right hand of Gopewad Madam. The madam took the said money and put it in a cupboard and took out two copies and given it to the complainant and said that, she will give him the receipt after obtaining signature on it. After that the complainant came out with the copies and signaled to the trap squad by removing the handkerchief from his head. Thereafter, the staff of trap squad came at that place. Then police inspector Shri Pedgaonkar introduced himself to Gopewad madam. Thereafter, he asked witness No. 02 Bhatt Madam to take out the money kept in the cupboard by Gopewad Madam. Bhatt madam took out the money from the cupboard and shown to Shri. Pedgonkar. At that time, Shri. Pedgaonkar verified said serial numbers and the currency notes. The said notes were found to be correct in the verification. After that, the crowd gathered at the place, therefore Shri. Pedgaonkar met the Tehsildar and told him that he was taking the relevant records to the police station. After received the permission from Tehsildar, we took the record and went to Himayatnagar Police station along with the accused. The police called for a computer to conduct the panchnama. Then a script prepared upon the conversation which was recorded in the voice recorder and obtained the signature of we two panchas thereon. After that Shri. Pedgaonkar asked name, address and village to the accused and then asked the accused to stop in the other room at the police station. There was a female constable at that place. Then Shri. Pedgaonkar took the money which had taken out from the cupboard by Bhatt Madam and sealed it in an envelope and obtained our signature thereon. Similarly, he took out the memory card from the voice recorder and sealed it in an envelope and obtained our signature on it. The bribe demand verification, pre-trap and trap action and spot panchnama dated 30/5/2016 which shown to me are the same. My signature is present on its each page and similarly, the signature of Shri. Pedgaonkar is also present on it. Similarly, the signature of witness No. 02 Bhatt

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madam is also present on each page. Its contents are true and Exhibit No. 46 is given to it.

10. The memory card and money which was seized before me, if shown to me I can identified it. The signature on the envelope at article No. 01 which shown to me is mine and the one currency note of 100 rupee and two currency notes of 10 rupees contained in it are the same. The signature on the envelope which shown to me is mine. The article No. 02 has been given to it. The memory card taken out from the envelope at article No. 02 is the same. The article No. 03 has been given to it. My signature is present on the envelope which shown to me. The article No. 04 has been given to it. The Memory card taken out from the envelope at article No. 04 shown to me is the same. The article No. 05 has been given to it. The accused that demanded and received bribe is present in the court and this is the same person.

-Cross Examination by Advocate Shri. S. N. Hake on behalf of accused-

11. It is true to say that, I and other panch witness signed over the copies of Mutation No. 761 and Mutation No. 438. The signatures which now shown to me are the same. (As the copies of Mutation No. 761 and Mutation No. 438 are shown to the witnesses during the cross examination and as the panch witnesses have admitted their signatures, therefore Exhibit No. 47 and Exhibit No. 48 are given to both documents.) It is true to say that the certified copies of Exhibit No. 47 and 48 have been supplied to the complainant.

12. It is true to say that, at first the complainant demanded one certified copy of single Mutation. It is true to say that, the complainant demanded two copies at the time of bribe verification. It is true to say that, the accused told the complainant that there is a charge of rupees 60/- for each certificate. It is true to say that, the accused had said that, she would give both copies to the complainant. It is true to say that, the complainant left after demanding the copies of two mutations.

13. It is true to say that, the script of bribe verification has been prepared during 12.00 to 12.30 after the return. It is true to say that, I have signed over the script. It is true to say that, the script was prepared on 27/05/2016 and my signature was

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obtained on it. It is true to say that when we went for bribe verification on 27/05/2016, the accused was not present and therefore the bribe verification was failed. It is true to say that therefore, Shri. Pedgaonkar decided the bribe verification on 30/05/2016. It is true to say that, a script was also prepared for what happened at the scene and my signature was also taken on it. It is true to say that, three scripts were brought to the police station on 30/05/2016. It is true to say that, the police officers were sat in the Himayatnagar Police station and we were sitting outside. It is true to say that they have prepared all the documents and obtained our signature on it. It is true to say that, no entries have been taken on the spot of occurrence.

14. It is true to say that, the accused had told the complainant that you should sit outside and she will sign the receipts. It is true to say that, the police came before giving the receipt and they caught hold the hand of the accused. It is true to say that, therefore the accused could not provide the receipts. It is true to say that, the accused had continuously said that the money is for copies. It is true to say that when Shri. Pedgaonkar caught hold the hands of the accused, the accused said that the said money is for copies. It is true to say that, Shri. Pedgaonkar told the accused that, what she wants to say should be given in writing. It is true to say that, the accused given her written statement to Shri. Pedgaonkar. The written statement now shown to me is the same. It bears my signature. (As the statement dated 30/05/2016 is shown to the witnesses during the cross examination and as the panch witness has admitted his signatures, therefore Exhibit No. 49 is given to the document). I had read the contents at Exhibit No. 49. It is true to say that, when the spot panchnama was conducted that time also the accused was saying that he had accepted money for the copies. It is true to say that, then I come to know that the said money is not for bribe.

15. A Tata Sumo vehicle was used in this case. But I do not remember its number. I do not remember the name of the driver also. It is true to say that, said vehicle was used on 27/05/2016 and 30/05/2016. It is true to say that, the panchnama dated 27/05/2016 had been conducted around 7.30 in the night at A.C.B. office. It is true to say that we went to have tea when the officers in the A.C.B. office were conducting panchnama. They prepared the panchnama and we signed on it. It is true to say that, no action was taken on

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26/05/2016. It is true to say that, on 26/05/2016 the complainant was present in the A.C.B office. On 27/05/2016 I was called through the written letter.

16. It is true to say that, a document at Exhibit No 26 had not been read over to me on 27/05/2016. It is true to say that, as A.C.B. officer asked me to signed over Exhibit No. 26, I had signed over it. I do not understand the number of the Memory card that had used on 27/05/2016. The witness himself told that, said memory card is of Sandisk Company. The A.C.B. officer had taken out the said memory card from the bag. I do not remember whether the said memory card was in sealed condition or not. After the action on 27/05/2016 the said memory card was sealed in the envelope and obtaining our signature on it and put it in a cupboard. It is not true to say that the memory card was kept in the cupboard and sealed it with the label of our signature. Our signatures were not taken on the said cupboard while kept things in and taking things out from the cupboard. It is true to say that, I have nothing to do with the incident that had taken place during 27/05/2016 to 29/05/2016. My additional statement was not recorded while leaving the office on 27/05/2016.

17. It is not true to say that, I falsely stated that, I told the incident that had taken place on 30/05/2016 to Shri. Pedgaonkar. It is true to say that, there was no demand of bribe of rupees 200/-. It is true to say that, I am aware that if I falsely state, a departmental inquiry may be initiated against me. It is not true to say that, I gave false testimony out of fear of Anti-Corruption Bureau and departmental inquiry. Cross examination completed.”

PW3 Suresh Kakani, District Collector, was the sanctioning authority.

PW4 Balwant Pedgaonkar, PI, (ACB), was the Investigating Officer.

“1. I was on duty as a Police Inspector in the Anti-Corruption Bureau, Nanded in the year 2016. On 26th May 2016, Rajaram Thote had come with a complaint that he wanted a copy of the mutation for bank work from the Tehsil Office; in this regard, he had gone to the office of the accused

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public servant with an application on 26th May 2016; at that time, he complained that the accused public servant had demanded a bribe of Rs. 200 for obtaining the mutation. He made an oral complaint in this regard in our office and later submitted it in writing. The complaint now shown to me and marked as Exhibit No. 26 is the same. After receiving that complaint, I wrote a letter to the Chief Executive Officer, Zilla Parishad for getting two Panch witnesses. Now, on page 12 of the record, a letter marked with the exhibit number 37 was shown. That letter is the same. It bears my signature. The contents thereof are correct. Accordingly, the Chief Executive Officer sent the Panch witnesses with the letter. Since the accused is a female public servant, a letter was written to the Police Station, Airport, Nanded for providing a female constable. When the Panch witnesses arrived at the office, they were first introduced to the complainants. Thereafter, the complainant orally stated his complaint before the panchas. Thereafter, I showed the written complaint made by the complainant to the panchas. Since, the oral and written complaint made by the complainant were same, the panchas signed the complaint bearing exhibit number 37. Thereafter, the panchas were assured of confidentiality and asked to come to the office at 7 a.m the next day.

Accordingly, when panchas came to the office at 7 a.m. the next day, panchas were instructed that, their voice sample would be recorded in a digital voice recorder. Accordingly, a fresh sealed memory card was removed and inserted into the digital voice recorder, ensuring that no previous conversations were recorded on it, and the statements of me, both panchas and the complainant were recorded on it.

Thereafter, we took all the materials for the trap and left for Himayatnagar in a government vehicle. We reached the railway gate at Himayatnagar around 10.30 to 10.45 hours. Thereafter, after giving proper instructions to the complainant, the panch No. 1 and the police personnel handling the digital voice recorder, three persons, namely the complainant, the panch No. 1 and the police constable, were sent to meet the accused public servant. Before that, instructions were given to the complainant as to what to say, what to say by panch No.1, and what to do by the police personnel. Before going to the Tehsil office in Himayatnagar, the police personnel turned on the digital voice recorder and placed it in the left pocket of the shirt of the complainant. Thereafter, the complainant and panch No.1 went to the Tehsil office and inquired about the

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accused public servant; at that time the staff present there informed that, the accused public servant has gone to Nanded for official work and would be back on Monday. Thereafter, complainant and the panch witness No.1 came to the place where I had stopped; where the conversation recorded in the digital voice recorder was heard and its script was prepared and further action was decided to be taken on 30th. Accordingly, the panch witnesses and the complainant were sent with instructions to be present at the Anti-Corruption Bureau office, Nanded at 7 a.m. on the 30th.

Accordingly, on 30th both panch witnesses and complainant came to the office. At that time I gave the same instructions to the complainant and panchas as before and left for Himayatnagar in a government vehicle at 9 a.m. We reached Himayatnagar at around 11 a.m, where we reviewed the instructions given to the complainant and witness number 1 and sent them to visit the accused public servant; similarly, witness number 2 and other staff were instructed to be present near the vehicle. Around 12 noon, the complainant, Panch No. 1, and the police personnel returned to the government vehicle and said that when they met the accused public servant, the accused public servant demanded Rs 120 for mutation. Thereafter, we listened to the recorded conversation in the digital voice recorder and decided to set up a trap as it found that the accused public servant had demanded the bribe.

It was instructed that Anthracene powder and ultraviolet lamps would be used in accordance with the trap operation and a police officer demonstrated it. Upon that, the complainant and the Panch witnesses came to know that, Anthracene powder is not visible in natural light but when viewed under an ultraviolet lamp in the dark, a greenish glow is visible. Thereafter, frisking of the complainant took place, in which a diary and some materials were found, and from it, one currency note of Rs. 100 and two currency notes of Rs. 10, totaling Rs. 120, were separately taken out, which were required for the bribe. The police personnel then applied anthracene powder to the notes; and after coating them with anthracene powder, they demonstrated how the notes looked in natural light and in the dark under an ultraviolet lamp and returned other materials to the complainant. The notes coated with anthracene powder were kept gently in the left pocket of the shirt of the complainant and the complainant was instructed not to touch the notes until the accused public

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servant demanded a bribe. Thereafter, Panch witness No.1 was instructed to go with the complainant and inspect the complainant and to keep an eye on what was being said between the complainant and the accused public servant and police personnel was instructed to turn on the digital voice recorder at some distance from the Tehsil Office and keep it in the inner pocket of the shirt and we members of the trap squad stopped in different ways. Before that, they were instructed about what signals to give if the accused public servant asks for and accepts a bribe and if it was not possible to give the planned signal to the complainant, the panch witness No. 1, instructed to make the planned signal. Accordingly, we stopped around the Tehsil office. Accordingly, the complainant and the panch witness No.1 went to the Tehsil office and after some time, when the complainant came out and made the planned signal, we came to know that the accused public servant had accepted the bribe. Accordingly, we the members of the trap squad went to the accused public servant in the Tehsil office. I asked to the panch witness No.1 that, who accepted the bribe and where he kept it. Then the panch witness No.1 pointed at the accused public servant and said that she had accepted the bribe and kept the bribe amount in the third compartment of the back cupboard. Thereafter, the female police officer who was with us caught hold the hands of the accused public servant. Since the place is a public one, we requested the head of the office to arrange for a room. Accordingly, he provided an adjoining room. Thereafter, panch witness No.2 took the bribe amount from the cupboard, while we had taken out the bribe amount separately, the description of the bribe amount was written on a piece of paper. When the witness No.2 examined the seized currency notes to ascertain whether the description of the currency notes and the description written down were the same, it has been found that, the description of the currency notes mentioned on the paper and the description of the seized currency notes were the same. Thereafter, those currency notes were seized for the purpose of the investigation. Thereafter, we took the accused public servant to the adjoining room. There, we closed the windows and doors of that room and made it artificially dark . when we examined the hands of the accused public servant under an ultraviolet lamp, a greenish glow was seen on the fingers and palm (phalanges) of her right hand. Thereafter, a thorough inspection of the spot of occurrence was carried out and further action was decided to be taken at Himayatnagar Police

Station.

After that, I went to the police station and requested the police, accordingly they provided a computer and space. The currency notes were kept in an envelope and sealed. Panch witnesses and I signed on it. Thereafter, I filed a complaint against the accused public servant on behalf of the state. This complaint was registered on the 31st at around 1.00 a.m. Now information on page Nos. 41 to 45 of the record was shown. That is the same. It bears my signature. The contents thereof are correct.. It has been given exhibit number 62. Thereafter, the accused public servant was arrested and the information about the arrest was given to the husband of accused public servant namely Anil and his statement was recorded accordingly. After receiving the planned signal, we went inside; I introduced myself to the accused public servant. Thereafter, we seized the original documents such as the application for mutation submitted by the complainant; the receipt book signed by the Tehsildar on the blank receipts, and a register and made arrangements to return them after investigation.

After giving information and arresting the accused public servant, we returned to the office in Nanded and since the voice sample of the accused public servant had to be recorded there, we took a new memory card and made sure that no conversation was recorded on it. We inserted that memory card into the digital voice recorder. The voice sample of the accused public servant was recorded in that digital voice recorder and at the same place the statement of the accused public servant was recorded. The copy of application for obtaining mutation bearing exhibit number 28 shown now and annexed extract of seven and eight A are the same. Accordingly, a panchnama of all incidents and a panchnama of voice samples were carried out. Thereafter, the hash value of the memory card was checked and it was found to contain eight files. The memory card was seized and deposited at Himayatnagar Police Station.

Thereafter, a letter was sent to the Land Records Office as a map of spot of occurrence was required. The letter now shown on page No. 67 of the record is the same; it bears my signature. The contents thereof are correct. It has been given exhibit number 63. Thereafter, a letter was sent to the District Collector informing him that a case had been registered against the accused public servant and seeking information about the accused public servant. The letter now shown on

page No. 74 and 75 of the record is the same; it bears my signature. The contents thereof are correct. It has been given exhibit number 64. Thereafter, a letter was sent to Himayatnagar police station on 3rd for depositing the seized currency notes. The letter now shown on page No. 76 and 77 of the record is the same; it bears my signature. The contents thereof are correct. It has been given exhibit number 65. Muddemal list is annexed with this letter. On the 3rd, the statements of some employees were recorded. On the 4th we returned the punch witnesses with letter. Similarly, the registered book and receipt book of the Himayatnagar Tehsil Office that had been deposited were returned. Thereafter, on the 7th, a letter on page number 94 of the record was written to the District Collector, requesting the return of the register and receipt book of the Tehsil Office. The letter now shown is the same; it bears my signature. The contents thereof are correct. It has been given exhibit number 66. Again, a reminder was sent to the District Collector and information was sought as to whether the accused public servant has the right to take money or not, and if so, what are the government resolutions regarding the amount that can be taken. The letter on page number 95 of the record is the same; it bears my signature. The contents thereof are correct. It has been given exhibit number 67. On the same day, a map of the spot of occurrence along with the letter was received from the Land Records Office. The letter now shown on page No.98 of the record is the same; it has been received by our office and bears my signature. The contents thereof are correct. It has been given exhibit number 68.

Thereafter, the concerned staff from the Land Records who drew a map of the spot of occurrence recorded his statement. The District Collector has furnished information at exhibit No. 53 along with a copy of the Government Resolution in accordance with the letter at exhibit No. 67. It is on page No. 129 of the record. As per said Government Resolution it has been observed that, the rate for providing an immediate mutation copy is Rs. 15 and for providing general copy is Rs. 10. The statement of the Tehsildar in this regard has also been recorded. Along with the letter on page number 108 in the record, the Tehsildar has furnished the photocopies of application of the complainant, the receipt book and register.

Thereafter, the memory card seized in the trap and the

memory card containing voice sample were sent for analysis to the Forensic Science Laboratory, Aurangabad through police personnel and his statement was recorded. The letter in this regard is on page No. 144 to 146 of the record. The contents thereof are correct. It has been given exhibit number 69. Thereafter, there was a letter sent to the District Collector to seek information on some issues. The letter is on page number 148 in the records. I have signed the receipt of it. The information sent along with that letter is on pages number 149 to 150. It has been given exhibit number 70. Accordingly, the statement of the District Collector was recorded. After the investigation, a letter was sent to the District Collector through the Superintendent of Police, Anti-Corruption Bureau, Nanded for the approval of the competent authority. Accordingly, after receiving the approval order from the competent authority, the charge sheet was filed in the special court. The muddemal, which was sent to the laboratory for analysis, has been filed in the court after receiving the report. I can identify the bribe demand verification panchnama that I had carried out in the action; if shown to me. The bribe demand verification panchnama now shown at exhibit No. 39 is the same; it is signed by the panchas and me. The contents thereof are correct. Now, the bribe demand, trap action and the spot panchnama bearing exhibit number 46 on pages 21 to 26 of the record were shown; is the same; it is signed by the panchas and me. The contents thereof are correct. Similarly, if the voice sample panchnama is shown, I can identify it. Now, the voice sample panchnama on pages 50 to 58 of the record is shown; is the same. It is signed by the panchas and me. The contents thereof are correct. It has been given exhibit number 71.

(The advocate of the accused public servant objected to exhibit the script in the voice sample, which will be considered during the arguments.)

I can identify the currency notes and memory cards seized by me; if shown to me. Now, envelope bearing Article 1 containing one note of Rs 100 denomination and two notes of Rs 10 denomination are shown; they are the same. It has been given article numbers 6 to 8. Now the memory cards from articles two and four and articles three and five are shown; they are the same. The public servant who demanded and accepted a bribe from the complainant is present in the court. Investigation revealed that the accused public servant demanded and accepted bribe while he was a public servant.

Cross-examination by the advocate Mr. Waghmare on behalf of the accused public servant :-

02. The complainant would have come to lodge the complaint around 2 to 2:30 p.m. A discussion was held with the complainant when he arrived at the office. The complainant gave the complaint in writing in our office. I was in my cabin at that time. It is true to say that, the date of the complaint bearing exhibit number 26 seems to have been overwritten. I know that if there is an overwriting, the initials are taken. Since I did not pay attention to that overwriting, I cannot give the reason why the signature of the complainant was not taken. No record of the entry of the complaint was taken anywhere. It is true to say that, after receiving the complaint, I had given a letter regarding providing the punch witnesses. The punch witnesses had signed the complaint on the 26th. I did not investigate the reason for which the complainant needed the documents. The complainant had not provided the bank case documents along with the complaint. It is true to say that, the complainant had not submitted any documents in this regard.

I have not investigated whether the complainant had submitted an application to the Inward and Outward Section for obtaining a copy of the mutation. It is true to say that, the complainant had demanded a copy of single mutation, i.e., Gut No. 225, Mutation No. 761. I have not investigated whether the complainant received two copies during the investigation.

The memory cards are provided by the office. No separate entry is taken regarding the receipt of the memory card. No separate panchnama was carried out regarding the receipt of that memory card. In this case police staff Shri. Gajulwad has used a digital voice recorder and memory card. It is true to say that, police staff Gajulwad was present while preparing the script in the panchnama.

I did not give a written order to the panchas to be present at 7.00 am on the 27th. I cannot say which employee carried the written order for providing panch witnesses. On 27th, we left the office around 9.00 to 9.30 am. We did not make an entry of the trap materials carried with us. The witness himself says that, there is no such record keeping system in his office. On the 26th itself, the complainant was instructed to be present near the railway gate at Himayatnagar.

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It is true to say that, on 27/05/2016 the complainant and the accused public servant did not meet. A script was prepared in the office. On 30th we left the office around 9.00 to 10.00 am. It took 5 minutes to give the instructions again at Himayatnagar railway gate. The distance from the place where we stopped to the Tehsil office would be approximately 1 km. It is true to say that, there were tables of other employees along with the accused public servant in the Tehsil Office. When I went after the trap was set, the other employees were working on their own tables. The complainant did not take the copies. The complainant asked for two immediate copies and I did not come to know that he got it.

It is not true to say that, as per the Government Resolution 2011, there is a Government fees of rupees 15 to check for each bundle of records and since three bundles were examined for the copy of the complainant, it cost rupees 45 for that and rupees 15 for providing the immediate copy, making a total of rupees 60 and rupees 120 for providing two copies. It is true to say that, there is a signature of the complainant on the back of the receipt. The amount of rupees 120/- demanded to the complainant for providing the copy was the legal fees for providing the copy from the records, and no inquiry was made regarding this. I cannot say that the complainant was asked to wait outside to receive the receipt of that amount. It is true to say that, we have taken action even before writing the receipt.

It is not true to say that It is falsely stated that the bribery verification come to the notice that A.P.S. demanded a bribe. It is not true to say that It is falsely stated that A.P.S. demanded a bribe from the complainant before Panchas witness No. 1. It is not true to say that When the recorded conversation on the memory card was listened to, it was falsely stated that A.P.S. demanded a bribe. I don't remember whether the paper with the note numbers of the bribe demand was written on it was filed with the charge sheet or not. I don't remember which police staff placed the notes laced with anthracene powder in the complainant's pocket. It is not true to say that It is falsely stated that I instructed to the panchas and It is falsely stated that complainant has indicated that the bribe money was accepted.

It didn't happen that when I went to the spot of occurrence I asked A.P.S. about the amount, she said that the amount was for the true copy. If the A.P.S. wishes, we take

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their written statement. It is true to say that A.P.S. has written in the statement that the amount is for two true copies. I have not taken separate entries regarding the entire proceedings. The witness himself says that the entries have been taken only in the case diary. There is no record in the police station diary that we went to Himayatnagar police station at 5 pm. We computerized the Panchnama on our office computer. It is true to say that I narrated the contents of the Panchnama and the police staff computerized it. The Panchnama records the time at which the Panchnama commence and completed.

It is true to say that, Hash – value checked by me. The investigation did not found that the first demand was for a bribe of Rs. 200. It is not true to say that the amount of Rs. 120 accepted by A.P.S. was the government fees for issuing two true copies. It is not true to say that the amount accepted by A.P.S. is Rs. 120 which is the legal fee for providing the true copies. It is not true to say that a false case has been registered against A.P.S. It is not true to say that A.P.S. did not demand or accept bribes. It is not true to say that a false case has been filed against APS without any solid evidence.

It is not true to say that, the trap and complete investigation documents were not sent to the competent authority. It is true to say that there was no F.S.L. report in those documents. It is true to say that documents relevant to hash value were not sent to the competent authority. I was in possession of all the memory cards in the action. It is true to say that the memory card was removed from the sealed pocket and placed back in it after use and sealed.

Question - Were sealed or unsealed panchnamas done while depositing and to take back the seized memory card at Himayatnagar Police Station?

Answer - There's no need to do that.

It is true to say that the complainant's voice samples were not sent for F.S.L. examination. No panchnama was conducted into the sealing and unsealing of the bottle of anthracene powder. The accused public servant did not conduct a separate panchnama of the amount kept in the cupboard. It is not true to say that today I falsely testifying.”

PW5 Gajanan Sahebrao Shinde, the then Tehsildar, Devni, whose statement is recorded by IO.

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PW6 Manoj Kenekar, acted as voice analyzer.

ANALYSIS

6. On re-appreciating the entire evidence, here, it is emerging that, PW1, who has lodged report resulting into registration of crime. In his evidence, at Exhibit 25, he has stated that, when he approached the present appellant for issuing of urgent copy of mutation entry, she allegedly demanded Rs.200/-. However, in paragraph 3 of his cross-examination, he testified that the accused told him that, he will have to pay an amount of Rs.120/- to take documents. Such answer is repeated by him in paragraph 3 itself.

PW2-shadow pancha in his evidence at Exhibit 36, claims to have called to office of Anti Corruption Department by PW4. He and complainant made aware of nature of complaint, he accompanied the complainant to the office of accused with voice recorder. But, in paragraph 6 of his evidence, he has stated that, when he and complainant approached appellant, she allegedly asked him whether he had brought application. He stated that, appellant told complainant that he will have to pay Rs.60/- each for two copies,i.e. total amount which he would be required to pay is Rs.120/-. When complainant told that he is not carrying

such money, she further told him to come back with money and take the copies.

However, paragraph 8 of his cross, shadow pancha also answered that, when complainant asked appellant whether his work has been done, she told him that price of two copies of Rs.120/-, and then questioned him whether he had brought the said amount. Therefore, though initially in complaint, informant claims about having put up demand of Rs.200/-, but in his cross, as well as in evidence of shadow pancha, who is star witness for prosecution, the appellant's demand was stated to be Rs. 120.

In paragraph 14 of cross of PW2, he also admitted that the complainant requested two copies and the accused informed the complainant that there was a charge of Rs. 60 per copy. Paragraph 14 categorically demonstrates his admission that, before giving the receipt, police caught appellant and that appellant did not provide any receipt. He further admitted that appellant was continuously informing police that money demanded and accepted by her were charges for copies. Therefore, on re-appreciation of such material, it is emerging that amount allegedly demanded and even handed over was only Rs120/-.

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PW4-Investigating Officer also though stated about receiving complaint of demand of Rs.200/-, in his cross at the hands of advocate Waghmare in paragraph 2, admitted that, firstly, there is overwriting as regards to the date of complaint. Secondly, he has admitted that, he did not investigate whether the application of complainant was forwarded and whether two copies were received by complainant. In concluding para, he has admitted that, there is Government Resolution of 2011, wherein Rs.15/- are charged for checking of each bundle of records and since three bundles were to be examined, cost of Rs.45/- and Rs.15/- for providing immediate copies making a total of Rs.60/- and Rs.120/- for providing two copies. He also fairly answered that, there is signature of the complainant at the back of receipt and the total amount of Rs.120/- demanded for providing the copy was legal fees for providing the copy from the records. But no enquiry was done regarding this. Therefore, apparently, when such evidence is coming in the testimonies of complainant, shadow pancha and very Investigating Officer, more particularly, in the cross, there is substance in the written statement tendered by the appellant, wherein she has set up a case that amount demanded by her was towards urgent charges, which even complainant admits for seeking urgent charges. Therefore,

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charges handed over and accepted of Rs.120/- are towards legal charges.

Consequently, though Investigating Officer has got verification done by making use of voice recorder, procedure as contemplated, to raise its credibility is not adopted, no pre and post sealing panchanama of memory card is apparently done by him. There is overwriting over the date of complaint. Furthermore, the record shows that, there are repeated attempts to contact appellant to ascertain demand. Therefore, there is considerable doubt in the manner of investigation.

Resultantly, all such aspects create doubt about the credibility and veracity of the complaint. Answers given by informant, shadow pancha, and even Investigating Officer, while facing cross, has rendered prosecution case weak.

7. Perused the judgment. Learned trial Court has not considered the answers given by above witnesses in cross and as such, in the considered opinion of this Court, there is improper appreciation of evidence, requiring indulgence at the hands of this Court by allowing the appeal. For all above reasons, appellant succeeds. Accordingly, I proceed to pass following order:

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ORDER

- [I] Criminal Appeal No.749 of 2024 is allowed.
- [II] The conviction awarded to appellant Smt. Sunita Dattatray Gopewad in Spl. ACB No.02 of 2016 by the learned Additional Sessions Judge-1, Bhokar on 31.07.2024 for offences punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, stands quashed and set aside.
- [III] The appellant Smt. Sunita Dattatray Gopewad stands acquitted of the offences punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act.
- [IV] The bail bonds of appellant stands cancelled.
- [V] The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- [VI] It is clarified that there is no change as regards the order in respect of disposal of muddemal.
- [VII] Criminal Application No.3771 of 2024 is also disposed of.

**ABHAY S. WAGHWASE,
JUDGE**

S P Rane