



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

**943 APPLN. FOR LEAVE TO APPEAL BY STATE NO. 127 OF
2024**

THE STATE OF MAHARASHTRA
VERSUS
SANTOSH SOPANGIRI GIRI

...
Mr. D. J. Patil, APP, Advocate for Appellant
Senior Advocate Mr. Rajendrraa Deshmukh a/w Ms. Ashwini
Deshmukh i/b Mr. Devang Deshmukh, Advocate for Respondent
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CORAM : SANJAY A. DESHMUKH, J.

DATED : 08/01/2025.

P. C. :

1. This is an application for leave to file an appeal.
2. The applicant-State has preferred this application for leave to file an appeal against judgment delivered by the learned Additional Sessions Judge, Jalna, District : Jalna in Special Case (ACB) No.2 of 2015 dated 27/09/2019. The accused has been prosecuted under Section 7 and Section 13(1)(d) r.w. 13(2) of the Prevention of Corruption Act, 1988.
3. The prosecution's case is that the accused / respondent was serving as a Village Development Officer at village Waghoda / Warud, Panchyat Samiti, Mantha, District : Jalna. It is alleged that

he initially demanded Rs.5000/- and thereafter Rs.2,500/- on 07/11/2014 to the complainant.

4. The learned trial court framed charge against the accused / respondent. The oral evidences of three witnesses were recorded. Shadow panch witness supported the prosecution. The learned Sessions Judge held that the complainant insisted the accused to accept amount of bribe. Thereafter, the amount was accepted.

5. The learned APP for the State pointed out the evidence of the complainant – Baliram (PW-1) and the panch witness – Pratap Rathod and submitted that there is a cogent and acceptable evidence of these two witnesses. He relied upon the case of **Neeraj Dutta vs. State (Government of N.C.T. of Delhi), reported in (2022) 5 S.C.R. 104**, in which it is held in para No.68 as under :

“68. What emerges from the aforesaid discussion is summarized as under :

- (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact is issue by the prosecution is a sine qu non in order to establish the guilt of the accused public servant under Section 7 and 13(1)(d)(i) and (ii) of the Act.*
- (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal*

gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

- (c) *Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*
- (d) *In order to prove the fact in issue, namely the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

 - (i) *if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need to be a prior demand by the public servant.*
 - (ii) *On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.*
 - (iii) *In both cases of (I) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or*

receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under section 13(1)(d) and (i) and (ii) of the Act.

- (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*
- (f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence.*

The trial does not abate nor does it result in an order of acquittal of the accused public servant.

- (g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the Court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.*
- (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.*

6. The learned senior Advocate Mr. Deshmukkh for the respondent submitted that three important aspects are to be proved by the prosecution i.e. demand, acceptance and sanction to prosecute the public servant. He submitted that the demand is not proved and therefore, second aspect of acceptance is also not proved. He pointed out that the prosecution witness i.e. shadow panch witness Pratap Rathod (PW-2) in his cross-examination had admitted that complainant Baliram open the topic of money for the first time. He also admitted that for ten times complainant insisted the accused / respondent to keep the amount with him and that

every time accused / respondent refused to do so. The accused / respondent also told to the complainant that as his transfer took place, he has to hand over the charge. Same things happened at the time of verification also. The learned Sessions Judge considered this cross-examination as reasonable doubt. It is well settled that accused is entitled for reasonable doubt. The prosecution has not proved its case beyond reasonable doubt. There is no ground and reason to allow this application for leave to file the appeal. The application deserves to be rejected. The argument of the learned APP Mr. D. J. Patil for the applicant-State is not acceptable in this regard. It is rejected.

(SANJAY A. DESHMUKH, J.)