



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 948 OF 2018

The State of Maharashtra,
through P.S.O. Police Station,
Shirur Anantpal, Tq. Shirur Anantpal,
Dist. Latur.

... Appellant

Versus

Rajaram s/o Ranba Zendre,
Age: 56 years; Occu. Service,
R/o Shirur Anantpal, Dist. Latur.

... Respondent

.....
Mr. S. A. Gaikwad, APP for Appellant/State
Mr. M. D. Shinde, Advocate for Respondent
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 28 NOVEMBER 2025
PRONOUNCED ON : 02 DECEMBER 2025

JUDGMENT :

1. Judgment and order dated 16.05.2017 passed by learned Special Judge in Special (ACB) Case No. 03 of 2011 is the subject matter of challenge on behalf of State in this appeal.

2. In nutshell, prosecution was launched against present respondent on report Exhibit 46 received from one Hariram Madaje, who reported that his own brother Bharat was addicted to liquor and under its influence, he used to trouble his own wife, brothers and entire family and therefore, complainant allegedly approached

accused, who was ASI of the police station, Shirur Anantpal. It is the case of prosecution that, for taking action against Bharat, there was demand of bribe of Rs.1,500/- and on refusal to meet demand, it is alleged no action as expected would be taken. Rs.500/- were paid upfront and remaining Rs.1,000/- was decided to be paid later on. As complainant was not willing to pay bribe, he approached ACB authorities i.e. PW4, who planned, arranged and executed trap and after apprehending the accused, charge-sheeted him for offence u/s 7, 13(1)(d) and u/s 13(2) of Prevention of Corruption Act, 1988.

In support of its case, apart from relying on documentary evidence like complaint, panchanamas, etc, prosecution adduced oral evidence of complainant PW1; shadow panch PW2; sanctioning authority PW3 and investigating officer PW4.

3. After appreciating the same and hearing each of the side, learned Trial Judge vide judgment and order dated 16.05.2017 concluded that prosecution failed to prove the case beyond reasonable doubt and thereby acquitted the accused. Hence, Instant Appeal.

SUBMISSIONS

4. Learned APP would point out that on receipt of report from PW1 independent panchas were summoned by the investigating officer and on introducing them to complainant, they were made to

get demand verification done and after getting convinced, final trap was laid and also successfully executed and therefore, according to him, there is both, demand as well as acceptance.

5. Learned APP very candidly pointed out that, here, unfortunately, complainant himself has not supported prosecution and was required to cross examine. However, he added that mere for want of support of complainant, case of prosecution was not affected, more particularly, according to him, when complainant in cross has admitted his signature over the complaint and therefore, said complaint is got proved through investigating officer and has evidentiary value.

6. He further submitted that, independent panch witness like PW2 has lend support to the story of prosecution and he has narrated about demand during pre-trap verification as well as demand and acceptance post trap. According to him, evidence of PW2 finds support from very investigating officer and thus, according to him, case of prosecution stood proved beyond reasonable doubt. Relying on the judgment of the Hon'ble Apex Court in the case of ***Neeraj Dutta v. State (Govt. of NCT of Delhi)***, reported in (2023) 4 SCC 731, he prays to allow the appeal by setting aside the impugned judgment and order of acquittal.

7. In answer to above, learned counsel for original accused submit that, complainant himself has retracted. He was illiterate and had not given any written complaint. That, he had denied the contents of complaint noted on his narration. That, moreover, it has come on record that at the time of alleged demand and acceptance, there was no work pending with accused. That, very sanctioning authority had admitted that there was no work pending with accused and therefore, according to him, there was no question of putting up a demand. He further added that, it is a case of thrusting to falsely implicate. For said reasons, he justifies the judgment and order of acquittal and urges to dismiss the appeal for want of merits.

He relied on the judgment of this Court in the case of *State of Maharashtra v. Mohan Madhusudan Daskhedkar*, reported in [2017 All.M.R (Cri.) 2298].

8. In the light of above submissions, evidence is re-appreciated and reanalyzed. Going by the nature of complaint, testimonies of complainant and more particularly that of shadow panch is crucial. He being independent witness, it is incumbent upon prosecution to prove its case beyond reasonable doubt that there was demand as well as acceptance. In the light of such requirements, evidence is put to analysis.

Evidence of PW1 is at Exhibit 31. On appreciating the same, it is emerging that, in initial part of the chief, he has narrated about his brother Bharat to be liquor addicted and troubling them. But, according to him, his brother Govind has lodged report against Bharat and he denied report from his side. According to him, as accused ASI was making proper inquiry, he had no occasion to go to ACB and he flatly denied demand of Rs.1,500/- made by accused and part amount of Rs.500/- being paid to the accused. He also denied arrest of accused in presence of panchas.

9. Therefore, finding him not supporting, learned APP after seeking permission of the Court, cross examined very complainant and in paragraph no.4 he has answered that he is uneducated, he cannot sign; he denied officer asking him to sign and also denied knowing the contents of Exhibit 32. He also denied demand of Rs.1,500/- raised by accused for taking action against his brother. Since thereafter he had denied to every suggestion of learned APP.

While under cross at the hands of defence, he admitted that, his brother had executed undertaking at police station to behave properly and that he would not indulge in consumption of liquor. He also admitted that chapter proceedings initiated against his brother and initial report against his brother was filed on 11.12.2010. He also admitted about not giving report against his

brother at police station Shirur Anantpal. Lastly, he admitted that no proceedings were pending against his brother on 18.01.2011.

10. PW2 shadow panch in his evidence at Exhibit 44, testified about visiting ACB office with another panch Ibrahim and being introduced to Hariram, who narrated them about his brother troubling them under influence of liquor and for taking action, ASI had demanded Rs.1,500/-. In his testimony he has testified about verification of demand done in his presence, which is at Exhibit 49. Then he narrated in paragraph 9, the events of actual trap at the hotel Pratiksha where accused was to meet them. He stated that, in the hotel, accused asked complainant whether he brought money and after it was answered in affirmative, he was directed to hand it over and it was duly accepted and kept in the pant pocket, followed by relay of signal and apprehension of accused.

Above witness is subjected to extensive cross, wherein, he admitted that, on application of Govind, accused had already taken action against Bharat and forwarded report under section 107 of Cr.P.C. He admitted that, in the verification panchanama, it was noted that this witness introduced by the complainant to accused as a money lender. He admitted that he has no occasion to read each and every panchanama over the cause signature.

11. PW3 is the sanctioning authority and PW4 is the investigating officer. Here, there is no issue about validity of sanction and non application of mind.

PW4 is the investigating officer, who carried out investigation and charge-sheeted accused. His evidence is at Exhibit 79, wherein he narrated the entire events that took place since lodgment of complaint by PW1 till apprehension of accused and charge-sheeting him.

While under cross he has admitted that, he has not seen the application filed by complainant in police station against his brother. He also admitted about action being initiated against complainant's brother on the strength of complaint dated 11.12.2010 itself and the report already submitted and brother of accused executing bond and thus, also admitted that complaint is already disposed of. He admitted that, he had not come across any written complaint filed against Bharat, who is brother of complainant after complaint dated 11.12.2010. He also admitted that, at the time of verification panchanama Exhibit 49, he had instructed informant to introduce panch as money lender. Therefore, text appearing in panchanama to that extent is an improvement. He also admitted that, on the day of alleged initial payment of Rs.500/- by complainant to accused, Suresh Londhe and Moinoddin Shaikh was not present.

However, in spite of so, unfortunately these two persons who were best witnesses to the very demand, are not examined. He admitted that, contents of Exhibit 46 which is report by complainant is reproduced word to word in Exhibit 47 verification panchanama. Rest is all denial.

12. Therefore, here, it is emerging that, firstly complainant has retracted and has denied lodging any complaint against his brother. He has flatly denied contents of the report or signature over it. This is evident from paragraph 4 while learned APP has cross examined complainant himself. This witness has flatly denied demand of Rs.1,500/- being raised for taking action against his brother or Rs. 500/- be taken by way of initial payment. Though PW2 has testified about accompanying complainant for verification and also accompanying him at the time of trap, this witness in cross has admitted that no work of complainant was pending with accused.

13. Even sanctioning authority including very investigating officer in their cross examinations have admitted that action of chapter proceedings was already taken against brother of complainant for which entire exercise of lodging report and conducting investigation regarding initiating action against brother of complainant was undertaken. Therefore, the crucial question which arises when almost all witnesses are admitting that there was

no work pending with accused, the very question of motive to raise demand does not arise.

14. Learned APP has relied on judgment of the Hon'ble Apex Court in the case of **Neeraj Dutta** (Supra). The observations in paragraph 67 and 68, which are relevant are as under :-

“67. Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the Accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence.

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

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the Accused public servant Under Sections 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 not 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.”

15. Recently, while deciding Criminal Appeal No.1779 of 2010 on 23.02.2023, in the case of ***Shankarlal Sharma v. State of Madhya Pradesh***, the Hon'ble Apex Court has analyzed the above judgment and held that, the Constitutional Bench has reiterated that mere acceptance or receipt of legal gratification would not make it an offence under sections 7 or 13(1)(d) of P.C. Act. The Hon'ble Apex Court further observed that when complainant does not support the

prosecution, the demand made by accused can be otherwise proved even on the basis of circumstantial evidence and while saying so, the Constitutional Bench has reiterated that the offer by the bribe giver and demand by the public servant has to be proved by the prosecution as a fact in issue. The contents of paragraph 5 of the above judgment, in appeal, are as under :-

“5. A Constitution Bench judgment of this Court in a recent decision dated 15th December, 2022 in Criminal Appeal No.1669 of 2009 (Neeraj Dutta v. State (Govt. of NCT of Delhi) holds that when the complainant does not support the prosecution, the demand made by the accused can be otherwise proved by the prosecution even on the basis of circumstantial evidence. While saying so, the Constitution Bench has reiterated that the offer by the bribe giver and the demand by the public servant have to be proved by the prosecution as a fact in issue. The Constitution Bench reiterated that mere acceptance or receipt of illegal gratification without anything more would not make it an offence under Section 7 or Section 13(d) of the PC Act. The Constitution Bench also held that only when a proper demand is made by a public servant and is accepted by the bribe giver and in turn, the amount tendered by the bribe giver is received by the public servant, it would be an offence under Section 13(1)(d) and in particular Clauses (i) and (ii) thereof. The Constitution Bench reiterated the well settled law that presumption under Section 20 does not apply to Clauses (i) and (ii) of Section 13(1)(d) of the PC Act.”

Therefore, here, even if complainant has retracted, he seems to have resiled from the very inception of the testimony. No part of his testimony shows that there was any demand of illegal gratification. He has outright denied any complaint being lodged at his instance. Therefore, the foundational fact of initial demand itself is not proved by prosecution. In view of above observations of the Hon'ble Apex Court in appeal referred above, even as facts foundations are not proved, in my opinion, the very essence of demand has not been substantiated. Therefore, shadow panch and Investigating Officer have allegedly supported the prosecution, in view of demand itself not being proved, case of prosecution cannot be accepted.

16. Similarly, in the testimony of sanctioning authority including Investigating Officer, there is admission in cross that there was no work pending with accused so as to hold that he was motivated to set up demand. These witnesses have admitted that, prior to the date of complaint, action was already shown to be initiated against the brother of PW1, for which it is alleged that there was demand of bribe.

17. Learned counsel for respondent has placed on record judgment of this court in Criminal Appeal No. 360 of 2004, in the

case of *The State of Maharashtra v. Mohan Madhusudan Daskhedkar*, holding that, complainant having interacted and not supported the prosecution case, benefit of doubt was rightly held to be extended by trial court.

18. Further, the observations of the Hon'ble Apex Court in the case of *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450, the factors which are required to be borne in mind by the appellate court while hearing an appeal against acquittal, more particularly in paragraph nos.72 and 73 of the said judgment read as under :

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be

given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) *The trial court's judgment was manifestly unjust and unreasonable;*

vi) *The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.*

vii) *This list is intended to be illustrative, not exhaustive.*

2. *The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."*

Likewise, above law is reiterated even in the case of ***Murlidhar & Ors. v. State of Karnataka*** reported in (2014) 5 SCC 730 : [2014 ALL SCR 1571] as well as in the case of ***Ramesh Babulal Doshi v. State of Gujarat***, reported in 1996 SCC (Cri) 972.

For above reasons also, this court refrains from substituting its own view by upsetting the findings recorded by learned trial court, more particularly when even on merits, case of prosecution is rendered doubtful for reasons stated above. Therefore,

I do not find any reason for interference in the impugned Judgment and order passed by the learned trial Court. Hence, the following order :

ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)