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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.63 OF 2015.

Shri Sandeep Chadha,
S/o Mr Premnath Chadha, Major of Age, Service, Married, Indian National Occupation-Service. R/o 6B-1105, Whispering Palms, Lokhandwala Complex, Kandiwali-East, Mumbai ... Appellant.

Versus

State (through)
Central Bureau of Investigation, The Officer In Charge Office of The Supdt. of Police, CBI, Anti-Corruption Branch, Bungalow No. F-1, Type VI, GMC Quarters, National Highway NH17, Bambolim, Goa – 403202. .... Respondent.

Mr Ashish Chavan, Advocate Mr Raj Chodankar, Advocate for the appellant.

Ms Asha Desai, Special Public Prosecutor, with Ms Sunita Naik, Advocate for the respondent.

CORAM: BHARATI DANGRE J.

Date: 18th July 2025.

JUDGMENT

1. The present appeal filed by the appellant raises a challenge to the finding of conviction and the sentence imposed by the Special Judge, CBI Court for Goa, Panaji, in Special Case No.9/2013, thereby finding him guilty of committing offence under Section 7 and Section 13(1) (d) read with 13(2) of Prevention of Corruption Act, 1988 sentencing him to suffer imprisonment for a period of one year and to pay a fine of 50,000/-, in default to undergo simple imprisonment for 3 months, on each count.

2. I have heard Mr Ashish Chavan, learned counsel for the appellant, and Ms Asha Desai, learned Special Public Prosecutor for the respondents.

3. The appellant, working as Assistant Audit Officer, a public servant, was charged of accepting a bribe of Rs.20,000/- as a reward for doing an official act in the exercise of official function and thereby committing an offence under Section 7 of the Prevention of Corruption Act. He was also accused of obtaining for himself cash of Rs.20,000/- by corrupt and illegal means and thereby committed an offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

Since the accused pleaded not guilty to the said charge, he was tried by Special Judge, CBI Court for Goa in Special Case No.9/2013.

4. In support of the prosecution's case, the complainant entered into the witness box as PW4 and deposed in support of the complaint lodged by him on 11.2.2013 to the Superintendent of Police, CBI at Goa.

As per the prosecution, the complainant Mr Balkrishna Shetty, running a mess in the National Institute of Technology, Farmagudi, Ponda, was engaged in the act of serving food at subsidised rates to the students in the campus.

Since the team of auditors visited the NIT for audit for four days and on completing the audit work on 8.2.2013, as per his version, he received a phone call from the NIT office from an auditor conducting the audit. He was asked to pay the service tax for running the mess, and he was directed to meet him in the NIT office at around 4.00p.m. Accordingly, when he approached the office, he met three people, of which two of them were ladies, and he was then escorted to the next room. The person accompanying him had paper-sheets with the calculation of service tax, and he was asked to pay the service tax as worked out in the audit report and the amount was set out to be Rs.3,60,000/-. He demanded the bribe amount of Rs.60,000/-. On negotiating, he agreed to pay Rs. 15,000/- but disagreed that he should arrange a/c room and a/c taxi for his stay in Goa.

The person gave his name as Sandeep Chadha and also gave his mobile number and asked for payment of Rs.15,000/- immediately, but he assured to pay it the next day.

5. As per prosecution on 9.2.2013, a call was received by the complainant demanding money, but the complainant told him that he was in a hospital. He again called after ten minutes, but the call was not answered. The complainant, therefore, met the OSD Rajendra, who asked him to contact CBI, and accordingly, he contacted the Superintendent of Police, who told him to contact the accused to ascertain the demand; if so, he would visit the complainant with the money. Accordingly, he contacted Sandeep Chadha and agreed to pay him a bribe of Rs.20,000/- in Panaji.

6. In support of the said complaint, Balkrishna Shetty entered the witness box and deposed in sync with his complaint. According to him, the demand of Rs.60,000/- was raised on 8.2.2013, which was negotiated and brought down to Rs.15,000/-, which he agreed to pay on the next date. On 9.2.1013, he received a call from the accused, but he did not answer the call, but approached Mr Subhash Desai, who asked him to file a complaint.

PW4 specifically deposed that on 9.2.2013, he received a call from the accused and told him that his CA has informed him that no amount is payable, but he was threatened that if he did not fulfil the demand, he would report about the same i.e, payment of service tax in the audit report. As per the complainant on 10th February, he was again called by the accused who asked him to meet at 4.00p.m at Farmagudi Tourist Cottage and when he went there at 4.00 p.m, the accused inquired whether he had brought the money and was told that he would bring the money on the next date and he was called at Panaji and was told to make a phone call at 12.00 noon. Since he was not ready to pay the bribe amount, he went to the CBI office and lodged the complaint. Pursuant thereto, he was asked to bring the amount of Rs.20,000/- in denomination of Rs.1,000/- and in the presence of two panchas, the facts stated by him in the complaint were confirmed.

The panch witnesses were given instructions and the notes were smeared with the white powder, which turns pink when it comes in contact with water.

7. As per PW4 the complainant, he was also provided with a voice recorder, and one micro SD card was inserted into the same by completing the necessary formalities of ensuring that said card was blank. At 12.00 noon, he received a call from the accused, who inquired as to why he did not come at 12.00 noon. He was therefore given instructions to come near the office of EPFO at Panaji and make a call. The Police Inspector from CBI and Mr Walke sat in the same and a voice recorder was with Mr Walke. When they reached the spot, and the panch witnesses were given instructions, according to the complainant since he was of the view that accused would refuse to accept the bribe if any one accompanies him and no one should be sent along with him, he was instructed that as soon as the money is accepted by the accused, he should signal by pulling down the glass window of the car and move hand over his head.

The complainant thereafter drove his car towards the accused, who came and occupied the front seat by his side, and gesturing with his hand, inquired "where is the money," and thereafter the complainant removed the bribe money from the left side shirt pocket and handed it over to the accused. He thereafter inquired whether the accused would write anything against him in the report, and he promised not to write anything. He therefore rolled the window glass of the car and gave a signal, and the accused also asked him as to why such a gesture was made by him, and the complainant responded by stating that his manager had accompanied him and was waiting outside.

Immediately, the accused got down and was accosted by the CBI team, and on completing the necessary formalities, the notes were recovered from his right side pant pocket.

8. The panch witness verified the serial numbers of the currency notes and compared them with the notes handed over by the complainant. The panchanama of the voice recorder was also prepared and the proceedings were concluded and a trap panchanama was drawn by affixing the necessary signatures.

The pre-trap panchanama as well as post-trap panchanama are brought on record through panch witness, Mr Ratnakar Walke, PW2.

The pre-trap panchanama drawn on 11.2.2023 at 10.45 hours in the chamber of Nilesh Shirodkar, Inspector CBI, ACB Goa bears the signatures of the panchas along with the officer of CBI, ACB, and has noted the necessary compliances, including the number of notes which were to be used for the purpose of trap.

Subsequent to the bribe amount being paid by the accused to the complainant, a post-trap panchanama is drawn on 11.2.2023 at 12.30 hours to 18.00 hours, recording the steps taken by the ACB team pursuant to the signal being given by the complainant and on apprehending the accused who on search lead to the notes, used in the trap. The transcription panchanama of the recorded conversation between the complainant and Sandeep Chadha is also brought on record being marked as Exh.16.

9. For the purpose of voice identification, Deepak Kumar Tanwar, Senior Scientific Officer, Gr-I at CFSL Office, New Delhi was examined as PW3, an expert in the field of 'Speaker Identification' who has compared the voice samples furnished to him and analysed the voice in the SD card based on the voice specimen forwarded to him. He prepared his report and forwarded the same to the CFSL, CBI (EXH.24) while he analysed the voice in SD card report.

10. From the entire testimony of PW4 Balkrishna Shetty, where he referred to first demand on 8.2.2013, which resulted in lodging of the complaint, as he never intended to pay the bribe amount. It is the case of the Balkrishna Shetty that on 9.2.2013, he received a phone call from the accused, but he did not answer the call. However, when he received the phone call for the second time, he contacted his chartered accountant on the telephone and informed him that one person was insisting him to pay service tax. The chartered accountant told him that after verifying the position, he would inform him whether he is liable to pay such tax and after a short while, informed that since he was serving the students at subsidized rates in educational institutions, he is exempted from paying tax. As per his own version, when the accused contacted him, he told him that he was not able to pay any service tax and told him about the discussion with his chartered accountant, but he was threatened that if he did not fulfill the demand, he would report the same in his audit report. Thereafter, he contacted CBI and lodged the complaint.

11. According to this witness on 10.02.2012 he again received a call from the accused who asked him to meet at Farmagudi Tourist Cottage spot at 4.00 p.m. and when asked about money, he responded by stating that he could not withdraw cash being Sunday and was told by the accused that since the amount was not paid now he will have to pay Rs.20,000/- and he was asked to come at Panaji on the next day with the amount.

12. On the complaint being lodged, and all the necessary formalities being completed, he was provided a video recording, but a careful reading of the testimony of this witness would reveal that the demand for the bribe amount at the instant of the accused is not all proved. In fact, it is important to note that, according to the complainant, the accused indicated by hand that he should pay the bribe amount while seated in the car, and pursuant to this gesture, the money was handed over to him.

The testimony of this witness makes the case of the prosecution doubtful.

In the cross examination, when the voice recorder (SDR) was played in the Court, the complainant admitted that he did not hear the voice of the accused "paise leke aya kya aap ne." He even admit that at the time of post-trap panchanama drawn on 11.2.2013 he had not disclosed to the PI that accused made gesture by hand demanding the amount while seating in the car but for the first time he disclosed this fact on 25.2.2013 and when specifically asked about the reason for this omission he has stated that he might have forgotten this and even this is not recorded in his statement on 25.2.2013. Further in the cross examination he admit that he was not called at the time of the audit of NIT during 2012 as at that time he had handed over the bills to the officers and he had no occasion to discuss with the chartered accountant about the payment of Service tax as he was not aware about the audit report for the earlier year.

13. The complainant thus has failed to prove the demand, and according to the prosecution case, when the bribe money was handed over, it was only the complainant who was present in the car, and no shadow witness was allowed as the complainant was apprehensive that if any person accompanied them, he would not accept the amount.

The key witness has therefore failed to prove the demand, which is sine qua non for the offence under Section 7 of the Prevention of Corruption Act. Moreover even the tape recorded conversation has failed to unequivocally establish the demand and in any case tape recorded conversation can be relied upon only upon corroborative evidence of conversation deposed by any of the parties to the conversation and in this case it is only the complainant's version that the accused indicated to him that the amount should be paid and he has paid the amount.

14. The demand of illegal gratification is sine qua non for constitution of an offence under the Prevention of Corruption Act, 1988 and for arriving at the conclusion of all the ingredients of the offence of demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on record in their entirety. Presumptive evidence as contemplated under Section 20 of the Act must also be taken into consideration, but in respect thereof, the standard of burden of proof on the accused versus the standard of burden of proof on the prosecution would differ. Before the accused is called upon to explain as to how the amount in question was found in possession, the foundational fact of Demand and payment of a bribe must be established by the prosecution. The Court will then, consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probabilities and not on the touchstone of proof beyond a reasonable doubt.

15. Applying the aforesaid parameters, when the evidence brought on record by the prosecution is carefully scrutinized, PW2, who is the panch on the pre-trap panchanama (Exh.12) and post-trap panchanama (Exh.15) as well as transcript panchanama (Exh. 16) and voice specimen panchanama (Exh. 17), has failed to establish the voice recording of the alleged demand. There is a reference to two voice recorders in the trap panchanama dated 11.2.2013, the first recording is made on the mobile phone of the complainant, but it do not include any demand.

The second recording is allegedly the conversation between the accused and the complainant in the car, recorded in the digital voice recorder (DVR) on the person of the complainant. Though it is allegedly recording of 11.2.2013, the transcription thereof is not prepared on the same date, but it was copied on the laptop on

25.2.2013 and the transcription panchanama record that the file was copied on the laptop and then a transcription was made.

The Investigating Officer (PW6) has corroborated PW2 when he admitted that transcription was not prepared from the SD card but from the recording of the laptop, leading to an inference that the transcription was not of the contents of SD card but it was of the recording, which was copied from the laptop. This, therefore, becomes secondary evidence as it is a transcription taken from the copy of the electronic record and not from the original record. It ought to have been, therefore, accompanied with the certificate under Section 65-B, of the Evidence Act, 1872, so that it becomes admissible, but no such certificate has been rendered in evidence.

Furthermore, the chain of custody of laptop from 11.2.2013 to 25.2.2013 is not shown, giving rise to the possibility of tampering with the voice recorder, of which the benefit must go to the accused.

16. Most relevant aspect of the matter is the absence of the panch witness at the time of trap to overhear the conversation, or watch the amount demanded being handed over to the accused. The prosecution has failed to establish that the demand for a bribe amount preceded the actual money accepted as bribe, and from the evidence it is brought on record that the auditor had already submitted the report and therefore it become doubtful as to how the evidence of PW4 Balkrishna Shetty that a bribe amount was demanded can be accepted.

Evidence of Raghu (PW8), consultant with NIT, about demand is nothing but hearsay as he deposed that he had helped the complainant to contact SP, CBI, his evidence do not take the case of the prosecution any further.

17. The primary defence of the accused is that there was no motive/reward/favour as contemplated under Section 7 of the Act. The case of the prosecution is that illegal gratification was accepted by him towards waiving or exempting the service tax liability in mess run by the complainant.

Accused in support of his 313 statement has relied upon further explanation at Exh. 64/C (number of documents) and PW6 Manisha Chaurasiya, Assistant Audit Officer, corroborates the documents. As she deposed that on 5.2.2013, the accused came to Goa and on 6.2.2013 the actual verification of the record of NIT Goa commenced, and during such verification, the doubts existing were noted and informed to the Accounts officials of NIT Goa. She has categorically deposed that on 7.2.2013 the chartered accountant of NIT came along with the necessary information with respect to the query raised by the audit team and after detailed discussion between the team and the chartered accountant and also the officers at Mumbai, the clarification was offered by chartered accountant in respect of the objections and thereafter once again on 8.2.2013 chartered accountant visited the NIT and provided necessary clarrification and final report was prepared on the same day with the help of the accused for the purpose of submitting it to the higher authority. She categorically denied that she knew any person by name Balkrishna Shetty and that he even visited the office or the accused and she is not even aware whether any meeting was arranged between the accused and Balkrishna Shetty by Raghu.

18. PW6 Manisha in cross examination has admitted that once the final report was prepared and signed by the Auditor, which was done on 8.2.2013, no changes in the same are permissible.

She also categorically admit that she has perused the earlier audit of NIT before coming to Goa for verification, and one audit report of November 2012 prepared by Mr K. P. Joseph, there was an issue of service tax of mess contractor of NIT but for this year there was no issue of verification on the aspect of sales tax of the mess contractor.

19. PW7 Amit Kabiraj, NIT Assistant Registrar, PW8 B. V. Raghu, NIT Ministerial Assistant, PW9 Albertian D'Costa, Deputy

Director Census as well as PW10 Vir Bhadar Sami, PF Commissioner, have not thrown any light on the version of the prosecution case, and therefore their evidence do not assist the prosecution.

As far as evidence of PW11 Sharda Rajput working as Senior Audit Officer, Mumbai, he has deposed that the audit of NIT Goa was fixed from 4.2.2013 to 8.2.2013 and the team comprised included Manisha PW6 and Mr Sandeep Chadha, the accused. He deposed that the purpose of the audit at NIT Goa was verification and rectification of the accounts, and Mr Makwana, Senior Audit Officer conducted the audit of NIT in the year 2012, and team was deputed for verification of the accounts, to find compliances of earlier objections. He categorically deposed that audit team including the accused was not supposed to look into the matter of service tax liability arising out of the mess contract at NIT, Goa as department is having a separate wing for looking after the audit of service tax matter but the scope of the visiting team was only to verify the accounts and to find out if any service tax is paid or not. He also stated that he was entrusted with the function of verification audit, and transaction of various government departments and during the audit of NIT Goa, the accused was in contact with subordinates of Mumbai in connection with the verification of accounts.

This witness has thus supported the defence adopted by the accused that the audit did not pertain to service tax.

20. The two Nodal Officers from the BSNL and Bharatiya Airtel are examined as PW13 and PW14 to establish CDR phone of the accused, but merely because the phone calls have been exchanged by itself do not establish the demand.

21. Nilesh Shirodkar(PW15), entrusted with the Investigation of the case has deposed that the complainant was present in CBI office, and gave his complaint to SP, CBI and the case was entrusted to him for investigation. He deposed about the steps taken pursuant to the receipt of the complaint from PW4, as he had stated that the auditor had demanded a bribe of Rs.20,000/- for not mentioning the service tax in the audit report. He deposed that it was decided to lay a trap on the accused to catch him while demanding and accepting the bribe amount as alleged in the complaint. After following the necessary formalities and explaining the process to be carried out involving the complainant and other trap team members, he had deposed that a voice recorder was used for recording the likely conversation between the complainant and the accused during their meeting, which was fixed at 12.00 hours.

Witness categorically states that he asked independent witness Mr Ratnakar Walke to act as a shadow witness and to accompany the complainant to the spot inorder to view the transaction and hear the conversation but the complainant informed that accused will not allow any other person to accompany him during the meeting and during the delivery of the bribe amount and therefore the complainant was sent alone with the voice recorder placed on his person and he was briefed about the signal to be indicated after the demand was made and money was handed over. According to him, he had specifically instructed the complainant not to hand over the bribe amount unless demanded.

The Digital recorder was placed on the left side pant pocket of the complainant and it was expected to record the demand however the evidence as regards the voice recorder is tainted in the wake of the fact that it was transmitted to the laptop and thereafter, the transcript was prepared.

The Investigating Officer has categorically admitted that he has not perused the report of the expert to whom the SD card was forwarded for the purposes of analysis. He admitted that during the time of post-trap panchanama, he noticed one file containing the recording in the SD Card, which was claimed to be said panchanama before sealing it, but he was not sure whether there were any other folders in the SD card at that time. It is also admitted by the witness that during the post-trap panchanama, the complainant did not disclose to him that he had recorded the conversations between the accused and himself during the trap on his mobile phone, but he did not verify the mobile phone of the complainant to find a recording of such a conversation.

A specific admission on behalf of the witness is that he had instructed the complainant to record the conversation, but the same is not found to be recorded in the panchanama and though the version given by the complainant is recorded in the post-trap panchanama he did not verify the exact words uttered by the complainant about the demand of a bribe.

22. On appreciation of the entire evidence brought on record to establish the guilt of accused, it is evidently clear that demand for illegal gratification has not been proved by the prosecution and since it forms the sine qua non under 7 of the Prevention of Corruption Act, the conviction cannot be sustained.

It is also important to note that there is no independent verification of the allegation of demand by the CBI, and the version of the complainant is accepted as gospel truth. Further the prosecution has relied upon the voice recorder, but has failed to prove that the voice in the recording is that of the accused, as it was not identified by any independent witness during the voice identification process. In addition, the transcription of voice recording is done from the copies, required a certificate under Section 65-B but in absence of any such certificate, the transcription is inadmissible. The evidence of the voice identification expert reveals several lacunae which failed to make out reliable case based on the complaint, resulting in a trap proceedings. Although panch witness was available during the trap proceeding the complainant refused to allow him and this itself creates suspicion in the whole version of the prosecution.

In addition, since it has come on record that the signing of the audit report was done on 8.2.2013 itself, the case of the prosecution that the accused demanded the bribe amount and this was actually accepted by him on 11.2.2013 itself, creates a suspicion. The prosecution has failed to prove any motive of reward or favour as contemplated under Section 7 of the Act as its witnesses have categorically stated that the task of the audit team which was entrusted with the work of audit of NIT was only for assuring compliance of the earlier audit report and rectification of accounts and did not involve service tax liability arising out of MESS contract at NIT Goa.

23. In the wake of the aforesaid, the case of the prosecution as it has been laid before learned Trial Judge has been extremely doubtful, and the benefit of doubt must yield to the accused however, the Judge has failed to consider the lacuna in the case of the prosecution and simply failed to note that the prosecution has failed to prove the case beyond reasonable doubt but despite this, finding of guilt was recorded and sentence was imposed.

Being convinced by the arguments advanced on behalf of the counsel for the appellant made out on the basis of evidence placed before the Trial Judge, I deem it appropriate to set aside the judgment and order dated 4.12.2015 passed by Special Judge, CBI Court for Goa, Panaji in Special Case No.9/2013(new) and by setting aside the impugned judgment and order, the appeal is allowed.

The appellant is acquitted of the charges framed against him under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

BHARATI DANGRE, J.

18th July 2025