

Judge, Solapur, whereby the appellant has been convicted for the offence punishable under Sections 7 of the Prevention of Corruption Act, 1988 (for short 'PC Act') and sentenced to suffer rigorous imprisonment (for short 'RI') for one year and to pay a fine of Rs. 2000/-, in default to suffer RI for six months. He is also convicted for the offences punishable under 13(1)(d) read with Section 13(2) and has sentenced to suffer RI for two years and to pay a fine of Rs. 3000/-, in default to suffer RI for six months.

2. The appellant has expired during the pendency of this appeal on 11.11.2017. Accordingly, an application was moved to bring his legal heirs on record. The said application was allowed, and the legal heirs are accordingly substituted as appellants.

3. It is case of prosecution that complainant-Mr. Vithal Godse was owner of land situated at Vadachiwadi, Taluka Madha, District Solapur. A portion of the said land, measuring 22 Ares, was acquired in the year 2001 by the Land Acquisition Officer (LAO). Compensation was sanctioned in favour of the

complainant. It is alleged that the appellant demanded bribe from the Complainant of Rs. 1500/- for giving compensation cheque and accepted it through accused no. 2.

4. The Learned Advocate for the appellant submitted that P.W.1 – the Complainant has admitted in his cross-examination that his nephew Trimbak Godse had accompanied him on 12.06.2006 and had witnessed the alleged demand, but said witness was not examined by the prosecution. The non-examination of this witness raises doubts about the prosecution's case.

5. The learned counsel further submitted that the Accused No. 2 i.e. Advocate Sarade accepted the alleged bribe and not the appellant. The panch witness has admitted that Accused No. 2 took the money but did not hand over to the appellant. It was the case of the Accused No. 2 that the said amount received was as professional fees. Furthermore, the Cheque for compensation was to be signed by Mr. Thombare, the appellant's superior and not the appellant. However, Mr. Thombare was not examined by the prosecution.

6. The learned counsel further submits that there is no evidence on record to show any meeting or agreement between the appellant, and the Accused No. 2, and the Complainant about the alleged bribe transaction. There is no material to show that the Accused No. 2 was acting on behalf of the appellant, or that the appellant authorized him to accept bribe on behalf of him. But these facts are not considered by the learned Special Court and has passed impugned Judgment and Order ,which is erroneous, hence requested to allow the Appeal.

7. It is contention of Learned APP that the Appellant demanded the bribe from the Complainant for giving cheque of compensation amount. The Appellant had told the Complainant to give bribe amount to the Accused No.2. The said amount was recovered from the Accused No.2. PW-2 panch witnessed the said incident, he has supported the prosecution case. The trap incident occurred in the office of the Appellant. The prosecution has proved the case beyond doubt. The learned Special Court has passed well-reasoned order no interference is required in it and requested to dismiss the Appeal.

8. I have heard both the learned counsel, perused evidence produced on record and the impugned judgment and order.

9. To prove its case, the prosecution has examined three witnesses. It has come in the evidence of PW-1 Vitthal Godase, first informant that his landed property was acquired by Land Acquisition Office. After acquisition he did not receive any compensation from LAO. In February-2006, he received letter from LAO to take the compensation. After receipt of the said letter, for 2-3 months he could not go to the Land Acquisition Office. On 12.06.2006, he went to the office of the Land Acquisition Office where he met the appellant. He showed the letter to the appellant and demanded compensation. The appellant informed him that officer is not present and asked him to wait. Thereafter, the appellant took out one file and obtained his signature on the letter by affixing revenue stamp. The appellant told this witness that if this witness is accepting the said amount under protest, he has to file application with Mr. Shinde, Clerk. As such this witness filed application with Mr. Shinde, this

witness stayed in Land Acquisition Office till 6.00 p.m. At 6:00 pm Mr. Thombare, LAO came in the office. The appellant took this witness in his chamber. Thereafter, this witness and Mr. Thombare discussed for some time. Thereafter, this witness and the appellant came out of his chamber. The appellant demanded an amount of Rs.1,500/- to pay the compensation amount. This witness told him that he did not have amount of Rs.1,500/-. Then the appellant told this witness that unless and until he pays Rs.1,500/-, he will not issue cheque and asked this witness to come in the next week. This witness asked the appellant for what purpose he is demanding the said money, then appellant told him for tea, etc. Thereafter, this witness returned to village. On 17.06.2006, this witness went to ACB Office and filed complaint against the appellant. The complaint is at Exhibit-13. The ACB Officers told him to come in the ACB office at 8:00 a.m. on 19.06.2006. Accordingly this witness went to ACB office. The ACB officer and two persons were present. The ACB Officer introduced this witness with those two persons i.e panch witness, he gave Rs.1500/- to ACB Officer i.e. three currency notes of

Rs.500/- each. ACB officers prepared pre-trap panchnama and demonstrated the procedure of anthracene powder. Thereafter, this witness and panch Mr. Jadhav PW-2 went to the office of the appellant. The ACB team followed them. The appellant was present in office. This witness demanded the cheque of compensation to the appellant. The appellant asked this witness to wait, thereafter at 12:00 to 12:15 p.m., again this witness went to appellant. The appellant asked this witness by gesture whether he brought the amount, this witness told him that he has brought the amount. During that period, the accused No.2 came there. The appellant asked this witness to pay amount to the accused No.2 by showing fingers towards the accused No.2. The accused No.2 asked this witness to come out of the office, he demanded the amount. This witness took out the amount from his shirt pocket and gave to the accused No.2 Shri. Sarade. He counted the same amount and put in his pocket. Thereafter, this witness gave the pre determined signal to the raiding party. The raiding party came there and caught hold the accused No.2 and brought him to the office of the appellant. The ACB officer asked this

witness to sit outside of the office. After some time ACB officers called this witness in office and verified fingers and shirt pocket under the light of ultra violet lamp, the same found glittering. Thereafter, ACB officer recorded the statement of this witness. This witness identified the appellant present in the Court.

10. In cross examination, this witness admits that he had filed a complaint with Collector of Solapur as regards that he did not receive compensation amount from the Land Acquisition Office. He further admits that after receipt of notice in February-2006, he did not went to Land Acquisition Office due to his domestic work for 2-3 months. He admits that land of one Mr. Mahingade was also acquired by Land Acquisition Office. He admits that on 12.06.2006, when he went to Land Acquisition Office, the appellant told him to wait till arrival of Mr.Thombare. He admits that the appellant prepared documents and obtained his signature upon revenue ticket. He admits that the appellant also obtained signature of his nephew Mr. Trimbak on revenue stamp. He admits that when he met Mr. Thombre, he told him that his land is of new tenure and asked this witness to

bring an order. This witness states that he does not know whether the accused No.2 was the Advocate of Mr. Mahingade. He admits that ACB officer instructed this witness to pay the amount to the appellant when he demanded for issuance of cheque. This witness was confronted with the application dated 19.06.2006 filed by him, he admits contents of it. It is at Exhibit-14. He admits that on 19.06.2006, he received cheque from Mr. Thombare after the appellant was arrested. He admits that Mr. Thombare had power to sign the cheque of compensation and its disbursement. He admits that it was the duty of the appellant only to keep the documents before Mr. Thombare. This witness was not aware whether the accused No.2 had filed documents in the office of the appellant on 19.06.2006. He admits that the accused No.2 had no knowledge about the transaction between this witness and the appellant. This witness denied the suggestion that he requested the accused No.2 to do his work and paid the amount to him as fees. This witness denied the suggestion that as he was not having the order

of new tenure land, therefore he has falsely implicated the appellant.

11. From the evidence of this witness, it reveals that for the first time when he had gone to the Land Acquisition Office on 12.06.2006, his nephew was with him, it is alleged that on that day the appellant had demanded bribe. However, the prosecution has not examined the nephew of PW-1 to prove the demand of bribe.

12. The prosecution has examined PW-2 Bajarang Jadhav, panch witness, he has stated that on 17.06.2006, as per the order of his superior, he went to ACB office. There he was introduced with the Complainant and ACB team. At that time, another panch was with him. He was asked to come on 19.06.2006, on that day ACB officers read over complaint to this witness and another panch. It is at Exhibit-13. This witness signed on it. The ACB officer demonstrated them about anthracene power, ultra violet lamp etc. The ACB officer smeared anthracene powder upon the currency notes of Rs.1500/- and kept the same in the shirt pocket of the complainant. The number of currency note

noted down in the pre-trap panchnama. The ACB officer gave instructions to this witness, other panch and the complainant. Thereafter, they went to Special Land Acquisition Office. This witness and Complainant went to the appellant. The appellant, by gesture enquired with the Complainant whether he has brought money and informed him that, officer has not come and asking him to wait outside. After 1 ½ hour, this witness and PW-1 went to the appellant, he asked to wait for 5 minutes. Thereafter, the appellant by gesture told to the Complainant to pay the bribe amount to the accused No.2. The accused No.2 carried this witness and the Complainant in the passage of office and asked to pay amount as per the direction of the appellant. Accordingly, the Complainant paid amount of Rs.1,500/- to the accused No.2 thereafter the Complainant gave pre-determined signal to the raiding party by removing his cap. The raiding party apprehended the Accused No.2 and recovered bribe amount from him. They verified the currency notes in the ultra violet light and they found anthracene powder on it. Post trap

panchnama was prepared. This witness signed on it. It is at Exhibit-17.

13. In cross examination, this witness admits that he came to know about filling of complaint on 17.06.2006. He admits that complaint was filed against the appellant for demanding bribe for issuing cheque of compensation. He admits that the Complainant had not demanded the cheque of compensation to the appellant in his presence. The Complainant enquired with the appellant whether his superior has come to office and he replied in negative and told them to wait for some time. This witness admits that he came to know that the complainant's work is with the superior of the appellant. This witness admits that he has stated before the police that the appellant demanded the bribe amount by gesture. The same is not appearing in his statement. He cannot assign any reason as to why the same is not mentioned in his statement and panchnama. He admits that the Complainant had gone in the office of the appellant to enquire whether his superior has come or not and came out of the office of the appellant within 5 to 10 minutes. At

that time, he came to know that the superior of the appellant came to the office but has not issued the cheque. This witness admits that thereafter the Complainant voluntarily went in the office of the appellant and he followed him. The appellant was doing his office work and this witness and the Complainant were in the said office for 15-20 minutes. This witness admits that for the second time also the Complainant has not demanded the cheque of compensation amount to the appellant. So also, the appellant has not issued cheque to the Complainant. During the period of 15-20 minutes, the Complainant had not gone to the chamber of superior of the appellant. During that period, the appellant had ordered tea for them and they took it. The appellant demanded bribe amount by gesture while taking tea. At that time the accused No.2 was not in office. After taking tea within 5-10 minutes the appellant told the Complainant to give the bribe amount to the accused No.2. This witness has not seen whether the accused No.2 gave any documents to the appellant within 15-20 minutes. The raiding party was visible to them.

14. PW-3 Bhaskar Thorat, Dy. S.P., ACB has stated that on 17.06.2006 PW-1 had filed complaint against the appellant. This witness signed on it, it is at Exhibit-20. The Complainant had produced some documents along with the complaint. This witness issued letter to Dean, Medical College, Solapur and called two panchs. This witness asked panchs and the Complainant to remain present on 19.06.2006 at about 8:00 a.m. This witness introduced the Complainant with the panch and asked them to read the complaint and sign. Accordingly, panch read the complaint and signed on it. On 19.06.2006, PW-1 and panch came to ACB office. The Complainant produced three currency notes of Rs.500/- each. This witness demonstrated the characteristic of ultra violet lamp and anthracene powder. The anthracene power applied on the currency notes. The pre-trap panchnama was prepared. The numbers of currency notes were noted down in pre-trap panchnama. The panchs signed on it. It is at Exhibit-23. The Complainant and PW-2 went to the office of the appellant. This witness and ACB Team followed them. After some time, the Complainant and PW-2 came out of the

office. Thereafter, at 12.10 p.m. the Complainant and PW-2 again entered into the office at 12:20 p.m. The Complainant and one unknown person came out of the office. The accused No.2 is the unknown person. The Complainant gave pre-arranged signal to this witness. After the signal, this witness caught hold the unknown person and they enquired with him about his identity. The said person told his name as Suryakant Sarde. This witness enquired with the Complainant about who accepted the bribe. The Complainant told that the accused No.2 has accepted the same. This witness took search of the accused No.2 and found that there was mobile and some documents. Thereafter, this witness asked PW-2 to take out the currency notes from the pocket of the accused No.2 as such he took out the same. This witness tallied the number of tainted notes with the numbers of notes mentioned in pre-trap panchnama, the same were tallied. Thereafter, this witness went to the office of the appellant. He seized the file of the Complainant from him and arrested him. This witness verified the hands of the accused No.2 currency notes and his shirt pocket under the light of ultra violet lamp and

they found glittering. The hand of the Complainant was also checked, they were found glittering. This witness prepared post-trap panchnama, it bears signature of this witness and panchs. It is at Exhibit- 17. In investigation, he recorded the statement of the Complainant and PW-2. After receiving sanction order, chargesheet was filed against the appellant and the accused No.2. In cross examination, he admits that on 19.06.2006, the Complainant had received a cheque of compensation amount from Deputy Collector in the evening. He admits that the brother of the Complainant had received compensation amount on 12.06.2006 from the appellant. He admit that he has seized the application filed by the accused No.2 with the office of the appellant on 19.06.2006.

15. It is prosecution's case that the appellant had demanded bribe for issuance of cheque of compensation, where it is the defense of the appellant that the said land of the PW-1 was of new tenure, hence he was asked to bring an order. As per prosecution's case, initial demand of bribe was made by the appellant on 12.06.2006. In cross examination, PW-1 has

admitted that his nephew Mr. Trimbak Godse was with him in Land Acquisition Office and the appellant had obtained their signatures on revenue stamp. He further admitted that the appellant carried him in chamber of his superior Mr. Thombre, who informed him that his land was of new tenure and asked him to bring order. It shows that land of PW-1 was of new tenure, Exhibit-14 is the application filed by the PW-1 with LAO on 19.06.2006. It shows the land of PW-1 was of new tenure. To prove the initial demand of the bribe, the prosecution has not examined PW-1's Nephew Mr. Trimbak Godse. He could have been an important witness to prove the initial demand of bribe.

16. To prove the demand and acceptance of bribe on the day of trap, the prosecution has relied on the evidence of PW-1 and PW-2. In cross examination, PW-1 has admitted that on 19.06.2016, the appellant has told him to wait as his superior Mr. Thombre was not yet arrived when he went to meet him. He was confronted the Application at Exhibit-14, filed by him on 19.06.2006. He admits it. In the said application, it is mentioned about new tenure land. He admits that 19.06.2006 he received

compensation cheque after the arrest of the appellant after filing of application i.e Exhibit-14. The said cheque was issued by issued Mr. Thombre from the admission given in cross examination by PW-1. It shows that on the day of trap the appellant did not demand bribe when PW-1 and PW-2 were in his office for one and half hour and were asked to wait. It has come on the evidence of PW-1 that when he met appellant on 19.06.2006 he demanded the compensation cheque but the appellant asked him to wait. However, this fact is not supported by the statement of PW-2. He has not stated that the PW-1 had demanded compensation cheque from the appellant. In cross examination, PW-2 admitted that in his presence, PW-1 didn't demand compensation cheque from the appellant and the PW-1 enquired with the appellant if his superior has come in the office. He replied in negative and asked them to wait. This witness further admits that he came to know that the work of PW-1 was with the superior of the appellant. He has stated before the police that the appellant had demanded the bribe by gesture, but it is not appearing in statement given to police and he cannot assign

any reason. He has further stated that after having tea the appellant had asked bribe to PW-1 by gesture.

17. From the evidence of PW-1 and PW-2, it proves that though PW-1 and PW-2 were present in the office for one and half hour, but there was no demand of bribe by the appellant. This is discrepancy in the evidence of PW-1 and PW-2 about the demand of compensation cheque by PW-1 to the appellant. It has come on record that PW-1's land was of new tenure. It proves from record that after arrest of the appellant, PW-1 received compensation cheque by Mr. Thombre on the said day. It shows that PW-1 work was with Mr. Thombre and not with the appellant. It has come in the evidence of PW-2 that PW-1 had enquired with the appellant about Mr. Thombre's presence. There is discrepancy about demand of bribe by the appellant by gesture. As per PW-1, the appellant demanded bribe by gesture, whereas it has come in the evidence of PW-2 that demand of bribe by gesture is not appearing in his statement given to police, though he has stated before police. Further, he has stated that the appellant had ordered tea for them and while having tea he

demanded bribe by gesture and after five to ten minutes of having tea, the appellant told PW-1 to give the amount to the accused no. 2. It shows that demand of bribe was orally but it is not prosecution's case that demand of bribe was oral, so it has not been proved beyond doubt that the demand of bribe by the appellant at the time of trap was by gesture or orally. The bribe amount was accepted by the accused no. 2, an Advocate. It is his defense that the said amount was given to him as fees by the PW-1. The learned special court has acquitted the accused no. 2 and the same has not been challenged by the prosecution.

18. Considering evidence on record, the prosecution failed to prove initial demand of bribe by the appellant. It also failed to prove that the work of the PW1 was with the appellant, as the PW1 had received cheque on same day after arrest of the appellant. It has not been proved that on the day of trap there was demand of bribe by the appellant by gesture. The prosecution has failed to establish a clear and explicit demand of money by the appellant. The prosecution failed to establish the essential

ingredients of demand and acceptance under Sections 7 and 13(1)(d) of the Prevention of Corruption Act.

19. In the view of above, I pass following order.

ORDER

(i) The Appellant is acquitted for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act.

(ii) The bail bonds are stand cancelled.

(iii) All pending Applications are disposed of.

(SHIVKUMAR DIGE, J.)