

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.780 OF 2010

1. **Bhausahab Devappa Latthe**
Age : 53 Years, Residing at : Vasant Bhavan,
House No.686, 3rd Lane, Shahupuri,
Kolhapur, District : Kolhapur.
2. **Shankar Pandurang Patil**
Age : 40 Years, Residing at : Pargaon,
Taluka : Hatkanangale, District : Kolhapur. ...Appellants

Versus

The State of Maharashtra ...Respondents

Mr.M.K.Kocharekar i/b. Mr.Vishal Laxman Kolekar:-	Advocates for Appellants.
Mr.H.J.Dedhia:-	APP for Respondent – State.

CORAM : S. M. MODAK, J.

DATE : 12th JUNE 2025

JUDGMENT :-

1. The only issue arisen in this Appeal is, “*whether the learned Special Judge–Ichalkaranji was justified in convicting both the Appellants on the basis of other evidence, particularly when the de-facto Complainant has not supported the prosecution.*” Earlier, as this issue was pending before the Hon’ble Supreme Court in case of **Neeraj**

*Dutta V/s. State (Govt. of N.C.T. of Delhi)*¹, this Appeal was kept pending. The Constitutional Bench has decided the reference in the judgment reported in *2022 Live Law SC 1029*. There can be a proof of demand and acceptance by way of circumstantial evidence in absence of direct oral and documentary evidence. If the Complainant “*turned hostile or has died or is unavailable to give evidence*”, the demand of illegal gratification can be proved through evidence of other witness.

2. In view of answer to the issues referred, this Appeal is taken up for hearing. According to learned Advocate Shri.Kocharekar, even if the evidence of the panch-witness PW No.1–Laxman Pawar is considered, it is short of details pertaining to the demand for illegal gratification. According to him, mere demand for money is not sufficient but it has to be for doing some work and by way of gratification. To buttress his submission, he relied upon two more judgments. They are:-

- (i) *Neeraj Dutta V/s. State (Govt. of N.C.T. of Delhi)*²
- (ii) *Soundarajan V/s. State represented by the Inspector of Police Vigilance Anti-Corruption, Dindigul*³.

On the point of verification of demand, he relied upon the

1 Criminal Appeal No.1669 of 2009 : 28th February 2019 : Supreme Court of India

2 2023 SCC OnLine SC 280

3 (2023) 16 Supreme Court Cases 141

observations in para No.34 of the judgment in case of ***Mir Mustafa Ali Hasmi V/s. State of Andhra Pradesh***⁴.

3. Whereas, according to the learned APP, there is no fault in the impugned judgment and the panch-witness PW No.1–Laxman Pawar has given all the details pertaining to pre-trap formalities and the incidents at the time of trap. According to him, there is no flaw in the investigation and the sanction is also by the Competent Officer. According to him, the judgment need not be interfered.

4. The prosecution case in nutshell, is as follows:-

The de-facto Complainant–PW No.2–Jalandar Kambale is a resident of village:Yalgud, Taluka:Hatkanangale, District:Kolhapur. He was desirous of getting some financial assistance from the Panchayat Samiti for the purpose of erection of house. Accordingly, he made an application and he got sanction from the Panchayat Samiti as per the order dated 13th October 2005. The money sanctioned was Rs.20,000/- (Rupees Twenty Thousand).

Background

5. He started with the construction on his joint family property. He has also arranged for building materials. The work was

⁴ (2024) 10 Supreme Court Cases 489

incomplete because he could not get the financial assistance. The present **Appellant No.1–Bhausahab Latthe** was working as a Sectional Engineer. Whereas, **the Appellant No.2–Shankar Patil** was working as an Assistant Junior Engineer in Panchayat Samiti–Hatkanangale. The allegation of demand of illegal gratification was against the Appellant No.1–Bhausahab. Prior to lodging the complaint with the Anti-Corruption Bureau on 19th May 2006, the de-facto Complainant met the Appellant No.1–Bhausahab on two occasions. The Appellant No.1–Bhausahab was expected to measure the construction work and on the basis of his report, the money was to be released by the Panchayat Samiti. There is no date of the first meeting but the second meeting took place on 9th May 2006. Every time, the Accused–Bhausahab demanded Rs.1500/- (Rupees One Thousand Five Hundred) for the purpose of submitting the report after measuring the construction. Already, the de-facto Complainant was in financial difficulty, he could not arrange for money and hence, he approached the Anti-Corruption Bureau at Kolhapur.

Approaching A.C.B.

6. The Deputy Superintendent of Police–Shri.Hanumant Wakade–PW No.5 recorded his complaint on 19th May 2006 (Exhibit-

40). Then, he arranged for the service of panch-witness. PW No.1–Laxman Powar and PW No.3–Kakasaheb Vishnu Kawade were the panch-witnesses. The pre-trap formalities were prepared and trap was arranged in the Panchayat Samiti Office on 19th May 2006. They went to the Office. The de-facto Complainant accompanied by PW No.1 could not meet the Appellant No.1–Bhausahab. However, they met the Appellant No.2–Shankar. On enquiry, they were told that the Appellant No.1–Bhausahab had gone to meet the superior. After some time, he came to the Office. As instructed, the de-facto Complainant inquired with Bhausahab about his work. At that juncture, Bhausahab demanded Rs.1500/- (Rupees One Thousand Five Hundred) and he instructed the de-facto Complainant handed over the amount to the Appellant No.2–Shankar.

Trap

7. He gave a pre-decided signal and then, the Dy.S.P. along with another panch PW No.3 came there. The Appellant No.2 was found with tainted notes and the formalities were completed. Thereafter, Dy.S.P.–Wakade lodged the complaint with Hatkanangale Police Station. It was registered under Sections 7, 13(1)(d) read with 13(2) and Section 12 of the Prevention of Corruption Act, 1988 (“*In*

short, the PC Act, henceforth”). PW No.4–Rajaram Zende who was serving as an Additional Chief Executive Officer–Zilla Parishad–Kolhapur gave sanction to prosecute both the Appellants. The charge-sheet was filed.

Trial

8. As said above, the charge was framed against the **Accused Nos.1 and 2** for the offence punishable under Section 7 of the PC Act. Whereas, against the **Accused No.2**, charge was framed under Sections 12, 13(1)(d) read with Section 13(2) of the PC Act. Both the Appellants denied the allegations levelled against them. The Appellant No.2–Shankar took a specific defence of thrusting of money. It was not accepted by the trial Court. The trial Court recorded the conviction as follows:-

- (i) For the **offence under Section 7**, the Accused No.1 and the Accused No.2 was sentenced to rigorous imprisonment for 1 year and fine of Rs.10,000/- (Rupees Ten Thousand). There is in default sentence for 6 months.
- (ii) For the offence under **Sections 13(1)(d) read with 13(2)**, the Accused No.1 and Accused No.2 were sentenced to 1 year and fine of Rs.5,000/- (Rupees Five Thousand) and in default for 3 months.

- (iii) For **offence under Section 12**, the Accused No.2 was sentenced to suffer rigorous imprisonment for 6 months and fine of Rs.5,000/- (Rupees Five Thousand) and in default, rigorous imprisonment for 3 months.

Argument

9. Both the sides invited my attention to the evidence of all the witnesses. There is no dispute that the de-facto Complainant Jalandar Kambale has not supported the prosecution case except to filing of an application to the Panchayat Samiti and sanction to the tune of Rs.20,000/- (Rupees Twenty Thousand). Now, it needs to be seen whether on the basis of evidence of PW No.1, it can be said that the demand is proved. As stated in the deposition, panch-witness is not supposed to depose about the demand made earlier to approaching the Anti-Corruption Bureau. He is only supposed to depose about the interaction on the date of trap. It is true, the Investigating Agency made an attempt to record the conversation with the help of tape-recorder. The tape-recorder was also offered but it could not be used because the de-facto Complainant has expressed inability to operate it. The Investigating Agency cannot be blamed for the same.

Evidence of trap panch

10. I have gone through the evidence of **PW No.1–Laxman**

Powar about the actual conversation between the de-facto Complainant and the Appellant No.1. He has deposed:-

*“**Jalandar** (Complainant) asked **Latthe** (Accused No.1) as to what happened to his work. Thereupon, Shri.Latthe told to Jalandar **first to pay the amount of Rs.1500/-** and then, he would see about the work. Jalandar informed Shri.Latthe that he had brought Rs.1500/-”.*

According to learned APP, on the basis of this interaction, the demand is proved and the trap was led. Whereas, according to Mr.Kocharekar, this is not sufficient to infer about the demand for illegal gratification. He relied upon the observations in cases of **Neeraj Dutta** and **Soundarajan** as referred above. Learned APP tried to differentiate the facts of those cases and the present case.

Consideration

11. I have gone through the observations in those two judgments. It is true, in case of **Neeraj Dutta** (supra), she asked “*the complainant to give papers regarding the electricity meter and Rs.10,000/- to her as she was in hurry*”. The Hon’ble Supreme Court observed, “*this cannot be treated as specific demand of gratification*”.

The Supreme Court observed:-

“...PW-5 has not stated that there was any discussion in his

presence between the appellant and the complainant on the basis of which an inference could have been drawn that there was a demand made for gratification by the appellant..”(Para No.20).

12. Whereas, in case of ***Soundarajan*** (supra), the de-facto Complainant has not supported. The material portion from the complaint were not brought to his notice during the cross-examination.

In Para No.12, the Supreme Court observed:-

“Absence of specific demand of gratification by the complainant”.

Impugned judgment

13. Learned trial Judge in the impugned judgment has emphasized on shortcomings in the explanation given by the Appellant No.2 about thrusting. It finds place in Para No.61. Learned trial Judge observed, *“the conduct of Appellant No.2 was not consistent with his innocence. He has not tried to rescue, when the money was thrust in his pocket (Para No.61).* The learned trial Judge has given importance to evidence of panch-witness (Para No.56). About the visit of panch-witness to Anti-Corruption Bureau Office on 19th May 2006, the trial Court believed about the same in Para Nos.32 and 33. The trial Court also believed about the procedure followed at the time of carrying out the pre-trap panchnama. The trial Court also believed about the

instructions given by Dy.S.P. The trial Court believed the evidence of PW No.1 and also believed the prosecution case about acceptance by the Appellant No.2. That is why, the trial Court observed:-

“Not noticing anthracene powder at the hands and clothes of the Appellant No.1 but they were found on the fingers of Appellant No.2 and full pant of the Appellant No.2” (Para Nos.38 to 41).

The trial Court observed:-

“Panch witness was not on inimical terms with the case of both the Appellants”.

14. The trial Court has also emphasized on drawing of presumption under Section 20 of PC Act (Para No.58). Learned APP has drawn my attention to the averments in trap-panchnama and the evidence of Investigating Officer.

Findings

15. When the evidence is perused, I am afraid the findings of the trial Court about carrying out the pre-trap formalities and post-trap formalities can be doubted. Even the evidence of PW No.1 and Dy.S.P. are sufficient to infer that the tainted notes of Rs.1500/- were found with the Appellant No.2. The evidence of Sanctioning Authority is not challenged.

Role of Appellant No.2

16. On this background, it needs to be seen whether the evidence on the point of demand as deposed by PW No.1—panch witness can be believed upon. On this background, I have again perused the facts deposed by PW No.1. It is important to note, that there is no prosecution case about demand by Appellant No.2. He was neither involved in initial demand nor at the time of trap. What is evidence against him is he was present in the Panchayat Samiti Office on 19th May 2006 when PW No.2 along with PW No.1 visited. He was a subordinate to the Appellant No.1. He was bound to answer where the Appellant No.1 had gone. The prosecution does not come with the case that the Appellant No.2 has participated in the interaction in between the de-facto Complainant and the Appellant No.1. His role started when he accepted the amount as instructed by the Appellant No.1. Now, whether this mere acceptance is sufficient to justify the conviction for these offences?

17. It is important to note that the money was demanded by the Appellant No.1 for the purpose of submitting a report of measurement. On this background, when the evidence of PW No.1 is perused, except Appellant No.1 asking PW No.2 to pay Rs.1500/- and

then he would see about his work, there is no interaction. If de-facto Complainant could have supported, then simply not explaining the nature of work could have suffice the purpose. But, the panch-witness is not expected to know about the nature of work and why earlier demand was made. The panch-witness was not expected to know what type of measurement of construction site was to be done. It was not expected from him to depose these facts on the basis of personal knowledge. But when the law expects him to hear the conversation and to depose in the Court, the law expects evidence on the point of such conversation which connects the Accused to the nature of work and money demanded for doing that work. Even when the de-facto Complainant has not supported, still if the panch-witness could have given those details, his evidence could have been given weightage. That is what is elaborated in above two referred judgments.

18. Learned trial Judge has overlooked this fact while appreciating the evidence. Learned Judge has not given attention to the exact conversation between “*the Appellant No.1 and the de-facto Complainant*” as deposed by PW No.1.

19. It is settled law, that mere acceptance is not sufficient. It has to be preceded by the evidence about demand. For this reason and

absence of evidence showing the involvement of the Appellant No.2, there cannot be conviction for the Appellant No.2 for accepting Rs.1500/- (Rupees One Thousand Five Hundred). No doubt, the Appellant No.1 has enquired about Rs.1500/- but for want of other details, the evidence of PW No.1 cannot be considered as sufficient to prove the case of demand. For the above said reasons, the presumption under Section 20 cannot come to the rescue of the prosecution. There may be lacunae in the defence put up by the Appellant No.2 but it does not support the prosecution because on other aspects, the prosecution evidence cannot be believed upon. So, I am unable to subscribe to the view taken by the trial Court in arriving at the guilt of both the Appellants. The benefit of doubt needs to be given to both the Appellants and hence, I am inclined to allow the Appeal. Hence, the following order:-

ORDER

- (i) The Appeal is allowed.
- (ii) The judgment dated 18th September 2010 passed by the Court of Special Judge – Ichalkaranji in Special Case No.3 of 2008 thereby convicting both the Appellants is set aside.
- (iii) Both the Appellants are acquitted for the offences under Sections 7, 13(1)(d), 13(2) and under Section 12 of PC Act.

(iv) The fine amount, if paid, be returned to both the Appellants.

20. The Appeal stands disposed of accordingly.

[S. M. MODAK, J.]