



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.22/2013

State of Maharashtra,
through Deputy Superintendent of Police,
Anti-Corruption Bureau, Chandrapur,
Dist. Chandrapur.

...APPELLANT

VERSUS

Shri Narayan S/o Shri Shivram
Mataghare, aged about 60 yrs.,
Occ. Service, R/o. Chimur, Tah. Chimur,
Dist. Chandrapur.

...RESPONDENT

Mr. Bhagwan M. Lonare, Addl. Public Prosecutor for appellant/State.
Mr. Jemini B. Kasat, Advocate for respondent.

CORAM : **M. M. NERLIKAR, J.**
JUDGMENT RESERVED ON : **10.11.2025**
JUDGMENT PRONOUNCED ON : **24.11.2025**

JUDGMENT :

Heard.

2. The appeal is directed against the judgment and order dated 07.12.2011 passed by the learned Special Judge Warora in Special (ACB) Case No. 11/2008, wherein the accused i.e.

present respondent is acquitted for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("PC Act").

3. The prosecution case in brief appears to be:-

The complainant Shri Ashok Kathane intending to relinquish his rights in favour of his son qua his shop property vide a gift deed applied for mutation in favour of his son in the Office of the Taluka Inspector of Land Records, Chimur on 20.02.2003. At the relevant time, the present respondent was working as Head Quarter Assistant, demanded an amount of Rs.2000/- as illegal gratification for mutation entry but the complainant unable to pay the said amount and asked to reduce the amount to Rs.200/-. However, the accused/present respondent was persistent in his demand of Rs.2000/-. Again, on 09.07.2003, when the complainant went to respondent's office, same demand was made, to which the complainant agreed. As the complainant had no intention to give bribe to the present respondent, he visited the Office of Anti-Corruption Bureau, ('ACB') Chandrapur. The complainant made oral

complaint in ACB Office which was reduced in writing by Shri Choudhari, Deputy Superintendent of Police, ACB on 21.07.2003. The ACB Officer called two persons to act as 'Panchas'. The complainant's complaint was read by the two 'panchas' and thereafter both the 'panchas' affixed their signatures on the said complaint. After preparing the Pre-Trap Panchnama, the raiding party proceeded to the Office of Taluka Inspector of Land Records. The present respondent demanded the bribe amount from the complainant which was handed over to the respondent. On giving the pre-fixed signal, the raiding party conducted the raid. The tainted notes were found on the person of the accused in his shirt pocket. Thereafter, a detailed Panchnama was prepared and the shirt of the present respondent was also seized. After examination, the shirt pocket of the present respondent as also the currency notes seized from him, turned violet in colour due to sodium carbonate solution being sprinkled on the tainted currency notes. Accordingly, Seizure Memos were duly recorded.

After completing investigation by the Investigating Officer, charge-sheet came to be filed against the respondent. The learned Trial Court framed charge vide Exh-4. The same was read over and explained to the accused/respondent in vernacular language. The present respondent pleaded not guilty and claimed to be tried. The prosecution examined 5 witnesses to prove the guilt of the accused whereas, the respondent did not examine any witness in his defence.

The learned Trial Court upon hearing both the parties was pleased to acquit the respondent for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act. Being aggrieved by the same, the State has preferred the present appeal.

4. The learned APP submits that, in order to prove the guilt of the accused, the prosecution has examined as many as five witnesses. PW-1 is the complainant who has lodged the complaint (Exh.18) with the ACB Office. PW-2 is Sanjay Bhaurao Wankhede Panch No.1 to the demand. PW-3 Vijay Ashokrao Kathane is son of the complainant. PW-4 Pandit

Ramji Kanekar is the Sanctioning Authority and PW-5 Purushottam Ramrao Choudhary is the Investigating Officer who has registered the FIR (Exh.72) and also conducted the investigation. The learned APP submits that the prosecution has proved the case beyond reasonable doubt. All the witnesses supported the case of the prosecution and accordingly, the demand and acceptance was duly proved by the prosecution. He submits that in the cross-examination of the witnesses, nothing was brought on record, to draw an adverse inference. The testimonies of the witnesses were not shaken or shattered in the cross-examination. The trap was successful and the accused was caught red handed while demanding and accepting the illegal gratification. He submits that after considering the record, PW-4 who is the Sanctioning Authority has accorded the sanction. PW-1 and PW-2 deposed about the demand of Rs.2000/- by the respondent for effecting the mutation entry. The evidence of these two witnesses also show that the accused has accepted the bribe amount, therefore the Trial Court ought to have considered the evidence of PW-1 and

PW-2 in its true perspective. However, the learned APP submits that the Trial Court has given much importance to the omissions and contradictions which do not go to the root of the matter and the Trial Court ought to have ignored those contradictions and omissions. He submits that, when the sanction was accorded by PW-4, it was specifically deposed that it was after going through the record and application of mind. The investigation was carried out in lawful manner and after getting the sanction order, the charge-sheet was filed and the case was proceeded. The accused was caught red handed and the tainted notes were recovered from the pocket of the accused. The Trial Court has committed gross error in acquitting the accused. Lastly, he prayed that the appeal be allowed and accused be convicted for the offence, for which he was charged.

5. On the other hand, learned counsel for the respondent vehemently submits that the High Court is dealing with the appeal against acquittal. There is a double presumption of innocence after the acquittal and therefore, interference must

be limited. He submits that the High Court is having full power to re-appreciate the evidence in appeal against acquittal, however interfering in the order of acquittal is only warranted where the Trial Court view is perverse, based on misinterpretation or ignorance of material evidence or results in miscarriage of justice. He submits that the prosecution has miserably failed to prove the case beyond reasonable doubt. The evidence of prosecution witness does not inspire confidence. On the contrary, it is based on hypothesis. There are several variances and contradictions in the testimonies of the prosecution witnesses. He submits that the evidence led by the prosecution is full of omissions and those omissions go to the root of the matter. The evidence of PW-1 and PW-2, if taken as it is, it cannot be said that the demand was duly proved. The evidence of prosecution witnesses have been shaken in cross-examination in order to bring on record the relevant omissions and falsify the case of the prosecution. The testimony of PW-1 cannot be believed as the conduct of PW-1 is not natural. PW-1 has suppressed many facts and those facts are brought on

record by the defence in the cross-examination of PW-1, therefore the evidence of PW-1 is required to be discarded. He further submits that the evidence of PW-2 who is Panch Witness is not believable and his presence at the spot itself is doubtful. Further, the sanction which was accorded by PW-4 is not in accordance with law and it is without application of mind. The draft was sent by the office of the ACB which is only signed by the Sanctioning Authority without going through the material and this fact was brought on record by the defence in the cross-examination. So far as PW-3 is concerned, his evidence is hearsay and his evidence would not be useful for the prosecution. The evidence of PW-5 Investigating Officer demonstrates only procedure which he has followed, even his evidence is full of contradictions and omissions, therefore cannot be relied. Lastly, he submits that if the evidence of PW-1 is perused, he stated that the demand was in the nature, “*whether he brought the amount*” is not sufficient as it does not constitute the demand in law, therefore the very basis in respect of demand is lacking. He submits that though it has come in

the evidence of the Investigating Officer i.e. PW-5 that the statement of the respondent was recorded after the trap to which an explanation was given, however that statement does not find place in the charge-sheet and therefore, an adverse inference is required to be drawn. The conduct of PW-1 and PW-5 is unnatural for the reasons that without verification of the demand, the Investigating Officer accepted the version of the complainant. It is necessary to consider that, filing of the complaint by PW-1 (Exh.18), calling panchas from the office of the Conservator of Forest, Chandrapur, the panchas thereafter being readily present at the office of the ACB, the entire exercise done at the ACB office in respect of the procedure to be followed during the trap, going to the office at Chimur from Chandrapur, laying down the trap and so also registration of FIR after conducting the trap. All these stages have been done within one day which is not believable. He submits that PW-5 accepted the version of the complainant as gospel truth and arranged the trap. The conduct of PW-1 is unnatural for the reason that he readily brought 20 notes of denomination of

Rs.100/- each, as if he knew that trap was going to be arranged on the very day and therefore, the conduct is unnatural and with malafide intention. So far as the earlier episode of demand is concerned, there is no specific date and time and same cannot be considered as the defence was successful in bringing omission on record to that effect in cross-examination and further that the omission was proved by PW-5 Investigating Officer, therefore, there is no connecting circumstances to the alleged incident of initial demand and acceptance dated 21.07.2003, therefore lastly he submits that the Trial Court after appreciating the entire evidence, acquitted the present respondent. He relies on the following judgments:-

(i) P. Somaraju Vs. State of Andhra Pradesh, 2025 SCC Online SC 2291,

(ii) State of Maharashtra Vs. Baliram, 2024 SCC OnLine Bom 1019,

(iii) Ramchandra and another Vs. State of Maharashtra, 2024 SCC OnLine Bom 2286,

(iv) Mir Mustafa Ali Hasmi Vs. State of Andhra Pradesh, (2024) 10 SCC 489,

- (v) *Shashidhar Shivram Shinde Vs. State of Maharashtra, 2018 SCC OnLine Bom 968,*
- (vi) *Dattatraya S/o. Rajaram Thaokar Vs. The State of Maharashtra, 2017 ALL MR (Cri) 4184,*
- (vii) *Subhash s/o. Narayanraoji Rathod Vs. State of Maharashtra, 2017 ALL MR (Cri) 4144,*
- (viii) *Bismillakha s/o Salarkha Pathan Vs. State of Maharashtra, 2004 ALL MR (Cri) 1341,*
- (ix) *Mukhtiar Singh (since deceased) thr. His Legal Representative Vs. State of Punjab, (2017) 8 SCC 136.*

6. While dealing with the appeal against acquittal, the Supreme Court in the case of P. Somaraju (Supra) has laid down certain parameters which read as under:

“11. Before proceeding, it would be appropriate to recapitulate the well-settled principles governing interference with an order of acquittal by an Appellate Court, which were also discussed by the High Court in the impugned judgment. At the outset, we rely upon the seminal case of [Chandrappa & Ors. vs. State of Karnataka](#),⁴ wherein this Court had laid down the five-point canonical test as follows:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The [Code of Criminal Procedure](#), 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the

presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.” 4 (2007) 4 SCC 415.

12. To summarize, an Appellate Court undoubtedly has full power to review and reappraise evidence in an appeal against acquittal under [Sections 378](#) and [386](#) of the Code of Criminal Procedure, 1973. However, due to the reinforced or ‘double’ presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court’s view is perverse, based on misreading or ignoring material evidence, or results in manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgements of this Court has more firmly entrenched this position, including, inter alia, [Mallappa & Ors. vs. State of Karnataka](#), [Ballu @ Balram @ Balmukund & Anr. vs. The State of Madhya Pradesh](#), [Babu Sahebagouda Rudragoudar and Ors. vs. State of Karnataka](#), and [Constable 907 Surendra Singh & Anr. vs. State of Uttarakhand](#).”

7. In order to prove the case of the prosecution, the prosecution has examined as many as five witnesses. PW-1 is

the complainant examined at Exh.17; PW-2 Sanjay Wankhede who was present at the time of demand and acting as Panch was examined at Exh.31, PW-3 Vijay Kathane who is the son of complainant was examined at Exh.54, PW-4 Pandit Kanekar who is the Sanctioning Authority was examined at Exh.55 and PW-5 Purshottam Choudhary who is the Investigating Officer was examined at Exh.66. Upon perusal of the evidence of PW-1, he has deposed that in order to mutate the name of his son Vijay in respect of his property i.e. shop, he approached the accused who was serving in the office of the Land Record at Chimur as he looked after the said work. When he met with the accused, accused told him that if he wanted to mutate the name of his son, he will have to sell that shop to the complainant's son and for that he will be required to spend Rs.10,000/- to Rs.15,000/-, but instead of that PW-1 should pay Rs.2000/- to the accused so that he will effect the entry in the name of his son. It was informed by PW-1 that it was not possible for him to spend Rs.2000/-, instead he will pay Rs.200/-. However, the accused was persistent in his demand

of Rs.2000/-. Thereafter, he visited the accused several times , but every-time, the accused was persistent in his demand of Rs.2000/- The accused had said that he may come anytime with Rs.2000/- and he will do his work. Subsequently, he went to the ACB Office and lodged complaint against the accused. After recording the complaint (Exh.18), PW-1 produced an amount of Rs.2000/-in the ACB Office. He further deposed that two panchas were called and they were explained about the procedure which was to be followed by the ACB Office. Thereafter, PW-2 who is panch witness went along with PW-1 and after reaching the office of the accused, the accused said that his work will not be done on that day and it will be done on Monday. However, PW-1 replied that on Monday, he is not available in town and so his work be done on that day itself. Accordingly, the accused agreed and asked him whether he has brought the amount. PW-1 replied and said that he has brought an amount of Rs.2000/-. Thereafter, the accused took out some papers and obtained signature of PW-1. Accused said that his work was ready and accordingly PW-1 took out the

amount by right hand from the pocket of his shirt and handed over to the accused, who accepted that amount. Accused counted the amount and kept it in the pocket of his shirt. He further deposed that when the amount was paid to the accused, he gave signal by removing his spectacles and when the accused said to PW-1 to come to the office of Mr. Nannaware at that time, the accused was caught by the raiding party. The subsequent procedure was thereafter followed.

8. PW-3 who is son of PW-1 deposed that as his father (PW-1) intended to transfer the building in his name and accordingly, PW-1 executed gift deed in favour of PW-3 and for the mutation purpose, PW-3 along with PW-1 went to the Taluka Land Record Office. Accordingly, the application was submitted by PW-3. He further deposed that the accused had perused all the documents and told that gift-deed is not proper and sale-deed will have to be executed and for that purpose, he will be required to spend Rs.10,000/- to Rs.15,000/-. He further deposed that they will also be required to pay stamp duty. The accused told his father that if he does not want to

spend that much amount, then they will have to pay Rs.2000/- to him and he will do the work. However, his father (PW-1) told him that he will pay Rs.200/- for tea, but the accused refused to do the work unless Rs.2000/- was paid to him. The rest part of his deposition is hearsay.

9. Another witness is PW-2 who is a panch witness who accompanied along with PW-1 to the office of the accused. PW-2 deposed that he was serving in the office of Conservator of Forest, Chandrapu and another panch Diwakar Kemekar was working as a Forest Guard in his office. He further deposed that he knows accused and complainant. The incident occurred on 21.07.2003, when he was called in the ACB Office along with another panch Diwakar Kemekar. They were asked about willingness to act as panch. Accordingly, both gave consent to act as panch. At the relevant time, the complainant was present. Complaint which was lodged by the complainant, was given to the panchas for reading. In the complaint, demand of Rs.2000/- was mentioned for effecting mutation entry of the field in the land record by the accused. He further deposed

that an amount of Rs.2000/- was brought by PW-1. These were 20 notes of denomination of Rs.100/- each. Numbers of currency notes were noted. Then the demonstration of the entire process was given. Thereafter, it was informed that they had to go to Chimur and accordingly PW-1, PW-2 and another panch witness went to Chimur by Jeep to the office of accused. Accused was present in the office. The complainant asked the accused about his work. Accused told that his work is not done yet and accordingly informed that he has no time and to come on Monday. PW-1 informed that he is not available on Monday and he is going to other village. Therefore, his work should be done today itself. Accordingly, accused asked him whether he has brought the amount as agreed. Complainant told him that he has brought the amount of Rs.2000/-. Accordingly, the PW-1 handed over amount to the accused. Accused accepted it by hand and kept in his shirt pocket. Then accused gave two forms to the complainant and asked him to put date as 04.06.2003. PW-1 signed those forms. Those were kept by the accused. Thereafter along with the pad

of papers, accused went inside the cabin of officer Nannaware. Thereafter, PW-2 gave signal to another panch Kemekar who was standing near the gate of the said office, then that panch gave signal to the raiding party. Thereafter, members of the raiding party and panch Kemekar came in the office of the accused and asked PW-2 where is accused. Accordingly, PW-2 informed that accused has accepted the amount and he is in cabin. Thereafter, Dy.S.P Choudhary went inside the cabin of officer Nannaware along with Police Constable Dongre and Sayankal and they caught hold of the accused. Accused was frightened and asked the Police Officer of their identity. Accordingly, Dy.S.P Choudhary introduced himself and other members of staff. He further deposed that Dy.S.P Choudhary asked him where the accused has kept the amount. Accordingly, he informed that the amount is in his shirt pocket. Thereafter, one person took out the notes from the shirt pocket of the accused and he does not remember the name of the person who has taken out the amount. PW-2 has further

deposed about the procedure which was carried after accused was caught red handed.

10. Now, so far as cross-examination of all these three witnesses are concerned, PW-1 has admitted that unless some amount is paid to Mr. Nannaware, his work will not be done. It was also stated to him that Mr. Nannaware will not directly accept the bribe. He further admits that the accused was caught by raiding party on getting signal just on entering the cabin of Mr. Nannaware. It was brought on record by the defence in the cross-examination that during investigation, the Investigating Officer had recorded PW-1's statement. However, it is not stated in the statement that he repeatedly visited the office of Land Records and met with accused about 5 to 6 times and each time the accused asked him to pay Rs.2000/-. It has also come in the cross-examination that the accused said to him that he can bring the amount of Rs. 2000/- at any time and whenever the amount will be brought, he will do his work. He further deposed that he cannot assigned any reason as to why these facts do not find place in his statement though he has

stated. Further, in the cross-examination of PW-2, he admits that he went to office of the ACB at about 11 to 11.30 a.m. and after one and half hours, he along with other raiding party, proceeded for the raid. Categorically, he admits that before proceeding for raid, he had not given any signature. He further admits that after the amount was paid on demand, he was not directed by Dy.S.P Choudhary to give signal. It was told to PW-1 to give the signal. He further admitted that he has stated to the Police that he gave signal to Kemekar who was standing near the gate of the office who then gave the signal to the raiding party, however he did not assign any reason why this fact did not find place in his statement. He admits that he cannot assign any reason why the same has not come in the statement that he had stated that accused had kept the amount in his shirt pocket. He further admits that after accused was caught, he was interrogated and the statement of accused was also recorded in his presence.

11. Upon perusal of the entire evidence of these three witnesses, it appears that accused has asked PW-1 as to

whether he had brought the amount. Whether the aforesaid question amount to demand is the question before this Court. As argued by the learned counsel for respondent that it does not amount to demand as held in the case of Mukhtiar Singh (Supra), of which para 19 and 24 read as under:-

“19. Inspector Satpal (PW 2), who was the shadow witness, after reiterating the statement of the complainant with regard to the pre-trap proceedings, stated that he along with the complainant on that day met the original accused and followed to his quarter in the building of the police station whereafter the original accused enquired of the complainant as to whether he had brought the money, on which, the latter handed over three currency notes denomination of Rs 500 and five currency notes of Rs 100 each to him and that he kept the same in a cardboard box lying near him. The witness stated that he then gave a signal to the other members of the raiding party including the DSP (Vigilance) who entered the room and undertook the steps pertaining to recovery and seizure as narrated by the complainant. Further, in the case of Dattatraya S/o. Rajaram Thaokar (supra) and Mir Mustafa Ali Hasmi (supra).

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24. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs 3000 which had been paid or of

Rs 2000 as made on the day of trap operation is wholly inadequate to comply with the prerequisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs 3000 at the first instance is alleged to have been paid i.e. Santosh Singh Lambardar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs 3000 as well as the demand of Rs 2000 has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of the complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had h enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act.”

12. After perusal of above judgment, it could be said that the question which was posed by the accused cannot be said to

be demand in the eye of law. As the Supreme Court has specifically held that, inquiry as to whether money had been brought or not, can by no means constitute demand as recognized in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the PC Act. Therefore, in order to attract Section 7 or 13 of the PC Act, there should be other cogent evidence, other than the accused asking whether money has been brought or not.

13. After perusal of the evidence of PW-1, PW-2 and PW-3, there are many omissions which have come in the evidence of PW-1 like the statement regarding going to Land Record Office 5 to 6 times and the demand of Rs.2000/- being made by the accused, that entire part was brought on record as omission which was proved by the Investigating Officer i.e. PW-5 in paragraph No. 20 which is a material omission. The same was also brought on record even in the cross-examination of PW-2. The said omission was brought from the mouth of PW-1 and

was proved by PW-5 Investigating Officer. This omission is a material omission which goes to the root of the matter and falsify the version of PW-1. If this material omission is brought on record, then there is no proof of initial demand neither there is date and time is forthcoming and therefore, further demand dated 21.07.2003 in the nature of whether he brought the amount is not sufficient to comply with the prerequisites to constitute the ingredients of the offence of which accused is charged. Therefore, from the evidence, it is crystal clear that the prosecution has utterly failed to prove the initial demand and further on 21.07.2003, merely inquiring “whether the amount is brought”, is not sufficient to constitute offence under Section 7 or 13 of the PC Act. It is settled position of law that if the prosecution fails to prove the demand then mere acceptance is of no use.

14. From the entire evidence of these three witnesses, there are various contradictions and omission which destroys the case of the prosecution. On one hand, PW-1 deposed that

he has given the signal to the raiding party, however on the other hand, PW-2 deposed that he has given signal to Kemekar who is another panch witness. However, it has come in the evidence of PW-5 that PW-1 has given the signal to the raiding party. Further, it has come in the evidence of PW-2 that one person took out the notes from the shirt pocket of the accused, however he does not remember the name of that person who has taken out the amount. However, PW-5 has stated that panch No.2 - Kemekar has taken out those notes. This is also a major contradiction which was brought on record. If at all PW-2 was accompanying with another panch Kemekar, then certainly he would have taken the name of Kemekar, however as PW-2 does not remember the name who has taken out the amount creates doubt about his presence and therefore, his testimony cannot be believed. It is further to be noted that from the deposition of PW-3, he accompanied his father to the office of the accused when initial demand was made, however same does not find place in the evidence of PW-1. Therefore, there are several contradictions and variances in the

testimonies of these witnesses. The evidence of these witnesses cannot be believed and the prosecution has utterly failed to prove the demand. The presence of PW-1, PW-2 and PW3 at the place of incident itself is doubtful in view of above discussion and therefore, this evidence will have to be discarded.

15. In the evidence of PW-4 who is the Sanctioning Authority, it is deposed that the department of ACB has sent the documents to him for according sanction. Accordingly, he verified all the documents sent to him along with proposal of sanction order. He further deposed that sanction bears his signature at Exh. 56. He is empowered to appoint and remove the accused. In the cross-examination, he admits that he had also received proforma of sanction order. He admits that before according sanction, he had not verified the service book of the accused. The learned counsel for the respondent submitted that the sanction is not valid as PW-4 without application of mind had signed sanction order which was already received by him. To buttress his submission, he relied on the case of State

of Maharashtra Vs. Baliram (*supra*). This Court while dealing with the sanction order, has observed as under:-

“Perusal of the sanction order reveals that First seven paragraphs deal with allegation levelled against accused. In second last paragraph, only it is mentioned that upon reading papers of investigation and evaluating evidence carefully, he is satisfied that there is an adequate evidence against the accused and accorded sanction.”

Further, the learned counsel for the appellant relied on another judgment of Ramchandra and another (*Supra*) wherein in para 21 it is observed as under:-

“21. Here, in the present case, the sanction is not only challenged on the ground of Incompetency of Sanctioning Authority PW4 Dilip Swami but also on the ground of non-application of mind. Perusal of the sanction order shows that the Sanctioning Authority has not clarified that on what basis he came to conclusion that the sanction is to be accorded. As observed earlier, the sanction of the Sanctioning Authority should be after application of mind. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied his mind to all relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the

sanction had been granted in accordance with law. Perusal of the evidence of Sanctioning Authority PW4 Dilip Swami and the sanction order nowhere reflects material that on which basis he came to conclusion that the sanction is to be accorded. Thus, the sanction granted is not a valid sanction.”

16. Keeping in mind the observations of this Court, I perused the sanction order (Exh.56). It is apparently clear that even in this case the first seven paragraphs deal with the allegations levelled against the accused. In another paragraph it is stated that upon reading papers of the investigation and evaluating evidence carefully, he is satisfied that there is sufficient evidence against accused and in the last paragraph sanction has been accorded.

17. From the evidence and order of sanction at Exh.56, it is crystal clear that the Sanctioning Authority has not applied his mind and only signed the sanction order which was provided by the ACB Department along with the proposal which is further corroborated by the admission of PW-4 that he has received proforma of sanction order. If such cryptic orders are passed, according sanction, it would frustrate the very

object of inserting the provisions for getting sanction for prosecuting government servant. The purpose of this provisions is to safeguard frivolous complaint/frivolous allegations against public servant and if the Sanctioning Authority fails to apply mind to the fact and material placed before it, under such circumstances, that sanction is not valid sanction accorded, therefore on this ground also the prosecution has failed.

18. There is one another glaring factor in this case, that though the statement of the accused was recorded immediately after he was caught red handed, that statement was not placed on record by the prosecution and therefore, whatever explanation given by the accused has not come on record. It has come in the evidence of PW-5 Investigating Officer that at the time of incident, the statement was given by the accused. Admittedly, the said statement does not form part of the charge-sheet. Therefore, an adverse inference ought to be drawn that the said statement was fatal to the prosecution.

This Court in case of Shashidhar Shivram Shinde (supra) observed in para 12 which read as under:-

“12. As per the panchanama no. 2, explanation of accused was taken by Police Inspector Shri Idole. But that explanation not filed with the chargesheet. In the case of Bismillakha s/o Salarkha Pathan Vs. State of Maharashtra (cited supra), this Court has observed as under:

However, there is one more important circumstance and i.e. the statement to be found in the post trap panchnama to the effect that immediately after the trap was sprung, both the accused were asked by P.I. Dhok and they gave their version regarding acceptance of money. It is the express prosecution case which can be found in the panchnama that the version given by accused was reduced to writing and signed by the panchas as well as P.I. Dhok. The contents of what was mentioned in these two writings was not found in the panchnama as those were separate documents. However, for reasons best known to the prosecution, these documents have not been brought before the Court in the trial. The panchas examined as well as P.W. 7 Dhok but do not utter a single word about this first version given by the two accused in writing immediately after the trap was sprank. This circumstances of suppressing the first version as given by two accused, according to him, is a very important circumstance which raises a shadow of doubt about the veracity of the prosecution case. The duty of the prosecution is to bring the entire truth as found before the Court.

It appears to me that these two vital documents have been kept back from the trial. In my view, in such circumstances, these writings were evidence which could be produced and which were in the hands of the Investigating Agency and which could have been produced as evidence in the Court but was not produced. By virtue of Section 114 of the Indian Evidence Act, the Court would be entitled to presume that had these documents been produced, they would not have favoured the prosecution which had withheld these documents. Useful reference can be made to illustration (g) of Section 114 of the Indian Evidence Act, in this regard.”

19. Therefore, as observed earlier the explanation of the accused, taken by Dy.S.P Choudhary, that explanation/statement was not filed along with the charge-sheet for the reasons best known to the prosecution and therefore non-production of explanation given by the accused creates doubt about the prosecution story.

20. Considering the above discussion, it is crystal clear that the story of the prosecution is not believable. The evidence of PW-1, PW2 and PW3 is full of contradictions, omissions and there are variances in their testimonies, therefore the evidence cannot be believed. It is further necessary to mention that

demand is not proved and therefore, mere acceptance is not sufficient to come within the purview of Sections 7 and 13 of the PC Act. Not only that, even the surrounding circumstances do not support the case of the prosecution. Further, the sanction order was accorded without application of mind. So also, the statement of the accused recorded by the Dy.S.P. Choudhary is not placed on record and therefore, it creates doubt about the story of the prosecution. For all these reasons and keeping in mind, the parameters laid down by the Apex Court in the case of *P Somaraju* (supra), I am not inclined to interfere in the judgment of acquittal dated 07.12.2011 passed by the learned Special Judge, Warora in Special (ACB) Case No.11/2008. The Trial Court has not committed any error in acquitting the respondent. After appreciating the entire evidence in its true perspective, the following order is passed.

ORDER

(i) Appeal is dismissed.

(M. M. NERLIKAR , J.)