



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

CRIMINAL APPEAL NO.81/2012

State of Maharashtra,
through Superintendent of Police,
Anti Corruption Department, Amravati.

...APPELLANT

VERSUS

Sanjay S/o Uttamrao Khedkar,
Aged 40 yrs., Occ. Junior Clerk,
Tahsil Office, Chandur Railway,
Tq. Amravati, Dist. Amravati.

...RESPONDENT

Mr. Bhagwan M. Lonare, APP for appellant/State.
Mr. D.S. Dharaskar for respondent.

CORAM : **M. M. NERLIKAR, J.**

DATE : **25.11.2025**

ORAL JUDGMENT :

Heard the learned APP and learned counsel for the respondent.

2. The appeal is against the judgment and order of acquittal dated 06.05.2011 passed by the learned Additional Sessions Judge, Amravati in Special Case (ACB) No.09/2008,

wherein the accused was 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. Brief facts:-

The Complainant (P.W.1) Madan Patil, in order to obtain caste certificates of his daughters, approached the respondent/accused, who was working as Jr. Clerk at Tahsil office, Chandur Railway, District Amravati. The respondent demanded Rs. 200/- on 23.7.2007 to issue extract of 'Kotwal Book' for the purpose of preparation of caste certificates of the daughters of the complainant. As the complainant did not have Rs.200/-, he was told by the respondent to bring the said amount on 25.07.2007. The complainant was not willing to pay the bribe amount and therefore, he went to Anti Corruption office where the Investigating Officer prepared a trap.

On 25.7.2007 the respondent accepted the amount of Rs.200/- from the complainant (P.W.1) before panch witness (P.W-2. The tainted currency notes were examined in the light of ultra violet lamp and bluish shining was seen there. Other

necessary formalities were also performed by the Investigating Officer. After obtaining sanction and after completing investigation, charge-sheet came to be filed against the respondent.

Accordingly, the respondent has been prosecuted for the offence punishable under Sections 7, 13(1)(d) r/w section 13(2) of the Prevention of Corruption Act, 1988. The prosecution has adduced total 5 witnesses to prove its case. However, the learned Special Judge/Additional Sessions Judge, Amravati by its Impugned judgment and order dated 06.05.2011 acquitted the respondent. Being aggrieved by the this, the present appeal is being preferred.

4. The learned APP submits that the demand as well as the acceptance was proved by the prosecution through PW-1 who is the complainant. The FIR was registered by PW-5 who is also the Investigating Officer. The learned APP has mainly relied on the depositions of PW-5 and PW-1 (complainant). He submits that after registering the complaint of PW-1, necessary pre-trap procedure was followed and accordingly, the

complainant was sent with the PW-2. He further submits that on 25.07.2007 when the PW-1 and PW2 went to the office of the respondent in furtherance of trap, respondent/accused asked, “whether amount was brought” and accordingly PW-1 said that he has brought the amount and handed over the same to the respondent. He submits that PW-2 though fully, did not support the version of the prosecution however he admits that he accompanied PW-1 and went to the Tahsil office. The learned APP submits that admittedly respondent is working as a “Clerk” in the Tahsil Office and the work of issuing Kotwal Book extract was entrusted to the respondent. The Sanctioning Authority has also granted sanction order after perusal of the entire records. However, the Court has declined to accept the said sanction order by observing that the sanction is not legal and valid one. On the contrary, he submits that PW-4 who is Collector has deposed that after going through the papers, he has granted sanction order and therefore, he submits that even if the complainant PW-1 turned hostile, the prosecution has

duly proved the demand and acceptance therefore, he prays to allow the appeal.

5. On the other hand, the learned counsel for the respondent submits that the important evidence in respect of demand is of PW-1 and PW-2. So far as the evidence of PW-1 is concerned, he has completely turned hostile and not supported the case of the prosecution. Even if the evidence of PW-2 is taken into consideration, even he has not deposed anything about the demand of the amount by the respondent. He submits that, “whether he brought money” does not amount to demand as contemplated under Sections 7 and 13 of the PC Act. He accordingly submits that if the ingredients of Section 7 or 13 of the PC Act are not fulfilled, then under such contingency, the appeal cannot succeed. The evidence of PW-2 does not inspire confidence as there are several contradictions and omissions which are brought on record in the cross-examination. So far as PW-3 is concerned, his evidence cannot be believed on the point of demand as he was not present when the alleged demand was made by the respondent. In the

evidence of PW-4 who is the Sanctioning Authority even he admits that there are several case papers in the compilation, wherein crime number was not mentioned in each and every case paper, even the name of the person was not in the case paper who accepted Rs.20/- and issued the receipt. He further admits that along with papers, he has received draft sanction order Therefore, it was submitted that the sanction order is not legal and valid. He submits that so far as the evidence of PW-5 is concerned, his evidence would not be useful on the point of demand as he has only deposed about the procedure which he has followed. Not only that, even there are other contradictions and omissions in his evidence which are brought on record by the defence in the cross-examination of the PW-2 which has been proved from the deposition of PW-5. There are many persons working in the office of the respondent and it was admitted by PW-5 that though he has recorded statements of some of the persons from the office of respondent, however none were examined by the prosecution, therefore lastly he prayed to dismiss the appeal.

6. Upon perusal of the record and proceedings as well as after going through the testimonies of the prosecution witnesses admittedly as many as five witnesses have been examined by the prosecution. PW-1 Madan Shrawan Patil who is the complainant was examined at Exh.9 PW-2 Shridhar Wamanrao Dhoke was examined at Exh.15 is panch No.1 who accompanied along with PW-1 at the time of trap. PW-3 Ajgarali S/o. Gaffarali was examined at Exh.30 who is another panch, who was included in the raiding party, PW-4 Dr. Purushootam Niwruddhi Bhapkar, Collector who is the Sanctioning Authority was examined at Exh.32 and PW-5 Aniruddha Sheshrao Adhao is the informant and the Investigating Officer who was examined at Exh.39. At the relevant time, he was working as a Police Inspector at ACB Office, Amravati.

7. So far as PW-1 is concerned, he turned hostile and has not supported the case of the prosecution. Not only that, in the cross-examination he has admitted that the present respondent had given Rs.200/- to his daughter Shilpa as she had lost her

purse and therefore, on 25.07.2007 Shilpa gave Rs.200/- to PW-1 for being handed over to respondent and accordingly on 25.07.2007, the amount of Rs.200/- was returned to the respondent. It is further admitted by PW-1 that the said amount of Rs.200/- has absolutely no concern with the Kotwal Book extract and he further deposed that accused never demanded the bribe from him. Therefore, considering the evidence of PW-1, who is the complainant, he himself has turned hostile, thereby weakening the case of prosecution.

8. PW-2 who is panch No.1 has deposed that the incident is dated 25.07.2007. He was serving in the office of Upper Wardha Project. PW-2 (panch No.1) and PW-3 (panch No.2) were instructed by the Superior Officer to assist the ACB officer. Pursuant to aforesaid, they went to the ACB office at Amravati at 12.00 noon. He further states that PW-1 was present there and he narrated his complaint to panch No.1 and panch No.2. Accordingly, they put signatures on the complaint. After completing the demonstration by the ACB Officer in respect of trap, they proceeded towards the Tahsil Office at about 03.00

p.m. Upon reaching the Tahsil office, PW-1 asked the respondent about Kotwal Book however, he told it was to be signed by Officer and to come back later. Accordingly, they informed the ACB Officer about the same, then again at 05.00 p.m. PW-1 and PW-2 went inside the Tahsil Office. Accordingly, they approached respondent. PW-1 asked the respondent whether the copy of Kotwal Book is ready and in turn respondent asked to PW-1, "whether he brought money". PW-1 replied that he had brought the money and accordingly gave money to respondent. The respondent counted the amount and was kept in his pocket. Thereafter, PW-1 by folding sleeve, gave signal to the raiding party waiting at the gate of the Tahsil Office and thereafter, ACB constable and PW-3 came there and caught the respondent. ACB Constable asked PW-2 where the money was kept to which he replied that the money was kept in the shirt pocket of respondent. Thereafter, ACB officer Adhao came in the office and asked PW-3 to take out the money from the shirt pocket of the respondent. Accordingly, the amount was taken out by PW-3 and further procedure was followed by

the ACB Officer. In the cross-examination of PW-2, it was brought on record that PW-2 was standing outside the room and therefore, he had no occasion to witness the demand and acceptance. He further admitted that he has not stated in his Police statement that respondent has asked complainant to call three to four cup of tea and when PW-1 had asked whether the copy of Kotwal Book is ready, the respondent asked complainant whether he has brought money and the complainant-PW-1 replied that he had brought money as stated earlier. Therefore, this vital omission was brought by the defence on record. He admitted that he has stated all these facts for the first time in the Court. He further admitted that Pramod Gawai, Dipak Kamble and Chhaya Hade were doing their work near the table of respondent at the relevant time. The respondent might have told then that it was the same amount that was lent by him to the daughter of PW-1. He further admitted that he has been asked by the ACB Officer to give evidence as per the documents and two to three days after

happening of the incident, his signatures were obtained by the ACB Officer on documents.

9. Upon perusal of the evidence of PW-2, it goes to show that he has supported the case of the prosecution to some extent, however so far as the demand is concerned, there is vital omission which has been brought on record by the defence. Under such circumstances, even if the evidence is taken as it is, the factum of demand is not proved by the prosecution from the evidence of PW-2. Therefore, prosecution failed to prove the demand beyond reasonable doubt.

10. So far as the PW-3 is concerned, his evidence would not be useful for proving the demand as he was at the relevant time, with the raiding party.

11. Now coming to the evidence of PW-4 who is the Sanctioning Authority. He deposed that he has received the case papers regarding the trap from the ACB office. After going through those papers, he came to the conclusion that the respondent being a public servant, had demanded and accepted

bribe of Rs.200/- and the said demand and acceptance was for issuing the extract of Kotwal Book to PW-1. He further deposed that after going through the case paper, he issued sanction order which bears his signature and the contents are true and correct which is at Exh.33. In the cross-examination, it was brought on record that crime number was not mentioned in each and every case paper and even the name of the person was not mentioned in the case paper as to who had accepted Rs.20/- and issued the receipt. He further admits that he did not know as to who was the said person and he has not made any attempt to trace out the name of said person. It was also brought on record that whether the signature on the said receipt is of respondent or not, the said fact has not been ascertained by PW-4. He admitted that the date on which the first demand was made of Rs.200/- is not mentioned in the sanction order and he has received draft sanction order. He further admits that he has not returned the draft sanction order to the ACB Office. It was admitted that the date appearing in

the sanction order at Exh.33 is not in his handwriting the sanction order at Exh.33 is a typed document.

12. Upon perusal of the sanction order, admittedly the 1st four paragraphs are the facts of the case and arranging of the trap by the ACB Office, Amravati, whereas in 5th paragraph, it is stated that the respondent is abusing his position as a public servant and thereby alleged to have committed an offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act. In further paragraph, it is stated that upon careful reading of the papers of investigation in Crime No.3052/2007, he is satisfied that there is adequate evidence to prosecute the respondent and in the last para, he has accorded sanction. Upon perusal of the sanction order, it appears that the Sanctioning Authority has not applied its mind before according sanction.

13. As observed supra that so far as the sanction is concerned, the prosecution has utterly failed to prove that the Sanctioning Authority has applied its mind before according the

sanction and under such circumstances, even the sanction cannot be said to be valid sanction as observed by this Court in case of ***State of Maharashtra Vs. Baliram, 2024 SCC OnLine Bom 1019***, wherein this Court has dealt with the identical sanction order and held that *“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, in the case of ***Ramchandra and another Vs. State of Maharashtra, 2024 SCC OnLine Bom 2286***, this Court has laid down similar ratio.

14. Therefore, after considering the entire evidence of the prosecution witnesses, the important thing is that the demand in the nature of, “whether he brought money” amounts to demand in law or not is the question before this Court. The Supreme Court in the case of ***Mukhtiar Singh (since deceased) thr. His Legal Representative Vs. State of Punjab, (2017) 8 SCC***

136, while dealing with identical issue has 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, from the ratio laid down by the Supreme Court even by stretch of imagination, such stray question can not amount to demand, therefore the prosecution has utterly failed to prove the factum of demand. Even PW-1 who is the complainant has turned hostile and secondly the evidence of PW-2 and PW-3 does not inspire confidence as the evidence full of contradictions and omissions. The last evidence is of PW-5 the Investigating Officer, the same is not useful to prove the factum of the demand. He has only deposed about the complaint of PW-1, and procedure which has been followed for laying down the trap and further procedure which has been followed after the trap was allegedly successful.

15. Therefore, considering the above circumstances, the prosecution has failed to prove the case beyond reasonable doubt therefore, there is no merit in the appeal, hence appeal stands dismissed.

(M. M. NERLIKAR , J.)

Gohane