



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL No. 123/2008.

State of Maharashtra,
through Anti Corruption Bureau,
Bhandara.

...

APPELLANT.

VERSUS

Sanjay s/o Mangaruji Wakalkar,
Aged about 36 years,
resident of Paraswada, P.S. Tirora,
Presently resident of Tumsar,
District Bhandara.

...

RESPONDENT.

Mr. A.M. Joshi, A.P.P. for the Appellant.
Mr. S.G. Loney, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.

JUDGMENT RESERVED ON : 07.10.2025.

JUDGMENT PRONOUNCED ON: 17.10.2025.

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JUDGMENT :

This appeal is directed against the judgment and order dated 11.05.2007 passed by the Special Judge, Gondia in Special Case No.4/2005, by which the respondent was acquitted of the offence under Sections 7, 13[1][d] read with 13 [2] of the Prevention of Corruption Act, 1988.

2. The brief facts of the case is that – Chhotelal Bhagat approached the office of Anti Corruption Bureau and lodged a report against the present respondent, alleging demand of bribe for approving list of 99 persons working under Employment Guarantee Scheme (EGS). It is alleged in the said complaint that the respondent who was working as a Talathi, demanded some amount for putting his seal and signature on the list prepared by the complainant for working EGS in Form No.4, which was to be submitted to the Tahsildar. The respondent demanded an amount of Rs.500/-, however, the said amount was settled at Rs.400/-. However, the labourers who were working under the EGS were not ready to pay the said amount to the

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respondent and asked to lodge a complaint with the anti corruption department.

3. On receiving the report from Chhotelal, Sevakam Kore, Police Inspector called two employees from Education Department to act as Panchas for the trap. Accordingly Sudhakar Aglave and Ashok Paunikar came to the office of the Anti Corruption Bureau, Bhandara on 03.02.2005, and after obtaining their consent, they were explained about the trap which was to be carried out. Thereafter they were sent to the office of the Talathi on 03.02.2005 and there, the talathi accepted the amount from the complainant Chotelal as bribe amount, upon which and he was arrested immediately. After completing the necessary procedure, First Information Report against the respondent was registered for the aforesaid offences, and after completing investigation, charge-sheet came to be filed before the competent Court.

4. Charge was framed at Exh.6 for the aforesaid offence. The contents thereof were read over and explained to the respondent in

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vernacular language. The respondent pleaded not guilty and claimed to be tried. His statement under Section 313 was recorded, wherein he denied to have committed the alleged offence. The prosecution examined 8 witnesses to bring home the guilt of the respondent, however, by the impugned judgment and order, the Special Court acquitted the respondent for the aforesaid offence. Hence, this appeal.

5. I have heard the learned Counsel for the parties. The learned A.P.P. has submitted that the prosecution has duly proved the demand and acceptance of amount, however, the Special Court has conveniently ignored this fact. The complainant/ P.W.1 has specifically deposed about demand of bribe by the respondent. He further submits that P.W.2 has not supported the case of the prosecution, and even P.W.3 has been declared hostile, however, P.W.1 was present in the office at the relevant point of time and deposed in support of the prosecution. Learned A.P.P. further submits that so far as P.W.4 is concerned, he is an independent witness, who went to collect the cheque amount towards compensation and he has specifically submitted that the

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accused/respondent demanded the amount and accepted the same. In cross examination of this witness, nothing has been brought by the defence, so as to discard his testimony. The learned A.P.P. submits that so far as P.W.5 is concerned, he has deposed that the accused has demanded Rs.500/-. This demand was initial demand, which was made on 01.02.2005. It is submitted that P.W.6 is the sanctioning authority of the respondent, who has granted sanction to prosecute the respondent, after going through the papers and application of mind. So far as P.W.7 is concerned, the learned A.P.P. submits that he has demonstrated the procedure in respect of verification of labourers. Accordingly, he deposed that in the year 2005 there was request from Taluq Agriculture Office in respect of labourers. Lastly he submitted that P.W.8, who is the investigating officer, has deposed about filing of the complaint by the complainant, as well as laying trap thereby proving the case of prosecution.

6. On the other hand, the learned Counsel for the respondent submits that the prosecution has utterly failed to prove the demand. He submits that framing of charge is invalid, for the reason that initial

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demand, according to the prosecution was made on 01.02.2005, however, there is no charge to that effect as to whether there was initial demand or not, and in such circumstances, the respondent cannot be convicted. He further submits that there are several material contradictions in respect of recovery of currency notes, as per prosecution witness no.2, recovery was made from pocket of the respondent, whereas complainant in his cross examination has deposed that it was recovered from drawer of the table. This fact itself shows that there was no trap set up and consequently no recovery. Further putting seal and signature of Patwari/respondent on the list prepared under EGS, the said work has not been assigned to the Talathi/Patwari, and therefore, there is no question of demand or verification of the list by the respondent.

7. In respect of P.W.4, it is the contention of the respondent that his presence in the office of the respondent itself is doubtful, as he has admitted in the cross examination that he does not remember about the amount of cheque which he has received, so also failed to state how much area of land was acquired, and therefore, reliance

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cannot be placed on the testimony of P.W.4. Even P.W.4 has deposed that the respondent had placed the bribe amount in the drawer of the table. Therefore, there are several contradictions and omissions in the deposition of witnesses, and therefore, the prosecution has utterly failed to prove the case beyond reasonable doubt.

8. Upon hearing both the parties at length and upon perusal of the evidence on record, it reveals that initial demand was made by the respondent on 01.02.2005, however, there is no charge framed to that effect, therefore, whether non framing of charge of initial demand, which was made on 01.02.2005, was fatal to the prosecution case or not, is the question before this Court.

Upon careful perusal of the charge at Exh.6, it reveals that it was framed for the incident which had occurred on 03.02.2005 at about 3 p.m. Admittedly there is no charge framed for the incident dated 01.02.2005. Now in such circumstances, as it is a law point, it is necessary to decide the same, and therefore, reliance can be placed on the judgment of Hon'ble Supreme Court in case of **Soundarajan .vrs. State represented by the Inspector of Police.. -**

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(2023) 16 SCC 141, wherein an identical issue was decided by the Supreme Court. The relevant observations are as under :

“Effect of the failure to frame a proper charge.

14. *We must deal with another argument made by the learned senior counsel appearing for the appellant. That is about the failure to frame a proper charge for the offence punishable under Section 7. The relevant portion of the charge reads thus:*

"You, working as the Sub Registrar at Kannivadi, Dindigul District from 27.10.2003 to 27.10.2003 and as such you are a public servant you registered the sale deed of 16.05 cents of land purchased by Sundaramoorthy on 12.07.2004 and demanded a sum of Rs.500/ from Sundaramoorthy as gratification other than legal remuneration for returning the registered document and also received Rs.500/ as bribe, hence you disclosed the offences punishable under Section 7 of Prevention of Corruption Act 1988 and triable by this Court."

15. *Thus, the Special Court omitted to frame a specific charge on demand allegedly made by the appellant on 6th and 13-8-2004 and acceptance thereof on 13-8-2004.*

16. *Under Section 464 of CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the Court, a failure of justice has in fact been occasioned thereby. In this case, from the perusal of the cross-examination of PW3 and other prosecution witnesses made by the Advocate for the appellant, it is apparent that the appellant had clearly understood the prosecution case about the first alleged demand made on 6-8-2004 and the subsequent alleged demand and acceptance on 13-8-2004. There is no doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is, per se defective.*

However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned. Therefore, in this case, the omission to frame charge and/or error in framing charge is not fatal.

17. *We find that, in this case, the charge has been framed very casually. The Trial Courts ought to be very meticulous it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under sub section (2) of [Section 464](#) CrPC. Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge.”*

Therefore, from the above observations of the Supreme Court, same analogy is required to be applied here. As can be seen that the initial demand is of 01.02.2005, however, there is no charge to that effect. As was observed in paragraph no.17 in the aforesaid judgment that the trial Courts ought to be very meticulous when it comes to framing of charges. However, while considering the scope of Section 464 of Cr.P.C., the Court has also observed that omission to frame a charge or any error in charge is neither fatal, unless in the opinion of the Court the failure of justice has in fact been occasioned thereby. Therefore, a bare perusal of the cross-examination of the P.W.1, who

is the original complainant, it is apparent that the respondent has clearly understood the case of prosecution about the first demand made on 01.02.2005, and the subsequent alleged demand and acceptance on 03.02.2005.

9. However, the Supreme Court has also held that “*there is no doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is per-se defective. However, by reason of said omission or defect, the accused was not prejudice in so far as his right to defend is concerned.*” Thus, the law laid down by the Supreme Court that though charge is per-se defective, however, when there is no prejudice caused and the accused has been granted full opportunity and right to defend his case, in such circumstances, such omission would not be fatal. As was observed by the Supreme Court even in the present case, though it can be said that there was no proper charge, or the charge framed at Exh.6 is per-se defective, however, that by itself would not be fatal, when full opportunity was granted to the accused/respondent, and he understood the case of prosecution.

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10. Now so far as the merits of the matter is concerned, upon perusal of the deposition of P.W.1 Chottelal, that the incident occurred on 01.02.2005. P.W.1 was working under EGS during that period and he had prepared a list of 99 persons. It was to be handed over to the Partwari i.e. present respondent for the purpose of approval and to put his seal and signature in Form No.4. On 01.02.2005 he along with one Omkar had been to the office of Patwari/ respondent at Paraswada and after handing over list to the respondent for his seal and signature, the respondent demanded Rs.500/- i.e. Rs.5/- per person. However, P.W.1 agreed to pay Rs.400/- after two days when the labourers declined to pay the same, it was decided to file complaint against the respondent with the office of Anti Corruption Bureau. P.W.1 after obtaining Rs.300/- from Omkar went to Bhandara and lodged complaint with Anti Corruption Bureau, Bhandara. The procedure was explained to the complainant and panchas. Thereafter, P.W.1 and one person went to the office of the respondent, where other persons were also present. Accordingly P.W.1 asked respondent to put his seal and signature on the list

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which was placed before him. At that time the respondent asked P.W.1 whether he has brought the amount which was earlier agreed. P.W.1 told him that he has brought Rs.400/-, on which the respondent brought Form No.4 and placed his signature on it which was handed over to P.W.1. Thereafter, P.W.1 handed over the amount to the respondent. On giving signal to the Anti Corruption Officials, they reached the room where the respondent was sitting. P.W.1 further deposed that accused took out the amount from drawer of the table. After completing the formalities and preparation of panchnama, the accused was arrested.

11. P.W.1 was cross-examined, and it was tried to bring on record that his statement was recorded under Section 161 after two months. It was also admitted that after taking out the amount from the drawer, the respondent was asked to dip his fingers in the solution, which he did.

12. Another material witness P.W.3 – Raghunath Ukey, who was a panch, was declared hostile. His deposition in contradiction with what was deposed by P.W.1. In the initial part of his deposition, he has stated that there was no demand. He has also contradicted on the

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point where the bribe amount was kept, as was deposed by P.W.5 and P.W.6. Witness P.W.2 deposed that the amount was kept in pocket by the respondent. He was cross-examined at length by the learned A.P.P., but, nothing was brought on record. It has further come in his evidence that at the relevant time there was load shedding, and therefore, there was power outage. This witness in his deposition does not speak about demand of bribe amount. Even though he was declared as hostile, and was cross-examined by the learned A.P.P. and same suggestions were put to him, still he maintained that there was no demand from the respondent/accused.

So far as P.W.4 - Shobharam Barsagade is concerned, though he supported the case of the prosecution, but, his presence is doubtful for the reason that he has not mentioned about the purpose of offering bribe amount and how that amount was accepted. It is further to be noted that even he failed to mention about the cheque amount which was received by him towards acquisition of land and how much land was acquired. He further failed to depose that he has not heard the talks between P.W.1 and respondent in respect of

putting seal and signature on Form No.4. Further when his evidence is to be compared with the evidence of P.W.7, it goes to show that no verification on Form No.4 was required by the Talathi before sending the list to the Tahsildar and the list can be produced/filed directly before the Tahsildar. Considering this admission by P.W.7, it can be gathered that this witness is a planted witness and no reliance can be placed on his evidence and the same is required to be discarded.

13. As already discussed above, P.W.1 deposed that the amount was recovered from the drawer, whereas, as per the deposition of P.W.2, the same was recovered from the pocket of the respondent. Whereas P.W.8, who is the investigating officer, states that recovery of bribe amount was from drawer of the table. Therefore, after considering the entire evidence, there are several contradictions, so far as recovery of bribe amount, as to whether the bribe amount was recovered from pocket of respondent, or the same was recovered from drawer of the table.

14. After perusal of the evidence of material witnesses i.e.

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P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 it appears that the prosecution has failed to prove the demand itself. Even on the point of demand there is variance in the depositions of P.W.1 and P.W.2. On one hand P.W.1 deposed about demand of amount before putting signature, however, deposition of P.W.2 is silent about the said demand. On one hand deposition of P.W.1 goes to show that respondent asked him whether he brought the amount and accordingly, told him that he has brought Rs.400/- and after that respondent brought Form no.4 and placed his signature on it and thereafter P.W.1 handed over the bribe amount. He further deposed that he sat outside in the verandah as the office was crowded. On the other hand, P.W.2 has not stated about this demand and acceptance, however, he has deposed that the respondent has put seal and signature on the list and the same was handed over to the complainant.

15. It is very interesting to note that it has come in the deposition of P.W.1 that after the officers of the ACB entered the room, he went and sat outside in the verandah and while deposing he

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has mentioned everything that has happened in the room. In such circumstances, when P.W.1 was sitting outside the room, the question remains unanswered as to how he was aware of preparation of solution, asking the accused to dip his right hand fingers in the solution, the change of colour of water, sealing and seizing of water by the officers. The entire procedure is being narrated as he was present in the room, and therefore, his evidence creates a doubt, therefore it cannot be believed.

16. After going through the entire evidence on record and perusing the judgment and order passed by the learned Special Judge, I see no reason to interfere with the said findings recorded therein. The prosecution has utterly failed to prove the factum of demand and recovery, and accordingly, there is no merit in the appeal, the same is thus dismissed.

JUDGE