



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

CRIMINAL APPEAL NO. 187 OF 2012

Jagan S/o Prabhakar Gawai
Aged about 53 years, Occ. Service,
R/o Deshpande Lay Out, Krida Sankul Road,
Buldhana, District Buldhana

... Appellant.

// VERSUS //

State of Maharashtra,
through Deputy Superintendent of Police,
Anti Corruption Bureau, Buldhana, District
Buldhana

... Respondent

Shri Avinash Gupta, Senior Advocate assisted by Shri A.A.Gupta, Advocate for the appellant.

Ms. Sonia Thakur, AGP for the respondent nos. 1 and 2.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 3rd November, 2025.

Pronounced on : 17th November, 2025.

JUDGMENT

The appellant has preferred the present appeal being aggrieved by the judgment and order dated 07.04.2012 passed by the learned Special Judge, Buldhana, in Special (A.C.P.) Case No. 3 of 2006, whereby the appellant was convicted for the offences punishable under Section 7 and Section 13(2) of the *Prevention of Corruption Act, 1988* (hereinafter referred to as “the PC Act”).

By the said judgment, the learned Special Judge sentenced the appellant to suffer rigorous imprisonment for a period of six months and to pay a fine of ₹600/-, in

default of payment of fine to suffer rigorous imprisonment for one month, for the offence punishable under Section 7 of the PC Act.

The appellant was further convicted for the offence punishable under Section 13(2) of the PC Act and sentenced to suffer rigorous imprisonment for one year and to pay a fine of ₹600/-, in default of payment of fine to suffer rigorous imprisonment for one month.

Both the substantive sentences were directed to run concurrently.

2. The prosecution case, in brief, is as follows:

The complainant, Shri Santosh Ramrao Kute, lodged a complaint with the Anti-Corruption Bureau (ACB), Buldhana, alleging that the appellant/accused, who was serving as a Clerk in the Irrigation Department, Division Office, Buldhana, had demanded illegal gratification for processing the Leave Travel Concession (LTC) bill of the complainant's father, Shri Ramrao Kute, a retired employee of the same department.

It is the case of the prosecution that the complainant's father had submitted his LTC bill to the Head Office, Irrigation Department, Buldhana, after obtaining the necessary recommendations from the Engineer of Jalgaon Jamod Office and the Assistant Engineer of Khamgaon Sub-Division Office. The Treasury Office, Buldhana, had raised certain objections in respect of the said bill. The

appellant/accused, who was entrusted with the duty of sanctioning and forwarding such bills, allegedly demanded a bribe of ₹300/- for clearing the said objections. Pursuant thereto, in October 2005, the complainant met the appellant, who reiterated the demand. The complainant accordingly paid ₹300/- to Gawai. Thereafter, on 07.11.2005, when the complainant again met the appellant regarding the pending bill, the appellant demanded an additional ₹100/-, which the complainant paid. The appellant assured that the bill would be processed by 14.11.2005.

However, as the work was not completed, the complainant contacted the appellant on 17.11.2005 over the phone, when the appellant allegedly informed him that the Treasury Department had raised further objections and that an amount was required to be deposited. The appellant then demanded another ₹200/- to clear the leave travel concession bill of his father amounting to Rs.5,790/- and asked the complainant to meet him the next day.

3. Unwilling to pay further bribe, the complainant approached the ACB Office, Buldhana, on 18.11.2005 and lodged a written report (Exhibit 8) before the Deputy Superintendent of Police. After verifying the complaint in the presence of panch witnesses, a pre-trap panchanama (Exhibit 10) was drawn. Two currency notes of ₹100/- each, bearing serial numbers 4 PF/964773 (Exh.12) and 7 CW 109784 (Exh.11), were treated with anthracene powder and handed to the complainant for use in the trap.

Thereafter, the raiding party proceeded towards the Irrigation Office. The complainant and the shadow witness (P.W.2 Sudhakar Jadhav) entered the office and met the appellant. The appellant took out the relevant file, showed the complainant a chit containing treasury objections (Exh.14), and suggested that they go out for tea. At “Sunil Tea Stall”, located near the office, the appellant reiterated his demand for ₹200/- to remove the objections. The complainant then handed over the tainted currency notes to the appellant, who accepted them in his right hand and kept them in his right back pant pocket.

On receiving the pre-determined signal from the complainant, the raiding party rushed to the spot and apprehended the appellant. The anthracene test conducted under ultraviolet light, showed traces of powder on the appellant’s right hand and pant pocket. The tainted currency notes were recovered from his possession under the trap panchanama.

Shri Jadhav, the Investigating Officer, thereafter registered the offence on the basis of a written report (Exhibit 28). Consequently, Crime No. 3132 of 2005 was registered for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the *PC Act* against the appellant.

4. During the course of investigation, the Investigating Officer issued a letter (Exhibit 26) to the Tahsildar, pursuant to which a spot map (Exhibit 20) was prepared and forwarded to the ACB Office. The Investigating Officer collected necessary documents and information pertaining to the appellant/accused, recorded

the statements of relevant witnesses, and obtained the requisite sanction order (Exhibit 33) for prosecution of the accused from the competent authority, namely, P.W.4 – Shri Sanjay Devidas Kulkarni, Superintending Engineer, Akola Irrigation Circle, Akola. Upon completion of investigation, a charge-sheet was filed before the learned Special Court.

5. The learned Special Judge framed a Charge vide Exhibit 3 against the appellant for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the *PC Act*. The appellant pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined in all four witnesses, namely –

1. P.W.1 – Santosh Ramrao Kute, the complainant (Exhibit 7);
2. P.W.2 – Sudhakar Tryambak Jadhav, the shadow witness (Exhibit 9);
3. P.W.3 – Himmatrao Mahadu Jadhav, the Investigating Officer (Exhibit 23);
and
4. P.W.4 – Sanjay Devidas Kulkarni, the sanctioning authority (Exhibit 56).

In defence, the appellant examined D.W.1 – Rameshwar Dashratj Gangurade (Exhibit 41).

6. Upon appreciation of the oral and documentary evidence on record, the learned Special Judge held that the prosecution had established that the appellant, being a public servant, had accepted a sum of ₹200/- from the complainant other than his legal remuneration, as a motive or reward for processing and encashing the Leave Travel Concession bill of the complainant's father. The learned Court further held that the appellant had abused his position as a public servant and, by corrupt or

illegal means, obtained pecuniary advantage for himself. Accordingly, the learned Special Judge concluded that the prosecution had proved the guilt of the appellant for the offences punishable under Section 7 and Section 13(2) of the *PC Act*, and convicted and sentenced him as stated hereinabove.

7. Heard Senior Counsel Shri Gupta appearing for the appellant/accused and Ms. Sonali Thakur, learned A.P.P. for the respondent-State.

8. Learned Senior Counsel, Shri Gupta, appearing for the appellant, made following submissions:

8.1. It is contended that the alleged earlier demands of ₹300/- and ₹100/- are uncorroborated and unsupported by any independent or documentary evidence. The alleged subsequent demand made on a phone call was never verified or substantiated during investigation. The Investigating Officer failed to collect any call records or other corroborative material to prove such demand. In the absence of proof of demand, the recovery of tainted money alone cannot sustain a conviction under the provisions of the *PC Act*.

8.2. The learned Senior Counsel submitted that even the alleged demand and acceptance at the time of the trap have not been satisfactorily proved. The narration of events by the complainant is inconsistent and lacks corroboration from the shadow witness. There are material contradictions and omissions between their testimonies, which go to the root of the prosecution case and render it unreliable.

8.3 The second panchanama, which is a contemporaneous document, has been relied upon by the prosecution as corroborative evidence. However, the same is not substantive evidence and cannot substitute oral testimony. The recitals in the said panchanama are inconsistent with the depositions of the complainant and the shadow witness, thereby casting serious doubt on the genuineness and timing of its preparation.

8.4 It is further urged that several persons were present at the tea stall at the relevant time, yet none were examined by the Investigating Officer. This omission raises serious doubts regarding the authenticity of the alleged demand and acceptance.

8.5 It is submitted that the sanction order (Exh.33) was accorded mechanically without proper application of mind. The sanctioning authority admitted in cross-examination that he was unaware of the detailed facts and record of the case while granting sanction, rendering the sanction invalid in law.

In support of his submissions, the learned Senior Counsel placed reliance upon the following judgments:

1. *Panalal Damodar Rathi v. State of Maharashtra*, (1979) 4 SCC 526;
2. *State of Punjab v. Madan Mohan Lal Verma*, (2013) 14 SCC 153;
3. *Yadav Pandharinath Patil v. State of Maharashtra*, Criminal Appeal No. 91 of 2016, decided on 29.09.2025;
4. *Babarao s/o Shyamrao Vitalkar v. State of Maharashtra*, Criminal Appeal No. 202 of 2005, decided on 30.08.2023; and

5. *Ramrao Satyanarayan Ramod v. State of Maharashtra*, 2008 ALL MR (Cri) 2807.

On these premises, it was contended that the essential ingredients of demand and acceptance, being *sine qua non* for conviction under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, have not been proved beyond reasonable doubt, and therefore the appellant is entitled to acquittal.

9. Per contra, Ms. Thakur, learned Additional Public Prosecutor, supported the findings recorded by the learned Special Judge and submitted that the prosecution has proved its case beyond reasonable doubt by making submissions as below:

9.1 It is argued that the evidence of the complainant (P.W.1) and the shadow witness (P.W.2) clearly establishes that the appellant demanded and accepted ₹200/- as illegal gratification. The tainted amount was recovered from the possession of the appellant immediately after the trap, and the anthracene test confirmed its presence on his hands and pocket, conclusively proving acceptance.

9.2 Minor discrepancies or omissions in the testimony of witnesses do not affect the core of the prosecution case. Both key witnesses have consistently deposed regarding the sequence of events leading to the trap, and their evidence has remained unshaken in cross-examination.

9.3 The trap was conducted in accordance with established procedure. The demonstration of anthracene powder, preparation of pre-trap and post-trap panchanamas, recovery of tainted money, and sealing of samples were all done in the presence of independent panch witnesses. The defence suggestion that the money

was forcibly thrust into the appellant's hand is not supported by any evidence and is contrary to human conduct.

9.4. The sanction order was issued after due consideration of all material facts placed before the competent authority. The sanctioning authority (P.W.4) has deposed that he perused the relevant documents and applied his mind before according sanction. Hence, the contention of mechanical sanction is baseless.

In view of the above, it is submitted that the prosecution has successfully proved the twin requirements of demand and acceptance beyond reasonable doubt. The learned Special Judge has rightly convicted the appellant, and no interference is warranted with the impugned judgment.

10. Before adverting further the evidence led by the prosecution in support of its case as well as the defense evidence needs to be considered.

11. P.W.1 Santosh Ramrao Kute (Complainant) deposed that his father's Leave Travel Concession bill was pending in the Irrigation Office, Buldana, and that the accused, a Junior Clerk, demanded ₹200 for removing Treasury objections and forwarding the bill for payment. On the earlier occasions as per the demand of accused the complainant paid him ₹300 and ₹100. Again ₹200 was demanded for clearing the pending bill of LTC. He claimed that being unwilling to pay a bribe, he approached the Anti-Corruption Bureau, Buldana, and lodged a written complaint (Exh. 8). After pre-trap formalities were explained and anthracene powder applied to two ₹100 notes, he and Panch No. 1 proceeded to meet the accused.

According to him, the accused accepted ₹200 with his right hand at Sunil Tea Center and kept it in the back pocket of his trousers, whereupon the complainant gave the predetermined signal. The tainted notes were thereafter recovered by the raiding party.

In the cross-examination the complainant could not clearly state when and where the first demand was made. He gave differing versions in his oral testimony and written complaint as to whether the demand occurred in the office or outside at the tea stall. He admitted that Treasury objections were indeed raised and that the accused had informed him that such objections needed to be removed for passing the bill. This admission supports the defence version that the amount, if given, was towards meeting official expenses, not as personal gratification. His behaviour of handing over the money without any conversation about work seems unnatural. Such conduct lacks natural spontaneity and indicates a pre-arranged trap rather than a genuine demand. The alleged demand and acceptance took place in a public tea stall, yet no independent person present there was examined to support his testimony. P.W.2 did not corroborate his statement regarding the discussion of work or the sequence of events, and there are material differences regarding seating arrangements and timing of the payment.

12. After the Evaluation of evidence of P.W.1, it is noted that the testimony of P.W.1, though narrating the alleged demand and acceptance, is riddled with inconsistencies regarding the place, time, and purpose of the alleged transaction. His

own admissions about the Treasury objections and the official process of bill clearance introduce an alternative explanation consistent with innocence of the accused. In the absence of corroboration from independent or reliable witnesses, the evidence of P.W.1 cannot be treated as free from doubt.

13. P.W.2 Sudhakar Jadhav (Shadow Witness / Panch No. 1), a clerk deputed from the Tahsildar's office, stated that he accompanied the complainant to the Irrigation Office as per instructions of the A.C.B. He confirmed the pre-trap demonstration and deposed that he and the complainant met the accused, who thereafter accompanied them to Sunil Tea Center. He claimed that while taking tea, the complainant handed over two ₹100 notes to the accused, who accepted them and kept them in his back pocket. After the complainant gave the signal, the raiding party arrived, and the tainted currency was recovered.

In cross-examination P.W.2 admitted that in the office, no discussion took place regarding any demand or the complainant's work before proceeding to the tea stall. This admission destroys the prosecution's claim that the accused demanded money immediately before acceptance. P.W.2's version about the seating arrangement and number of chairs occupied at the tea stall contradicts the I.O.'s notes and the complainant's statement. He did not state in his prior statement that artificial darkness was created in the office during the ultraviolet test, or that the light was later switched on details introduced for the first time in court, diminishing his reliability.

P.W.2 admitted that the place of occurrence was a public area, yet no neutral witness was joined in the proceedings despite the feasibility of doing so.

14. The testimony of P.W.2 fails to corroborate the complainant on the vital aspect of demand. His own admission that no conversation regarding work or demand took place in his presence in the office, and the discrepancies in his narration of events at the tea stall, render his evidence uncertain and unreliable. The omissions in his earlier statement further impair his credibility. In consequence, the evidence of P.W.2 does not furnish the necessary independent assurance to sustain the uncorroborated version of P.W.1.

15. When read conjointly, the depositions of P.W.1 and P.W.2 do not satisfactorily prove the essential ingredients of demand and acceptance of illegal gratification. The inconsistencies between their versions, the absence of independent corroboration, and the admitted existence of Treasury objections give rise to grave doubt about the prosecution story. The mere recovery of tainted notes, unaccompanied by credible proof of demand, cannot establish guilt under Sections 7 and 13(1)(d) of the Prevention of Corruption Act.

16. P.W.3 Himmatrao Mahadu Jadhav (Dy. S.P., ACB, Buldana) Investigating officer, the then Deputy Superintendent of Police, A.C.B., Buldana, deposed that on 18.11.2005 he received the complaint of P.W.1 Santosh Kute (Exh.8) and requisitioned two government clerks as panch witnesses. He explained the pre-trap

demonstration using anthracene powder, prepared the first panchnama (Exh.10), and arranged the trap. He stated that after the predetermined signal was received, the raiding party rushed to Sunil Tea Center, where the complainant identified the accused Jagan Gawai as the person who accepted ₹200. P.W.3 claimed to have verified the tainted notes, conducted the ultraviolet test showing green fluorescence on the accused right hand and pant pocket, seized the articles under Exhs. 13 and 18, and recorded the memorandum of accused (Exh.19). He thereafter obtained sanction and filed the charge sheet.

In cross-examination the P.W.3 I.O. admitted that he had not ascertained when or where the complainant first met the accused or made the alleged demand, nor whether any independent witness was present during such meeting. This omission undermines the prosecution foundation that a specific prior demand preceded the trap. He conceded he did not verify the alleged phone call of 17.11.2005 through call records or inquire into any documentary proof. Such failure weakens the corroboration of alleged pre-trap communication between complainant and accused. He admitted that though the trap occurred at a public tea stall on a busy road with shops and schools nearby, no customer, shopkeeper, or employee from the Irrigation Office was examined to confirm the alleged demand or acceptance. This omission is a serious lapse, since the place of occurrence was accessible and presence of neutral witnesses was possible. He further admitted that the doors and windows of the Deputy Engineer's room were opened after testing the hands under ultraviolet

light, contrary to the panchnama that stated artificial darkness was created and the fingers of Panch No.2 (who took out the notes from the accused pocket) were not tested for anthracene traces. Such procedural irregularities cast doubt on the integrity of the forensic corroboration. The I.O. accepted that the seizure memo (Exh.13) was prepared prior to Panchnama No.2 (Exh.21), but simultaneously stated that both were written at the same time. This internal inconsistency makes the record-keeping of the trap unreliable. He admitted that on the day of trap, other employees were present in the accused room but he did not record their statements. Non-examination of such natural witnesses deprives the Court of potentially independent evidence. P.W.3 candidly admitted that Treasury Office had raised objections on the bill and that the responsibility to remove those objections rested with the Head of Office, not the accused. This admission directly supports the defence case that the accused had no authority to do the favour alleged and, therefore, no motive to demand illegal gratification. He admitted that in the accused's oral and written statement, it was disclosed that the money was given to be passed to Treasury officials, but the I.O. did not investigate that aspect or examine Treasury staff.

17. The testimony of P.W.3, the Investigating Officer, does not inspire confidence due to multiple lapses and contradictions. His admissions reveal that no independent verification was made of the alleged demand, no effort was taken to examine neutral witnesses from the tea stall or the Irrigation Office, and procedural irregularities occurred during the ultra violet test. The failure to verify the alleged telephone

conversation, coupled with his admission that the accused was not competent to remove Treasury objections, materially affects the prosecution theory of motive and demand. These omissions and inconsistencies are not mere irregularities but go to the root of the prosecution case, rendering the trap procedure doubtful and incomplete. Consequently, the evidence of the Investigating Officer, instead of strengthening the prosecution case, exposes serious infirmities which, when read with the discrepancies in the testimonies of P.W.1 and P.W.2, create reasonable doubt about the genuineness of the alleged demand and acceptance of bribe.

18. P.W.4 Sanjay Devidas Kulkarni, who was then Superintending Engineer, Akola Irrigation Circle, deposed that the Buldana Irrigation Division fell within his jurisdiction and that he was the appointing and removing authority of the accused, a Junior Clerk. He stated that upon receiving the proposal from the A.C.B. office, he perused the relevant papers and, being satisfied, accorded sanction to prosecute the accused for the alleged offence of accepting bribe. The sanction order (Exh.33) and forwarding letter (Exh.32) bear his signature and office seal.

In cross-examination P.W.4 categorically admitted that there was no documentary evidence before him except the bare statement of the complainant alleging payment of ₹100 and ₹300 to the accused. He also admitted that he did not have any document from the Telephone Department or other independent material to verify the alleged demand or conversation referred to in the sanction order. He stated that he was unaware of the Treasury Office objections to the T.A. bill and did not know

who in the Irrigation Office was competent to remove such objections. This shows that the sanctioning authority lacked knowledge of the context in which the accused was allegedly involved, an essential factor for forming a fair opinion. P.W.4 admitted that he had seen the papers only in 2006 when the proposal for sanction was first sent. The record reveals no note, query, or discussion by him indicating any independent consideration or evaluation of evidence. Though he denied according sanction mechanically, his admissions that he did not verify or analyze crucial material such as the accused immediate explanation, Treasury objections, or lack of independent corroboration clearly demonstrate absence of true application of mind. The witness admitted that the documents forwarded to him included the explanation of the accused, yet he failed to consider it before granting sanction. This omission suggests that the sanction was granted on a predetermined format prepared by the Investigating Officer, without any independent reasoning by the competent authority.

19. The evidence of P.W.4 – the sanctioning authority – reveals serious infirmities in the process of granting sanction. His own admissions show that the sanction was accorded without any corroborative material except the bare allegations of the complainant. He was unaware of the relevant facts concerning the Treasury objections or the role of the accused therein. The record further discloses that the accused immediate explanation, though part of the papers, was not considered before issuance of sanction. These circumstances unmistakably indicate that the sanction

was granted in a routine and mechanical manner, relying solely upon the papers forwarded by the investigating agency, without due application of independent mind by the competent authority. Such a sanction, though formally valid, cannot be said to comply with the mandatory requirement under Section 19(1)(c) of the *PC Act*. Consequently, the sanction in the present case does not lend credible support to the prosecution case.”

20. The defense examined one witness namely Rameshwar Gangurade (Peon, Irrigation Department, Buldana). D.W.1 deposed that he was acquainted with the accused, having worked with him in the Irrigation Department, Buldana since 1990, maintaining cordial and friendly relations. On the day of the alleged incident, he had gone to the Sunil Tea Stall adjacent to the office for tea, where he observed a person approach the accused with some money. According to D.W.1, the person forcibly handed over the amount to the accused, instructing him to give it to the Treasury employee to clear the bill, as the complainant did not know the Treasury official. The accused refused to accept the money initially. Shortly thereafter, the accused was taken into custody by the Anti-Corruption Bureau. In cross-examination, D.W.1 stated that he had not previously disclosed this incident to anyone, nor had he given any statement immediately after the arrest. He denied that his testimony was false or influenced by friendship with the accused. He confirmed that the incident he described took place exactly as deposed and that he observed it from a distance of 4–5 feet.

21. D.W.1's evidence suggests that the accused did not solicit or demand the money and that the transfer of money was forced upon him, consistent with the defense plea that the accused was not a willing participant in any bribery transaction. D.W.1's testimony, however, contained significant inconsistencies. He admitted during cross-examination that he had a cordial and long-standing relationship with the accused spanning over a decade. Moreover, he did not report the incident immediately to any authority, nor did he provide a contemporaneous statement to the Anti-Corruption Bureau or police, which casts serious doubt on the reliability and credibility of his evidence. Hence the evidence of the defense witness is of no assistance to the appellant.

22. The Court notes that P.W.1, the complainant, is the sole witness on whom the prosecution primarily relies. His own admissions during cross-examination indicate that the accused initially refused to accept the money, which suggests the absence of *mens rea*. No independent witness has corroborated the prosecution's version of events.

23. Further, the evidence of P.W.2 and the documentary material on record indicate that the accused was at no point seen soliciting or receiving any gratification. The incident at the tea stall, as narrated by P.W.1, involved only a brief conversation at a distance and does not conclusively demonstrate that the money was intended for the accused's personal benefit. Taken together, the evidence on record does not satisfactorily establish the essential ingredients of an offence under Section 7.

24. I have carefully and minutely examined the entire oral and documentary evidence on record, the depositions of prosecution and defence witnesses, and the submissions advanced by both sides. The prosecution case primarily rests on the testimonies of P.W.1 (complainant) and P.W.2 (shadow witness), supported by the trap proceedings conducted by P.W.3 (Investigating Officer). However, a cumulative reading of their evidence reveals material inconsistencies and omissions which go to the root of the matter.

25. The foremost requirement under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988, is proof of a demand and voluntary acceptance of illegal gratification as a motive or reward for doing or forbearing to do an official act. Mere recovery of tainted currency notes from the possession of an accused, unaccompanied by proof of a prior demand, is insufficient to sustain conviction.

26. In the present case, the complainant (P.W.1) has failed to specify with certainty the date, place, and manner of the alleged demand. His oral testimony contradicts his written complaint as to whether the demand was made in the office or at the tea stall. His own admission that Treasury objections were pending and that the accused had only informed him of the need to remove such objections lends credence to the defence that the amount, if paid, was not for personal gain but towards official

expenses. Furthermore, his conduct of handing over the money without any conversation about work appears unnatural and indicative of a pre-arranged trap rather than a spontaneous act of bribery.

27. The evidence of the shadow witness (P.W.2) fails to corroborate the complainant on the vital aspect of demand. His admission that no discussion about work or demand took place in the office before they proceeded to the tea stall completely undermines the prosecution's theory that the accused made a demand immediately prior to the acceptance. Discrepancies regarding seating arrangements, sequence of events, and the omission of certain facts in his prior statement to the police render his testimony unreliable. The failure to examine any independent witness from the public tea stall, though available, is a significant omission that erodes the credibility of the prosecution story.

28. The evidence of the Investigating Officer (P.W.3) further exposes procedural lapses and investigative infirmities. He admitted that he did not verify the alleged telephonic conversation preceding the trap, nor did he record statements of any neutral witnesses from the tea stall or the office. The ultraviolet test was conducted in a manner contrary to what was recorded in the panchnama, and the fingers of the panch witness who recovered the notes were not tested for anthracene traces. His candid admission that the accused had no authority to remove Treasury objections, and that such responsibility lay with the Head of Office, strikes at the very root of the

alleged motive. These admissions and irregularities cumulatively render the trap procedure doubtful and the entire investigation unreliable.

29. Equally fatal to the prosecution case is the evidence of the sanctioning authority (P.W.4). He admitted in cross-examination that the sanction order was accorded solely on the basis of the papers forwarded by the Investigating Officer and without verification of independent materials such as Treasury objections or the accused explanation. He was unaware of the official duties of the accused and the circumstances surrounding the alleged demand. His testimony unmistakably reveals that the sanction was granted mechanically and without due application of mind, thereby not satisfying the mandatory requirement of Section 19(1)(c) of the *PC Act*.

30. Reliance is placed on the principles laid down in *N. Vijayakumar v. State of Tamil Nadu*, (2021) 3 SCC 687, wherein the Hon'ble Supreme Court has consistently held that proof of demand of illegal gratification is a *sine qua non* for establishing an offence under Sections 7 and 13(1)(d) of the *PC Act*, and that mere recovery of tainted notes or acceptance without proof of demand cannot form the basis of conviction. Further, the sanction to prosecute must reflect conscious and independent application of mind by the competent authority; a mechanical sanction vitiates the prosecution. The relevant paragraphs 26 and 27 are reproduced as under.

26. *It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in the case of C.M. Girish Babu v. CBI.*

Cochin, High Court of Kerala (2009) 3 SCC 779 and in the case of B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7,13(1) (d)(i)and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

27. *The relevant paragraphs 7, 8 and 9 of the judgment in the case of B. Jayaraj (supra) read as under :*

“7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI[(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1].

8. *In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time*

when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under [Sections 13\(1\)\(d\)\(i\)](#) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. *Insofar as the presumption permissible to be drawn under [Section 20](#) of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under [Sections 13\(1\)\(d\)\(i\)](#) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under [Section 20](#) of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand of 2020 As the same is lacking in the present case the primary facts on the basis of*

which the legal presumption under [Section 20](#) can be drawn are wholly absent.”

The above said view taken by this Court, fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a “possible view” as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of [Prevention of Corruption Act](#), courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of [Prevention of Corruption Act](#), it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.”

31. Taking into consideration the law laid down by the Hon’ble Supreme Court as mentioned above and the facts of the present case, the prosecution has failed to establish beyond reasonable doubt that the accused demanded, accepted, or agreed to accept any gratification as a motive or reward for any official act. The inconsistencies in the evidence of material witnesses, the absence of independent corroboration, the doubtful trap procedure, and the invalid sanction order together render the prosecution case unsafe for conviction.

In view of the foregoing analysis and in light of the settled legal principles, I hold that the prosecution has failed to prove the essential ingredients of demand and acceptance of illegal gratification under Sections 7 and 13(1)(d) of the PC Act. The sanction order is found to be mechanical and invalid for want of due application of mind. The benefit of reasonable doubt must, therefore, enure to the accused.

Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant vide judgment and order dated 07-04-2012 passed by the learned Special Judge, Buldhana in Special (A.C.P.) Case No. 3 of 2006, are hereby set aside.

The appellant is acquitted of all charges under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. His bail bonds, if any, stand cancelled, and the fine amount, if deposited, shall be refunded to him.

[NIVEDITA P. MEHTA, J.]