



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

CRIMINAL APPEAL NO. 306 OF 2017

Mr. Sopan s/o Maroti Kamble,
Aged about 60 years, Occ. - Retired,
R/o Near Sai Baba Mandir Ward,
Nagpur Road, Chandrapur.

.... **APPELLANT**

VERSUS

State of Maharashtra,
through Deputy Superintendent (ACB),
Gadchiroli.

.... **RESPONDENT**

Mr. R.P. Durge, Counsel for the appellant,
Mr. S.S. Hulke, Addl.P.P. for the respondent.

CORAM : NIVEDITA P. MEHTA, J.

DATE OF RESERVING THE JUDGMENT : 05-12-2025

DATE OF PRONOUNCING THE JUDGMENT: 22-12-2025

JUDGMENT :

The appellant has preferred the present appeal against the judgment and order dated 13.06.2017 passed by the learned Special Judge, Chandrapur, in Special (ACB) Case No. 1/2005, whereby the appellant is convicted for the offences punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”) and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.10,000/-, in default to suffer simple imprisonment for three months; and further convicted for offence under Section 13(1) (d) read with Section 13 (2) of the PC Act and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs. 5000/-, in default to suffer rigorous imprisonment for one month. The learned trial Court directed both sentences to run concurrently.

2. The prosecution's case in brief is as follows :

2.1 The complainant, Mr. Namdeo Khatke had sold his pair of bullocks to one Maroti Narwate for ₹7,000/, which was assured to be paid within fifteen days. When the complainant visited Maroti's house after the stipulated period, he could not find one black bullock. On enquiry, he found that one black bullock had already been sold at the Jainur weekly market for ₹4,000/-. The complainant then demanded the amount and Maroti assured him to repay within fifteen days. The complainant had no faith in Maroti and therefore brought back bullock of white colour with him. Despite repeated demands, Maroti refused to pay and even quarrelled with him. After nearly two and a half years, when Maroti again purchased a pair of bullocks from another villager, the complainant detained those bullocks until his earlier dues of ₹4,000/- were paid. At this stage, Maroti approached the appellant, who was then serving as a Police Station Officer at Bhari Police Station, and returned with the appellant to the complainant's house. The appellant instructed the complainant to release the detained bullocks and to lodge a formal report, assuring the complainant of appropriate action.

2.2 Acting on this instruction, the complainant lodged a written report at Bhari Police Station on 12.01.2004 in the presence of Shamrao Pole. It is the prosecution's case that immediately thereafter, the appellant demanded ₹500/- from the complainant to initiate prompt action on his grievance. When the complainant suggested that the amount be adjusted from the money to be recovered, the appellant refused and insisted on receiving ₹500/- directly, to be paid on 17.01.2004.

2.3 Unwilling to pay an illegal gratification, the complainant approached the Anti-Corruption Bureau, Chandrapur, on 16.01.2004 and lodged a complaint. ACB conducted the usual pre-trap procedure, applied phenolphthalein powder to five notes of Rs.100/- denomination, and instructed the complainant to hand over the money only if the appellant made a demand, with a pre-arranged signal to be given thereafter. On the morning of 17.01.2004, the complainant, accompanied by panch witness Rajesh Belkhule, met the appellant near a shop in Mokashiguda. After a brief interaction, the appellant led them to the Bhari Police Station and into his chamber. Inside, the appellant enquired whether the complainant had brought the money, demanded the agreed amount, and reiterated that the matter would be resolved swiftly if the money was paid.

2.4 On this demand, the complainant took out the tainted notes and handed them to the appellant. The appellant accepted the money, counted the notes with his right hand, momentarily questioned the presence of dust, and placed the money in the pocket of his shirt. When the three of them stepped out of the police station, on crossing the compound wall, the complainant gave the predetermined signal, whereupon the raiding party rushed in. Upon seeing the raiding party approach, the appellant immediately threw the tainted notes onto the ground, however, he was apprehended on the spot. His hands were tested with phenolphthalein test, which revealed violet colouration, indicating contact with the tainted notes. Similar tests conducted on the complainant and on the tainted notes also produced violet reactions. It was under this factual matrix that the legal machinery was set into motion.

3. In support of its case, the prosecution examined six witnesses, namely PW No. 1 Namdeo Tukaram Khatke, complainant (Exh.11), PW No. 2 Rajesh Dnyaneshwar Belkhule, Panch Witness (Exh.17), PW No.3 Ajay Mahadeo Thombare, Panch Witness (Exh.30), PW No. 4 Shamrao Govindrao Pole (Exh. 33), PW No. 5 Pankaj Rajkumar Gupta, Sanctioning Authority (Exh.34), PW No. 6 Jabbar Imam Khan, Investigating Officer (Exh 40).

4. Besides the oral evidence, the prosecution further relied upon the Charge framed against appellant (Exh. 7); Complaint lodged by Namdeo Khatke (Exh. 13); list of articles found during personal search of complainant (Exh.14); report lodged by Tukaram Khatke (Exh.15); panchnama No.1 (Exh.18); seizure memo (Exh. 21 - 22); list of articles found during personal search of the appellant (Exh.23); list of articles found during personal search of Namdeo Khatke (Exh.24); sanction order (Exh.35); complaint lodged by Jabbar Imam Khan (Exh.45); First Information Report (Exh.46); Chemical Analysis Report (Exh.50); extract of Station Diary of Sub-Police Station (Exh.53); Statement of appellant under Section 313 of Cr.P.C. (Exh.56).

5. Upon appreciation of the oral and documentary evidence on record, the learned Special Judge held that the prosecution evidence, which is cogent, consistent, reliable and sufficient, establishes that the appellant accepted illegal gratification of Rs. 500/- from the complainant for taking action on his report dated 12.1.2004. The demand made itself was illegal. The acceptance of gratification was other than legal remuneration as a motive or reward for showing favour in the exercise of his official function. The learned trial Court noted that the prosecution

has proved that the appellant accepted or obtained or agreed to accept any gratification other than legal remuneration from the complainant. The learned trial Court, therefore, convicted the appellant against which the present appeal is preferred.

6. Heard learned Counsel Mr. R.P. Durge for the appellant and Mr. S.S. Hulke, learned Additional Public Prosecutor for the respondent/State.

7. Learned Counsel for the appellant submits that the prosecution has failed to establish the foundational requirement of demand, which is the *sine qua non* for conviction under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. It was contended that the complainant (PW-1) is a highly interested witness who harboured prior animosity against the appellant because the appellant had initiated proceedings under the Medical Practitioners Act against his son-in-law shortly prior to the trap. According to the defence, such a background supplied a strong motive for false implication. It was further urged that PW-2, the shadow panch, did not narrate the alleged demand in his examination-in-chief and only made certain admissions during cross-examination by the prosecution, which, in the submission of the defence, cannot constitute reliable and substantive evidence. PW-3 admittedly was not a witness to the transaction at all as he remained outside the compound. It was therefore argued that the prosecution is left with no credible, independent witness who heard the alleged conversation constituting a demand.

7.1 The learned Counsel for appellant further argued that the alleged acceptance of money was not voluntary. It was submitted that PW-2 himself admitted that on being apprehended, the appellant stated that the currency was being thrust into his

pocket and that the money was meant for Police Constable Bandu Todase. The conduct of the appellant in immediately throwing the notes on the ground upon seeing the trap party was cited as consistent with a case of forced insertion or planting and not conscious acceptance. Learned Counsel further contended that several procedural irregularities vitiate the trap, both panch witnesses were inexperienced and admitted to lapses of memory. Their signatures were taken on several documents prior to the trap, raising the probability of pre-fabrication. PW-4, who supports the initial demand, is admittedly closely related to the complainant and therefore not independent. The appellant also challenged the validity of the sanction order, arguing that the sanctioning authority failed to indicate the exact source of power or the appointing/removing authority of the PSI, thereby casting doubt on its legal competence. It was lastly contended that mere recovery of tainted currency and positive chemical tests do not establish the offence in the absence of a proven and voluntary demand, and therefore the appellant is entitled to acquittal.

7.2 To fortify his submission, learned Counsel for the appellant relied on the judgment in *Wasudeo s/o Nathuji Ukey vs. The State of Maharashtra* reported in **2024 ALL MR (Cri) 822**.

8. *Per contra*, learned Additional Public Prosecutor submits that :

8.1 The prosecution has proved all essential ingredients beyond reasonable doubt. It was argued that PW-1 gave a consistent account of the demand made by the appellant on 12.01.2004 and reiterated the same demand on 17.01.2004. His testimony was described as natural, detailed, and standing firm in cross-examination. The prosecution asserted that PW-2, though initially reticent,

unequivocally admitted in cross-examination that the appellant enquired whether the money had been brought, and thereafter accepted, counted, and kept the bribe amount in his shirt pocket. These admissions, according to the learned Addl.P.P., amount to substantive evidence and independently corroborate the complainant. It was further urged that PW-3, though not a witness to the exact handing over, corroborated every other material circumstance, including the pre-trap procedures, the signal, the apprehension of the appellant, the recovery of tainted currency, the tallying of serial numbers and the positive phenolphthalein tests on the appellant's hands, pocket, shirt and the currency notes. The prosecution contended that these facts, taken cumulatively, form a complete and unbroken chain pointing to guilt.

8.2 According to the learned Addl.P.P., the defence theory of forced insertion of bribe amount in the pocket of the appellant is inherently improbable and contrary to scientific evidence. It was pointed out that both hands of the appellant tested positive and that his shirt pocket also bore phenolphthalein traces, which cannot occur if the appellant were an involuntary recipient. The prosecution argued that the appellant's conduct of throwing the notes upon seeing the raiding party is not consistent with innocence. The alleged motive of enmity was dismissed as speculative and unsupported by any defence evidence. The learned Addl.P.P. further argued that the sanction order is valid, as PW-5 categorically deposed that he scrutinised the material and applied his mind before issuing the sanction, and that minor technical defects do not vitiate proceedings under Section 19(3) of the PC Act. It was submitted that the prosecution has duly proved demand, acceptance and recovery, and that the presumption under Section 20 of the PC Act stands fully attracted.

9. Before proceeding to the analytical discussion and the ultimate conclusion, a

preliminary evaluation of the prosecution's evidence is warranted.

10. PW-1 (Complainant): PW-1 Namdeo Khatke, aged 59 years, deposed that he knew the appellant, who at the relevant time was serving as a Police Station Officer at Bhari Police Station. The incident occurred about eight years prior to his testimony. PW-1 stated that about 2 and 2 ¼ years prior to the incident, he had sold a pair of bullocks to one Maroti Narwate for consideration of Rs. 7,000/-.

10.1 Maroti had agreed to pay the amount within 15 days. Shamrao Govindrao Pole acted as a mediator. After 15 days, when PW-1 visited Maroti's house, he found only one (white-coloured) bullock and was informed that the other (black-coloured) bullock had been sold for Rs. 4,000/-. PW-1 demanded payment, but Maroti sought further time of fifteen days, whereupon PW-1 took away the remaining white colour bullock due to lack of trust. After about 2 and 2 ¼ years, when Maroti purchased another pair of bullocks from Uttam Mane, PW-1 demanded Rs. 4,000/- from him and detained the newly purchased bullocks. Maroti thereafter approached the appellant, who accompanied him to PW-1's house and directed PW-1 to release the bullocks and lodge a report, which PW-1 did on 12.01.2004. The written report (Exh.12) bears his signature. PW-1 further stated that after lodging the report, the appellant demanded Rs. 500/- to take prompt action, and PW-1 agreed to pay the amount on 17.01.2004. On 16.01.2004, PW-1 approached the ACB, Chandrapur, and lodged a complaint (Exh. 13) against the appellant.

10.2 On the next day at about 6.30 a.m., PW 1 was called in the office of ACB. A trap was arranged in the presence of panch witnesses. Notes of Rs.100/- denomination (five in number) were treated with phenolphthalein powder and kept

in his shirt pocket after pre-trap procedures and panchanama (Exh.14). PW 1 was instructed to give signal after acceptance of bribe. PW 1 deposed that he and panch witness Rajesh Belkhule met the appellant near a shop at Mokashiguda and thereafter proceeded to the police station. Inside the chamber, the appellant enquired whether he had brought the amount and stated that his grievance would be settled early if the amount was paid. PW-1 handed over the tainted money, which the appellant accepted, counted with his right hand, and shaken it and dust was released. Appellant enquired regarding the same and PW 1 replied it to be roadside dust. Appellant folded the notes and kept in his shirt pocket. PW-1 after crossing the compound wall of police station, gave the pre-arranged signal, whereupon the raiding party arrived. Seeing them, the appellant threw the notes on the ground. Two officials caught hold of the appellant. His hands were subjected to phenolphthalein test and the solution turned violet. Similar test was performed on PW-1 and the shirt pocket, which also turned violet. Post-trap panchanama was drawn (Exh. 16) and the tainted currency notes (Article-B) were seized. PW-1 identified the appellant in the Court.

10.3 In cross-examination, PW-1 admitted that no prior complaint or written notice was issued to Maroti regarding recovery of money before 12.01.2004. He stated that he was illiterate and could only sign. He denied suggestions that the appellant was not present when Exh. 12 was lodged, that the demand was made by Constable Bandu in the name of the appellant, or that the appellant refused to take any action against Maroti regarding an old transaction of bullock-cart or asked him to approach a Court for recovery of money. PW-1 also denied that due to fear of a theft case filed by Maroti he released the bullocks. PW-1 admitted that his son-in-

law, Dr. Dhruvat Jammunde, was prosecuted by the appellant under Section 33 of the Medical Practitioners Act and was also arrested in an IPC case on 10.01.2004. He denied the suggestion that due to enmity arising therefrom he falsely implicated the appellant. PW- 1 denied that the money was forcibly inserted in the pocket of the appellant and asserted that the demand and acceptance were voluntary. He denied the defence suggestion that no demand was ever made by the appellant and that the case was fabricated.

11. Deposition of PW-2 (Shadow Panch Witness): PW-2 stated that in January 2004 he was serving as a Clerk in the North Chandrapur Circle, Forest Division. On 16.01.2004, he received an official communication directing him to attend the Anti-Corruption Bureau (ACB), Chandrapur, where he attended around 4.00-4.30 p.m. along with Ajay Thombare (Forest Guard). At the ACB office, the complainant Namdeo Khatke and other officials were present, and PW-2 was introduced to the complainant. PW-2 deposed that he was instructed to report again the following morning, and accordingly appeared at ACB at about 7.00-7.30 a.m. He was informed that the complainant had lodged a complaint regarding demand of 500/- by the appellant, who was a Police Station Officer. The complaint (Exh.13) bears his signature as a panch witness. Demonstration of phenolphthalein test was conducted and five currency notes of 100/- denomination coated with powder were kept in the shirt pocket of the complainant. Instructions regarding signalling after acceptance were given. PW- 2 signed Panchanama (Exh.18). Thereafter, the raiding party proceeded by Jeep to Bhari, reaching around 11.00 a.m., and the vehicle was halted near a hospital/school. PW-2, along with the complainant, proceeded on foot to locate the appellant. They found the appellant in a shop. After brief conversation, the

appellant proceeded to the police station, where they sat in his chamber. The appellant wrote something resembling a report on paper, later seized as Exh.15. PW-2 deposed that after leaving the chamber, the complainant gave a prearranged signal and the trap team arrived. Some currency notes were lying near the compound wall. The appellant was caught by the ACB team and thereafter hand-wash of the appellant was taken in sodium carbonate solution which turned reddish, and the samples were sealed (Articles D & E). The tainted notes and shirt of the appellant were also seized under Exh.19, Exh.20, and Exh.21, which bear his signatures.

11.1 In cross-examination by the APP, PW-2 admitted that during the trap, he was present with the complainant inside the chamber and had earlier stated before ACB that there was conversation wherein appellant enquired about the money and complainant responded affirmatively. He further admitted that the appellant accepted the notes, counted them, enquired about the dust on notes and then kept the same in his shirt pocket. He confirmed that the appellant threw notes on the ground after noticing the trap party. He proved seizure memos Exh.22, Exh.23, Exh.24 and Exh.26.

11.2 In cross-examination by learned Defence Counsel, PW-2 admitted that it was his first experience as a panch witness. He stated that he did not remember several details due to lapse of about eight years. He denied the suggestion that the money was forcibly inserted into the pocket of the appellant or that the appellant had refused to accept the money. He also denied any collusion with ACB or that he was deposing falsely. He admitted that when the complainant shook hands with the appellant, appellant commented on dust on complainant's hand. PW-2 further stated

that when the appellant was apprehended, appellant said that the money was being forced upon him and was meant for PC Bandu Todase. PW-2 denied the defence suggestion that the trap was fabricated. From the assessment of PW-2 it is noted that PW2 is an independent government employee acting as shadow panch witness. He corroborates the essential prosecution case regarding presence of complainant and appellant at the time of alleged demand and acceptance, the trap procedure, color change test, seizure of currency notes and shirt, identification of seized property, the events following the pre-arranged signal. Minor omissions and lapses of recollection attributed to passage of time. Cross-examination does not demolish core prosecution narrative of acceptance of tainted currency.

12. Deposition of PW-3-(Panch Witness): PW-3 deposed that on 16.01.2004, while on duty in the Forest Department, his superior officer directed him to attend the ACB Office and assist the ACB in government work. Accordingly, he along with Rajesh Belkhule reached the ACB Office around 4.30 p.m., where they were informed regarding a complaint and instructed to report again the following morning at 8.00 a.m. PW-3 stated that on 17.01.2004 at 8.00 a.m., he and Rajesh Belkhule attended the ACB Office, where the complainant was present. The complaint was shown and read over to them, and they signed the document. The characteristics of phenolphthalein powder and sodium carbonate solution were demonstrated to the panch witnesses and necessary instructions were given. The complainant produced five notes of Rs.100/- each, which were treated with phenolphthalein powder and kept in the left shirt pocket of the complainant after noting their serial numbers in Panchanama No. 1 (Exh. 18), which bears the signatures of both panchas. Thereafter, the raiding party proceeded in a government vehicle at about 8.30 a.m. to

Mouza Bhari and reached around 11.30 a.m. The vehicle was halted some distance away, after which the complainant and PW 2 proceeded towards the village, followed by PW-3 and the raiding team. On the way, the appellant met the complainant and PW 2 at store, and after some conversation, they all proceeded to the police station. PW- 3 and the raid party waited outside the compound wall. After about 30 minutes, the complainant gave the pre-arranged signal upon which PW-3 and the raid party rushed inside. The appellant was apprehended by the police, and upon noticing the raid team, he threw the tainted notes on the ground. On the instructions of the ACB Officer, PW-3 picked up the notes and thereafter all proceeded to the police station. PW-3 deposed that sodium carbonate solution was sprinkled on the currency notes, which turned purple, and the serial numbers were found to tally with those in panchnama No. 1.

12.1 In cross-examination, PW-3 stated that this was his first occasion to act as a panch witness. The notes were sealed in an envelope and seized. He further stated that when sodium carbonate solution was sprinkled on the shirt pocket of the accused, purple stains appeared, and the shirt was seized under Exh. 21 which bears his signature. A diary and other documents were also seized from the appellant under Exh. 22. Panchanama No. 2 (Exh. 20) was prepared and bears signatures of PW-3 and PW 2. Both hands of the appellant were dipped separately into sodium carbonate solution, which turned purple, and samples were sealed in two bottles under Exh. 19.

12.2 PW-3 further stated that after refreshing memory, he recalled that the right-hand fingers of the complainant were tested in solution and the colour also turned

purple, and the same was seized under Exh. 16. He admitted that the ACB took his name and address on paper on 16.01.2004. He could not recollect whether 2-3 persons were present along with the complainant at the ACB office. He did not recollect the full name of the complainant, remembering only his surname. He stated that the grievance of the complainant concerned non-receipt of money relating to sale of bullocks but did not know from whom the amount was due. He stated that prior to leaving for the trap, his signature and that of PW 2 were taken on several documents. He denied the suggestion that ACB officials instructed them to depose according to those documents. He admitted that he was stationed outside the compound wall and that he did not witness the actual transaction between the complainant and the appellant. He could not say whether the appellant threw the money when the complainant attempted to give it to him. PW-3 denied the suggestion that the appellant stated he never demanded money and that the report was accepted by one Bandu Todase. He denied the suggestion that documents including Exh. 16, 18, 19, 20, 21, 22 & 30 were prepared later at the ACB office and that his signatures were obtained there. He denied being threatened with departmental action or having deposed falsely.

12.3 PW-3 is an independent panch witness, a Government employee with no allegation of animosity toward the appellant. His evidence corroborates the procedure of trap, handling of tainted currency notes, chemical test results, matching of serial numbers, and seizure of shirt and materials. Though he did not witness the actual passing of notes due to his location outside the compound wall, he corroborates the post-signal events and scientific evidence supporting the prosecution case. Minor memory lapses do not affect core evidentiary value as they

relate to peripheral aspects. Cross-examination does not materially discredit the prosecution version.

13. Deposition of PW-4 - Relative of the Complainant : PW-4, Shri Shamrao Govindrao Pole deposed that he knows PW 1 Namdeo Tukaram Khatke. In the year 2004, PW 1 had sold a pair of bullocks to one Maroti Narwate. The said Maroti had sold one bullock in the market but thereafter refused to pay the balance amount to PW 1. Because of this, a quarrel occurred and PW 1 lodged a report in the police station. At that time, the appellant was present and demanded an amount of Rs. 500/- from PW 1 stating that it was for "tea etc." PW 1 told him that he had to recover an amount of Rs. 7,000/- from Maroti and if the amount was received, he would pay Rs. 500- 1,000 from that amount. The appellant insisted that the amount should be paid first. PW 1 agreed to pay within 4-8 days.

13.1 In cross-examination, PW-4 admitted that he has good relations with PW 1 and that PW 1 is his relative. He stated that he could not specify the exact date or month of the bullock transaction. He denied that PC Bandu Todase demanded money in the name of the appellant or that he had not met the appellant in the police station. He denied the suggestion that his statement was recorded on 8.6.2004. He further denied that he is deposing falsely.

14. Deposition of PW-5 - Sanctioning Authority: PW-5, former Special Inspector General of Police, Nagpur Range, deposed that between 2002 and 2005 he held the said post. In 2004, papers of investigation of Crime No. 3002/2004 for offences under Sections 7, 13(1)(d) r/w 13(2) of the PC Act were placed before him. After

scrutiny and application of mind, he found a *prima facie* case to accord sanction for prosecution of the appellant. Accordingly, he issued the sanction order (Exh. 35). He identified his signature on the order and stated that its contents are true and correct. Covering letter under the signature of Dr. S.G. Ingale was produced at Exh. 36. He deposed that he was the competent authority to accord sanction against the appellant.

14.1 In cross-examination, he stated that since 1985 the post of Special Inspector General of Police existed. He denied that the Director General of Police was the appointing or removing authority of PSI in 2004. He stated that he was unsure whether PSI was Class-II officer in 2004. He admitted that he must have gone through the provisions of Section 19 of the PC Act and that delegation of powers existing under the Bombay Police Act and that he is aware of Bombay Police (Punishment & Appeal) Rules, 1956. He denied that such powers were not delegated to Special Inspector General of Police or that he was not competent to remove him. He admitted that he had not mentioned the source of his power in the sanction order and that he had not appointed the appellant, but denied the suggestion that on that ground he was not competent to accord sanction or that he signed the order without studying the papers. He admitted that Dr. S.G. Ingale, his reader had prepared the sanction order as per draft and placed it before him for signature, but denied the suggestion that he accorded the sanction without knowing the complainant or the nature of the complaint, or that he granted sanction mechanically, without studying the papers, or under pressure from ACB.

15. Deposition of PW-6 – Investigating Officer : PW-6 stated that he was Dy. S.P. (ACB) Gadchiroli from 23-7-2001 till 12-7-2005. He stated that on 16.1.2004, he

received telephonic instructions from Addl. S.P. (ACB), Nagpur, Shri Gawai, to proceed to ACB Office Chandrapur to meet the complainant. Accordingly, he reached at 4.00 p.m. and reduced the complaint of the complainant into writing (Exh. 13). He thereafter requested the Forest Conservator to provide two panch witnesses and requested the Superintendent of Police, Chandrapur to provide one lady constable (vide letters Exhs. 41-43). On 17.1.2004 at 5.30 a.m., the complainant, panch witnesses and staff were present. The complaint was read over to panchas, who also signed it. The complainant produced five currency notes of Rs. 100/- each; their numbers were noted in Panchnama No. 1. Phenolphthalein powder was applied and demonstrations were carried out. Panchnama No. 1 was prepared (Exh. 18). Thereafter the trap party proceeded for Bhari and reached at village Mokashi Guda at 11.00 a.m. The complainant and PW 2 proceeded to meet the appellant. The appellant met them on the way and accompanied them to the police station. All went inside the police station. Trap party waited outside the compound wall. At about 12.00 noon the complainant gave the pre-determined signal. PW 2 disclosed that the appellant had accepted the bribe amount of Rs. 500 and kept it in his shirt pocket, but on seeing the trap party, he threw it on the floor. He was caught, and he appeared frightened. Sodium carbonate test was conducted on both hands of the appellant, both turned purple. Notes were recovered, serial numbers on the notes were tallied, phenolphthalein tested positive, and articles were sealed and seized (Exh. 19). Shirt of the appellant also tested positive (Exh. 21). Panchnama No. 2 (Exh. 20) was drawn, FIR registered (Exh. 46), and seized property was sent for chemical analysis (Exh. 48). Competent authority was contacted and after sanction, charge-sheet was filed.

15.1 In cross-examination, PW-6 denied various suggestions regarding fabrication, coercion of panch witnesses, PC Bandu Todase demanding bribe in the name of appellant, and preparation of panchnamas later in the ACB office. He denied that the complainant and PW-4 were Naxalite supporters or that the appellant had been falsely implicated due to previous disputes. He further denied that the appellant never demanded or accepted the bribe amount.

16. Upon perusal, the prosecution case, as reflected in the depositions of PW-1 to PW-6 and the material on record, is that the complainant Namdeo Khatke (PW-1) was induced to lodge a report against one Maroti Narwate for non-payment after sale of bullocks. Subsequently, the appellant, then a Police Station Officer, allegedly demanded Rs.500/- from the complainant to "settle" the grievance and accepted the bribe amount in his chamber on 17.01.2004. The complaint reported the same to ACB, a trap was arranged in presence of panch witnesses and currency notes were treated with phenolphthalein powder, trap was executed and on giving the pre-arranged signal, ACB officers apprehended the appellant, recovered the notes and seized clothing and tested hand-wash samples which turned positive. The prosecution relies on the contemporaneous panchnamas, seizure memos and the phenolphthalein tests recorded in the evidence.

17. The question for determination is whether the evidence of demand and acceptance, and the chain of trapping and seizure, is established beyond a reasonable doubt. In corruption prosecutions, the dignity of panchnama procedures, credibility of panch witnesses and the integrity of scientific tests are pivotal. The Court must scrutinise the evidence for internal consistency, possible motives for fabrication, the

chain of custody of seized articles and whether defence challenges succeed in creating a reasonable doubt. The Hon'ble Supreme Court has given this observation in the case of ***T. Shankar Prasad vs. State of Andhra Pradesh, (2004)3 SCC 753.***

The relevant paragraph of said judgment is reproduced below-

"11. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawking v. Powells Tillery Steam Coal Co. Ltd. observed as follows:

"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

12. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Court may have regard to the common course of natural events, human conduct, public or private business, vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act."

18. PW-1 is the complainant and the principal protagonist for the prosecution. He is an illiterate agriculturist who admitted he can only sign his name. His evidence chronicles the antecedent civil dispute with Maroti, lodging of Exh. 12 on 12.01.2004, subsequent approach to the appellant, and the later demand and acceptance of Rs. 500/- in the appellant's chamber. PW-1's narrative is corroborated in essentials by independent panch witnesses (PW-2, PW-3, PW-6) and by the documents (Exhs. 12, 13, 14, 16, 18, 19, 20 & 21). Defence suggestions that the complainant had motive to fabricate based on enmity (prosecution of his son-in-law) were specifically negated by PW-1 and are not supported by independent evidence. Minor inconsistencies on peripheral points such as precise

dates of earlier transactions do not detract from the reliability of his direct account of the trap and passing of notes. On the whole PW-1's testimony is cogent and credible on the core aspects.

19. The defence argument regarding minor discrepancies and embellishments particularly when statements are recorded after a long lapse of time, do not render the prosecution case unreliable so long as the core or substratum of the case remains intact. Similar observation was upheld by the Delhi High Court in **Ram Karam Pathak vs. State, 2015 SCC OnLine Del 9116**. The observations made in the said judgment are as follows;

“40. I do not find any merit in the submission of the appellant that there is material discrepancy, or contradiction in the depositions of the complainant (PW-7) and the panch witness (PW-6). A statement of a witness has to be understood in the context in which it is made. The same incident - which is witnessed by two or more witnesses, may be perceived differently by both/each of them. Thus, different eyewitnesses to the same incident, may narrate the incident in the manner that each of them perceives it. It is not necessary that the versions of both are identical, and merely because they are not identical, the two versions cannot be rejected as being contradictory, inconsistent and, therefore unreliable. What is necessary to be seen is whether the substratum, or the crux of the different versions is the same, or not. If it is, the same may be accepted by the Court. The complainant (PW-7) in his examination-in-chief did not elaborate on the details of the conversation that he had with the accused - dialogue by dialogue. He simply states that the accused demanded the bribe money. The statement that the accused demanded the bribe money is the conclusion drawn by the complainant (PW-7) in the context of his previous interaction with the accused, as narrated in the complaint. In his cross-examination, the complainant (PW-7) stated that the accused asked him “lao paise do”, whereafter he took out the treated G.C. notes and gave the same to the accused. Thus, the crux or substratum of the statement of the complainant is that the accused demanded the bribe money and that he gave the same to the accused thereafter.

44. It is well-settled that minor embellishments or discrepancies naturally creep in, when statements of witnesses are recorded after several years of the incident. In the present case, the trap was laid and raid conducted on 05.01.2001. However, the statement of the panch witness (PW-6) was recorded on 12.03.2007 and 17.07.2007. The

statement of the complainant (PW-7) was recorded on 12.03.2007 and 15.05.2007. Thus, there was a gap of nearly 6 ½ years between the date of the incident, and the recording of the statements, and a natural loss of memory, and imperfection in recollection is bound to result with passage of such a long time. This also explains the discrepancy in the statements of the panch witness (PW-6) and complainant (PW-7) with regard to the place at which the hands/pocket wash was conducted and the post-raid proceedings (Ex. PW-8/A) drawn up, which are minor in nature, and do not shake the core case of the prosecution. Reference may be made to Syed Ahmed (supra). These submissions of the appellant are, therefore, rejected.”

In the present case, the evidence of an independent panch witness, even if not perfect in every minute detail, deserves full acceptance when it supports the core prosecution story and is consistent with scientific evidence, such as phenolphthalein tests and contemporaneous panchnamas. The minor inconsistencies pointed out by the defence do not in any manner dent the substantive truthfulness of PW-1's account, which is further corroborated by PW-2, the pre-trap and post-trap documents, and the chemical test results.

20. PW-2 (Rajesh Belkhule) and PW-3 (Ajay Thombare) are independent government employees who acted as panch and shadow panch witnesses. Both were present at the ACB office during the pre-trap demonstrations, signed Panchnama No. 1, which contained the serial numbers of the treated notes, witnessed the pre-arranged signal and the subsequent raid, and identified the seized currency and shirt in court. PW-3 candidly admitted he was stationed outside the compound wall and did not witness the physical transfer, however, he did witness the post-signal events and the recovery of notes. PW-2 was present inside the chamber and specifically testified to the appellant counting and pocketing the notes. Their evidence deals with the written panchnamas and seizure memos. The

lapse of recollection attributable to the passage of eight years is natural and was honestly conceded. It does not amount to impeachment of their core testimony. As independent, public-servant witnesses, their testimony materially corroborates PW-1 and strengthens the prosecution's case.

21. Receipt of telephonic instructions, reduction of the complainant's statement to writing, arrangement of panch witnesses, recording of serial numbers in Panchnama No.1, application of phenolphthalein powder, execution of the trap, drawing of Panchnama No.2 and seizure of articles and hand-wash samples. This procedural sequence described by PW-6 is comprehensive and consistent with the contemporaneous documents produced. There is no material on record to suggest *mala fides* or procedural manipulation by the ACB. Defence suggestions of fabrication, collusion or after-the-fact preparation of panchnamas were specifically denied by PW-6 and are not supported by any independent evidence.

22. The prosecution placed reliance on the application of phenolphthalein powder to the five notes and subsequent sodium carbonate test on the notes, shirt pocket and hand-wash solutions, all of which resulted in the characteristic colour change. The serial numbers of the notes were duly noted in the pre-trap panchnama and were later verified and found to tally at the time of seizure. The hand-wash bottles and seized clothing were sealed, and their seizure was recorded in the respective memos, which were proved and identified by panch witnesses in trial. The matching of serial numbers, the physical recovery of the tainted currency notes at the scene, and positive chemical tests on the appellant's shirt pocket and hand-

wash together establish a reliable chain of custody and provide scientific corroboration of prosecution case. Defence attempts to concentrate on the possibility that notes were planted or forcibly inserted into his pocket, but the independent panch testimony coupled with the positive test results on separate samples (notes, shirt, and hand-wash) considerably reduce the plausibility of such an afterthought fabrication. It is a well settled principle that while an offence under the PC Act requires proof of both demand and acceptance, the recovery of tainted currency notes and the positive phenolphthalein test constitutes strong corroborative evidence of acceptance. The Hon'ble Supreme Court in ***M. Narsinga Rao vs. State of A.P., (2001) 1 SCC 691*** has held that mere recovery of phenolphthalein smeared currency notes from the accused is not by itself conclusive proof of acceptance of bribe but when recovery is accompanied by other proved circumstances, it permits a presumption that the accused voluntarily accepted the bribe. The relevant para is reproduced below-

“19. Illustration (a) to Section 114 of the Evidence Act says that the court may presume that "a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession." That illustration can profitably be used in the present context as well when prosecution brought reliable materials that appellant's pocket contained phenolphthalein smeared currency notes for Rs. 500/- when he was searched by PW-7 DSP of the Anti-Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else because there is a possibility of somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that appellant had willingly received the currency notes”.

23. The trial record shows that PW-1 and PW-2 specifically testified about the appellant inquiring whether the complainant had brought the money and, on

affirmative reply, accepted the notes, counted them and placed them in his shirt pocket. PW-4's evidence supports the circumstance of a demand having been made earlier at the police station where the appellant is said to have insisted on payment. While some defence witnesses and the appellant may have suggested the involvement of other police personnel, the contemporaneous panchnama, the admission by the appellant at the material time (as reported by panch witnesses) and the appellant's conduct in throwing the notes on noticing the trap party are circumstances which point to demand/acceptance by the appellant. The defence hypothesis of insertion or forced planting of currency notes is not substantiated on the record.

24. The defence contentions aired in cross-examination were: (a) the absence of prior written notice to Maroti before 12.01.2004; (b) possible motive of the complainant arising from enmity; (c) that the appellant never demanded or accepted the money and that notes were planted or forcibly inserted in his pocket; and (d) procedural irregularities in panchnama preparation. Each contention was met by contemporaneous documents and independent panch testimony. The absence of an earlier written notice in respect of the civil dispute does not weaken the existence of a grievance or the subsequent demand, it speaks only to the antecedent civil remedy. Motive for false implication was suggested but not supported by independent corroboration. The mere presence of a past prosecution of a relative does not establish fabrication. Allegations that panchnamas were prepared later or that panch witnesses were coerced were specifically denied and are not corroborated by the record. The contemporaneous complaint and panchnama, the presence of two independent government panch witnesses who

witnessed the procedure, the positive phenolphthalein and sodium carbonate tests on notes, shirt and hand-wash samples, the recovery of the same serially recorded notes at the scene, the appellant's conduct when the trap party arrived has established acceptance beyond reasonable doubt. The standard in criminal trials is not to eliminate every possible hypothesis of innocence but to exclude reasonable doubt. The defence scenarios put forward have not succeeded in creating such doubt in the face of documentary and independent testimonial corroboration.

25. PW-5 produced the sanction order for prosecution under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act. Questions were raised about specification of source of his power in the sanction order. However, the witness explained his position and the material demonstrates that the competent authority had considered the papers and issued sanction. Mere omission of particular technical recitals in a sanction order would not automatically invalidate the sanction unless it is shown that the authority lacked jurisdiction or the order was a sham. There is nothing on record to vitiate the validity of sanction; consequently, prosecution proceeded lawfully.

26. The record shows the deposition of witnesses approximately eight years after the event. Natural memory lapses on peripheral matters were admitted by panch witnesses. Such lapses, when confined to non-core facts, do not affect the evidentiary value of their testimony about the trap, seizure and tests. The delay in trial and fading memory is a factor to be taken into account, but here the contemporaneous documentary record reinforces the oral testimony and mitigates the effect of memory lapses.

27. The evidence on record demonstrates, beyond reasonable doubt, that the appellant demanded and accepted a bribe of Rs. 500/- from the complainant. The testimonies of the complainant and independent witnesses, corroborated by scientific tests and proper documentation, satisfy the requirements for establishing offences under Sections 7, 13(1)(d) r/w 13(2) of the PC Act. The procedural compliance regarding sanction and conduct of the trap has been duly proved.

28. For the reasons set out above, the prosecution case on demand and acceptance of bribe by the appellant is established beyond reasonable doubt by cogent and corroborative evidence i.e. contemporaneous complaint and panchnama recording serial numbers of tainted notes; independent panch witnesses who witnessed the pre-trap demonstration, sign the panch nama, and corroborate the events at the scene; positive chemical test results on the notes, shirt and hand-wash samples; and consistent seizure memos and identification of seized articles in court. Defence suggestions of fabrication, planting or forceful insertion of currency notes are not borne out by the record.

29. In view of the foregoing, the prosecution has made out a case against the appellant. The evidence is credible, consistent, and corroborated by independent witnesses and objective material.

30. Accordingly, the conviction recorded by the learned trial Court in respect of offences under Sections 7, 13(1)(d) r/w Section 13(2) of the PC Act deserves to be upheld. The appeal insofar as it challenges the sufficiency and reliability of the

prosecution evidence fails and is liable to be dismissed. Sentencing and ancillary relief, if any, may be considered in accordance with law and the facts adjudicated at trial.

31. The importance of meticulous contemporaneous documentation in trap cases, requires ACB to record serial numbers of currency notes, obtain signatures of independent panch witnesses and seal samples, steps materially aid proof. The PC Act, aims to criminalize the misuse of public office for personal gain. Section 7 prohibits a public servant from accepting any gratification other than legal remuneration as a motive or reward for performing or forbearing to perform any official act, while Section 13(1)(d) penalizes a public servant who dishonestly accepts or agrees to accept any gratification, and Section 13(2) extends liability where such gratification is demanded or accepted as a reward or inducement for performing, or refraining from performing, official duties. In the present case, the accused, a serving Police Station Officer, allegedly demanded and accepted Rs. 500/- from PW-1 to expedite official action regarding recovery of money due from Maroti Narwate. The testimony of PW-1, corroborated by independent panch witnesses (PW-2 and PW-3) and supported by scientific tests on currency notes and the appellant's hands and shirt, establishes that the appellant sought and accepted gratification in exchange for performing his official duty, beyond reasonable doubt. The procedural safeguards, including pre- and post-trap panchnamas, proper seizure, and recording of serial numbers, satisfy the requirements for admissible and reliable evidence under the Act. Thus, the appellant's actions squarely fall within the provisions of Sections 7 and 13(1)(d)/13(2) of the PC Act.

Order

- (i) Criminal appeal stands dismissed.
- (ii) The sentences shall run concurrently. The appellant shall be entitled to set-off for the period already undergone in custody under Section 428 of the Criminal Procedure Code. All fines and conditions imposed by the learned trial Court are also upheld.
- (iii) A certified copy of this judgment be sent to the learned trial Court for compliance and for ensuring that the remainder of the sentence is carried out in accordance with law.

(NIVEDITA P. MEHTA, J.)