



Judgment

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

CRIMINAL APPEAL NO.475 OF 2013

State of Maharashtra,
through ACB, Shirkhed.

..... **Appellant.**

:: VERSUS ::

Sanjay s/o Vithalrao Tekade,
aged about 40 years, occupation service,
r/o Shrikrushna Colony, Chandur Bazar,
district Amravati.

..... **Respondent.**

**Shri N.B.Jawade, Additional Public Prosecutor for the
Appellant/State.**

**Shri Manoj Kariya, Counsel and Ms.Parinita Lakhani,
Advocate for the Respondent.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 11/07/2025

PRONOUNCED ON : 05/08/2025

JUDGMENT

1. By this appeal, the appellant (the State) has challenged judgment and order of acquittal dated 5.12.2012 passed by learned Additional Sessions Judge

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and Special Judge, Amravati (learned Judge of the trial court) in Special (ACB) Case No.8/2009.

2. By the said judgment impugned in the appeal, the respondent (the accused) is acquitted of offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act (the P.C.Act).

3. Brief facts of the prosecution run as under:

The accused was serving as Police Constable at Police Station Shirkhed. Umesh Kohale (the complainant) was prosecuted on the basis of report lodged by one Mangesh Dhomne for committing theft of 9-10 “Tur Bundles” vide Crime No.11/2009. The investigation of the said crime was handed over to the accused. During the pendency of the investigation, said complainant Umesh Kohale and Mangesh Dhomne have settled the dispute in the “Village Tanta Mukti Samiti” and, therefore,

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settlement documents were taken to the accused, but the accused has not accepted the same and allegedly demanded amount Rs.2000/- from the complainant on 25.2.2009. The accused demanded the said amount for not obtaining the PCR and only for temporary arrest. Later on, on 21.3.2009, the accused met the complainant at Riddhapur and demanded bribe amount Rs.4000/- on 21.3.2009. As the complainant was not willing to pay the amount, he approached office of the Anti Corruption Bureau (the bureau) and lodged a complaint. After lodging of the complaint, the officers of the bureau called two panchas. The complainant has produced 8 notes of Rs.500/- before the officers of the bureau. The contents of the complaint are read over by the panchas as well as the complainant has also narrated the facts. The personal search panchanama of the complainant was carried out. The anthracene powder was applied to the said tainted

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notes and the notes were kept in the shirt pocket of the complainant. The complainant as well as the panchas were instructed as to the procedure to be followed during the trial. The complainant was instructed not to hand over the amount unless it is demanded. Pancha No.1 was instructed to remain with the complainant and observe events. Accordingly, pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant along with pancha No.1 proceeded towards Riddhapur Bus Stand. The raiding party members followed them. The accused came on motorcycle. There was communication between the accused and the complainant. Thereafter, they went at a Juice Stall. After some time, the complainant, the accused, and pancha No.1 came out of the Juice Center and the accused left the place on his motorcycle without taking money.

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4. On the basis of the above said investigation, after obtaining a sanction, chargesheet was filed against the accused. The charge was framed vide Exh.2. The contents of the charge are denied by the accused. In support of the prosecution case, the prosecution examined four witnesses, they are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Umesh Kohale, the complainant	8
2	Bharat Chaven, pancha No.1	12
3	Mirza Begh, pancha No.2	17
4	Nilima Araj, the Investigating Officer	21

5. Besides the oral evidence, the prosecution placed reliance on complaint Exh.9, seizure memo Exh.10, pre-trap panchanama Exh.13, post-trap Exh.14, report Exh.23, FIR Exh.24, and Sanction Order Exh.34.

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6. After considering the evidence adduced during the trial, learned Judge of the trial court observed that the sanction was not proved as well as the evidence as to the demand which is *sine qua non* is also not established by the prosecution and acquitted the accused.

7. Heard learned Additional Public Prosecutor Shri N.B.Jawade for the State and learned counsel Shri Manoj Kariya for the accused.

8. Learned Additional Public Prosecutor, submitted that though the trap was unsuccessful, the evidence of complainant PW1 Umesh Kohale and pancha No.1 PW2 Bharat Chavan sufficiently shows that there was demand by the accused. Thus, mere demand is sufficient to prove the charges against the accused under Sections 7 and 13(1)(d) read with 13(2) of the PC Act. The evidence of complainant PW1 Umesh Kohale is also corroborated by

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and pancha No.1 PW2 Bharat Chavan. In view of that, the order of acquittal passed by learned Judge of the trial court is erroneous and liable to be quashed and set aside.

9. *Per contra*, learned counsel for the accused supported the judgment impugned in the appeal and submitted that proof of demand is *sine qua non* for proving the charges. The prosecution has failed to prove the charges levelled against the accused. Learned Judge of the trial court rightly considered that aspect of the demand is not proved by the prosecution and, therefore, no interference is called for in the judgment impugned in the appeal.

10. After hearing both the sides and going through the entire evidence on record, it reveals that, admittedly, there was no acceptance of the amount.

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11. Now, only question is, whether the demand by the accused is established by the prosecution to prove the charges against the accused.

12. Before adverting to the merits of the matter, it is necessary to refer scope while exercising appellate powers especially while dealing with appeals against acquittal.

13. It is well settled that while exercising appellate powers, especially while dealing with appeals against acquittal, cardinal principle, to be kept in mind, is that there is a presumption of innocence in favour of the accused unless the accused is proved guilty. The presumption continues and finally culminates into a fact when the case ends in acquittal. The possibility of two views in criminal case is not an extraordinary phenomenon while considering appeals against the acquittal, fact cannot be lose sight of that the trial court

has appreciated the entire evidence and reversal of an order of acquittal is not to be based on mere existence of a different view or mere difference of opinion. Normally, while exercising appellate jurisdiction, it is duty of the appellate court whether decision is correct or incorrect on law and facts. While dealing with appeals against acquittal, the court cannot examine the impugned judgment only to find out whether view taken was correct or incorrect. After re-appreciating oral and documentary evidence, the appellate court must first decide whether trial court's view was possible view. The appellate court cannot overturn acquittal, and order of acquittal cannot be reversed, only on the ground that after re-appreciating evidence, it is of the view that guilt of the accused was established beyond reasonable doubt.

14. By applying the above said principle, if the evidence of the present matter is considered, admittedly,

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though the prosecution relied upon the sanction, which according to the prosecution is valid sanction, no witness is examined to prove validity of the sanction. Since question of validity of sanction has been raised, it is necessary to discuss an aspect of sanction.

15. The sanction order was exhibited during the evidence of Investigating Officer PW4 Mirza Beg. Thus, she is not authority who had accorded the sanction.

16. Perusal of the sanction order reveals that in first paragraph of the sanction order, designation of the accused was mentioned and, thereafter, the prosecution case was summarized. As far as satisfaction of the Sanctioning Authority for granting the sanction nowhere reflects from the sanction order. Even, the sanction order nowhere discloses that the Sanctioning Authority has applied its mind and, thereafter, accorded the sanction.

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17. The law on the point of sanction is well settled.

18. The Hon'ble Apex Court in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**¹ has held that what Court has to see is whether or not sanctioning authority at the time of giving sanction was aware of facts constituting offence and applied its mind for the same and any subsequent fact coming into existence after resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must, therefore, be strictly complied with before any prosecution can be launched against the public servant concerned.

19. The Hon'ble Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**² has held that

¹ 1979 AIR 677

² 2014 Cri.L.J.930

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sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft chargesheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution

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independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

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20. The Hon'ble Apex Court in the case of **State of Karnataka vs. Ameerjan**³ has held that it is true that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority.

3 (2007)11 SCC 273

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21. In view of the settled principles of law, it is crystal clear that the prosecution has to establish that the sanction is valid and accorded after application of mind. The purpose for which an order of sanction is required, the same is to be borne in mind. In fact, the sanctioning authority is the best person to judge as to whether public servant concerned should receive protection under the P.C.Act by refusing to accord sanction for his prosecution or not.

22. In fact, the Sanctioning Authority is the best person to judge as to whether public servant concerned should receive protection under P.C.Act by refusing to accord sanction for his prosecution or not.

23. In the present case, aspect, that the sanction was accorded after application of mind, itself is not established by examining the Sanctioning Authority.

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24. Besides the issue of the sanction, the prosecution claimed that the accused person has demanded the gratification amount.

25. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Umesh Kohale and pancha No.1 PW2 Bharat Chavan.

26. It is well settled that proof of demand is *sine qua non* to establish the offence.

27. The evidence of complainant PW1 Umesh Kohale shows that he was prosecuted for the offence of theft and the investigation was with the accused. He settled the dispute with the complainant who has lodged report against him and, therefore, he had been to the police station and the accused demanded amount Rs.2000/- from him. As per his evidence, second demand was also

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made by the accused on 21.3.2009. As he was not willing to pay the amount, he approached the office of the bureau and lodged the complaint. He narrated about the events carried out in the office of the bureau during pre-trap panchanama.

As far as the demand is concerned, his evidence shows that he went to the police station and the accused arrested him. At the relevant time, the accused demanded amount Rs.2000/- for not seeking PCR and he has paid the said amount. After some days, he received a message that the accused has called him and he met the accused at Riddhapur Bus Stand. At the relevant time, the accused demanded Rs.4000/- from him and asked him to pay within 2-3 days. As the complainant was not desiring to pay the amount, he approached the office of the bureau at Amravati. As to the demand on the day of the trap, his evidence shows that as instructed by the

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officer of the bureau, he along with pancha No.1 PW2 Bharat Chavan went at the Riddhapur Bus Stand whereat the accused met him. The accused enquired with him as to whether he brought the amount. Thereafter, they went to the Juice Center. At the Juice Center, the accused asked him as to the amount and, thereafter, they all came outside the Juice Center and the accused left the place without taking money. Thus, the evidence shows that the amount was not accepted by the accused.

His cross examination shows that the police informed him that the offence registered against him is non-compoundable. His evidence further shows that the crime was investigated by the accused and he was arrested in the said crime and one day PCR was sought. He has not complained against the accused that the accused demanded Rs.2000/- and the said amount was paid to him. He has not made complaint to the court or

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superior of the accused as to the demand by the accused. He has also admitted that he is not possessing the currency decided to be used as tainted amount. He further admitted that after releasing him on bail also, he has not made any complaint against the accused.

28. To corroborate the version of complainant PW1 Umesh Kohale, the prosecution has examined pancha No.1 PW2 Bharat Chavan. His evidence, as to the demand on the day of the trap, shows that he was along with the complainant. They met the accused at Riddhapur Bus Stand. While going towards the bus stand, one person wearing uniform met them, but he denied that the accused made any demand to the complainant in his presence. He has also not stated as to the demand by the accused in the juice centre. Subsequently, he voluntarily stated that the accused asked whether the amount is brought. He further admitted that

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it was the complainant who informed the accused that he has brought the amount. Thus, as far as the demand is concerned, the evidence of pancha witness nowhere shows that in his presence the accused has made any demand to the complainant. The evidence further shows that it was the complainant who has informed the accused that he has brought the amount. The cross examination of this witness further shows that initially when he met the accused at Riddhapur Bus Stand, the accused has not uttered any word regarding the demand of any money. There was no talk or transaction about money at the Juice Center also. No amount was paid and the trap was not successful. He further submitted that he was informed by the officer of the bureau that one police officer has to be apprehended and accordingly they proceeded towards the spot.

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Thus, the evidence of this witness, as to the demand, shows that in his presence there was no demand by the accused.

29. Admittedly, the evidence of pancha No.2 PW3 Mirza Beg is not helpful to the prosecution as far as the demand is concerned. There was no acceptance of the amount. His evidence is only to the extent that he was along with raiding party members at the distance of 200 feet from complainant PW1 Umesh Kohale. There was communication between the complainant and the accused and, thereafter, they went at the Juice Centre. He is not aware as to the communication between them. Subsequently, the complainant and pancha No.1 PW2 Bharat Chavan informed that the amount was demanded. His cross shows that the complainant was instructed to pay the amount only demand is made. The tainted amount was returned to the complainant. He specifically

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admitted that he has no personal knowledge as to what exactly happened on the spot.

30. Investigating Officer PW4 Nilima Araj, narrated about all the events carried out during the pre-trap panchanama. As far as the demand on the day of the trap is concerned, her evidence is that she along with complainant PW1 Umesh Kohale; pancha No.1 PW2 Bharat Chavan; and pancha No.2 PW3 Mirza Begh along with raiding party members went to Riddhapur Bus Stand. The complainant and pancha No.1 PW2 Bharat Chavan proceeded towards the spot. There was communication between the complainant and persons came on the motorcycle. They went in the juice center and after some time they came out. The persons came on motorcycle left the place. Thereafter, she drawn various panchanamas.

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Her cross shows that the trap was unsuccessful. She further admitted that after the trap, after 3 days, the FIR was lodged. She further admitted that the tainted amount was not seized from the accused in her presence. The tainted amount was produced before the court to ascertain whether any anthracene powder was applied on it. She is not confirmed as to the genuineness of allegations of bribe. She further admitted that nothing was seized from the possession of the accused. It was market day, when the trap was conducted at Riddhapur. The accused has not accepted the tainted amount though he met the complainant at the bus stand. She further admitted that as the accused did not accepted the amount, she had not caught him.

31. After appreciating the evidence on record, it is undisputed that the trap was conducted, but the accused has not accepted the amount.

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32. It is well settled that proof of demand is *sine qua non* to constitute the said offence.

33. The evidence of complainant PW1 Umesh Kohale is not corroborated as far as earlier demand is concerned. The aspect of demand on the day of the trap is also not corroborated by pancha No.1 PW2 Bharat Chavan. The said pancha witness specifically stated that in his presence there was no demand, but it was the complainant who told the accused that he has brought the amount.

The evidence of the complainant is also to the extent that the accused made enquiry with him whether money is brought.

Admittedly, a stray enquiry as to whether the money had been brought or not can by no mean constitute demand as enjoined in law.

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The evidence of the complainant is only to the extent that the accused made query with him whether the amount is brought.

Pancha No.1 PW2 Bharat Chavan, has not uttered any single word as to the demand by the accused on the day of the trap. Though he admitted during the cross examination by learned APP that the accused enquired whether the amount is brought, he specifically admitted that there was no demand by the accused to pay the amount.

34. Thus, after appreciating the evidence, the only evidence on which the prosecution relied upon, is the stray statement of complainant PW1 Umesh Kohale that the accused enquired with him whether money had been brought or not.

35. The same aspect is considered by the Hon'ble Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**⁴ wherein also it is held that statement of complainant and shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

36. As far as the evidence of complainant PW1 Umesh Kohale, as to the demand is concerned, admittedly, the same is not corroborated by any evidence.

37. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**⁵ wherein it has been held that the combine

4 2017 SCC ONLine SC 742

5 1963 Mh.L.J. (SC) 273

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effect of Sections 133 and 114, illustration (b) may be stated as follows:

“According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars.”

38. In the case of **M.O.Shamsudhin vs. State of Kerala**⁶, it has been held that word "accomplice" is not defined in the Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in crime. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule

6 (1995)3 SCC 351

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of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused.

39. Thus, it is well settled that while deciding the offence under PC.Act, complainant's evidence is to be scrutinized meticulously. There could be no doubt that the evidence of complainant should be corroborated in material particulars. Complainant cannot be placed on any better footings than that of an accomplice and corroboration in material particulars connecting accused with crime has to be insisted upon.

40. Thus, to establish the offence, proof of demand is *sine qua non*.

41. In the present case, on appreciation of the evidence, as far as the previous demand is concerned,

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there is no corroboration. The demand on the day of the trap is also not corroborated by the evidence of pancha No.1 PW2 Bharat Chavan. Investigating Officer PW4 Nilima Araj has admitted that she has not verified regarding genuineness of the allegation of demand.

42. Thus, the evidence of the prosecution as to the demand falls short to prove the charges against the accused.

43. In view of the settled position of law, conclusive and definite evidence is required to be proved beyond any reasonable doubt for constituting the offence under the P.C.Act.

44. Thus, the prosecution miserably failed to prove the aspect of demand at the hands of the accused.

45. While dealing with appeals against acquittal, it is well settled that cardinal principle to be kept in mind is

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that there is a presumption of innocence in favour of accused unless the accused is proved guilty.

46. In the case of **N.Vijayakumar vs. State of Tamil Nadu, reported in (2021)3 SCC 687**, the Hon'ble Apex Court has dealt with expression "erroneous" which means "wrong", "incorrect" and observed that it will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A

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possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind.

47. After appreciating the evidence on record, I do not find any error committed by learned Judge of the trial court. The appreciation of the evidence is on the basis of sifting and weighing of material facts and on that ground the appeal of the state deserves to be dismissed.

48. The judgment impugned in the appeal appears to be legal and correct and nothing is on record to arrive at a finding to show that the judgment impugned is perverse or illegal. Therefore, the view taken by learned Judge of the trial court is a possible view and no interference in the judgment impugned in the appeal is called for.

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49. In the light of the above, as the appeal is devoid of merits, it requires to be dismissed and the same is **dismissed**.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!