



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

CRIMINAL APPEAL NO. 671 OF 2008

Ramesh s/o Sadashiorao Ballawar,
Age – Adult, Occupation – Service,
R/o Girgaon, Tahsil – Nagbhid,
District – Chandrapur.

.... **APPELLANT**

VERSUS

The State of Maharashtra,
through Deputy Superintendent of Police,
Anti-Corruption Bureau, Chandrapur.

.... **RESPONDENT**

Mr. R.P. Joshi, Counsel for the appellant,
Mr. H.N. Prabhu, Addl.PP. for the respondent.

CORAM : NIVEDITA P. MEHTA, J.

DATE OF RESERVING THE JUDGMENT : 04-12-2025

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 12-12-2025

JUDGMENT :

The appellant has preferred the present appeal against the judgment and order dated 06.09.2008 passed by the learned Special Judge Chandrapur, in Special Case No. 2/2000, whereby the appellant is convicted for the offences punishable under Section 7, Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”). By the said judgment and order, the learned Special Judge sentenced the appellant to undergo Rigorous Imprisonment for Six months and to pay a fine of 100/-, in default of payment of fine, to undergo Rigorous

Imprisonment for one month for the offence under Section 7 of the PC Act. The appellant is further sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs. 300/-, in default of payment of fine, to undergo Rigorous Imprisonment for two months for the offence under Section 13(1) (d) read with Section 13(2) of the PC Act. Both the substantive sentences are directed to run concurrently.

2. The prosecution's case in brief is that :

2.1 PW.1 Vinod Vasantrao Hatwade, the complainant, along with his father and brother, had agricultural land measuring 2.35 acres situated at Mouza Girgaon. For the purpose of digging a well on the said land, there exists a government scheme known as 'Jeevandhara Jawahar Yojana', intended to benefit persons falling below the poverty line. According to the prosecution, the complainant submitted an application on 11-06-1999 seeking benefits under the said scheme. The application was addressed to the Patwari, who is the appellant, requesting that appropriate entries be made in Gao Namuna Form No. 8 regarding his father's one-third share in the agricultural land.

2.2 Pursuant to the said application, the complainant approached the appellant in his office. The appellant informed him that he had no authority to make such entries and assured the complainant that he would get the work done through his superior officers. It is the prosecution's case that the appellant initially demanded ₹2000 for processing the complainant's request, but subsequently agreed for an amount of ₹1,500. After negotiations, the complainant stated that he could arrange only ₹1,000, to which the appellant

agreed, adding that the work would be done only upon payment. The complainant thereafter approached the Anti-Corruption Bureau (ACB) Office. The officials told the complainant to again meet the appellant and if he demands money, re-approach the ACB Office. On 14-06-1999 the oral complaint was lodged. Panch witnesses were summoned, and a pre-trap panchnama was drawn. ₹1,000 consisting of ten currency notes of ₹100 each were produced by the complainant and phenolphthalein powder was applied to the said notes and the same were handed over to him with instructions that the money be tendered to the appellant only on specific demand.

2.3 Subsequently, the raiding party proceeded to the office of the appellant at Nagbhid. As the appellant was initially not present, the complainant and Panch No. 1 waited at the Bus Stand. After some time, the appellant arrived on a motorcycle and took both of them to his office. The appellant made the requisite entry in Form No. 8 and handed the document to the complainant. Thereafter, the complainant offered the pre-treated currency notes. The appellant allegedly accepted the amount, after which he immediately shut the office door from inside. The raiding party knocked on the door and, after some delay, the appellant opened it. His hands were found wet, and on being questioned about the bribe amount, he denied having accepted any money.

2.4 A search of the appellant's office was then conducted. A bundle of currency notes was recovered from behind the bathroom wall of the appellant's house, and the numbers of the recovered notes tallied with those recorded in the pre-trap panchnama. Phenolphthalein traces were found on the shirt pocket of the appellant, indicating that he had kept the tainted notes

therein before throwing them away on seeing the police. The appellant was thereafter arrested. PW.5 Shri Sharma, the Investigating Officer, carried out a subsequent investigation, recorded the statements of witnesses, and forwarded the final report to the police station.

3. It was against this background that the criminal machinery was set in motion, and an FIR, was registered under the PC Act. Upon investigation, a charge-sheet was submitted to the learned Special Judge, who framed charges vide Exhibit 6 against the appellant for offences punishable under Section 7, Section 13(1)(d) read with Section 13(2) of the PC Act. The appellant pleaded not guilty and claimed to be tried. Thereafter, the trial commenced, and the appellant was found guilty and sentenced.

4. During the course of the proceedings, the prosecution examined several witnesses in support of its case. PW-1 Vinod Vasantrao Hatwade is the complainant. The testimony stands proved through Exhibit-11. PW-2 Vivek Dinkar Bellalwar was the panch witness examined at Exhibit-23. PW-3 Ramji Motiram Maraskolhe was the Investigating Officer and his statement is brought on record through Exhibit-32. PW-4 Sanjay Dhyndeo Pawar is the sanctioning authority and his testimony has been duly exhibited as Exhibit-38. Likewise, PW-5 Shri Radhakrushna Jagannath was the Investigating Officer examined at Exhibit 43.

5. Besides the oral evidence, the prosecution further relied upon the complaint (Exhibit 18); Village Form No.7 (Exhibit 12); Map dated

22/02/1999 (Exhibit 13); Village Form No. 8-A (Exhibit 17); Seizure Memo dated 15-6-1999 (Exhibit 20); Letter to the Deputy Chief Executive Officer, Zilla Parishad, Chandrapur (Exhibit 24); Panchnama No 1 (Exhibit 25); Seizure Memos dated 15-6-1999 (Exhibits 26 to 28); Panchnama No. 2 (Exhibit 29); First Information Reports (Exhibits 34 and 35); Sanctioning Order (Exhibit 39); List of Articles found during personal search of complainant (Exhibit 45); Form of Application to be made for constructing well on irrigated land under Jeevan-Dhara/Jawahar Wells Programme (Exhibit 46); List of Articles found during personal search of appellant (Exhibit 47), List of Articles found during personal search of complainant after the trap (Exhibit 48); complaint lodged by Shri R.J. Sharma, Police Inspector, Anti Corruption Bureau, Chandrapur (Exhibit 49); requisition to Deputy Director, Regional Forensic Science Laboratory (Exhibit 50); Invoice Challan (Exhibit 51); Duty Certificate issued to Police Constable (Exhibit 52); CA Report (Exhibit 53); and photocopy of first page of Service Book of Shri Ramesh Ballawar (Exhibit 59).

6. Upon appreciation of the oral and documentary evidence on record, the learned trial Court observed that minor discrepancies or inconsequential variations in the testimony of prosecution witnesses cannot, by themselves, render the entire prosecution case doubtful or fabricated. The learned trial Court noted that the incident in question occurred in 1999, whereas the witnesses were deposing nearly a decade later, in 2008. In such circumstances, the passage of time is naturally expected to result in certain variations in recollection. However, such trivial inconsistencies, which do not

go to the root of the prosecution's case, are insufficient to discard the entire prosecution's evidence or to hold that the prosecution's version is inherently unreliable. In view of the evidence adduced on record and the findings arrived at by the learned trial Court, and having considered the totality of the circumstances, the learned trial Court held that the prosecution has duly proved the foundational facts necessary to establish the culpability of the appellant and accordingly, held the appellant guilty of the offences punishable under Section 7 as well as Section 13(1)(d) read with Section 13(2) of the PC Act. It is against such conviction that the present appeal is preferred.

7. Heard learned Counsel Mr. R.P. Joshi for the appellant and learned Additional Public Prosecutor Ms. H.N. Prabhu for the State/CBI.

8. Arguments of the learned Counsel for the appellant:

8.1 Learned Counsel for the appellant contended that the prosecution has failed to establish the essential ingredients of the offence alleged under the PC Act. It was submitted that the testimony of PW-1 to PW-5 is full of inconsistencies, omissions, and contradictions, which seriously undermine their credibility. The learned Counsel highlighted that the complainant, PW-1, did not state crucial details before the police during the initial complaint or the recorded statements, such as the exact amount demanded, the insistence on Rs.1000/-, or the arrangement at the bus stand, thereby casting doubt on the authenticity of the subsequent trap.

8.2 It was argued that the panch witness, PW-2, was closely associated with the complainant and cannot be considered truly independent. The defence emphasized that procedural lapses were evident in the investigation, including the preparation of two FIRs (Exh.34 and Exh.35) in respect of the same offence, which raises serious doubts about the integrity and regularity of the investigation. Further, the sanction for prosecution (Exh.39) was granted by an authority who had no power to remove the appellant from service and, therefore, could not be treated as a competent authority under Section 19 of the PC Act, rendering the sanction invalid.

8.3 The learned Counsel also challenged the conduct of the trap, pointing out that the chemical tests with phenolphthalein and sodium carbonate were not adequately controlled, and there is a possibility of contamination or error in marking the currency notes. It was submitted that the recovery of cash and documents from the appellant's premises was not satisfactorily explained, and the chain of custody of the articles, as reflected in the panchanamas, is doubtful.

8.4 Finally, it was contended that the prosecution's case is built on suspicion and conjectures rather than on clear, cogent, and unimpeachable evidence. In view of the material contradictions, procedural irregularities, and lack of credible corroboration, the learned Counsel urged that the appellant is entitled to the benefit of doubt and must be acquitted of all charges.

8.5 The appellant has relied upon the following cases in support of his case:

- (i) Rajesh Gupta v. State through Central Bureau of Investigation, (2022) 20 SCC 793;
- (ii) Sampuran Singh Vs. State of Punjab, AIR 1982 SC 1407;
- (iii) Neeraj Dutta v. State (Government of NCT of Delhi), (2023) 18 SCC 251;
- (iv) Mukhtiar Singh (Since Deceased) through His Legal Representative v. State of Punjab, (2017) 8 SCC 136;
- (v) Dattatraya s/o Rajaram Thaokar v. The State of Maharashtra, 2017 All MR (Cri) 4184;
- (vi) Jagannath s/o Nivrutti Jadhav v. The State of Maharashtra, 2017 All MR (Cri) 3776;
- (vii) C. Sukumaran v. State of Kerala, (2015) 11 SCC 314;
- (viii) B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55; and
- (ix) Shri Sharad s/o Namdeorao Shirbhate v. State of Maharashtra, 2007 All MR (Cri) 352;

9. Arguments of the learned Additional Public Prosecutor for the State:

9.1 Learned Addl.PP argued that the depositions of PW-1 to PW-5 collectively establish that the appellant, a public servant, demanded and accepted gratification in contravention of Section 7 of the PC Act. It was contended that the evidence clearly demonstrates that the trap was organized under due procedure, the bribe was marked, and the recovery of the same was effected in the presence of independent witnesses.

9.2 The prosecution also relied on the documentary evidence, including the FIRs, panchanamas, seizure memos, and the chemical analysis report, to

assert that the prosecution has successfully discharged its burden. It was submitted that the chain of events from the lodging of the complaint, the pre-trap arrangements, the execution of the trap, and the subsequent seizure of money and documents, are all established on record. Any minor inconsistencies in the testimony of witnesses were argued to be normal and immaterial in view of the overall credibility and corroboration of material facts. The learned Addl.PP urged to consider the cumulative effect of the evidence, which, suffices to establish the appellant's guilt beyond reasonable doubt.

10. Before proceeding to analyse the rival submissions and record findings on the core issues arising in the present case, it is necessary to undertake a careful and holistic scrutiny of the evidence adduced by the prosecution. This Court is required to examine the depositions of the material witnesses not in isolation but in the context of the entire chain of circumstances, the intrinsic probabilities of the case, and the legal requirements governing proof of demand, acceptance, recovery, and sanction. The credibility of the witnesses, the consistency and coherence of their testimonies, the presence of material omissions or contradictions, and the extent to which their statements are corroborated on material particulars must all be objectively assessed. It is only upon such thorough appreciation of the evidence that the Court can analyse and ultimately determine whether the prosecution has succeeded in establishing the essential ingredients of the alleged offences beyond reasonable doubt. With this guiding framework, the testimony of each

prosecution witness, from PW-1 to PW-5, is now reassessed in its proper legal perspective.

11. PW-1 Vasant Hatwade (complainant) deposed that he is a resident of village Girgaon and that the agricultural land admeasuring 2.35 hectares situated at Mouza Girgaon stood jointly in the names of his father and his paternal uncles. He deposed that as the land is dry-crop land, he applied for benefits under the Jawahar Rojgar Yojana for sanction of a well. For this purpose, he approached the Gram-Panchayat and thereafter met the appellant, who was then working as Talathi of the said village, for issuance of required revenue Extract viz. 7/12 and Gav-Namuna 8-A. PW-1 deposed that he had requested the appellant to record the 1/3rd share of his father in Form 8-A so that the Gram-Sevak could process his application. According to him, the appellant initially stated that he had no authority to make such an entry but thereafter represented that he could get the entry effected through his superiors. PW-1 further stated that upon his persistent request, the appellant demanded ₹2,000/- for the said work, subsequently reduced the demand to ₹1,500/-, and finally agreed to accept ₹1,000/-. PW-1 claims that he expressed inability to pay immediately and would arrange the amount. PW-1 thereafter approached the Anti-Corruption Bureau (ACB) and lodged an oral complaint, which was reduced into writing and is exhibited as Exh. 18. A pre-trap procedure was conducted wherein currency notes of ₹1,000/- (10 notes of ₹100/- denomination) were treated with phenolphthalein powder and handed over to him with instructions that the money be tendered to the

appellant only on specific demand. PW-1 was instructed to give a pre-arranged signal after the acceptance of money.

11.1 According to PW-1, on the date of the trap he, along with the panch witness, proceeded to Girgaon. As the appellant was not present at the Bus Stand, PW-1 called him through the village Kotwal. The appellant thereafter arrived on a motorcycle and took PW-1 and the panch to his office-cum-residence. PW-1 states that upon his request for recording the 1/3rd share, the appellant reiterated, “first money, then work”, and demanded the amount. PW-1 states that after demanding and receiving ₹1,000/- from his right hand, the appellant kept the tainted notes in the pocket of his shirt and made the relevant entry in Gao Namuna Form 8-A. PW-1 then exited the office, gave the pre-arranged signal by waving a handkerchief, after which the ACB raiding party arrived. PW-1 further deposed that a fresh solution of sodium carbonate was prepared and used for hand-wash tests. The appellant’s hand-wash did not show any colour change. However, when the solution was sprinkled on the pocket of the appellant’s shirt, the powder marks turned colour. The shirt (Article Q) and two documents found in the shirt pocket (Article R / Article S) were seized under Exh. 27.

11.2 During cross-examination, PW-1 admitted that there exist two rival political groups in the village, Congress and BJP, and that he is associated with the Congress Party. He also admitted that a first trap attempt had been arranged earlier, during which the appellant had refused to accept the money. He conceded that certain statements claimed by him during evidence

regarding the appellant's demand, the calling of the appellant through the Kotwal, and the exact content of conversations were not reflected in his statement before the ACB. He further admitted to some inconsistencies regarding the placement of documents in his pocket prior to payment.

11.3 PW-1 denied the defence suggestion that the trap was arranged at the instance of his maternal uncle, a local Congress leader, or that the appellant was falsely implicated due to political rivalry in the matter of ward formation. He asserted that the appellant had indeed demanded and accepted the bribe amount.

12. PW-2 Vivek Bellalwar (Panch Witness) deposed that in June 1999 he was working as a Senior Clerk in the General Administration Department of the Zilla Parishad, Chandrapur. On 14.06.1999, Police Constable Kawadkar from ACB approached his office with a requisition asking for two employees to act as panch witnesses. He, along with another employee, Shri Sharad Ramteke, was directed to accompany the ACB personnel. PW-2 identified the requisition letter bearing the signature of the Deputy Chief Executive Officer, which is exhibited as Exh. 24. PW-2 stated that he was present at the ACB office the same evening and was introduced to Dy.S.P. Hiware and other staff. Since it was late, he was instructed to return the next morning. On 15.06.1999, he again reported at the ACB office, where the complainant Vinod Hatwade had lodged a complaint alleging that the Talathi (appellant) had demanded illegal gratification for supplying a certified copy of Gao

Namuna Form 8-A. PW-2 verified that the contents of the oral information and written complaint (Exh. 18) were tallied, and he made an endorsement on the complaint.

12.1 PW-2 further stated that a demonstration was given about phenolphthalein powder and sodium carbonate. Ten currency notes of ₹100/- each, totalling ₹1,000/-, were treated with powder and kept in the shirt pocket of the complainant with specific instructions not to offer the money unless demanded. A pre-trap panchanama was prepared, bearing his signatures on each page, and is exhibited as Exh. 25.

12.2 Thereafter, the raiding party proceeded to village Girgaon. The vehicle was halted about half a kilometre before the Bus Stand, where further instructions were given. PW-2 and the complainant then proceeded towards the Talathi Office. A villager informed them that the Talathi was not present and would be called. After about half an hour, the appellant arrived on a motorcycle, enquired about PW-2's identity, and PW-2 informed him that he was a relative of the complainant. The appellant took both PW-2 and the complainant to his office.

12.3 Inside the office, PW-2 states that the Talathi enquired whether the complainant had "come prepared." The complainant took out certain documents from the almirah, and the Talathi told him to "take the paper and give it" (कागद घ्या आणि द्या). The complainant then removed the tainted notes from his shirt pocket with his right hand and handed them to the appellant,

who accepted the amount, retained it, and said “all right.” PW-2 states that he witnessed the acceptance. The complainant thereafter exited the office and gave the pre-arranged signal.

12.4 PW-2 deposed that upon receiving the signal, the ACB team tried to enter the office but found the door closed. After repeated knocking, the appellant opened the door and denied having accepted any money. A search of the house did not initially reveal the alleged amount, but subsequently, the notes were found lying behind the bathroom on the back side of the house. PW-2 accompanied the police constable during recovery, and the recovered notes were matched with the numbers noted in the pre-trap panchanama. Sodium carbonate solution was sprinkled on the notes, which showed a violet colour reaction. The notes were sealed in an envelope marked Article G to P and seized under Exh. 26.

12.5 PW-2 further stated that a fresh solution of sodium carbonate was prepared and used for hand-wash tests. The appellant’s hand-wash did not show any colour change. However, when the solution was sprinkled on the pocket of the appellant’s shirt, the powder marks turned colour. The shirt (Article O) and two documents found in the shirt pocket (Article R / Article S) were seized under Exh. 27. Additional documents including receipt books, registers and notebooks were also seized under Exh. 28. A spot panchanama (Exh. 29) and spot map (Exh. 30) were prepared, which PW-2 identified and affirmed.

12.6 In cross-examination, PW-2 stated that he had joined service in January 1999 and was aware that giving evidence contrary to documents bearing his signatures could lead to departmental proceedings. He admitted that before deposing, he had read the panchanamas and statements. He stated that complainant's relative was present throughout until they reached Girgaon. PW-2 reiterated that he had disclosed to the appellant that he was a relative of the complainant, though he could not explain why this was not reflected in his earlier statement.

12.7 He stated that the complainant was standing and PW-2 was seated at the time the money was handed over. He also admitted that neither he nor the complainant counted the notes in the office but he presumed that they were the same ten notes given earlier. He maintained that the appellant had stated “कागद घ्या आणि द्या” and “टीक आहे” at the time of acceptance, and denied defence suggestions that the appellant never demanded or accepted any amount, that the trap activities were fabricated, or that he was deposing falsely at the instance of ACB officers.

13. PW-3 Ramji Maraskolhe (A.S.I. – FIR Registration Witness): PW-3 deposed that on 15.06.1999 he was serving as Assistant Sub-Inspector at Police Station Sindewahi and was on station diary duty on that day. He stated that the staff of the ACB brought a report along with a covering letter to the police station. The said covering letter, bearing his endorsement regarding registration of the crime number, is exhibited as Exh. 33. On the basis of the said report, he registered Crime No. 3021/1999. PW-3 further stated that the

printed First Information Report was prepared by him, which bears his signature and is exhibited as Exh. 34. He identified the signature of the ACB staff on Exh. 33. After registration of the offence, he forwarded the papers to the ACB staff for further investigation as the case pertained to the ACB.

13.1 In cross-examination, PW-3 stated that Exh. 34 is not in his handwriting, though it bears his signature, and he is unable to identify whose handwriting it is. He acknowledged that another printed FIR on record, Exh. 35, also bears his signature, and explained that printed FIRs are generated in duplicate: one original and one carbon copy. The carbon copy is retained at the police station and another copy is sent to the learned Magistrate/Special Judge.

13.2 He admitted that he did not send the carbon copies of the FIRs to the learned Magistrate/Special Judge in the present matter and does not remember how many copies in the FIR book had the same machine numbers. He denied the defence suggestions that Exh. 34 and Exh. 35 were not prepared on 15.06.1999 or that he did not receive any letter from P.I. Sharma on that day. He also denied that two FIRs were prepared later at the instance of P.I. Sharma or that they were antedated.

14. PW-4 Sanjay Pawar (Sanctioning Authority) : PW-4 deposed that he served as the Sub-Divisional Officer (SDO), Brahmapuri, from 22.01.2000 to 07.06.2001, and that the appellant was functioning as a Talathi at Girgaon, Taluka Nagbhid, during that period. He stated that the competent authority

for appointment and removal of a Talathi is the SDO. He further stated that on 20.01.2000 he received a letter from the ACB, Chandrapur seeking sanction for prosecution of the appellant on the basis of a successful trap. A proposal accompanied by documents running into 207 pages was forwarded to him. PW-4 stated that he perused the entire set of papers and, being satisfied that a *prima facie* case existed, he accorded sanction for prosecution on 29.02.2000. The sanction order placed before the Court was identified by him as the same order he issued, bearing his signature, seal, and the date in his handwriting. It is exhibited as Exh. 39. He also identified the covering letter forwarding the sanction to the Deputy Commissioner of Police, ACB, which is exhibited as Exh. 40. He affirmed the correctness of the contents of both documents.

14.1 In cross-examination, PW-4 stated that applications for the post of Talathi are invited through advertisement by the Collector, but he could not precisely state the entire appointment procedure. He also stated that without referring to the relevant record, he could not confirm whether the appellant's appointment was made by the Collector.

14.2 He did not recall whether he had examined the Service Book or appointment file of the appellant before granting sanction. He could not state whether the documents sent to him (pages 1–207) were originals or copies. He denied that he was unable to describe the contents of the 207 pages, though he did not remember whether a draft sanction order was included with the documents sent to him.

14.3 He acknowledged that the first page of Exh. 39 does not bear his signature or seal but stated that, as the typing style matched, he believed it to be the same page originally forming part of the sanction order. He clarified that the reference to “the Act” in the sanction order pertains to the PC Act.

14.4 PW-4 stated that, without referring to the file, he could not specify which witness statements were before him apart from that of the complainant. He remembered receipt of the appointment order and service book of the appellant. He also recalled that the papers were forwarded by Dy.S.P. Sawarkar.

He denied suggestions that he did not read the papers, that the SDO was not the appointing authority, or that he granted sanction mechanically or blindly merely on request.

15. PW-5 R.J. Sharma (Investigating/Trap Officer): PW-5 deposed that on 14.06.1999 he was serving as Police Inspector, Anti-Corruption Bureau, Chandrapur. On that day, complainant Vinod Vasantrao Hatwade appeared before him and made an oral report, which he reduced into writing. The complaint (Exh. 18) bears his signature, the signature of the complainant, and the complainant’s endorsement affirming correctness. The complainant had produced a carbon copy of an application submitted by him to the Talathi, which was shown to the witness as Article D.

15.1 PW-5 stated that he issued a requisition to the Chief Executive Officer, Zilla Parishad, for providing two panch witnesses (Exh. 24), and also issued a

letter to the Superintendent of Police, Chandrapur, to depute a lady constable (Exh. 44). Panchas Vivek Bellalwar and Sharad Ramteke reported to him and expressed willingness to act as panchas. They were asked to remain present the next morning at 7:00 a.m.

15.2 On 15.06.1999, the panchas arrived and were introduced to the complainant and staff. The complainant narrated the contents of the complaint to the panchas, who also read the complaint and signed Exh. 18. The complainant then produced ten currency notes of ₹100 each, the numbers of which were recorded in the pre-trap panchanama. PW-5 conducted the search of the complainant in presence of panchas and prepared a list of articles (Exh. 45). Demonstration of phenolphthalein powder and sodium carbonate solution was given. The tainted notes were smeared with powder and placed in the left shirt pocket of the complainant.

15.3 The complainant was instructed to hand over the bribe only upon demand and to give a signal by removing a handkerchief. Panch No.1 was directed to accompany the complainant as his purported brother-in-law and Panch No.2 was required to stay with the raiding team. The pre-trap panchanama was drawn and signed by the witness and panchas.

15.4 PW-5 stated that the police party proceeded to village Girgaon, alighting about half a kilometre before the village. The complainant and Panch No.1 proceeded ahead. After the complainant met a local person, the Talathi (appellant) later arrived on a motorcycle. The complainant, Panch No.1, and the appellant then went to the Talathi's office. The raiding party

surrounded the premises.

15.5 After some time the complainant gave the predetermined signal, following which the police approached the office. The appellant closed the door and opened it after repeated calls. PW-5 observed that the appellant's hands were wet. Upon inquiry about the bribe amount of ₹1,000, the appellant denied acceptance and offered to be searched. Sodium carbonate solution tests were carried out twice on the appellant's hands, but both times no colour change was noticed.

15.6 PW-5 inquired with Panch No.1, who informed him that the appellant had accepted the money and kept it in his shirt pocket. The shirt pocket of the appellant was tested with sodium carbonate solution, which turned violet. A piece of paper found in the pocket also showed purple colour stains (Article E). The shirt (Article Q) and paper were seized under seizure memo Exh. 27, which bears the signatures of PW-5, the panchas, and the appellant.

15.7 PW-5 further stated that the appellant's house was searched. The tainted notes were found concealed at the rear side of the bathroom. The numbers tallied with those recorded in the pre-trap panchanama. Sodium carbonate solution sprinkled on the notes showed violet colouration. The notes were seized under Exh. 26 and marked as Articles G to P.

15.8 PW-5 explained that the complainant's right-hand fingers tested positive for phenolphthalein, and the solution was preserved in a bottle (Article C). Seventeen documents handed over by the complainant were

seized under panchanama (Exh. 46 collectively). Receipt books and registers (Articles K to O) were seized from the appellant under Exh. 28. Panchanama No. 2 (Exh. 29) was thereafter drawn.

15.9 A spot map (Exh. 30) was prepared. The personal search lists of the appellant and complainant are Exh. 47 and Exh. 48 respectively. PW-5 prepared the forwarding report to Police Station Sindewahi (Exh. 49) along with covering letter (Exh. 33). On the basis of this report, Crime No. 3021/1999 was registered (FIR Exh. 35). He thereafter arrested the appellant, sent seized articles for chemical analysis. The carbon copy of letter is at Exh. 50. The invoice challan at Exh. 51. The duty pass is at Exh. 52. He received the CA Report (Exh. 53). The service record of the appellant was called (letters Exh. 54 and Exh. 55). After completing the investigation and obtaining sanction, a charge-sheet was filed.

15.10 In cross examination, PW-5 stated that no station diary entry was made after receipt of the complaint (Exh. 18), and except the complaint, no other written material existed. He denied that the time was omitted deliberately or that the complaint was subsequently fabricated. He denied that Exh. 18 was not in existence prior to the trap or that Panchanama No. 1 (Exh. 25) was fabricated.

15.11 He acknowledged that several facts now deposed were not stated by PW-1 in his statement before him, including certain assertions relating to demand, insistence on the amount, remarks such as “कागद घ्या आणि द्या”

(wrongly typed as “first note then vote,”) and the complainant’s efforts to arrange money.

15.12 PW-5 admitted that Panch No.1 had not stated in his statement that he introduced himself as a relative of the complainant or that the appellant said “ठीक आहे” upon acceptance of the bribe. He denied the defence suggestion that he instructed the Police Station Officer to prepare two FIRs, that Panchanama No. 2 was imaginary, that no cash was found from the appellant’s premises, or that a false trap and false charge-sheet were created after failure of an earlier attempt.

16. The prosecution case primarily rests on the testimony of PW-1, who alleges that the appellant demanded a bribe of ₹1,000 for issuing a certified copy of *Gao Namuna No. 8*. A close scrutiny of his deposition, however, reveals material infirmities going to the root of the prosecution case. PW-1 admitted in cross-examination that several important facts stated in chief were never mentioned by him in his statement under Section 161 Cr.P.C. These omissions include: (i) that the appellant allegedly insisted upon ₹1,000 and not a lesser amount, (ii) that the appellant told him “कागद घ्या आणि द्या,” (iii) that the complainant had expressed his difficulty in arranging money, and (iv) that the appellant was called to the bus stop through a Kotwal. These omissions are material and constitute contradictions, rendering the version of PW-1 unreliable.

17. Further, PW-1 admitted that when he went to the appellant’s office on

earlier occasions, the appellant had advised him to furnish the necessary documents for legal formalities. This supports the defence theory that the interaction was administrative and not corrupt. The conduct of PW-1 in returning to the appellant with a pre-arranged trap, despite the alleged prior refusal by the appellant to accept any money, also creates doubt regarding the authenticity of the demand. It is well settled that proof of demand is *sine qua non* for offences under Sections 7 and 13(1)(d) of the PC Act. The testimony of PW-1, riddled with material contradictions and embellishments, fails to establish the foundational fact of demand.

18. PW-2 was projected as the most material witness to the alleged demand and acceptance. His testimony, however, does not inspire confidence. He admitted in cross-examination that he was conscious that deposing contrary to the documents bearing his signatures might expose him to departmental action. This affects the voluntariness and independence of his testimony.

Significantly, PW-2 admitted that (i) the complainant's back was facing him when the alleged handing over of money occurred, (ii) he did not see the appellant count the currency notes allegedly given to the appellant, (iii) he only "presumed" that 10 notes of ₹100 were handed over, and (iv) material facts such as the appellant saying "ठीक आहे" and "कागद घ्या आणि द्या" were not recorded either in the panchanama or in his statement before the ACB.

18.1 He made substantial improvements during deposition, which were not

part of the earlier record. It is also admitted that the appellant's hands tested negative for phenolphthalein test on two separate occasions. This destroys the prosecution theory of "acceptance," as if the appellant had actually counted currency with both hands, the hand-wash tests would have turned positive. The prosecution has not furnished any reasonable explanation for this contradiction.

18.2 PW-2 further admitted that the panchanama Exh. 29 contained statements not made by him. Such contradictions and improvements render his testimony untrustworthy and insufficient to prove demand or acceptance.

19. PW-3's evidence introduces serious procedural lapses that weaken the prosecution case. He admitted that two FIRs (Exh. 34 and 35), both described as original, exist on the record, but Exh.34 is not in his handwriting. He states that he did not send the carbon copy to the Magistrate, and that he cannot explain the handwriting or origin of Exh. 34. These irregularities raise doubt about the genuineness and timing of the FIR.

The defence's suggestion that the FIRs may have been prepared subsequently at the instance of the ACB is strengthened by these inconsistencies, especially since time of complaint was not mentioned. The FIR being the foundation of a criminal prosecution, such suspicious circumstances significantly dent the prosecution case.

20. PW-4 admitted that he did not verify the service record, appointment file, or appointment authority of the appellant, and was unable to confirm whether he had gone through the service book. He also could not recall whether the documents annexed (207 pages) were originals or copies. His admission that the sanction order's first page did not contain his signature or seal, though typeface was similar, undermines the authenticity of Exh. 39.

Most importantly, PW-4 admitted that he did not remember whose statements he considered apart from that of the complainant. This demonstrates non-application of mind, which vitiates the sanction under Section 19 of the PC Act. A defective sanction goes to the root of jurisdiction and renders the prosecution unsustainable.

21. The testimony of PW-5 contains major inconsistencies and contradictions. Firstly, no station diary entry was made on 14.06.1999 after receiving the complaint, and no time was recorded on the complaint. Such omission allows room for fabrication. Secondly, the Investigating Officer admitted that *except the complaint, no other evidence existed* on 14.06.1999, though the prosecution case implies elaborate verification. Thirdly, PW-5 conceded that PW-1 never stated before him several key facts which appear in the testimony at trial, demonstrating major improvements. PW-5 admitted that the shadow witness did not state that he introduced himself as the complainant's relative, nor that the appellant said "टीक आहे" upon acceptance. Despite allegation that the appellant counted tainted notes, hand-wash tests of the appellant were negative. This glaring contradiction is fatal to the prosecution. The alleged recovery of notes from the rear of the bathroom

does not establish possession by the appellant, particularly when the immediate hand-wash test was negative and when access to the area was not shown to be exclusive. Lastly, the Investigating Officer admitted that copy of the complaint was not sent to the police station, and that two FIRs came to be prepared, further deepening suspicion regarding fabrication. These infirmities cumulatively erode the foundation of the prosecution case.

22. Having evaluated the evidence of PW-1 to PW-5, this Court finds that the prosecution has failed to establish the primary and indispensable requirement of demand of illegal gratification, which is the foundation for offences under Sections 7 and 13(1)(d) of the PC Act. The complainant (PW-1), whose version is the genesis of the prosecution case, has made multiple material improvements at the trial, none of which find place either in the written complaint or in his statement before the Investigating Officer. In case of **B. Jayaraj v. State of A.P., 2014) 13 SCC 55**, the Hon'ble Supreme Court has observed-

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 appellant 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. and C.M. Girish Babu v. CBI.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the appellant 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. 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.

And in ***P. Satyanarayana Murthy v. District Inspector Police, State of Andhra Pradesh and another***, (2015) 10 SCC 152, which is reproduced as follow:-

21. In *State of Kerala v. C.P. Rao*, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in *B. Jayaraj* in unequivocal terms, that mere

possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that 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 proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

In view of the settled law cited supra, the Hon'ble Supreme Court has observed that the absence of cogent and reliable proof of demand is fatal to the prosecution's case. Thus, such material omissions amount to contradictions and render his testimony unsafe to rely upon.

23. The testimony of PW-2, the shadow witness, further weakens the prosecution case. His deposition is inconsistent and replete with

improvements. He admitted that he did not clearly see the alleged handing over of currency notes and merely “presumed” that the complainant handed over the money to the appellant. He also conceded that key statements attributed to the appellant during alleged acceptance were never mentioned in the panchanama or in his earlier statement. His admission that the complainant’s back was facing him at the crucial moment further dilutes the reliability of his evidence. In corruption cases, where direct corroboration is imperative, such infirmities in the testimony of the shadow witness shake the very foundation of the prosecution case.

24. Even assuming demand were proved, the prosecution has completely failed to establish acceptance, which is the second essential component of the offence. The evidence of PW-5, the Investigating Officer, conclusively establishes that the hand-wash of both hands of the appellant tested negative for phenolphthalein test, though the prosecution alleges that he counted the tainted notes with both hands. The failure of the chemical test is wholly inconsistent with the prosecution narrative and has not been explained by any witness. The Hon’ble Supreme Court in ***Selvaraj v. State of Karnataka, (2015) 10 SCC 230***, more particularly in para no. 18 held as under:

18. In State of Kerala v. C.P Rao, it has been laid down that recovery of tainted money is not sufficient to convict the accused. There has to be corroboration of the testimony of the complainant regarding the demand of bribe and when the complainant is not available for examination during the trial, court has to be cautious while sifting the evidence of other witnesses. Charge has to be proved beyond reasonable doubt. This Court has laid down thus : (SCC pp. 452-53, paras 12-13)

“12. Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in para

28 of A. Subair made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court.

13.”.

As held that a negative phenolphthalein test, in the absence of a plausible explanation, militates strongly against the prosecution case. This Court, therefore, finds that acceptance has not been proved beyond reasonable doubt.

25. The alleged recovery of tainted currency notes from behind the bathroom wall of the appellant's residence does not cure these fundamental defects. The place of recovery was neither shown to be in the exclusive possession of the appellant nor was the recovery witnessed in a manner that establishes conscious possession. When immediate hand-wash tests are negative, recovery from an open area cannot substitute proof of demand and acceptance. The Hon'ble Supreme Court has repeatedly held that mere recovery, divorced from proof of demand and acceptance, is legally inconsequential. Thus, the recovery relied upon by the prosecution does not advance its case.

26. The procedural lapses in the investigation further cast serious doubt on the prosecution version. PW-5 admitted that no station diary entry was made upon receipt of the complaint and that the complaint bears no mention of the

time of its recording. PW-3 admitted that two FIRs, both described as “original,” are on record and that he cannot explain the origin or handwriting of one of them. The carbon copy of the FIR was admittedly not forwarded to the learned Magistrate as mandated. These procedural irregularities create suspicion about the genuineness and timing of the FIR, thereby shaking the credibility of the very foundation of the prosecution.

27. The validity of the sanction order is also severely compromised. PW-4, the sanctioning authority, admitted that he neither verified the service record nor examined the appointment file of the appellant, and could not say whether the 207 pages forwarded to him were originals or photocopies. His acknowledgement that the first page of the sanction order bore neither his signature nor his seal demonstrates clear non-application of mind. It is settled law, as held in *State of Karnataka v. Ameerjan*, (2007) 11 SCC 273 that a sanction issued without proper application of mind vitiates the entire prosecution. In the present case, the sanction order suffers from such serious infirmities that it cannot be considered legally valid.

28. Apart from the infirmities already noted, the sanction order suffers from yet another fatal defect namely, that it was issued by an authority that was not competent to remove the appellant from his service. The evidence of PW-4, the Sanctioning Authority, reveals that he himself was uncertain about the appointing and removing authority of the appellant. He admitted in explicit terms that he could not state whether the appointment of the appellant was made by the Collector or by any other authority, and that he

did not verify the service record or appointment file before granting sanction. It is well settled that, under Section 19 of the PC Act, sanction for prosecution must be accorded only by an authority competent to remove the public servant from his office. Any sanction granted by an authority lacking such competence is *void, non est*, and incapable of conferring jurisdiction on the Court to take cognizance. The Hon'ble Supreme Court has repeatedly held that a sanction granted by an incompetent authority vitiates the entire prosecution, as seen in ***Nanjappa v. State of Karnataka, (2015) 14 SCC 186***, The relevant part of said judgment is reproduced below-

“24. In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial Court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case. As observed by this Court in Baij Nath Prasad Tripathi's case (supra), the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non est in law”.

In the present case, the prosecution has failed to establish that PW-4, the SDO, possessed the requisite authority to remove the appellant from service. On the contrary, his testimony discloses a clear absence of such power. The sanction order (Exh. 39), therefore, is rendered legally invalid, and in the absence of a valid sanction, the entire prosecution stands vitiated and cannot be sustained in law.

29. In view of the cumulative effect of these deficiencies, the absence of reliable evidence of demand, the failure to establish acceptance, the negative phenolphthalein test, the lack of credible recovery, the suspicious nature of the FIR, and the defective sanction, this Court is of the considered opinion that the prosecution has failed to discharge its burden of proving the guilt of the appellant beyond reasonable doubt. The inconsistencies and contradictions in the prosecution evidence are not mere minor discrepancies but go to the root of the matter, creating substantial doubt about the veracity of the prosecution case.

30. In criminal law, where two views are possible, the one favouring the appellant must prevail. The evidence led by the prosecution does not inspire confidence and is insufficient to bring home the guilt of the appellant. The benefit of doubt arising from these glaring deficiencies must necessarily go to the appellant. Consequently, this Court finds that the prosecution has failed to establish the essential ingredients of the offences charged and that the appellant is entitled to acquittal.

31. Upon a holistic evaluation of the evidence of PW-1 to PW-5, this Court finds that the prosecution has failed to prove the essential ingredients of demand and acceptance beyond reasonable doubt. The complainant's testimony suffers from material contradictions and omissions; the shadow witness is unreliable due to improvements and inconsistencies; the FIR is surrounded by suspicious circumstances; the sanction order suffers from non-application of mind; and the Investigating Officer's evidence contains

procedural lapses and contradictions which materially prejudice the defence.

32. Most significantly, the negative phenolphthalein test on both hands of the appellant is wholly inconsistent with the prosecution story of active acceptance and counting of the bribe amount. The alleged recovery from an open and accessible location behind the bathroom wall, without exclusive possession, also does not meet the threshold of proof required under the PC Act.

33. Given these serious infirmities, this Court is of the considered view that the prosecution has failed to establish its case. The evidence led does not inspire confidence and is insufficient to record a finding of guilt. The benefit of doubt must, therefore, go to the appellant. Accordingly, the appellant is entitled to acquittal. Hence, I proceed to pass the following order :

ORDER

- (i) Criminal Appeal is Allowed.
- (ii) The impugned Judgment and order dated 06.09.2008, passed by the learned Special Judge, Chandrapur, in Special Case No. 2/2000 is hereby quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under Section 7, Section 13(1)(d) read with Section 13(2) of the PC Act.
- (iv) His bail bond stands discharged. Fine, if any, paid by the appellant be refunded to him.

(NIVEDITA P. MEHTA, J.)