IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 15 OF 2018

The State of Maharashtra,
Through Shri S. G. Patil, Police
Inspector, Anti Corruption Bureau,
Aurangabd. .. Appellant

Versus

Yuvraj Damodhar Jagtap
Age: 48 years, Occu.: Service,
Police Head Constable B.No.505,
Police Station Osmanpura, Aurangabad. .. Respondent

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Mr. N. D. Raje, APP for the appellant/State.
Mr. Rajendrraa Deshmukh, Senior Counsel a/w Mr. Hashmi S. Ubaid i/b Mr. Devang R. Deshmukh, Advocate for respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 27.10.2026
Pronounced on : 28.10.2026

JUDGMENT :-

1. This is a State appeal which is directed against the judgment and order of acquittal dated 13.04.2017 passed by learned Special Judge, [P.C. Act], Aurangabad in Special Case No.19 of 2011, acquitting the accused respondent herein from charges under Section 7, 13(2) of the Prevention of Corruption Act [P.C. Act]

BRIEF FACTS OF THE PROSECUTION CASE

2. In brief, case of prosecution in trial Court was that, accused was working as Head Constable and he was entrusted with investigation of Crime No.78 of 2011 and in that connection, he had been to the house of complainant for arresting complainant's son. During the home visit, said son was not found and, therefore, were duly instructed to be brought to police station. Complainant's attempt of securing anticipatory bail for his son had gone futile and, therefore, there was apprehension of arrest. According to prosecution, accused threatened to take son of complainant in his custody and also put up resistance to the bail and to avoid the same, it is the case of prosecution that bribe of Rs.5,000/- was demanded. As complainant was not willing to pay bribe, after approaching ACB, he lodged report, which was reduced into writing, followed by planning and arranging trap, by arranging panchas and by giving them necessary instructions, after verification of demand, trap was executed, accused was apprehended, charge-sheeted and tried, but the trial ended up in acquittal. Hence, the appeal by State.

SUBMISSIONS

On behalf of appellant/State :-

3. Learned APP would submit that prosecution had proved the charges beyond reasonable doubt. According to him, it has come in the

prosecution evidence that demand of Rs.5,000/- being raised for avoiding arrest of complainant's son. That, initially verification of demand was got done and thereafter, trap was laid. He pointed out that complainant and shadow panch have both deposed regarding demand verification, however, according to him, learned trial Court disbelieved their testimonies and acquitted the accused merely on the count that mobile handset used for conversation between complainant and accused was not seized and there was no voice recording. Learned APP further submitted that in fact learned trial Court has failed to apply the correct law. That, in view of recent judgment of Hon'ble Apex Court in the case of ***Neeraj Dutta v. State (Government of NCT of Delhi), (2023) 4 SCC 731***, when there are proved circumstances, conviction can be based on the same, even if complainant's testimony is not supporting prosecution. As regards to the non-availability of voice recorder is concerned, he would submit that the same is not always fatal and in this connection, he seeks reliance on the judgment of Hon'ble Apex Court in the case of ***State of Lokayuktha Police, Devanagere v. C. B. Nagaraj, [2025 SCC OnLIne SC 1175]***. He pointed out that even sanctioning authority was examined by prosecution, but there is incorrect appreciation of such evidence. For all above reasons, he urges to set aside the impugned judgment and order, by allowing the appeal.

On behalf of respondent/accused :-

4. Per contra, learned Senior Counsel Mr. Deshmukh submit that prosecution has miserably failed to prove the charges. That, complainant's testimony itself is not worthy of credence and there is no support or corroboration from independent panch witness/shadow panch. He would submit that, at the outset, the aspect of initial demand itself has come under shadow of doubt. That, most of the conversation of complainant was alleged to be with accused on mobile phone, but the same itself is not seized, nor any CDR is gathered to demonstrate conversation between complainant and accused. He also took this Court through the cross-examination faced by shadow panch. He further submitted that, apart from weak evidence or no evidence, the point of demand and acceptance as well as the validity of sanction also arises in the present case, as PW3 was not competent to accord the sanction and on this, he invited attention of this Court to Exhibit-54, which is a list of appointed Police Constables and pointed out that name of applicant appears at Serial No.65. He submitted that the applicant was appointed by the Commissioner of Police and, therefore, he supports the findings of trial Court that said authority PW3 was not competent to accord sanction. He further submitted that defence case is of thrusting and such statement and stand is taken immediately after the main trap. Thus, while supporting the judgment and order of acquittal, he prays to

dismiss the appeal for want of merits.

BRIEF ACCOUNT OF EVIDENCE BEFORE THE TRIAL COURT

5. Re-appreciated the evidence. **PW1** Complainant's evidence is at Exhibit-08 and he, in his examination-in-chief, stated that there was quarrel on 14.04.2011 and his son Dhampal had tried to intervene between the quarrel of one Amrapali and Raju residing in the neighbourhood and in that connection, in the afternoon, accused along with police staff came to the complainant's house and sought whereabouts of complainant's son and directed that he be brought to the police station in the morning on the next day. Then, he deposed about his attempt to secure pre-arrest bail for his son and then stated that accused told him to produce his son in the police station and further told that if he does not want his son to be arrested and his bail application being resisted, then bribe of Rs.5,000/- was required to be paid. The complainant claims that he sought eight day's time to collect the money, but finally, on 12.05.2011, he approached the ACB office and lodged a complaint Exhibit-09. He further stated that panchas were called and introduced to him, and one of the panchas, namely, Deshmukh, was asked to accompany him to verify the demand by visiting the police station. However, during their visit to the police station, the accused was not present. Therefore, the PSO provided him

the mobile number of accused. After coming out of the police station, he claims to have called the accused, who allegedly asked him to come on 13.05.2011. That, on the next day, he and the shadow panch again went to the ACB office, where he once again called the accused. The accused asked him to come to the police station at 4.00 p.m. and further suggested to call before coming to the police station. Accordingly, at around 4.00 to 4.30 p.m., he and the panch went to Osmanpura Police Station and found the accused near the parking area. There, the accused allegedly stated that it was not possible to get his work done that day and that it would be done tomorrow. According to the complainant, the accused also inquired about the panch, who was introduced as his maternal uncle, and, at that time, the accused again asked whether the money had been arranged. In paragraph No.5 of his examination-in-chief, he deposed about handing over of currency, application of anthracene powder to it, giving necessary instructions to him as well as panch and in paragraph No.6, he deposed that he and the panch went to the police station together, whereas the raiding party accompanied them in a government vehicle. He claims that there also he made phone call to the accused and claims to have learnt from accused to come to police station and at such time, his son would be released on bail. Again, he made phone call to accused at 2.00 p.m.. That, they met accused in the Court and then he himself, panch and accused went towards Station

road to a sugarcane juice center, where accused allegedly told him that his work was done and when he is going to do his work. Thereafter, he took out tainted currency, handed it to the accused, which he accepted, after which necessary signal was relayed.

. While under **cross-examination**, he admitted that two weeks after rejection of anticipatory bail application, accused had demanded bribe from him. He admitted that his son and co-accused were absconding. Omission is brought in paragraph No.8 of his cross-examination that in his supplementary statement, he had stated about visiting the ACB office on 12.04.2011 and making a phone call to the accused on the same day between 2.30 p.m. and 3.00 p.m., asking him to come at 4.00 p.m. However, though he claims to have stated to this extent, it is found to be an omission, as he is unable to state why such portion is missing from his statement. In paragraph No.11, he answered that Investigating Officer instructed panch Deshpande to take physical search of accused, however, he is unable to state whether search was taken, as he was outside the juice center. He denied that there was implication at the behest of one Manikrao.

6. **PW2**, the shadow panch, in his evidence at Exhibit-17, stated that he visited the ACB office and met the Investigating Officer. There, he was given detailed instructions and was made to read the complaint. In

paragraph No.2 of his examination-in-chief, he stated that another panch was Surendra Deshpande. He further deposed that there was quarrel between Magar and Tangade and in the backdrop of complaint against son of complainant, accused had come to the house of complainant and demanded bribe of Rs.5,000/- to avoid PCR. That, trap was arranged by the Investigating Officer, who gave necessary instructions. Thereafter, he and the complainant visited Osmanpura Police Station at about 15.15 hours. However, as the accused was not present at the police station, the complainant obtained the mobile number of accused and called him, as the accused was away from the police station. They then returned to the ACB office, where panchanama Exhibit-18 was drawn. In paragraph No.3 of his examination-in-chief, he deposed that on 13.05.2011 police had called him at 9.30 a.m. and gave instructions regarding demand verification and accordingly, he and complainant went to police station. They met accused in front of Osmanpura Police Station and complainant asked when can his sons be produced. That, complainant introduced this witness to accused and then accused asked complainant to bring Rs.5,000/- tomorrow and also instructed to come after making phone call. Then, in paragraph No.4 he deposed about drawing of pre-trap panchanama, demonstration of application of anthracene powder to currency, necessary instructions being given and then he and complainant went back to police station,

but as accused was not present, complainant made phone call to him and accused allegedly asked complainant that he would make phone call around 2.00 p.m. and, therefore, they came back and pre-trap panchanama Exhibit-20 was drawn. In paragraph No.5, he deposed about main trap at around 16.00 hours, where complainant, this witness went to the Court. He claims that accused asked them to come to have cold drinks and accordingly, they came to the sugarcane juice center and there, complainant asked accused whether his work was done. According to this witness, accused replied, now you do my work. He wanted Rs.5,000/-, which complainant took out and handed it to accused, who accepted it, after which signal was relayed.

. While under **cross-examination**, he admitted that voice recorder was not provided to complainant while going for demand verification. He candidly admitted that he did not take note as to what was the conversation between complainant and accused. As pointed out, in paragraph No.8 of his cross-examination, this witness has answered that when son of complainant was produced before the Court, he did not enter the court hall and he does know what happened inside the court.

7. **PW3** is the sanctioning authority, who, in his evidence at Exhibit-30, deposed that he was serving as a Principal in Police Training Centre, Mumbai and was working as Deputy Commissioner of Police, Head

Quarters, Aurangabad in 2011 and on 23.09.2011, he had received sanction proposal for prosecuting accused from Superintendent of Police. He went through the proposal and investigation papers and got satisfied that there is sufficient evidence for prosecuting accused. He claims that he being appointing and removing authority of Police Head Constables, he accorded sanction Exhibit-31.

. While under **cross-examination**, he admitted that he has gone through the service book of accused and that the initial appointment of the accused was Constable. He is unable to state whether accused was promoted as Police Head Constable by the then Police Commissioner. In paragraph No.3 of the cross-examination, he admitted that he did not call papers of Crime No.78 of 2011 registered at Osmanpura Police Station.

ANALYSIS

8. In the light of above submissions, evidence is re-examined. To put it briefly, case of prosecution is that, for not seeking PCR and for not resisting bail application of son of complainant, there was demand of Rs.5,000/-. Complainant's evidence is at Exhibit-08. He speaks of accused visiting his place and asking him to bring his son to the police station and thereafter, there was said to be demand. However, there was meeting between complainant and accused on 12.05.2011 also, but on

that day there was no demand. Further, as pointed out, initial demand is said to be raised on mobile phone, but as submitted by the learned Senior Counsel, Investigating Officer has not collected mobile phone of complainant to ascertain whether there was really any conversation between complainant and accused over which there was said to be demand. In cases of such nature, initial demand itself has to be cogently proved, but the same does not seem to have happened.

9. Demand verification seems to have been done on 13.05.2011 when complainant and shadow panch Deshmukh together had approached accused at a parking place, but shadow panch in his cross-examination has admitted that he could not take note of actual conversation between complainant and accused. This witness seems to have learned from complainant regarding demand of Rs.5,000/- and as such, shadow panch was not party to the actual demand so as to attribute direct knowledge.

10. As pointed out, there is also variance in the testimony of complainant and shadow panch regarding meeting the accused at the time of main trap. According to complainant, accused met them at around 2.00 p.m., but shadow panch, who was said to be in his company, gives timing of meeting accused in a corridor at around 16.00 hours i.e. at 4.00 p.m.

11. As pointed out, the learned trial Court has held that the sanction was accorded by an incompetent authority. PW3, who was examined, gave his designation as Deputy Commissioner of Police and deposed that he was competent to accord sanction to Police Head Constables, but in his cross-examination, he is unable to state whether accused was promoted as Police Head Constable by the then Police Commissioner. At Exhibit-54, the accused has placed on record his appointment order, in which the name of the respondent-accused figures therein. Such appointment seems to be at the instance of Police Commissioner and not Superintendent of Police or Deputy Commissioner of Police. Resultantly, even aspect of sanction comes under shadow of doubt.

12. Consequently, here, on complete appreciation of evidence, prosecution seems to be weak on the point of initial demand itself. Initial demand is said to be on phone, but no CDR/SDR is gathered. Shadow panch in cross-examination has admitted that he did not hear the actual conversation of demand between complainant and accused. Therefore, for such reasons, case of prosecution cannot be said to be proved beyond reasonable doubt.

CONCLUSION

13. Perused the judgment under challenge. Learned trial Court has taken a view, which is the possible view that could emerge even on re-

appreciation of evidence. Bearing in mind the principles to be applied while dealing with appeal against acquittal, this Court does not find any good ground to interfere in the impugned judgment. There being no merits in the appeal, it deserves to be dismissed. Hence, the following order is passed :-

O R D E R

. Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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