2026:BHC-AUG:54693

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 388 OF 2007

Hari s/o Jakoji Sonkamble
Age-54 Years, Occ- Talathi
Sajja Bodhadi (Khd.) Tq- Kinwat
District-Nanded, R/o- Shivajinagar,
At Kinwat, Tq-Kinwat,
District-Nanded.

...APPELLANT
(Orig. Accused)

Versus

1. The State of Maharashtra,
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32

2. The Deputy Superintendent of Police,
Anti Corruption Bureau,
Nanded.

...RESPONDENTS

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Mrs. Surekha G. Chincholkar, advocate for the appellant.
Shri C.V. Bhadane, APP for the respondents/ State.

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CORAM: SUSHIL M. GHODESWAR, J.

DATE : 23/10/2026.

JUDGMENT :-

1. The present criminal appeal has been filed by the appellant/ accused challenging his conviction and sentence for the

offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act"), recorded by the learned Special Judge, Nanded, in Special (A.C.B.) Case No. 3/2005, vide judgment and order dated 10.08.2007. By the said judgment and order, the appellant has been sentenced to suffer simple imprisonment for six months and to pay fine of Rs.4,000/-, and, in default of payment of fine, to suffer simple imprisonment for three months, for the offence under Section 7. He has further been sentenced to suffer simple imprisonment for one year and to pay fine of Rs.5,000/-, and, in default of payment of fine, to suffer simple imprisonment for four months, for the offence under Section 13(1)(d) read with Section 13(2). Both the substantive sentences of imprisonment were directed to run concurrently.

2. The facts giving rise to the present appeal are as under:-

(a) The appellant was serving as the Talathi at Sajja Bodhadi, Tq. Kinwat, Dist. Nanded. The informant, Vitthal (PW-1), and his brother Vishnukant (PW-4) had effected private partition of their ancestral land. They wanted the said land to be mutated in the

names of their wives and intended to get the mutation effected accordingly.

(b) Therefore, Vitthal (PW-1) and his brother Vishnukant (PW-4) met the appellant in the Tahsil office at Kinwat and requested him to effect mutation. The appellant demanded bond of Rs.100/- and Vitthal (PW-1) gave him five bond papers of Rs.20/- each, on which the appellant obtained the signatures of Vitthal (PW-1). After 8 to 10 days, the appellant came to village Yenda, to the house of Vitthal (PW-1), and obtained the signatures of five panchas on the private partition deed and the signature of Vitthal (PW-1) on the application for mutation. While returning, the appellant asked Vitthal (PW-1) to come to Kinwat after 8 to 10 days and to bring Rs. 3,000/-. When Vitthal (PW-1) asked why the amount of Rs. 3,000/- was required, the appellant told him that without that amount his work of mutation would not be done.

(c) On 21.02.2005, Vitthal (PW-1) and his maternal cousin Ramrao Chole (PW-3), met the appellant in the Tahsil office at Kinwat and requested him to do the work of mutation. The appellant asked whether the amount of Rs.3,000/- had been brought and, on negotiation, agreed to do the work on receiving Rs.2,500/-.

(d) On 22.02.2005, Vitthal (PW-1) had gone to village Penda with his brother Vishnukant, where they met the appellant. The appellant enquired with Vitthal (PW-1) whether he required the mutation or not. Vitthal (PW-1) told him about his inability to arrange the money, but the appellant asked him to pay some amount and the balance after 7 to 8 days. Accordingly, Vitthal (PW-1) gave Rs.900/- to the appellant, which Vishnukant (PW-4) had brought from village Yenda on the appellant's motorcycle. The appellant asked Vitthal (PW-1) to bring the balance amount of Rs.1,600/- to Kinwat by the coming Saturday, stating that only then would he do the work of mutation.

(e) Vitthal (PW-1) was not willing to pay the bribe and, therefore, approached the office of the Anti-Corruption Bureau, Nanded, on 25.02.2005 and lodged the written complaint (Exh. 10). Thereafter, Divakar (PW-6) the ACB officer, arranged a trap by calling two panch witnesses from the office of the Public Works Division, namely, Balaji (PW-2), who was panch No. 1, and Dnyaneshwar, who was panch No. 2. They were directed to come to the ACB office on 26.02.2005 and, accordingly, they came there on the said date. Necessary formalities of trap were done. The trap was laid and the appellant accepted the amount. After giving the

pre-arranged signal, the raiding party rushed there and caught hold of the appellant. As the Tahsil office was closed due to a holiday, the appellant was taken to the police station. The tainted notes were taken out from the shirt pocket of the appellant by panch No. 2. The numbers of those notes tallied with the numbers noted in the pre-trap panchanama. The trap panchanama (Exh. 14) was completed. Divakar (PW-6) then lodged his complaint (Exh. 25) at Police Station, Kinwat.

(f) After completion of investigation, the charge-sheet was filed. The charge was framed at exhibit 03. The appellant pleaded not guilty and claimed to be tried. During the trial, the prosecution examined seven witnesses, namely, PW-1 Vitthal Chate, the complainant; PW-2 Balaji, panch No. 1; PW-3 Ramrao Chole, the maternal cousin of the complainant; PW-4 Vishnukant, the real brother of the complainant; PW-5 Ravindranath Mathpati, the sanctioning authority; PW-6 Divakar, the ACB officer who laid the trap; and PW-7 Hashmi, the Investigating Officer. After hearing the parties, the impugned judgment and order of conviction and sentence came to be passed. Hence, the present appeal.

3. The learned Advocate for the appellant submitted that the impugned judgment and order of conviction is contrary to law and the evidence on record, and suffers from perversity and non-application of mind. It was submitted that the sanction for prosecution accorded by PW-5, the Sub-Divisional Officer, Kinwat, is invalid, as PW-5 was neither the appointing nor the removing authority of the appellant and was, therefore, incompetent to accord sanction under Section 19 of the P.C. Act. It was further submitted that the sanction was granted mechanically, by merely appending his signature to a pro forma draft forwarded by the Anti-Corruption Bureau, without any independent application of mind, and that, in Special (A.C.B.) Case No. 2 of 2007, involving an identically situated Talathi, the very same sanctioning authority was held to be incompetent.

4. The learned Advocate for the appellant further submitted that the prosecution has failed to prove the essential ingredients of demand and voluntary acceptance of illegal gratification beyond reasonable doubt, and that the testimony of PW-1 Vitthal Chate is that of an interested witness. It was submitted that the amount of Rs. 900/- paid on 22.02.2005 was part payment towards the arrears of the sand excavation contract of

Ravindra Chole, son of PW-3, for which a receipt (Exh. 27) was also issued by the appellant. It was further submitted that, on the date of the alleged demand, the appellant was on election duty from 7.00 a.m., as evidenced by the letter issued by the Tahsildar, Kinwat, and, therefore, there was no occasion for the alleged demand. It was also submitted that, during the relevant period, the appellant was directed to recover arrears from 9.00 a.m. to 5.00 p.m. and to report the recoveries daily at the Tahsil Office, and that, on the day of the trap, the appellant had gone to the Tahsil Office to proceed on recovery duty along with staff members. The appellant had only the authority to process mutation notices and no authority to effect the mutation. It was further submitted that the appellant had been falsely implicated in this trap case by Ramrao Chole (PW-3) on account of the panchanama drawn regarding the sand excavation contract of the son of PW-3; that PW-3 was subordinate to Divakar (PW-6); and that they had arranged the trap in collusion with the complainant and the panchas.

5. It was further submitted that the independent witnesses, Rangrao Muneshwar and Sudhakar Tigalwad, who were present at the time of the demand and payment of Rs. 900/-, were not examined by the prosecution, and that their non-examination

creates serious doubt as regards the investigation as well as the alleged false implication of the appellant. It was also submitted that the complainant (PW-1) did not lodge the complaint immediately after the alleged demand of 22.02.2005, but approached the Anti-Corruption Bureau only on 25.02.2005, and that this delay of three days has not been explained.

6. In view of the above submissions, the learned Advocate for the appellant urged that the impugned judgment and order be quashed and set aside and that the appellant be acquitted of the offences charged.

7. Per contra, the learned A.P.P. for the State supported the impugned judgment and submitted that the prosecution, by examining seven witnesses, has fully established the guilt of the appellant before the Trial Court; that the evidence of the complainant (PW-1), panch No. 1 (PW-2) and the trap officer (PW-6) consistently proves the demand, acceptance and recovery of the tainted amount from the appellant; that the statutory presumption was rightly drawn; and that the sanction accorded by the Sub-Divisional Officer, who is the removing authority of the appellant, is valid. He, therefore, submitted that the appeal be dismissed.

8. With the assistance of the learned advocates for the respective parties, I have gone through the available record. Before adverting to the evaluation of the evidence available on record, it is pertinent to discuss certain relevant judgments of the Hon'ble Supreme Court. The Hon'ble Supreme Court, in ***K. Shanthamma v. State of Telangana, (2022) 4 SCC 574***, and ***Neeraj Dutta v. State (Govt. of N.C.T. of Delhi), (2023) 4 SCC 731***, has held that, for recording conviction under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act, as it stood prior to its amendment, the prosecution is required to establish the demand and acceptance of illegal gratification. In the absence of proof of demand and acceptance, the prosecution cannot succeed merely on the basis of recovery of the tainted amount. In ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh, (2015) 10 SCC 152***, the Hon'ble Supreme Court observed in paragraph 23 that proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and, in the absence thereof, the charge would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors proof of demand, would not, by itself, be sufficient to bring home the charge under the aforesaid provisions.

9. In the present case, the prosecution case of demand rests on (i) the initial demand of Rs. 3,000/- (later negotiated to Rs. 2,500/-) before 26.02.2005; (ii) the payment of Rs. 900/- on 22.02.2005 at village Penda; and (iii) the demand allegedly made at the time of the trap on 26.02.2005. The first two allegations depend upon the testimony of PW-1/ complainant supported by PW-3, his maternal cousin, and PW-4, his real brother. None of them is an independent witness. Their evidence has to be scrutinised with care, particularly when the appellant has set up specific case that PW-3 had grudge against him. The appellant's case is that Rs. 900/- was received by him on 22.02.2005 not as bribe but as part payment of arrears due from the sand excavation contract held by the son of PW-3. A notice dated 15.02.2005 had been served, calling upon the contractor either to deposit the arrears or to stop the excavation. A panchanama regarding stoppage of the work was drawn by the appellant along with the Revenue Circle Inspector on 20.02.2005, and receipt dated 22.02.2005 was issued for the same amount. Copies of the notice, panchanama and receipt were produced with the lists at Exhs. 20 and 27. The prosecution's own witnesses also support to this explanation.

10. PW-3 Ramrao Chole, the retired police head constable and maternal cousin of PW-1, has stated in his deposition that the sand contract was in the name of his son and that the notice for arrears was received; that, on 20.02.2005, the appellant and the Revenue Inspector drew a panchanama and stopped the work; and that his son deposited Rs. 900/- through the informant (PW-1). PW-4, the brother of PW-1, has admitted in his deposition that the appellant and the Revenue Inspector were talking with PW-1 about the sand contract and that receipt for Rs. 900/- was given to the father of the contractor i.e. PW-3. Thus, receipt for exactly the same amount on exactly the same date is admittedly in existence, and the prosecution has no explanation for it. The ignorance of PW-1 about the sand contract of the son of his own maternal cousin, which had been the subject of action by the appellant only two days earlier, is itself circumstance that makes his version suspect. A documentary receipt cannot be discarded merely because a particular question was not put in cross-examination, when the prosecution witness admits that the receipt for the same amount was issued. Therefore, the explanation of the appellant is reasonable and probable and is sufficient to raise doubt about the prosecution case that Rs. 900/- was paid as part of bribe. Once it is seen that Rs. 900/- was paid

towards arrears, the foundation of the prosecution case, namely, that it was part of the bribe and that the balance of Rs.1,600/- was to be paid later, is shaken.

11. It is also found that PW-1 has not given any date of the demand. He has admitted in his deposition that the appellant told him that mutation could not be effected without the order of the Tahsildar, and that he made no complaint that the appellant had refused to do his work. PW-7 has stated that the appellant had to report on the mutation only after the period for publication and objections, and that he does not know whether that period was over till the date of the trap. Thus, no work of the complainant was shown to be pending with the appellant for which he could demand money.

12. As regards the alleged negotiation of 21.02.2005, the appellant produced the order of the Tahsildar, forming part of Exh. 20, directing him to attend the Tahsil office for election duty from 7.00 a.m. on that day. It was for the prosecution to prove that the demand was made on 21.02.2005, and a mere possibility that the appellant might have been relieved at noon and become free in the afternoon cannot take the place of proof. The prosecution has also

not explained the delay in lodging the complaint, which was made on 25.02.2005, without the demand being brought to the notice of any superior officer of the appellant. That circumstance may not be fatal, but it assumes significance when considered with the rest of the evidence.

12. Further, according to PW-1's own deposition, Rangrao Muneshwar and Sudhakar Tigalwad were present when Rs. 900/- was handed over at village Penda. Both were named by PW-1 himself and were natural witnesses to the alleged payment. The prosecution did not examine either of them. The non-examination of these witnesses leaves the alleged payment of Rs. 900/- resting solely on the testimony of PW-1 and his real brother, PW-4, and an adverse inference against the prosecution is warranted.

13. It has come on record through the depositions of witnesses that, according to PW-1, the balance was to be paid by Saturday, whereas, according to PW-4, it was to be paid by Monday. PW-1, PW-2 and PW-6 admit that the time and place of the trap were not fixed. PW-3 says that he went with PW-1 to the ACB office on 25.02.2005 and 26.02.2005, but PW-2 and PW-6 deny his presence.

14. The demand at the time of the trap is also not proved. The talk between the complainant and the appellant was only about the work and about bringing the money, and, as regards the demand, the appellant made only a gesture. PW-6 could see the activities but could not hear the talk, and states that the money was kept and the signal was given at the same time. PW-6 also admits that the appellant was saying that the money had been forcibly kept in his pocket.

15. PW-2 gave different versions as to the parts of the complainant's body on which anthracene powder was applied (both hands, right fingers and palm). PW-7 did not record the statements of the panch witnesses or of the raiding party, and the partition deed was not found among the seized documents. The recovery of the tainted notes from the pocket of the appellant and the presence of anthracene powder prove only that the notes were found with him; they do not prove that he demanded and knowingly accepted them as gratification.

16. In view of the above, the prosecution has failed to establish the demand of illegal gratification beyond reasonable doubt and, consequently, acceptance of such gratification is also not

proved. The presumption under Section 20 of the P.C. Act could not have been drawn in the absence of proof of the foundational facts. Even otherwise, the appellant has rebutted it by bringing on record a probable explanation.

17. As far as sanction is concerned, the sanction (Exh. 23) dated 20.05.2005 was accorded by PW-5 Ravindranath Mathpati, the Sub-Divisional Officer, Kinwat. Section 19(1)(c) of the P.C. Act requires that sanction be accorded by the authority competent to remove the public servant from his office. Section 19 speaks of the removing authority and not the appointing authority. It was, therefore, for the prosecution to establish that PW-5 was the removing authority of the appellant; the burden cannot be placed on the appellant to show that he was not working under PW-5 on the date of the sanction. Sanction under Section 19 is a condition precedent to the taking of cognizance and is intended to afford protection against frivolous prosecution. The competence of the sanctioning authority is to be established by the prosecution through the evidence of the sanctioning authority and the relevant rules and orders. The burden cannot be shifted to the accused, particularly when the sanctioning authority himself did not know about the appointment of the appellant by the Selection Board and had not

seen the initial appointment order. PW-5 merely asserted that he was the appointing and removing authority. No rule, notification or order showing that the Sub-Divisional Officer is the authority competent to remove a Talathi has been shown. The competence of PW-5 to grant sanction has, therefore, not been established.

18. The challenge on the ground of non-application of mind also has force. PW-5 has stated that he received a letter dated 05.05.2005 and the case papers, that he found no material relating to any date other than 26.02.2005, and that he received the draft sanction along with the case papers. It is true that merely receiving a draft does not make the sanction mechanical. However, in ***Popat Shankar Sonwane v. State of Maharashtra, 1993 Mh.L.J. 359***, relied upon by the appellant, it is laid down that the sanctioning authority must independently and judiciously examine the record before according sanction. When the sanctioning authority, who is not shown to have known even the basic service particulars of the accused, signs a sanction on a draft prepared by the investigating agency and admits that he noticed no material relating to any date other than the date of the trap, it cannot be held that he independently and judiciously examined the record. In the present case, the prosecution has, therefore, failed to establish that a valid

sanction was granted by the competent authority after due application of mind to the relevant material.

19. In view of the above discussion, the prosecution has failed to establish demand and acceptance of illegal gratification by the appellant beyond reasonable doubt. The prosecution has also failed to establish that a valid sanction was granted by the competent authority. The conviction cannot be sustained, and the impugned judgment and order deserves to be set aside. Hence, the following order:

ORDER

(a) The Criminal Appeal is allowed.

(b) The impugned judgment and order of conviction and sentence dated 10.08.2007, passed by the learned Special Judge, Nanded, in Special (A.C.B.) Case No.3/2005, is quashed and set aside. Consequently, the appellant/accused is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, for which he was convicted.

(c) The bail bond, if any, stands cancelled and the surety, if any, stands discharged.

(d) The record and proceedings be sent to the concerned Court.

(SUSHIL M. GHODESWAR, J.)