IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.114 OF 2015

Uttam s/o Shankar Tupe,
Age : 62 years, Occ : Service,
R/o Talegaon, Tq. Bhokardan,
District Jalna.

...Appellant/ accused No.1

Since deceased through his L.Rs.
Kamalbai Uttamrao Tupe,
Age : 67 years, Occ : Household,
R/o Talegaon, Tq. Bhokardan,
District Jalna.

- Versus -

The State of Maharashtra.

...Respondent/ State.

WITH
CRIMINAL APPEAL NO.400 OF 2016

The State of Maharashtra.
Through Police Station, Phulambri,
District Aurangabad.

… Appellant/ complainant

- Versus -

Pranali Trimbak Tayade,
Age : 32 years, Occu: Service,
R/o Snehanagar, Aurangabad.

… Respondent/ accused No.2

…

Shri Nilesh S. Ghanekar, Advocate for the appellant/ accused in Criminal Appeal No.114/2015.
Shri A.A.A. Khan, APP for the respondent/ State in Criminal Appeal No.114/2015 and for the appellant/ State in Criminal

Appeal No.400/2016.
Ms. Monica N. Bagwe, advocate for the respondent/ accused in Criminal Appeal No.400/2016.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 23 October 2026
Pronounced on : 03 November 2026

JUDGMENT :-

1. Since both these appeals arise out of the same judgment and order, therefore, they are being decided by this common judgment.

2. In Criminal Appeal No.114/2015, the appellant/ accused No.1 (now deceased Uttam Tupe) has challenged the judgment and order dated 31.01.2015 passed by the learned Special Court (PC Act), Aurangabad in Special (ACB) Case No.16/2010 by which, he has been convicted for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he is sentenced to suffer rigorous imprisonment for 03 years and to pay fine of Rs.5000/-, in default of payment of fine, he is directed to suffer further rigorous imprisonment for 03 months, for the offence u/s

7. He is further sentenced to suffer rigorous imprisonment for 04 years and to pay fine of Rs.10,000/- and in default, to suffer rigorous imprisonment for 03 months, for offence u/s 13(2) r/w Section 13(1)(d). Both the sentences were directed to run concurrently. Whereas, accused No.2 (Pranali Tayade) is acquitted for the offence punishable under Section 7 of the PC Act. As such, in Criminal Appeal No.400/2016, the State has challenged her acquittal.

3. The brief facts leading to filing of the present appeal are as under:-

(a) The prosecution case is that the complainant Shivaji Poharkar (PW-1) had filed the complaint dated 30.08.2006 before the Anti-Corruption Bureau, Aurangabad, wherein, he stated that he was working with one Shri K. B. Wankhede, who was operating a kerosene agency M/s Rajendra Kerosene Agency at Phulambri and whenever the said Wankhede used to go out of town, he used to look after his business. The said Wankhede was holding a kerosene permit and, therefore, the complainant was required to approach the District Supply Officer as well as the Tahsil Offices whenever kerosene was distributed to his agency.

(b) In the month of August 2006, the kerosene tankers were unloaded in the presence of the employees of the District Supply Office. On 28.08.2006, the last kerosene tanker was unloaded in the presence of Shri Kapse, a clerk working with the District Supply Office. Therefore, on 29.08.2006, the complainant went to the Tahsil Office, Phulambri, and met the Tahsildar, Shri Tupe, i.e. the appellant/ accused No.1. He requested the appellant to issue the invoice. However, the appellant allegedly informed him that unless he made certain payments and met Tayade Madam (i.e. accused No.2) and Kapse, the clerk, the invoice would not be issued unless the complainant complied with the said demand. Accordingly, he went to meet Tayade Madam (accused No.2), who was working as a Naib-Tahsildar at the relevant time. She allegedly demanded Rs.3,000/- from him, in addition to the amount that could be demanded by Shri Kapse. She further informed him that after payment of the aforesaid amount, he would receive the invoices for both the tankers. Accordingly, the complainant met Kapse, the clerk. The said Kapse informed him that he should pay Rs.2,000/- to him and Rs.4,000/- to his Saheb (accused No.1). He further informed the complainant that after payment of the

aforesaid amount, the invoice would be issued. Accordingly, they asked him to make the payment of Rs.4,000/- on or before 31.08.2006, failing which the invoice would not be issued and his kerosene supply would be discontinued.

(c) Accordingly, the complaint was lodged by PW-1. Pre-trap panchanama (exhibit 89) was drawn on 31.08.2006. Trap was laid and the accused were caught while accepting the bribe amount. Detail spot panchanama (exhibit 57) was drawn. Thereafter, FIR bearing Crime No.II-3016/2006 came to be registered with the Phulambri Police Station. The accused persons were arrested.

(d) After completion of investigation, the charge sheet was filed. The charge was framed at exhibit 19 and the accused pleaded not guilty and claimed to be tried. In order to prove guilt of the accused, the prosecution has examined 7 witnesses, namely, PW-1 complainant Shivaji Poharkar, PW-3 Rajendra Bengle, who issued sanction order dated 20.10.2010 at exhibit 28, PW-3 Hanmant Prabhakar Guthe, panch witness, PW-4 Anilsinha Rajput, Investigating Officer, PW-5 Kishor Katole, police, carrier witness, PW-6 Sangram Sangle, panch witness and

PW-7 Bramhadeo Gavade, Deputy SP, who was the subsequent Investigating Officer.

(e) After recording evidence and hearing the parties, the learned Special Judge (PC Act), Aurangabad, by the impugned judgment and order dated 31.01.2015 convicted accused No.1 Tupe and acquitted accused No.2 (Tayade).

4. The learned advocate for the appellant/ accused No.1 submitted that the prosecution has failed to establish the initial demand of illegal gratification by the accused. He submitted that there are material omissions and contradictions in the evidence of PW-1/complainant as compared to the contents of the complaint. The complainant has not stated the date of the initial demand in his substantive evidence and has made only general allegations against the accused persons. He further submitted that the alleged conversation recorded during verification does not establish any specific demand of illegal gratification in connection with the official work of the complainant. He also submitted that the panch witness was not present inside the house of accused No.1 at the time of the alleged demand and acceptance, and there is no consistent

evidence regarding the recovery of the currency notes from the pocket of accused No.1.

5. The learned advocate appearing for the appellant further submitted that the complainant was working with K. B. Wankhede, whose kerosene agency licence had been cancelled by accused No.1, and, therefore, the possibility of false implication on account of previous animosity cannot be ruled out. He submitted that the complainant had admitted the transaction of hand loan of Rs.5,000/-, out of which Rs.4,000/- remained outstanding. The complainant had also admitted that he had gone to the house of accused No.1 and handed over Rs.4,000/- towards repayment of the said amount. Therefore, the defence of accused No.1 that the amount was accepted towards repayment of the hand loan and not as illegal gratification is probable. He lastly submitted that the prosecution has also failed to establish the admissibility and authenticity of the electronic conversation relied upon by it. Hence, the learned advocate prayed for allowing the appeal and setting aside the impugned judgment and order of conviction.

6. The learned advocate appearing for respondent/

accused No.2 submitted that the learned Special Judge has rightly appreciated the evidence available on record and has rightly acquitted accused No.2 of the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. She submitted that the allegations made in the complaint regarding the alleged demand of Rs.3,000/- by accused No.2 are not duly corroborated by the substantive evidence of PW-1/complainant. The complainant has not given any specific particulars regarding the alleged initial demand in his deposition. She further submitted that the alleged telephonic conversation does not establish any specific demand of illegal gratification by accused No.2 in connection with the official work of the complainant. The prosecution has failed to establish the essential ingredients of the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, against accused No.2 by leading cogent and reliable evidence. She, therefore, submitted that the findings recorded by the learned Special Judge acquitting accused No.2 are legal and proper and do not call for any interference. Hence, he prayed for dismissal of the appeal filed by the State.

7. The learned APP appearing for the State submitted

that the learned Special Judge has not properly appreciated the evidence brought on record by the prosecution. He submitted that the evidence of PW-1/complainant, the panch witnesses and the Investigating Officer, if considered in its proper perspective, establishes the demand and acceptance of illegal gratification by the accused persons. He further submitted that the complaint lodged by PW-1, the pre-trap panchanama, the trap proceedings and the subsequent recovery of the tainted currency notes lend support to the prosecution case. The learned APP further submitted that the defence of accused No.1 regarding the alleged hand loan is an afterthought and has been taken only to escape from the consequences of the offence. He submitted that the learned Special Judge ought to have properly appreciated the evidence against accused No.2 also, particularly the allegations regarding her demand of Rs.3,000/- and the telephonic conversation during verification. Therefore, the findings recorded by the learned Special Judge, insofar as they relate to the acquittal of accused No.2, are erroneous and deserve to be set aside. He, therefore, prayed for allowing the appeal filed by the State and dismissing the appeal filed by accused No.1.

8. After hearing the learned counsel for the respective parties and with their assistance, perusing the material available on record, it is evident that if the contents of the complaint dated 30.08.2006 are compared with the deposition of PW-1/ complainant, it appears that, in paragraph 4 of his deposition, he stated that he had gone to request the authorities to issue two certificates in respect of two tankers. However, he did not mention the date on which he had approached them. Thereafter, in paragraph 5 of his deposition, he stated that Tayade Madam (accused No.2) demanded Rs.3,000/-, Kapse Saheb demanded Rs.2,000/- and Tupe Saheb (accused No.1) demanded Rs.4,000/-. The allegation made in the complaint that the accused persons had threatened him that if he failed to pay the aforesaid amounts, his kerosene supply would be discontinued, is missing in his substantive evidence. Thus, in his substantive evidence, the complainant has not mentioned the date of the initial demand. Further, in paragraph 5 of his deposition, he has made general allegations regarding the demand of money. Moreover, the allegation that the accused persons had threatened him with discontinuation of his kerosene supply in the event of non-payment of the amount, is also missing in his deposition.

9. In the deposition of PW-/ complainant, it is stated that when the Investigating Officer, Shri Rajput, attempted to verify the complaint of PW-1 regarding the alleged demand of bribe, he accordingly asked the complainant to talk to the accused persons. The complainant allegedly received a phone call from Tayade Madam (accused No.2), who was Naib-Tahsildar. She allegedly informed him that he would not get the invoice unless the amount was paid. It is also the case of the prosecution that, after the phone call from Tayade Madam (accused No.2), the complainant received a phone call from Tupe (accused No.1), who also allegedly demanded the bribe amount. When the complainant informed him over the phone that he had not received the papers, the accused replied that the complainant would not get the papers unless the amount was paid. However, there is no specific conversation regarding the certificates or the amount to be paid for issuance of the certificates. Thus, the conversation merely refers to payment of money without establishing the specific demand of illegal gratification in connection with the official work of the complainant PW-1. Such conversation, in the facts of the present case, is not sufficient to establish the demand of illegal gratification.

10. For proving a demand, cogent and reliable evidence is required to be brought before the Court. Several judgments pronounced by the Hon'ble Supreme Court in respect of the Prevention of Corruption Act, particularly relating to Sections 7 and 13 of the Act, make it clear that proof of demand of illegal gratification is the gravamen of the prosecution case. Unless and until the demand is proved by leading cogent evidence, the prosecution case against the accused persons cannot be said to have been established. In this regard, the Hon'ble Supreme Court in ***B. Jayaraj v. State of Andhra Pradesh, reported in (2014) 13 SCC 55***, particularly in paragraph 7, has held that demand of illegal gratification is *sine qua non* for constituting the offence under Section 7 of the Prevention of Corruption Act, 1988, and mere recovery of currency notes, in the absence of proof of demand, would not be sufficient to establish the offence. The same principle has been reiterated in ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh, reported in (2015) 10 SCC 152***, particularly paragraphs 21 and 22, wherein it has been held that proof of demand of illegal gratification is indispensable for establishing the offences under Sections 7 and 13(1)(d) of the Act, and mere acceptance or recovery of the

amount, without proof of demand, would not be sufficient. Further, the Constitution Bench of the Hon'ble Supreme Court in *Neeraj Dutta v. State (Government of NCT of Delhi), reported in (2023) 4 SCC 731*, particularly paragraph 88.4, has explained the principles governing proof of demand and acceptance of illegal gratification. It has been held that the factum of demand and acceptance has to be established by the prosecution, either by direct evidence or by circumstantial evidence, as the case may be. Mere acceptance or receipt of an amount, without establishing the necessary foundational facts, would not be sufficient to establish the offence.

11. In this case, it is also pertinent to see that the accused were working in the Tahsil Office for the last three years, and the complainant as well as his master K. B. Wankhede, had been obtaining the invoices/challans from the office of the accused persons for more than three years i.e. since the time they started operating the kerosene agency. After having dealings with the accused persons for such a long period, what occasion had arisen for the accused persons to demand the amount after a period of three years, when there was not a single allegation of

demand of bribe during the said period? The prosecution could not bring on record what prompted the accused persons to demand the bribe amount from the complainant on this occasion, though they had known each other for the last three years.

12. It is also pertinent to see that the evidence regarding demand and acceptance is not satisfactorily established by the prosecution. It is an admitted position that the panch witness, who was directed to remain present with the complainant at the time of the trap, was not present inside the house of the accused to witness the alleged demand and acceptance. It is an admitted position that the panch witness i.e. PW-3 had stopped in front of the house of the accused. When the complainant came out of the house after allegedly handing over the amount, he informed panch No.1 that the Tahsildar (accused No.1) had demanded the amount and that he had paid the same. Thereafter, there is again no corroboration as regards who had removed the currency notes from the pocket of the accused. The complainant stated that accused No.1 had removed the currency notes from his pocket. However, the panch witness and the other prosecution witnesses have not stated so in their respective depositions, thereby giving

different versions regarding the alleged recovery of the currency notes.

13. It is also the case of the appellant/ accused that the complainant was having personal grudge against the office-bearers of the accused persons. From the evidence, it is gathered that Mr. Wankhede was carrying on the business of kerosene agency in the names of other persons. In paragraph 14 of deposition of PW-1, the complainant admitted that the licence of Mr. Wankhede was cancelled by accused Tupe (accused No.1), due to which Mr. Wankhede had suffered financial loss and had also been defamed. Therefore, the possibility of the complainant having personal grudge against the accused persons cannot be ruled out.

14. Moreover, the defence of the appellant/ accused is also required to be taken into consideration. The case of the accused is that, prior to the incident, he had advanced hand loan of Rs.5,000/- to the complainant, out of which the complainant had repaid Rs.1,000/-, and an amount of Rs.4,000/- remained outstanding. This fact has been admitted by PW-1 in his deposition. The accused is required to establish his defence on

the touchstone of preponderance of probabilities. The aforesaid admission of PW-1 is, therefore, relevant circumstance in support of the defence raised by the accused. It is also required to be seen that the complainant has admitted that the complaint was filed at the behest of Wankhede. Therefore, the defence of the accused that he had accepted the amount from the complainant towards repayment of the outstanding hand loan amount assumes significance. The complainant has also admitted that when he went to the house of the accused to pay the amount, he took out the money from his pocket and told the accused to accept the amount of Rs.4,000/- due to him. The Investigating Officer has also stated that he realized that the work of the complainant in the Tahsil Office was of routine nature. The accused, in his statement immediately after the raid, had stated that an amount was due to him from the complainant and that the amount of Rs.4,000/- was the same amount which was outstanding towards the complainant. This circumstance shows that the defence taken by the accused was not an afterthought, as the same was immediately put forth at the time when accused No.1 Uttam Tupe was apprehended. In that view of the matter, the contention of the appellant that he had received the amount not as a bribe, but

towards repayment of the hand loan amount advanced by him to the complainant, assumes significance.

15. It is also admitted by the complainant that he had an occasion to read his complaint for the purpose of refreshing his memory before giving evidence. In this regard, a reference can be made to the judgment of this Court in ***Suresh s/o Purushottam Ashtankar v. State of Maharashtra & Anr., 2015 ALL MR (Cri) 4243*** wherein, it was observed that a witness may refresh his memory before the Court with reference to contemporaneous records, as permitted by law. However, stealthily reading police statements before entering the witness box and thereafter deposing as if the entire evidence is being recollected independently affects the reliability of such testimony. The legal position regarding refreshing memory is governed by Section 159 of the Indian Evidence Act, 1872. Therefore, the circumstances in which the complainant had read the complaint before entering the witness box and the manner in which the same was used for refreshing his memory are required to be considered in accordance with the said provision.

16. It is also required to be observed that the evidence

regarding the recording of the conversation is not satisfactorily established. According to the prosecution, the conversation was recorded in a cassette. Thereafter, the contents of the cassette were downloaded onto laptop and a CD was prepared. However, there is no evidence of compliance with the requirements of Section 65-B of the Indian Evidence Act, 1872, and there is also no satisfactory evidence regarding the actual recording and authenticity of the conversation. In the absence of the necessary foundation for proving the electronic record, the said recording cannot be relied upon as admissible evidence.

17. So far as the appeal filed by the State against the acquittal of accused No.2 is concerned, it is required to be seen that the prosecution was required to establish the specific demand and acceptance of illegal gratification by accused No.2 by leading cogent and reliable evidence. Merely because her name finds place in the complaint and allegations have been made against her regarding the alleged demand of Rs.3,000/-, the same cannot be sufficient to record a finding of guilt. The evidence of PW-1/complainant, when considered in its entirety, does not satisfactorily establish the specific demand of illegal

gratification by accused No.2 in connection with the official work of the complainant. The alleged telephonic conversation also does not establish the necessary particulars of the demand attributed to her. The learned Special Judge, after appreciating the evidence available on record, has recorded a finding of acquittal in favour of accused No.2. The said finding is based on the evidence brought on record and cannot be said to be perverse or contrary to the material available on record. Therefore, no case is made out for interfering with the judgment and order of acquittal passed in favour of accused No.2.

18. In view of the above-referred facts and circumstances, and particularly when the prosecution has failed to establish the demand and acceptance of illegal gratification by leading cogent and reliable evidence, the appeal of accused No.1 deserves to be allowed and the appeal filed by the State Government deserves to be dismissed. Hence, the following order:-

ORDER

(a) Criminal Appeal No.114/2015 filed by accused No.1 (Uttam Tupe) is allowed and the impugned judgment and order is

quashed and set aside. The appellant/ accused No.1 is acquitted for the said offence. The bail bond, if any, stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded.

(b) Criminal Appeal No.400/2016 filed by the State is dismissed.

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

kps (SUSHIL M. GHODESWAR, J.)