# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# BENCH AT AURANGABAD

## CRIMINAL APPEAL NO.727 OF 2015

Kailas Chintaman Patil,
Age : 43 years, Occupation : Service,
R/o Shankar Appa Nagar, Jalgaon.

… Appellant/accused No.1

Versus

The State of Maharashtra.

… Respondent

WITH

## CRIMINAL APPEAL NO.730 OF 2015

Himmat Shamrao Pawar,
Age : 61 years, Occupation : Retired,
R/o Pardi Wada, Parola Naka,
Dharangaon, Dist. Jalgaon.

… Appellant/accused No.2

Versus

The State of Maharashtra.

… Respondent

…

Shri Manoharrao A. Tandale, Advocate for the appellants/ accused.
Shri V.M. Lomte, APP for the respondent/ State.

…

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 05 October 2026

Pronounced on : 27 October 2026

JUDGMENT :-

1. In both these appeals, the appellants/ accused are challenging the judgment and order dated 27.08.2015 passed by the learned Additional Sessions Judge, Jalgaon, in Special (ACB) Case No. 4 of 2013.

2. Accused No.1 (Kailas Patil) i.e. appellant in Criminal Appeal No. 727 of 2015 was working as a Junior Clerk in the Social Welfare Office. He came to be convicted under Section 7 of the Prevention of Corruption Act, 1988, and was sentenced to suffer two years' rigorous imprisonment and to pay fine of Rs.10,000/- and in default, to suffer simple imprisonment for six months.

3. Accused No.2 (Himmat Pawar) i.e. appellant in Criminal Appeal No.730 of 2015 was working as the Social Welfare Officer. He has been convicted under Sections 7 and 12 of the Prevention of Corruption Act, 1988. For the offence under Section 7, he has been sentenced to suffer simple imprisonment for one year and to pay fine of Rs.10,000/-, and in default, to suffer simple imprisonment for six months. For the offence under

Section 12, he has been sentenced to suffer simple imprisonment for one year and to pay fine of Rs.5,000/- and in default, to suffer simple imprisonment for three months.

4. Since both the appeals arise out of the same judgment dated 27.08.2015, they are being disposed of by this common judgment.

5. The prosecution story is as under:-

(a) P.W.1/complainant Vijay Patil was the Sarpanch of Village Panchayat, Palaskhede, Taluka Bhadgaon, District Jalgaon. He lodged the complaint (Exhibit 10) with the Anti-Corruption Bureau (ACB), Jalgaon, on 31.05.2011, contending that he being the Sarpanch had implemented various Government schemes for the development of Rupnagar Tanda locality. According to him, two separate resolutions dated 26.01.2011 were passed, and Rupnagar Tanda Vasti was divided into Tanda No.1 and Tanda No.2. Thereafter, on 29.01.2011, the letter was submitted to the Block Development Officer, Panchayat Samiti, Bhadgaon, for submission of development proposal for Rupnagar Tanda. Accordingly, the resolution came to be sent to the Panchayat Samiti, Bhadgaon. On 29.01.2011, the proposal for

concrete road at Palaskhede was submitted under the Tanda Sudhar Vasti Scheme.

(b) In March 2011, the complainant had gone to Jalgaon for Gram Panchayat work. At that time, he visited the Social Welfare Office. The complainant met Social Welfare Officer Pawar (accused No.2) and inquired about the development proposal. Pawar informed him that the proposal under the Tanda Sudhar Vasti Scheme had been sanctioned. Thereupon, the complainant inquired about the amount sanctioned under the proposal and when the said amount would be received. At that time, Pawar informed him that the proposal for Rs.2,00,000/- had been sanctioned, however, the funds were not available. He further stated that, after the funds became available, demand draft for Rs.2,00,000/- would be prepared in favour of the Block Development Officer and the Gram Sevak of the village and would be handed over to them. Pawar also informed him that the funds would be available in May.

(c) On 30.05.2011, at around 12 noon, the complainant visited the Social Welfare Office and found that Social Welfare Officer Pawar (accused No.2) was not present in his office.

Therefore, he inquired about Pawar from the employee working at the adjoining table. The said employee informed him that Pawar would come in the afternoon. The said employee was K.C. Patil i.e. accused No.1. The complainant informed K.C. Patil (accused No.1) that he was the Sarpanch of village Palaskhede and that the Palaskhede Gram Panchayat had submitted the proposal under the Tanda Sudhar Vasti Scheme. Accused No.1 Patil, informed him that the demand draft in respect of the proposal under the Tanda Sudhar Vasti Scheme for Palaskhede was ready and that the said demand draft was in the names of the Block Development Officer, Bhadgaon, and the Gram Sevak of the complainant's village. He further informed the complainant that a letter signed by the Special Social Welfare Officer in respect of the said demand draft would have to be sent to the B.D.O., Bhadgaon. Accused No.1 told the complainant that it would take one or two months to receive the demand draft. However, if the complainant pays 5% of the sanctioned amount of Rs.2,00,000/- i.e. Rs.10,000/- to Pawar (accused No.2), the complainant could obtain the demand draft immediately. At that time, the complainant did not have Rs.10,000/- with him. Therefore, he requested accused No.1 Patil to give him the

demand draft, stating that the amount would be paid later. Accused No.1 Patil told him that unless he pays Rs.10,000/-, Saheb (accused No.2) would not sign the necessary document and the complainant would not receive the demand draft. Thereafter, they negotiated the amount, which was reduced to Rs.3,000/-. Accused Patil asked the complainant to come in the afternoon and meet accused No.2 Pawar.

(d) Since the complainant was not willing to pay the bribe, he lodged the complaint with the ACB Office, where he met Dy.S.P. Shri Shivaji S. Deshmukh (PW-3). Dy.S.P. S.S. Deshmukh called two employees from the Government department. Accordingly, U.A. Tadvi and Rahul B. Sonawane (P.W.2) came to the office of the Anti-Corruption Bureau. After their introduction, the complaint was verified. Thereafter, the Dy.S.P. decided to conduct verification of the demand for bribe. The complainant was directed to proceed along with Pancha No.1 Rahul B. Sonawane, to the office of the accused persons to meet them. A voice recorder was also given to the complainant. However, since the complainant was unable to operate the voice recorder, the decision to use it was abandoned. After giving the

necessary instructions, the complainant and P.W.2 Sonawane left for the Social Welfare Office.

(e) At 3:45 p.m., they returned to the ACB Office. Dy.S.P. Deshmukh asked them what had happened at the office of the accused persons. Pancha No.1 Sonawane stated that after they reached the office, accused No.1 Kailas Patil met them. They inquired with Kailas Patil about accused No.2 Pawar. At that time, accused No.1 Kailas Patil informed them that accused No.2 Pawar was inside his cabin. Thereafter, P.W.1 complainant and Pancha No.1 met accused Pawar. Accused Kailas Patil also came near them. In the presence of the complainant and Pancha No.1, accused Kailas Patil told Pawar that he had asked the complainant to pay Rs.10,000/-. Thereupon, accused Pawar told the complainant to pay Rs.10,000/- being 5% of the sanctioned amount and take the demand draft. At that time, accused Pawar asked the complainant to pay Rs.5,000/- immediately and the remaining Rs.5,000/- later. The complainant informed him that he did not have the amount with him and would bring it on the next date. Pancha No.1 further informed Dy.S.P. Deshmukh that accused Pawar told the complainant to bring the amount in the

afternoon on the next date and if Pawar was not present in the office, to pay the amount to accused Patil. Accordingly, Pancha No.1 and the complainant returned to the ACB Office. The complainant also narrated the same incident to Dy.S.P. Deshmukh. Accordingly, the demand-verification panchnama, Exhibit 18, came to be prepared. Thereafter, the complainant and the panchas were directed to go home and were asked to report on the next date.

(f) On the next date, the complainant and the panchas approached the ACB Office at 12 noon. Dy.S.P. Deshmukh decided to conduct the pre-trap panchnama. After completing necessary formalities regarding the use of anthracene powder and other matters, the Dy.S.P. gave the necessary instructions to the complainant and the panchas. They were directed to go to the office of the accused persons, meet them and only upon demand, hand over the bribe amount to the accused demanding it with the complainant's right hand. Dy.S.P. Deshmukh further instructed the complainant that, if the bribe amount was accepted, he should give a signal to the raiding party. P.W.2/ panch witness Sonawane was instructed to accompany the complainant and keep watch on

who accepted the bribe amount and where it was kept. Pancha No.2 was instructed to accompany the raiding party and keep watch on the events. Accordingly, a detailed pre-trap panchnama, Exhibit 20, came to be prepared recording the aforesaid facts.

(g) After the pre-trap panchnama, at 3:30 p.m., Dy.S.P. Deshmukh, the complainant, the panchas and the members of the raiding party proceeded in a Government vehicle and on motorcycles towards Ambedkar Samajik Nyay Bhavan, Jalgaon. The complainant and Pancha No.1 entered the office of the accused persons. Dy.S.P. Deshmukh and the members of the raiding party took their positions around the building. After about ten minutes, the complainant and Pancha No.1 returned to Dy.S.P. Deshmukh. They informed him that accused Pawar was not present in the office and that accused Patil had told them that he had been asked to do the complainant's work as discussed on the previous date. Hence, Dy.S.P. Deshmukh instructed the complainant and Pancha No.1 to go to the office of the accused persons and collect the demand draft and, if the amount was demanded, the complainant should pay the bribe amount as previously instructed.

(h) After about ten minutes, the complainant and Pancha No.1, along with another person, came out of the building. Those persons had some discussion, after which the third person left the office compound on a motorcycle. The complainant and Pancha No.1 met Dy.S.P. Deshmukh and informed him that the complainant's signatures had been obtained in connection with the issuance of the demand draft. The third person told them that he would hand over the demand draft after having tea outside. Hence, it was decided to arrange the trap near a tea stall situated outside the office.

(i) Thereafter, the complainant and Pancha No.1 proceeded towards the tea stall on a motorcycle. The complainant, Pancha No.1 and the third person had tea at the said stall. They had some conversation, after which the third person, the complainant and Pancha No.1 left on a motorcycle. The raiding party followed the complainant and the third person. The complainant, Pancha No.1 and the third person stopped near Sane Guruji Garden. Dy.S.P. Deshmukh and the accompanying members of the raiding party stopped their vehicle at some distance. Meanwhile, the complainant gave the predetermined

signal by immediately scratching his head. Dy.S.P. Deshmukh and the members of the raiding party rushed towards the complainant, Pancha No.1 and the third person. When Dy.S.P. Deshmukh asked Pancha No.1 where the bribe amount was, P.W.1 informed him that the third person was accused Patil, who had demanded the bribe from the complainant and kept the said amount in the right pocket of his trousers. Thereafter, Dy.S.P. Deshmukh introduced the members of the raiding party and the panchas to accused Patil. Dy.S.P. Deshmukh asked Pancha No.2 to take out the bribe amount from the right pocket of the trousers of accused Patil. Upon counting, it was found that the amount was Rs.5,000/-, comprising ten currency notes of Rs.500/- each. Thereafter, the members of the raiding party, along with the accused, proceeded in a Government vehicle to the office of the accused persons. At that time, both hands of the accused were held. After reaching the office, the hands of the accused were examined in the cabin of the Special District Social Welfare Officer under the light of an ultraviolet lamp in darkness. At that time, a greenish colour was noticed on the fingers of the right hand and along the edges of the right pocket of the trousers of accused Patil.

(j) The complainant was also searched. The letter and the demand draft were found with the complainant and were seized in connection with the crime. After completing the aforesaid formalities, the complaint came to be registered.

(k) The investigation was conducted and the charge-sheet came to be filed. The accused persons pleaded not guilty and claimed to be tried. Thereafter, vide Exhibit-4 the charge came to be framed against the appellants. In order to prove the charge against the appellants, the prosecution examined four witnesses, namely, P.W.1 Vijay Dhondu Patil, the complainant, examined at Exhibit 9, P.W.2 Rahul Sonawane, the shadow pancha witness, examined at Exhibit 15, P.W.3 Shivaji Sakharam Deshmukh, Dy.S.P., Anti-Corruption Bureau, examined at Exhibit 37 and P.W.4 Rajendra Kalal, the sanctioning authority, examined at Exhibit 47.

(l) After hearing the parties, the learned Additional Sessions Judge, Jalgaon, vide the impugned judgment and order dated 27.08.2015 convicted and sentenced the appellants/ accused as stated herein above. Hence, these appeals.

6. The learned advocate appearing for the appellants/

accused submitted that the complainant Vijay Patil (PW-1) lacked the legal authority to collect the demand draft, which had been issued in favour of the Block Development Officer and the Gram Sevak. Accused No.2 had no authority to sign the draft, and accused No.1 was officially deputed to a boys' hostel at the relevant time. Therefore, according to the defence, neither of them had the official capacity or motive to withhold the draft. Accused No.2 was completely absent from the office on the date of the trap. The Investigating Officer arbitrarily shifted the trap to accused No.1 at the spot without conducting fresh pre-trap verification to confirm an actual demand by accused No.1. According to the learned advocate for the appellants, P.W.1 was a habitual complainant who had filed multiple false complaints against Government officers, which were brought on record at Exhibits 59 to 65. The said complaints demonstrated that he had predetermined motive to arrange traps against Government servants.

7. The learned advocate further submitted that the prosecution evidence also suffers from inconsistencies regarding the alleged demand for bribe. The amount allegedly demanded

fluctuated from Rs.10,000/- to Rs.5,000/- and later to Rs.3,000/-, indicating that there was no clear agreement. However, on the date of the trap, an amount of Rs.5,000/- came to be seized from accused No.1. The prosecution has failed to establish the demand and voluntary acceptance of the bribe by accused Patil. The trap was intended for accused No.2 Pawar, who was absent on the relevant date. The trap was shifted from accused No.2 to accused No.1 without fresh pre-trap verification. Therefore, the prosecution case raises a doubt as to who had actually demanded the bribe amount. According to the learned advocate, the amount was not voluntarily accepted but was stealthily planted by P.W.1 in the pocket of accused No.1 when the shadow pancha was riding pillion on accused No.1's motorcycle.

8. The learned advocate for the appellants submitted that there is no corroboration in the evidence of witnesses. The prosecution has failed to prove its case beyond all reasonable doubts. Therefore, the impugned judgment is required to be quashed and set aside and the appellants need to be acquitted.

9. In support of his submissions, the learned advocate for the appellants relied upon several judgments including ***A.***

*Subair vs. State of Kerala, (2009) 6 SCC 587, State of Punjab vs. Madan Mohan Lal Verma, (2013) 14 SCC 153, P. Satyanarayana Murthy v. District Inspector of Police, (2015) 10 SCC 152 : 2015 Cri.L.J. 4670, B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55, Mohd. Iqbal Ahmed vs. State of A.P., AIR 1979 SC 677 and K. Shanthamma vs. State of Telangana, (2022) 4 SCC 574.*

10. On the other hand, the learned APP strongly opposed the appeals and submitted that the contention of the appellants that the complainant was habitual in lodging complaints could not be accepted merely on that ground. Even if the complainant had lodged complaints against other public servants, nothing was elicited from his evidence to establish that the complaint in the present case was illegal or frivolous. On the contrary, the complainant was found to be steady and firm witness, and despite lengthy cross-examination, nothing was elicited by the defence to discredit his evidence. Moreover, the fact that the accused persons had demanded the bribe and accused No.1 had accepted it could not be disproved, as the prosecution evidence was strong and free from suspicion. Therefore, there was no lacuna in the investigation conducted by

the Investigating Officer and the appellants did not deserve any relief from this Court.

11. The learned APP further submitted that the judgments relied upon by the appellants were of no assistance to them. He submitted that there was no restriction on private citizens from filing complaints against corrupt public servants. In support of his submission, he relied upon the judgment of the Hon'ble Supreme Court in ***Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64***.

12. The learned APP also opposed the ground raised by the learned counsel for the appellants regarding the withholding of the demand draft for a period of more than two months. According to him, there was no reason for the appellants to withhold the demand draft when it was to be handed over to the office of the Block Development Officer. The withholding of the demand draft indicated their intention to demand a bribe, as they were aware that the complainant, being the Sarpanch of the village, was anxious about its development. Therefore, according to the learned APP, there was no illegality on the part of the prosecution in registering the corruption case against the

appellants. The purpose of the demand for a bribe was to extract money from the complainant, who was concerned about the development of his village. The accused persons knew that by withholding the demand draft, they could exercise authority or control over the complainant and thereby demand a bribe from him.

13. After having considered the above submissions and the material placed on record, it would be useful to refer to the principles laid down by the Hon'ble Supreme Court in ***P. Satyanarayana Murthy v. District Inspector of Police, (2015) 10 SCC 152 : 2015 Cri.L.J. 4670, B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55 and Neeraj Dutta v. State (Government of NCT of Delhi), (2023) 4 SCC 731***, concerning proof of demand and acceptance of illegal gratification under the Prevention of Corruption Act, 1988.

14. According to the prosecution, the complainant had visited the office of the Social Welfare Department to obtain the demand draft. The question is whether the complainant had any authority to collect the demand draft, which had been issued specifically in favour of the Block Development Officer and the

Gram Sevak. On consideration of this aspect, it is found that, although the demand draft had been prepared and was with the accused persons, they were required to forward it to the aforesaid office. However, due to the non-availability of funds, the demand draft had not been prepared earlier and came to be prepared in May 2011. The complainant had visited the office of the Social Welfare Department in connection with the release of the said demand draft, which was prepared in favour of the B.D.O. and the Gram Sevak. In that connection, the accused persons allegedly demanded 5% of the sanctioned amount as illegal gratification. However, the allegations regarding the demand were directed against accused No.2 from the beginning. The allegations also disclose that accused No.2 Pawar had demanded 5% of the sanctioned amount. However, at the time of the trap, accused No.1 Patil allegedly accepted Rs.5,000/- from the complainant. The shifting of the trap from accused No.2 to accused No.1 was done arbitrarily by the Investigating Officer. Accused No.2 was absent from the office on the date of the trap, i.e. 01.06.2011. Before shifting the trap from accused No.2 to accused No.1, the Investigating Officer was required to conduct fresh pre-trap verification to confirm whether accused No.1 had

actively demanded the bribe. The failure to conduct fresh pre-trap verification raises a doubt regarding the actual demand. The raiding party appears to have conducted the trap in haste without confirming who had actually demanded the bribe. The failure to conduct fresh demand-verification proceedings against accused No.1 raises serious concerns regarding the investigation conducted by the Investigating Officer.

15. The law on the issue is well settled. Demand for illegal gratification is a *sine qua non* for constituting an offence under the Prevention of Corruption Act, 1988. Mere recovery of tainted money is not sufficient to convict an accused when the substantive evidence is not reliable, unless there is evidence proving the demand for the bribe and its acceptance as illegal gratification. The statutory presumption under Section 20 of the Act can be invoked only after the prosecution establishes the foundational facts necessary for its application. The accused may rebut the presumption by bringing on record, through direct or circumstantial evidence, material establishing with reasonable probability that the amount was accepted otherwise than as a motive or reward contemplated by Section 7 of the Act.

16. While considering the explanation offered by the accused, the Court is required to assess it on the touchstone of preponderance of probabilities and not proof beyond reasonable doubt. However, before the accused is called upon to explain how the amount in question came to be found in his possession, the prosecution must establish the foundational facts. It is also important to observe that the complainant is alleged to be habitual complainant who had lodged complaints against various public servants. The complainant is, therefore, an interested witness who could be said to be concerned with the success of the trap. In such circumstances, his evidence is required to be scrutinized carefully, as is the evidence of any other interested witness. The Court must assess whether, his testimony inspires confidence and whether, it is corroborated by other evidence wherever necessary. In this regard, it would be useful to refer to the judgments of the Hon'ble Supreme Court in ***Ram Prakash Arora v. State of Punjab, (1972) 3 SCC 652; T. Subramanian v. State of Tamil Nadu, (2006) 1 SCC 401; and State of Kerala v. C.P. Rao, (2011) 6 SCC 450***. The case is required to be examined in the light of the aforesaid settled legal principles.

17. With the aforesaid legal position in mind, I have minutely perused the evidence of the complainant PW-1. He stated in his evidence that he along with PW-2 Sonawane, had gone to the Social Welfare Office, Jalgaon, at 3:00 p.m. Accused No.1 K.C. Patil met them. Accused No.1 told them that accused No.2 Pawar was available in his room. Accordingly, they proceeded towards the table of accused Pawar. Accused No.1 was also present there. Accused No.1 told accused No.2 Pawar that he had informed the complainant about the amount of Rs.10,000/- being 5% of the sanctioned amount. At that time, accused Pawar replied, “OK”. Thereafter, the complainant P.W.1 told accused Pawar that the amount was excessive and should be reduced. At that time, accused Pawar asked him to pay Rs.5,000/- initially and the remaining Rs.5,000/- afterwards. The complainant P.W.1 informed accused Pawar that he had not brought the money and would pay the amount on the next date. At that time, accused Pawar told him that he would not be available on the next date and that, when the complainant came with the money, he should pay the amount to accused No.1 K.C. Patil and take the demand draft.

18. After the above conversation, the complainant PW-1 and P.W.2 Sonawane returned to the ACB Office, where the Dy.S.P., ACB, prepared the demand-verification panchnama. I have also perused the evidence of P.W.2 Sonawane, Pancha No.1. The said pancha witness stated before the Court that, when accused Pawar asked the complainant to pay the amount, the complainant informed him that he had not brought the amount and would pay it on the next date. Thereafter, accused Pawar told the complainant to bring the amount on the next date. The complainant and Sonawane P.W.2 thereafter returned to the ACB Office and narrated the incident to the ACB Officer. However, the aspect of paying the amount to accused No.1 K.C. Patil, in the absence of accused Pawar is missing from the deposition of P.W.2 Sonawane. This is crucial aspect concerning the alleged direction or instruction given by accused Pawar to the complainant to pay the amount to accused K.C. Patil in Pawar's absence. The absence of corroboration on this vital aspect raises a serious doubt regarding the alleged demand and the direction to pay the amount to accused No.1. Therefore, it cannot be said that the evidence of the complainant on this material aspect is corroborated by the evidence of P.W.2, the pancha witness.

19. As stated earlier, the complainant being an interested witness, his evidence requires careful scrutiny and corroboration on material particulars. Pancha No.1 Sonawane has not stated precisely what the complainant deposed regarding the alleged direction to pay the amount to accused No.1 in accused No.2's absence. Therefore, the prosecution cannot be said to have proved its case beyond reasonable doubt.

20. In view of the aforesaid facts and the legal principles laid down by the Hon'ble Supreme Court in the aforesaid judgments, it would not be appropriate to sustain the conviction of the accused persons. Therefore, the present criminal appeals deserve to be allowed.

21. Before arriving at the final conclusion, it is necessary to consider the submission of the learned counsel for the appellants that this Court should also consider imposing compensation, in addition to the fine, upon the complainant, on the ground that he was repeatedly indulging in such activities and deliberately implicating accused persons in false cases.

22. However, although the complainant is stated to be a habitual complainant, it cannot be said that the appellants have

been acquitted on the ground that the allegations against them were wholly false. The prosecution has failed to prove its case beyond reasonable doubt. The appellants are being acquitted because certain doubts arising from the evidence could not be resolved in favour of the prosecution. In the absence of a specific finding, supported by the record and applicable law, that the complaint was deliberately false or malicious, no direction for compensation or other adverse order against the complainant can be made merely because the complainant had lodged complaints against other public servants.

23. Hence, the following order:

## ORDER

(a) Both Criminal Appeal Nos. 727 of 2015 and 730 of 2015 are allowed.

(b) The impugned judgment and order dated 27.08.2015 passed by the learned Additional Sessions Judge, Jalgaon, in Special (ACB) Case No. 4 of 2013, convicting and sentencing the appellants, is set aside.

(c) The appellants are acquitted of the offences for

which they were convicted.

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

(e) The record and proceedings be returned to the concerned Court.

(f) In view of disposal of the appeals, all the pending Criminal Applications do not survive and they are disposed of accordingly.

*kps* (SUSHIL M. GHODESWAR, J.)