



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

CRIMINAL APPEAL NO. 1041 OF 2023

The State of Maharashtra
Through Police Inspector,
Anti Corruption Bureau, Beed.Appellant

Versus

1. Anil Murlidhar Wethpathak
Age : 52 years, Occu.: Service,
Talathi Sajja Anjandoh,
Tq.Dharur, District Beed,
R/o.Shiral, Tq.Ashti, District Beed.
Now at Samarth Nagar, Kaij,
Tal.Kaij, District Beed.Respondent

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Advocate for Appellant : Mr.S.M.Ganachari
Advocate for Respondent : Mr. Akshay Dhananjay Kulkarni

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 24 FEBRUARY, 2026

PRONOUNCED ON : 25 FEBRUARY, 2026

JUDGMENT :

1. This appeal challenges judgment and order dated 28-02-2022, passed by learned Special Judge and Additional Sessions Judge, Majalgaon, District Beed, in Special Case ACB No.2 of 2013 thereby acquitting accused from charge under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (the PC Act).

BRIEF FACTS OF THE CASE

2. In short, prosecution was launched against present respondent, who was working as Talathi, for demanding bribe of Rs.500/- for taking note/remark of encumbrance over 7/12 extract as he had applied for crop loan with State Bank of India. It is the precise accusation that, for doing the said work, accused demanded Rs.500/- of which complaint was lodged with Anti Corruption Bureau (ACB) authorities, who further took steps to plan and execute trap by engaging panchas, by getting verification of demand done, laying main trap, apprehending accused, lodging complaint against him, and after chargesheeting him, making him face trial vide above special case, which ended in acquittal.

SUBMISSIONS

On behalf of appellant State :

3. Learned APP would submit that accused undisputedly was a public servant, as he was working as Talathi. It is pointed out that, complainant had approached him for taking remark of encumbrance over the 7/12 extract for availing crop loan from the State Bank of India. For doing said work, accused demanded Rs.500/- i.e. on 06-06-2013. It is pointed out that, as complainant was not willing to

pay bribe, he approached ACB authorities and lodged complaint. He pointed out that, for verifying the demand, complainant was made to accompany independent pancha witness for recording conversation of demand and later on after their return, conversation was reproduced by way of panchanama. He further submitted that, thereafter, main trap was planned wherein necessary instructions were given to complainant and shadow panchas, however, learned APP pointed out that, unfortunately before stepping in the witness box, shadow pancha, who accompanied complainant during main trap, has expired, however, according to learned APP, another pancha, who was also party to above procedure, was examined by prosecution, but the same has not been correctly appreciated by holding this witness to be hearsay witness. It is further pointed out that, here, there was acceptance as traces of anthracene powder were shown to be glittering over hands of accused demonstrating acceptance. That, tainted currency was in possession of accused and therefore, according to him, both demand as well as acceptance were cogently proved. He would submit that, with the quality of such evidence, learned trial Court ought to have invoked presumption available under the PC Act, but it has erred in not applying the same. He also questioned the finding of the learned trial Court on the point

of validity of sanction and would pray to allow the appeal by setting aside the impugned judgment.

On behalf of Respondent :

4. In contrast, learned counsel for respondent would justify the acquittal by pointing out that, here, prosecution has miserably failed to prove the charges beyond reasonable doubt and as such the cardinal principles of jurisprudence have not been proved by prosecution. He further pointed out that, at the outset, when there is acquittal, law does not permit appellate Court to draw another view and convict accused in an appeal.

5. He further pointed out that, here, complainant's evidence did not find support from independent witness as the said pancha, who participated in the initial verification as well as main trap, was not available for evidence, he having expired. He emphatically submitted that, though efforts were made by prosecution to examine second pancha witness, it is pointed out that, he was neither party to real events, which took place at the time of verification of demand as well as main trap and therefore, according to him, there was no corroboration to the testimony of complainant.

6. His second limb of argument is that, even electronic evidence in the form of recording of conversation has come under shadow of doubt as apart from variance to that extent in the prosecution evidence, prosecution did not place on record certificate under Section 65B of the Indian Evidence Act, so as to accept the above electronic evidence. On this count, he took this Court through evidence of complainant, Investigating Officer as well as the transcript.

7. He further justified the acquittal by pointing out that admittedly accused was appointed by officer of rank of the Collector but here Sanctioning Authority is not collector, but is rather Sub-Divisional Officer. That, there is admission about appointment by Collector and therefore, this witness was not authorized either to appoint or remove accused, therefore, sanction itself was invalid. He also pointed out that, that apart there is mechanical sanction and there is no application of mind to the foundational documents, which is evident from answers given by this witness in cross-examination. Consequently, he submits that, when sanction itself is invalid, the remaining exercise of proving demand or acceptance also goes in vain. Lastly, he would submit that, learned trial Court has correctly

appreciated the available evidence and committed no error whatsoever in acquitting accused and for above reasons, he prays to dismiss the appeal for want of merits. He seeks reliance on the decision of the Hon'ble Apex Court in the cases of *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors.*, (2020) 7 SCC 1; *Mohd. Arif v. State (NCT of Delhi)*, (2023) 3 SCC 654; *Ravinder Singh v. State of Punjab*, (2022) 7 SCC 581; *State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede*, (2009) 15 SCC 200, *V. Sejappa v. State*, (2016) 12 SCC 150. He also relied on the decision of this Court in the cases of *Arun Sambhaji Khanvilkar v. The State of Maharashtra*, 2024 ALLMR (Cri) 4346; *Raosaheb Arjun Lokhande v. The State of Maharashtra*, 2021 ALL MR (Cri) 642; *The State of Maharashtra v. Ramesh Tukaram Wagh*, 2020 ALLMR (Cri) 3509; *Bhagwan Mahadeo Sathe v. State and Ors.*, 2012 BomCR (Cri) 545; *Vinod v. The State of Maharashtra*, 2016 ALLMR (Cri) 3697, *The State of Maharashtra v. Chandsaheb Silar*, 2020(2) BomCR (Cri) 222; *The State of Maharashtra v. Ashok Balasaheb Nimbalkar*, 2022 ALLMR (Cri) 220; *The State of Maharashtra v. Srirang Dagaduji Bale*, MANU/MH/1649/2021, *The State of Maharashtra v. Shahikumar Baburao Pandit*, MANU/MH/1932/2023.

EVIDENCE IN TRIAL COURT

In the light of above submission, substance of evidence on record is reproduced as under :

8. **PW1** Govind Rangnath Repe, who is the complainant, in initial examination-in-chief stated that, for availing crop loan at the instance of State Bank of India, he had approached office of accused, who was Talathi and according to him, for marking encumbrance on 7/12 extract, there was demand of Rs.500/- and therefore, he approached ACB and lodged complaint exh.71, after which, ACB authorities summoned two panchas, introduced them to complainant, apprised them about his complaint. That, he and pancha no.1 Rasure were made to first go for demand verification by carrying a voice recorder and after they returned, said conversation was drawn by way of panchanama followed by laying of main trap regarding which he deposed in para 4 and 5. According to him, while he was in the company of shadow pancha Rasure, accused demanded bribe by making gestures and accordingly, made demand and so he took out tainted currency and handed it over to accused, who took it in his right hand and kept in his shirt pocket, which was followed by relay of predetermined signal.

In **cross-examination**, he denied almost every suggestions.

9. **PW2** Ankush Shankarrao Gurav is second pancha, who deposed at exh.73. He also stated that, he and shadow pancha Rasure visited ACB office and there meeting complainant, going through his complaint, causing signature over it. According to him, complainant as well as shadow pancha Rasure were made to carry voice recorder and visit accused at his office and according to him, after half an hour, they both returned and whatever complainant and shadow pancha Rasure narrated was drawn by way of panchanama, after which again instructions were given to all of them and again complainant and shadow pancha Rasure visited Talathi office and after short while, complainant came out and relayed predetermined signal.

While under **cross-examination**, this witness has stated that notings of demand verification panchanama were not drawn.

10. **PW3** Mandar Shrikant Vaidya is the Sanctioning Authority, who deposed that, he worked as Deputy Collector at Aurangabad. That, at the time of incident, he was working Sub-Divisional Officer at Ambejogai. That, he received papers from ACB for according sanction and he narrated about according sanction, which he identified at

exh.85. According to him, he had authority to remove accused.

While under **cross-examination**, he admitted that he does remember going through revenue record i.e. copies of *Ferfar*, but he is unable to state how many mutation entries were taken. He denied that he had no authority to appoint accused.

11. **PW4** Abhimanue Baliram Salunke is the Investigating Officer, who narrated all the steps taken by him since receipt of complaint, planning of trap, arranging panchas, getting verification of demand done and laying main trap.

12. **PW5** Vinay Ramchandra Bahir is another Investigating Officer, whereas **PW6** Nilesh Landage is a Clerk in the Tahsil office and he has acted as pancha for obtaining voice sample of accused and drawing panchanama exh.116.

While under **cross-examination**, PW6 is unable to state whether notings were done while conversation was heard.

ANALYSIS

13. On re-appreciation of above evidence, here, it is emerging that, according to PW1 complainant, for noting encumbrance over 7/12 extract, there was demand of Rs.500/-. He has also stated about

demand verification got done while he was in company of shadow pancha Rasure, but unfortunately said shadow pancha Rasure having expired was not available. In cases of such nature, complainant being interested witness, corroboration from independent corner is insisted for. However, here, shadow pancha, who allegedly accompanied complainant on both occasions i.e. at the time of demand verification as well as main trap, was not available to testify. Though prosecution has took efforts to examine another pancha, but unfortunately he was not in the company of complainant both times i.e. at the time of verification of demand and main trap and therefore, here is the case where there is no corroboration to testimony of complainant. When foundational fact of demand itself is not proved, as submitted by learned APP, presumption available under the NI Act, cannot be drawn.

14. As pointed out, complainant himself has admitted that, prior to the main trap, accused had already handed over 7/12 extract with necessary remark with encumbrance and therefore, question of motive of subsequently raising demand comes under shadow of doubt. There was no work pending with accused to either raise demand or accept it at the time of main trap. Motive of bribe comes

into picture for doing some work or forbearing any work. These elements are patently missing here.

15. PW5 Investigating Officer, in his cross-examination answered that he had recorded statement of complainant and at that time, complainant stated that the accused accepted bribe by his left hand. However, in the evidence of PW1 complainant, he deposed that, accused accepted bribe by right hand. Therefore, there is variance in the testimony of PW1 complainant and PW5 Investigating Officer on the point in which hand accused accepted the bribe and pocketed it. This further contributes to the credibility of the prosecution evidence.

16. As pointed out that, though pains are taken to record conversation, firstly, there is no distinct panchanama of blank memory card being used and further there is no certificate under Section 65B of the Evidence Act, which was essential for proving electronic evidence. Evidence to that extent is missing from the prosecution case.

17. Last but not least, here, cross-examination of PW3 Sanctioning Authority clearly shows that there is mechanical sanction and there was no proper application of mind while according to sanction.

There is also doubt about competence of PW3 Sanctioning Authority to accord sanction because for the post held by accused, the Collector is the appointing authority and resultantly also authority to remove him. PW3 Sanctioning Authority was Sub-Divisional Officer at the time of incident. For this reason, even sanction is not free from doubt.

18. Bearing in mind the settled principles to be applied while dealing with appeal against acquittal, which precludes appellate Court from taking distinct or different view than the opinion taken by the trial Court and with above quality of evidence, there being no corroboration to aspects of verification and demand, mere acceptance or possession of tainted currency would not be sufficient to hold that charges are proved beyond reasonable doubt. In consequence to above discussion, appeal fails. Hence, following order :

ORDER

Criminal Appeal stand dismissed.

**(ABHAY S. WAGHWASE)
JUDGE**