



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.176 OF 2012

The State of Maharashtra

.... Appellant
[Orig. Complainant]

Versus

Ashok Haribhau Abnave,
Age : 37 years, Occu. : Service,
Police Constable B. No.530,
MIDC Police Station, Ahmednagar,
Now R/o. Sugandhi Chai, Station Road,
Ahmednagar.

.... Respondent
[Orig. Accused]

.....

Mr. S. M. Ganachari, APP for Appellant - State.
Mr. Satej S. Jadhav, Advocate for Respondent.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 02 FEBRUARY 2026

PRONOUNCED ON : 03 FEBRUARY 2026

JUDGMENT :

1. State hereby assails the judgment and order dated 30.07.2011 passed by learned Additional Sessions Judge, Ahmednagar in Special Case No.03 of 2007 acquitting the accused from charge under sections 7, 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988.

2. Prosecution was launched against present respondent on the premise that, for avoiding arrest of the complainant, on account of



receipt of complaint against him, accused allegedly demanded Rs.10,000/- and on negotiations, it brought down to Rs.5,000/-. Rs.2,000/- were paid in advance and before meeting the demand of Rs.3,000/-, PW1 complainant lodged complaint with ACB authorities (Exh.22), which was made the basis for further investigation and filing charge sheet. Prosecution adduced evidence of in all four witnesses. The oral account of these witnesses, cross faced by them and the documentary evidence was scrutinized by the learned Sessions Judge, who conducted the trial and finally acquitted the accused holding that prosecution failed to prove the case. Hence, the instant appeal.

3. Learned APP pointed out that, prosecution had established the essentials for attracting demand as well as acceptance. He pointed out that, testimony of complainant has remained intact. That, there were anthracene traces to hands as well as handkerchief of the accused suggesting acceptance of bribe amount. According to him, merely because shadow panch at one point of time did not support prosecution, entire story of prosecution is disbelieved. He further pointed out that, so much part of the testimony of shadow panch, which was intact and supported prosecution story, ought to have been relied by prosecution, but it failed to do so.



4. He further pointed out that, here, after obtaining sanction, prosecution was launched. Appointing authority of accused was Superintendent of Police. Said authority had testified about receiving investigation papers, studying them and thereafter according sanction. However, sanction is also held to be invalid on the ground of non application of mind. He pointed out that, merely because witness sanctioning authority stated that he had summoned accused for preliminary inquiry and there being no material to that extent in the investigating papers, entire evidence of such witness has been doubted, which according to him, is improper to approach on the part of trial court.

5. He further submitted that, learned trial court also erred in accepting the different version, even when it was not probabilized. For above reasons, learned APP questions the judgment and order of acquittal and prays to allow the appeal by setting aside the impugned judgment and order.

6. Learned counsel for respondent - original accused pointed out that, case of prosecution had failed on two counts, i.e. firstly for want of sanction and secondly there being no corroboration to the testimony of complainant as independent witness - shadow panch, who is crucial



witness, himself had not supported prosecution, and therefore, according to him, when the essentials ingredients like validity of sanction and demand as well as acceptance itself not being proved, learned trial court committed no error in acquitting the accused and he urges to dismiss the appeal for want of merits.

7. Re-appreciated the evidence. PW1 is the complainant; PW2 Ramanand is the sanctioning authority, PW3 Bhangare is the shadow panch and PW4 P.I. Kopnar is the Investigating Officer. On the point of demand and acceptance, evidence of PW1 complainant and PW3 shadow panch is crucial, as in cases of such nature the complainant being interested person, corroboration from independent corner like shadow panch, is insisted for.

Evidence of complainant is at Exh.21. Substance of his evidence is that, he runs a hotel by named 'Hotel Sapna' on Nagar-Aurangabad Road. On account of occurrence in the mid-night of 12.06.2007 at his Dhaba, complaint was registered at M.I.D.C. Police Station, Ahmednagar and in that backdrop, he deposed that, two policemen had visited his Dhaba. That, in spite of he obtaining anticipatory bail, police had proceeded to draw panchanama and it is his testimony that accused Ashok Abnvae, a constable, suggested that if he wanted to avoid involvement in chapter case, he should pay Rs.10,000/-



and on negotiations, the amount was brought down to Rs.5,000/- and at that moment, he gave Rs.2,000/- and balance amount was agreed to pay in 2 to 4 days. Meanwhile, he approached Anti Corruption Bureau and lodged complaint at Exh.22, followed by pre-trap panchanama at Exh.23. Thereafter he deposed that, he and shadow panch PW3 went back to the hotel and from there he telephoned accused to tell that money was ready. However, in examination-in-chief itself, this witness has stated that he does not remember the number of Ashok. Then he stated that, while he and shadow panch were near the counter, accused came around 8:30 p.m. and summoned the complainant outside the hotel. When he went, he was asked whether the work of money was done, and on he answering in affirmative, he was asked to handover the money and accordingly he handed over. He further deposed that, at that moment, telephone at the counter of his hotel started ringing and so he went while accused was counting the money and he attended the call, came out and relayed signal.

However, while under cross examination, in paragraph 10, several omissions, which are as under, are coming therein :-

“My statement was recorded by police as narrated by me. I did not tell the police while lodging the complaint or while giving statement that the accused Ashok had told me to ring him up after making arrangement of money. I did not tell the police that



Abnave had given his cell phone number. I did not tell the police specifically that I informed the accused that the money was ready from my telephone. (Omission only in respect of the fact that money was ready, but not regarding making of telephone). I did not tell police that Bhangare was with me throughout the incident when my police statement was recorded. I did not tell the police during my police statement that the accused on arrival in the hotel questioned me whether the work of money was completed. I did not tell the police that I told Abnave to count the money because it was dark and that Abnave counted the money in the light of mobile handset.”

Rest is all denial.

8. PW3 Bhangare is the shadow panch, who is examined at Exh.28. Though therein he deposed about attending the office of Anti Corruption Bureau, being introduced to complainant, sign on complaint, drawing of pre-trap panchanama, he stated that after reaching the hotel, complainant made telephone call to the accused and accordingly around 8:40 p.m., one unknown person came on motorcycle. However, he further deposed that said person gave a call by saying “Sopan... come out”. Then, he corrected himself and stated that, name of complainant was not ‘Sopan’, but ‘Sudam’. He further stated that, while he was waiting at the counter, complainant went out of the hotel. As instructed



by Anti Corruption Bureau, he kept himself at the counter and there was darkness outside the hotel. That, accused did not come in the hotel and as complainant also did not come back in the hotel, he himself went out to the compound wall. However, further according to him, by the time he reached near the compound wall and the talk between complainant and accused Abnave had already over and the complainant had already given money to accused, which he slightly noticed in darkness. Not finding him supporting, learned APP seems to have sought permission of the court to cross examined him and accordingly it was granted. But, denied stating portion marked 'A' never told to the police. He has answered every suggestions by defence counsel during cross examination in affirmative.

9. Therefore, the sum total of above discussion is that, firstly, complainant's testimony is full of omissions and improvements. Whatever he deposed does not find place in the pre-trap panchanama or post-trap panchanama. The serious blow was suffered by prosecution when independent shadow panch witness deposed that he stayed at counter when complainant alone went to accused and that conversation between both of them was already over by the time he went out. Therefore, this witness has not corroborated the testimony of complainant. Therefore, rightly as held by the trial court, prosecution has



failed to prove very demand and acceptance by adducing cogent and reliable evidence.

10. As regards to sanctioning authority is concerned, as pointed out, though sanctioning authority deposed about giving personal hearing of the accused, sanctioning order is silent on that count. This witness also seems to be oblivious that complainant himself was a history-sheeter. Suggestion to this witness in the cross examination are answered by him on the ground that he is unaware of it. The very purpose of sanction is to ascertain whether there is application of mind to the investigation papers, prevent abuse or misuse of the provisions of P.C. Act. Moreover, this authority has admitted that, he had come across that during initial demand, there was presence of another constable namely Dalvi. Unfortunately, he was not examined, and moreover, sanctioning authority also admitted that he came across that on that particular day, Dalvi was already on leave. Therefore, from the testimony of this witness, the very aspect of demand is doubtful and this authority had not appreciated the same while according sanction.

Consequently, case of prosecution comes under shadow of doubt on all three counts i.e. on the point of demand, acceptance as well as on the point of valid sanction and as such, impugned judgment and order need not interfered with. Hence, the following order is passed :



ORDER

The Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)