



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 76 OF 2018

Sharad S/o Manga Tayade
Age: 59 years, Occ: Retired Govt. Servant.
R/o. Mangalam Bunglow,
Behind Bhim Nagar, Jail Road,
Nashik Road, Nashik,
Tq. & Dist: Nashik.

... **APPLICANT**
(Accused)

VERSUS

The State of Maharashtra,
(Anti Corruption Bureau, Nanded)
Through Police Station Vajirabad,
Nanded, Tq. & Dist. Nanded.

... **RESPONDENT**

...
Mr. Manoharrao A. Tandale, Advocate for Appellant.
Mr. D. J. Patil, APP for Respondent / State.

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 05th December, 2025.

ORAL JUDGMENT:

1 This appeal is preferred by the convicted accused against the judgment dated 8th January, 2018, passed by the learned Special Judge (ACB), Nanded in Special (ACB) Case No.7 of 2015, by which

the appellant was convicted under Section 235(2) of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short, "the PC Act") and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 2,000/-. In default, to suffer further rigorous imprisonment for two months. The appellant was further convicted for the offence punishable under Section 13(1)d) read with Section 13(2) of the PC Act and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.3,000/-. In default, to suffer further rigorous imprisonment of three months. Both the sentences were directed to be run concurrently.

2 Brief facts of the prosecution case are that Grampanchayat, Umri Jahagir, District Nanded, resolved to construct a cement concrete road. It was to be constructed by the Sarpanch of the village. The Sarpanch of the village gave that work of construction of cement concrete road to complainant Sachin Balaji Chavan. The complainant constructed the said road. The approximate costs of the said work was Rs.1,97,103/-. After completion of the construction work in the year 2014, the complainant submitted the running bill to the appellant, who was working as an Executive Engineer in the Zilla Parishad, Nanded. The complainant then met to the appellant and

requested him to sign necessary document required for passing of the bill of that work. The appellant demanded 2% of the bill amount i.e. Rs.4,000/- as a bribe for sanctioning the bill for making payment. The complainant was not willing to pay that amount. Therefore, he said that he would come later with the bribe money. The complainant then went to the ACB and gave a complaint to the police inspector Dayanand Sarvade on 30th September, 2014. Accordingly, verification of bribe amount was done and a trap was arranged. Thereafter, the *Panchas* were called. Anthracene powder was applied to the currency notes of Rs.3,000/-. Accordingly, the raiding party alongwith the complainant and *Panchas* went into the parking place of the premises of the Zilla Parishad, Nanded, where the appellant accepted the bribe amount in the presence of *Panchas*. The appellant then kept the said amount in the left side's pocket of his pant. The hands of the accused were checked in the rays of ultraviolet lamp. The anthracene powder was seen on the tips of the left hand's fingers of the appellant. The tainted currency notes and the pant of the appellant were seized. The report was lodged. The investigation was carried out and charge-sheet was filed. Charge was framed. The three witnesses i.e. the complainant (PW-1), the *Panch* witness (PW-2) and the investigating officer (PW-3) were examined. After considering the matter before it, the learned Special Judge held the

appellant liable under Sections 7, 13(1)(d) read with 13(2) of the PC Act.

3 During the argument, the learned counsel for the appellant submitted and pointed out the grounds of objections of the appeal. He submitted that the impugned judgment is illegal, perverse and contrary to the evidence on record. The complainant was not allotted the work of construction of the said road. Therefore, he was not entitled to that bill. The complainant has given his occupation as a student. The licence of the contractorship of the complainant is not produced on record. Therefore, he cannot do such construction work. The demand and acceptance are not proved. The learned Special Judge failed to appreciate the evidence that the said work of construction of the road was allotted to the Sarpanch and not to the complainant. He further pointed out the evidence on record and submitted that no independent witness was examined to prove the acceptance of the said tainted currency notes. When PW-2 had not heard the conversation between the complainant and the appellant as to the demand of the bribe, as it was not audible, the complainant's evidence became reasonably doubtful and remained uncorroborated, which goes to the root of the matter that there was no demand. The Demand Verification *Panchanama* (Exhibit-37) is reasonably doubtful.

It is lastly prayed to allow the appeal and set aside the impugned judgment of the learned Special Court.

4 The learned counsel for the appellant relied upon the following authorities:-

- a) ***Suraj Mal Vs. State (Delhi Administration), (1979) 4 Supreme Court Cases 725***, in which the Honourable Supreme Court held that, mere recovery of bribe money divorced from the circumstances under which it was paid, is not sufficient to convict the accused when the substantive evidence in the case was not reliable.
- b) ***Mohd. Iqbal Ahmed Vs. State of A.P., AIR 1979 Supreme Court 677***, in which the Honourable Supreme Court held that, prosecution has to prove that there was valid sanction and the sanctioning authority was satisfied while sanctioning it.
- c) ***P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 Supreme Court Cases 152***, in which the Honourable Supreme Court held that, mere acceptance of amount by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, reiterated, would

not be sufficient to bring home the charge under Sections 7 and 13 of the PC Act.

- d) ***Ram Prakash Arora Vs. The State of Punjab, AIR 1973 Supreme Court 498***, in which the Honourable Supreme Court held that, evidence of interested and partisan witnesses who are concerned in the success of the trap must be tested in the same way as that of any other interested witnesses.
- e) ***State of Karnataka Vs. Chandrasha, 2024 SCC OnLine SC 3469***, in which the Honourable Supreme Court in paragraph No.24 held as under:-

"24. We are conscious of the fact that in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the appellate Court would not be justified in setting aside the acquittal merely because the other view is also possible. In the present case, the recovery of bribe amount from the respondent having been proved, the explanation offered by the respondent in the absence of any concrete material, is clearly of the wall. Once the aspects of 'demand' and 'acceptance' of the bribe amount having been established beyond doubt, in our opinion, no two views are possible in the matter, and thus the approach adopted by the High Court is perverse and liable to be interfered with."

- f) **A. Subair Vs. State of Kerala, (2009) 6 Supreme Court Cases 587**, in which the Honourable Supreme Court held that, essential ingredients of offences must be proved and the courts cannot find out their own reason for non-tendering of evidence of/non-examination of the complainant.
- g) **State of Kerala and another Vs. C.P. Rao, (2011) 6 Supreme Court Cases 450**, in which the Honourable Supreme Court held that, standard of proof and corroboration with mere recovery of tainted money, divorced from circumstances under which it was paid, is not sufficient to convict accused in the absence of corroboration.

5 The learned APP for the respondent / State strongly opposed the appeal and submitted that the defence has admitted the sanction to prosecute accorded by the appointing and removing authority. The evidence of *Punch* witnesses materially corroborating to the prosecution's case. There is reliable evidence of demand, acceptance and sanction, which proves essential requirements of charged offence of acceptance of the bribe. The reasons and the findings of the learned Special Court are legal and correct. He

submitted that the evidence is properly evaluated, reasons and findings are properly given and no interference is warranted. He lastly prayed to dismiss the appeal.

6 The learned APP relied upon the following authorities:-

- a) ***State of Madhya Pradesh Vs. Jiyalal, (2009) 15 Supreme Court Cases 72***, in which the Honourable Supreme Court in paragraph No.8 held as under:-

"8. It was also not justified for the learned Single Judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution."

- b) ***Shamsher Singh Verma Vs. State of Haryana, (2016) 15 Supreme Court Cases 485***, in which the Honourable Supreme Court in paragraph No.14 held as under:-

"14. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) of Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC."

7 Perused the case laws relied upon by both the sides. Nobody will dispute the ratio laid down in the above authorities cited. However, facts of the case are decisive.

8 Following point emerges for consideration:-

Sr.No.	Point	Finding
1	Was the learned Special Judge illegal and incorrect in holding liable the appellant under Sections 7 and 13(1)(d) read with 13(2) of the PC Act ?	Affirmative

9 The defence has admitted the sanction to prosecute the appellant. However, even though the sanction order passed by the sanctioning authority to prosecute the appellant is admitted, the prosecution is still duty-bound to prove that the sanctioning authority had applied its mind while according sanction. It is against the

safeguard of Article 311 of the Constitution of India and also against Section 19 of the PC Act. Even though the said sanction order has been admitted by the defence, it is well established that an Advocate appearing for the accused has no authority to admit any document contrary to the interest of the accused. Advocate is not appointed to give admission on behalf of accused contrary to law. As per provision of Section 58 of the Indian Evidence Act, 1872, now Section 53 of the Bharatiya Sakshya Adhiniyam, 2023, though there is admission of fact, the Court may require proof of it. The prosecution in such case is duty-bound to prove a mandatory requirement of Section 19 that sanctioning authority applied mind while according sanction and such admission of document is not substitute to it. Mere admitting the document is not sufficient and proving the fact that the mind was applied by the sanctioning authority while according sanction, is mandatory requirement of law. Such admission does not dispense with proof. It must be fulfilled. In this case, the prosecution has failed to prove that the sanctioning authority applied its mind and then accorded the sanction to prosecute the appellant. Thus, sanction to prosecute the appellant is not proved.

10 In the cross-examination of PW-2, he has admitted that he was not able to hear the conversation between the complainant and

the appellant at the time of acceptance of the bribe as he was not standing near to him. The basic requirement of the law is that the demand must be proved. Thus, the evidence of PW-2 as to alleged demand of bribe on the part of the appellant is not proved as he has not heard the conversation between the complainant and the appellant at the time of demand verification. The said admission of PW-2 goes to the root of the matter on the point of requisite of demand, which is reasonably doubtful to accept the prosecution case. Therefore, on these two counts, the prosecution's case becomes reasonably doubtful to believe the complainant that there was a demand of bribe on the part of accused. It is well settled that mere acceptance of bribe is not sufficient unless demand is proved, as held by the Honourable Supreme Court in the case of **P. Satyanarayana Murthy** (supra).

11 Considering all these aspects, this Court is of the view that the prosecution's case is reasonably doubtful. The prosecution failed to disprove the presumption of innocence of the accused. The accused is entitled for benefit of doubt. Hence, point No.1 is answered in the affirmative. The impugned judgment deserves to be set aside and the appeal deserves to be allowed. Hence, the following order:

ORDER

- I. The Criminal Appeal is allowed.
- II. The judgment and order of conviction and sentence, dated 8th January, 2018, passed by the learned Special Judge (PC Act), Nanded in Special (ACB) Case No.7 of 2015, is set aside. The appellant is acquitted of the offences punishable under Sections 7, 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988.
- III. The surety is discharged from liability.
- IV. Fine amount, if paid, be refunded to the appellant.

[SANJAY A. DESHMUKH, J.]