

(2022) 06 BOM CK 0013

In the Bombay High Court

Case No : Criminal Appeal No.761 Of 1998

Bhagabai Dagadu Dhebe And Others

APPELLANT

Vs

Pimpri State Of Maharashtra

RESPONDENT

Date of Decision : 07-06-2022

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 3(1)(d), 7, 13(1)(d), 13(2), 20
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 06 BOM CK 0013

Hon'ble Judges : Prakash D. Naik, J

Bench : Single Bench

Advocate : Nagesh Y. Chavan, Rahul B. Khot, Y.Y. Dabake

Final Decision : Allowed

Judgement

Prakash D. Naik, J

1. The appellant is convicted for the offences punishable under sections 7 and 13(1)(d), 13(2) of Prevention of Corruption Act ("P.C. Act", for short), vide judgment and order dated 22nd September, 1998, passed by the Special Judge, Satara, in Special Case No.16 of 1992. The applicant has been sentenced to suffer imprisonment for six months and to pay fine of Rs.2,000/-, for conviction under Section 7 of P.C. Act, and, sentenced to suffer imprisonment of one year and fine of Rs.3,000/-, for conviction under Section 13(1)(d), 13(2) of the P.C. Act. After the Appeal was closed for judgment, it was listed for clarifications on 29th April, and closed for orders.

2 During the pendency of Appeal, the original appellant/accused had expired. His legal heirs preferred criminal application No.665 of 2019, for bringing them on record and seeking permission to pursue Appeal. The said application was allowed vide order dated 2nd May, 2019.

3 The case of the prosecution is that the accused was working as Gav Kamgar Talathi of Sajja Khinghar, Taluka Mahabaleshwar. The complainant is resident of

village Khinghar. His grand father died on 14th February, 1992. He had executed Will and bequeathed his property at village Damil, Taluka Poladpur, District-Raigad, to his sons Nivrutti and Ramchandra, and, the property at Khinghar was bequeathed to his son Sitaram and grand sons Santosh and Sandeep. On 26th April, 1992, the complainant approached the accused at his office and requested to enter their names. The accused told him that it was difficult task and it cannot be done abruptly. The complainant was told to see him in his office at Panchgani on 1st May, 1992. The complainant and his relative Anand Bhilare visited office of the accused at Panchgani on 1st May, 1992. The accused demanded Rs.1,000/- for the work. The complainant and Anand Bhilare again approached the appellant at his residence at Bonderwadi and inquired about work. The accused asked the complainant about money. The complainant gave Rs.100/- to accused. On 10th May, 1992, the complainant again met the accused at his office at Panchgani. The accused inquired about money. The complainant gave Rs.400/- to the accused. On 11th May, 1992, the complainant approached ACB at Satara. He lodged complaint against the accused. It was recorded. Arrangements were made for trap of accused. Pre trap panchanama was recorded. The complainant and others went towards the house of the accused. The bribe amount was accepted by the accused. He was caught by the raiding party. On completing investigation, charge – sheet was filed.

4 Charge was framed on 17th June, 1996. The prosecution examined 12 witnesses. Statement of the accused was recorded under Section 313 of Cr.P.C. Vide judgment and order dated 22nd September, 1998, the appellant was convicted.

5 Learned advocate for the appellant submitted that the prosecution case suffer from serious discrepancies. The demand and acceptance of bribe amount has not been proved beyond doubt. Appellant has been falsely implicated in this case. There are contradictions in the evidence of P.W.1, P.W.2 and P.W.3. The alleged demand of bribe amount and its acceptance by the accused, is not supported by independent evidence. The demand dated 1st May, 1992, acceptance dated 7th May, 1992 and 10th May, 1992, is not supported by independent witness. The appellant had informed complainant that it is difficult to grant application preferred by him and since the appellant was not granting request of complainant, the appellant has been falsely implicated in this case. The complainant was desperate to involve the appellant in the trap case. The evidence of complainant, his relative Ananda Bhilare, panch witness P.W.2 and the investigating officer is contradictory to each other. The accused had not invited the complainant at his residence. The complainant is apparently chasing the accused to part the amount. The complainant had allegedly parted an amount of Rs.100/- and Rs.400/-, towards bribe. The version of the complainant appears to be doubtful and conviction cannot be based on such version. The benefit of doubt ought to have been given to the accused. The demand and acceptance of bribe is required to be proved beyond doubt.

6 Learned advocate for the appellant relied upon the following decisions:

- (i) P.Satyanarayan Murthy Vs. District Inspector of Police and Ors. 2015(4)Bom.C.R. (Cri.)523;
- (ii) Panalal Damodar Rathi Vs. State of Maharashtra (1979) 4 SCC 526;
- (iii) State of Punjab Vs. Madan Mohan Lal Verma 2013 CRI.L.J.4050;
- (iv) Uttam S/o. Ramaji Shere Vs. State of Maharashtra 2018 All MR. (Cri) 2393;
- (v) Satish Ganpatrao Suryavanshi Vs. State of Maharashtra, delivered in Criminal Appeal No.453 of 2021.

7 Learned APP submitted that the prosecution has proved its case beyond doubt. The accused was concerned with the work of the complainant. Complainant had approached him on 26th April, 1992, for his work. He was told by accused to visit on 1st May, 1992. The complainant went to the office of the accused at Panchgani on 1st May, 1992. The accused made a demand of Rs.1,000/-, for performing the work. The complainant informed the accused that he would make arrangement for money. On 7th May, 1992, the complainant again visited the accused at his residence and paid an amount of Rs.100/-, on demand. On 10th May, 1992, the complainant met the accused near his office and inquired about the work. The accused demanded money. Complainant paid an amount of Rs.400/- to the accused. The complainant then lodged the complaint. Accused was caught accepting Rs.500/-, from complainant. The version of complainant is corroborated by P.W.3 Ananda Bhilare, who was accompanying him. The demand and acceptance dated 11th May, 1992, is supported by independent evidence of panch witness P.W.2. The evidence of all the other witnesses supports prosecution case. Pre trap and post trap panchanama were recorded by ACB. Second panch was examined by prosecution as P.W.4. The tainted amount was found in possession of the accused. Documentary evidence such as pre trap, post trap panchanma was proved in evidence. Sanction was granted for prosecution. The accused has not rebutted the presumption under Section 20 of the P.C. Act. There is no explanation for finding of currency notes in his possession by accused. There is no motive for false implication. The Appeal is devoid of merits and deserves to be dismissed.

8 I have scrutinized the evidence on record. The alleged demand of Rs.1,000/-, was purportedly made by the accused on 1st May, 1992. Complainant did not approach the ACB immediately after said demand. According to complainant, he paid an amount of Rs.100/-, to accused and told him that he would make an arrangement for further payment. According to complainant, the amount of Rs.400/-, was made to the accused on 10th May, 1992. The incidents dated 26th April, 1992, 1st May, 1992, 7th May, 1991 and 10th May, 1992, had occurred prior to the complaint of P.W.1 with ACB. According to complainant, the incidents dated 1st May, 1992 and 7th May, 1992 had occurred when he was accompanied by Ananda Bhilare, who is relative of the complainant. He is obviously the

interested witness. Thus, the alleged demand and acceptance prior to 11th May, 1992, is based on the version of P.W.1 and P.W.3. The case of the complainant is that the first demand was made on 1st May, 1992, followed by 7th May, 1992 and 10th May, 1992. Complainant parted an amount of Rs.500/-, to the accused and then lodged the complaint. There was no reason for the complainant to wait till 11th May, 1992 to lodge the complaint. It is apparent that he had made alleged payment of Rs.500/-. If he was not interested in complying alleged demand by accused, there was no reason for him to part half of the amount and then approach ACB.

9 According to complainant (P.W.1) he is the resident of village Khingar, Taluka Mahabaleshwar. Ganpati Bhilare was his grandfather. He expired on 14th February, 1992. His grandfather had executed Will in respect of field at Khingar in his favour and in favour of his brother. The accused was working as Talathi at Rajpuri Sajja. On 26th April, 1992, he approached the accused at his residence at Bondarwadi with 7 x 12 extract, death extract of his grandfather and Will, and, showed those documents to accused, and, requested him to enter their names to the record of rights of the property bequeathed by his grandfather. The accused told him that it was very difficult task and told him to see him on 1st May, 1992 in Talathi office at Panchgani. First of all it is not clear as to why the complainant had approached the accused for his official work at his residence. It is also noted that on 26th April, 1992, there was no demand of bribe by accused. P.W.1 further stated that he went to the office of the accused at Panchgani on 1st May, 1992. The accused told him that it is very difficult task, and, for that Rs.1,000/-, was required. The accused told him to submit the application in writing for entering their names. P.W.1 told accused that he cannot write the application. Therefore accused told some person working under him to write the application. The said person wrote the application. It was signed by the complainant. The complainant and Ananda Bhilare returned to their village. Thus, the demand of Rs.1,000/-, was allegedly made on 1st May, 1992. According to complainant, accused assisted complainant by directing person under him to write application on behalf of complainant. The assistance was rendered without accepting bribe. The complainant did not approach ACB after the alleged demand dated 1st May, 1992. The evidence also makes it clear that the accused had informed the complainant that it is a difficult task to allow the request of the complainant. The complainant then stated that on 7th May, 1992, he visited the house of accused at Bondarwadi alongwith Ananda Bhilare. The accused was not in the house. He learnt that the accused had been to the house of his brother. They went there. Accused was present. The complainant inquired about the progress in his matter. The accused asked whether he had brought money. The complainant told him that he is having Rs.100/-. The accused told him to give the said amount. Accordingly, complainant gave Rs.100/- to accused. They returned home. It is pertinent to note that although application was for entering names in records of rights was submitted in the office of Talathi at Panchgani, there was no reason for complainant to approach the accused at his residence. When he found that the

accused is not available at his residence, he followed him at the house of his brother, and, allegedly paid an amount of Rs.100/-. The accused had never called the complainant at his residence. On 1st May, 1992, the complainant had visited the office of Talathi at Panchgani. It is not clear as to what compelled the complainant to approach the accused at his residence on 7th May, 1992. Accused did not call complainant on 7th May, 1992. The complainant was desperately chasing the accused. The complainant further stated that on 10th May, 1992, he visited the office of Talathi at Panchgani alongwith Ananda Bhilare and Ravindra Dudhane. The accused was present in office. Ravindra Dudhane went out. Complainant and Ananda met accused. He was asked about progress of work. The accused told that, unless he is given money, the work would not be done. He told that he was required to pay some amount to his superior officer, and, he would keep some amount for himself. The complainant gave Rs.400/- to accused. Thus, instead of approaching ACB, the complainant had paid Rs.400/- on 10th May, 1992. There is no independent witness to fortify the incidents dated 1st May, 1992, 7th May, 1992, 10th May, 1992 and 24th June, 1992. Ananda Bhilare is the close relative of the complainant. Ravindra Dudhane is not party to alleged conversation between P.W.1 and accused. On 11th May, 1992, complainant approached ACB and lodged the complaint. He was called on 12th May, 1992. On the next day i.e. 12th May, 1992, the complainant approached the ACB office. Panchas were called at the ACB office. The complainant provided currency notes for trap. Instructions were given to panch witnesses and the complainant. Panchanama was recorded. All of them left the ACB office on 12th May, 1992, for Panchgani. Initially they went to the office of accused at Panchgani. It was not open. Thus, all of them proceeded to Panchgani by tempo. Initially they went to the office of the accused at Panchgani. It was not opened. Then they proceeded to Bondarwadi. Complainant and the pancha witness Chavan proceeded towards the house of the accused. The other members of raiding party dispersed near the trees and houses. They saw accused coming towards their direction. The complainant asked the accused whether he was proceeding towards Panchgani. The accused told that he is proceeded to Mahabaleshwar and that he has holding the additional charge of Mahabaleshwar. The accused inquired whether he had managed about money. The complainant told him that he had brought the money. The accused took them in his house for tea. The accused told the complainant to handover the amount, if brought by him as he is in need of money. The complainant gave money. Accused counted the notes and kept it in left pocket of Bandi. Signal was given to raiding party and the accused was apprehended. Currency notes were recovered from him. From the evidence of P.W.1, it is evident that he visited the residence of the accused. Firstly they went to Panchgani and since the office was not opened and Talathi was not available, they proceeded to residence of the accused. The accused had not told complainant to come with money at his residence. It was surprise visit of complainant at Bondarwadi on 12th May, 1992. The complainant was not told to come with money on any particular day.

10 In the cross-examination, P.W.1 has stated that the application for entering his name was written by the accused. In examination-in-chief he stated that the application was written by some other person on directions of accused. In cross-examination he changed his version, and, stated that the application was written by some person working with accused. It was written as per his instructions. Subsequently, he stated that the application was written by Bajirao Ambrale, resident of Khingar. Bajirao was aware that his father was alive. The presence of Bajirao Ambrale was referred to by the complainant for the first time in the cross-examination. He has given contradictory versions about the person who has written the application on his behalf. He further deposed that Ananda Bhilare was accompanied with him on 26th April, 1992. In the examination-in-chief he has not referred to the presence of Ananda Bhilare (P.W.3) on 26th April, 1992. He told the accused that he would be able to get loan, and, therefore, asked him to record their names to record of rights. The accused told him that it was a difficult task. He told the accused as to what should be done, and, the accused advised him to submit application. He admitted that the accused did not tell him to see him on particular date. He did not asked accused as to on what date he should meet him. The complainant intended that his name should be entered early. He admitted that he went to the house of the accused at Bondarwadi on 7th May, 1992 at his own accord. The conduct of the complainant would reveal that he was desperate to get his name entered in the record of rights expeditiously. While he had been to the accused on 7th May, 1992, he had not made any arrangement of Rs.1,000/-. On 7th May, 1992, there were house warming ceremony of the brother of the accused. There were several person. He asked the accused about his work in the house of his brother by taking him aside. The accused demanded Rs.900/-, after accepting Rs.100/-. On 10th May, 1992, when he visited the accused, he did not make arrangement of Rs.900/-. The accused had told him that notices were required to be issued to concerned persons. He do not remember whether the accused had told that his name could be entered only after services of notices. He do not remember whether the accused had told him that his name could not be entered on the basis of application and the Will. He requested accused to enter their names and the accused told him that it is a difficult task. He requested the accused to enter their name anyhow and the accused told him that he was unable to enter their names. Complainant and Ananda went out.

After reaching village on 10th May, 1992, he decided to lodge complaint with ACB. It is clear that he approached the ACB only when the accused told him that it is difficult to enter their names. If the accused had indicated inability to enter names, the question of making demand and further handing over Rs.,500/-, as bribe did not arise. The complainant was aware that notices were required to be issued to concerned parties. It seems without following procedure, he wanted to record names, immediately. The accused did not tell him to come with Rs.500/-, on particular date at particular place. Until he lodged the complaint, he was visiting the appellant/accused on his own and wherever the accused was

available, which indicate his desperation to get the work done anyhow. No credence can be given to deposition of such witness. In the cross-examination, he further stated that they did not go to the office of Talathi at Panchgani and again stated that they had been there. They reached the office of Talathi at Panchgani at 08:00 a.m. The office was closed and Talathi was not available. It was decided that they should see the accused initially in his office, and, if he is not available in the Bazar and if he is not available there too, they should see him at his residence. He had searched the accused in the Bazar. At that time, panchas and other members of the raiding party were in the vehicle. As the accused was not available in the Bazar, they went to his residence. The distance between Panchgani to Bondarwadi is 7 to 8 kilometers. There were about 14 to 15 persons in the raiding party. Version of the complainant is not fortified or corroborated by other witnesses. The version depicts that although the accused had not told him to approach him either at his residence or in the office on 12th May, 1992, with bribe amount, the complainant was desperate to follow him everywhere.

11 P.W.2 Suryakant Panditrao Chavan is the panch witness. He has deposed that he visited ACB office on 12th May, 1992 along with another panch Mr.Ghodake. Complainant was present. Complaint was read over to pancha witnesses. They were told about the raid to be conducted. Appropriate instructions were given to the complainant and the panch witnesses. Currency notes were arranged by the complainant. Anthracen powder was sprinkled on notes. Panchama was recorded. The complainant, panch witnesses and the members of raiding party proceeded by private vehicle from Satara viz. Wai, Panchgani and Bondarwadi. P.W.2 and complainant proceeded towards the house of the accused. The other persons accompanying were standing near tempo. The accused was coming from opposite direction towards them. Complainant asked the accused as to where he was going. Accused replied that he was going to Mahabaleshwar.

The complainant inquired about his work. The accused told him that he was holding two charges, and, therefore, the work could not be done earlier. He offered them cup of tea and took them to his residence. While proceeding the complainant told accused that he had brought the balance amount of Rs.500/-, complainant also told accused that as per his demand of Rs.1,000/-, he has already paid Rs.100/- and Rs.400/- earlier. All of them entered house of accused. Accused told complainant that he has to pay balance amount of Rs.500/-. Accused served tea to them. Accused told complainant to hand over balance amount of Rs.500/-, complainant gave the amount to accused. Complainant gave signal to the raiding party and the accused was caught. According to P.W.1, the amount was demanded by the accused when he met him on the road on 12th May, 1992. From the evidence of P.W.2, it can be seen that they met the accused on the road accidentally. Although the complainant enquired about work, the accused did not demand money on the road. He took them to his house. Before accused could demand money, the complainant told him that he has brought balance amount of Rs.500/-. The complainant took panch and raiding party

towards the house of accused, although complainant was not called at residence or office by accused. P.W.2 has not stated that they first went to the office of the accused at Panchgani, and, since he was not there, they went to his house. P.W.2 did not state that it was decided to first go to the office of the accused and if he is not there, then to Bazar and then to the residence of the accused. P.W.2 did not state that after visiting the office of the accused, the complainant tried to find the whereabouts of the accused in the Bazar, and, thereafter they went to the house of the accused. Thus, there are major contradictions in the evidence of P.W.1 and P.W.2.

12 In the cross-examination, P.W.2 has stated that he was not shown any complaint or other documents on 11th May, 1992, pertaining to present case. There was no talk between both panchas and complainant after they read complaint and signed it. They left Satara at 06:00 a.m. While leaving Satara, they were aware that they were proceeding to Bonderwadi. The instructions were given to effect raid on Talathi wherever he would find whether in the market(bazar), office or residence at Bonderwadi. They did not go to Talathi's office at Panchgani or in the market in search of Dhebe Talathi. The version of this witness runs counter to the version of P.W.1. According to P.W.1, they went to office at Panchgani, then to Bazar and lastly to residence of accused. He did not state that instructions were to effect raid whenever, accused is found. It is also difficult to accept that 14 to 15 members of the raiding party who had visited village Bonderwadi towards the residence of the accused could not be seen by the accused or any other person on the day of raid. The witness, however, deposed that they were hiding themselves behind the trees. P.W.2 has further deposed that when the complainant inquired about his work, the accused told him that the work was difficult and the notices are required to be issued to interested persons.

13 P.W.3 Anand Bhilare is relative of complainant (P.W.1). According to him, on 7th May, 1992, P.W. 1 went to the office of Talathi at Panchgani. He met accused alongwith documents, and requested to enter the name of his father to the record of rights. He was accompanying him. The accused prepared the application and obtained signature of the complainant on the same. The accused demanded Rs.1,000/-, for mutating the name of father of P.W.1. Complainant gave Rs.100/-, to accused. According to P.W.1, he had visited the office of the accused with P.W.3 on 1st May, 1992. The version of P.W.3 is that he visited the office of the accused alongwith complainant on 7th May, 1992. According to complainant, on 7th May, 1992, he had visited the house of the accused along with P.W. 3. Thus, P.W.3 has not referred to an incident dated 1st May, 1992. P.W.1 had approached accused with documents on 26th April, 1992 and not on 7th May, 1992. As per version of P.W.1, his name and the name of his brother were to be entered in record and not the name of father of P.W.1, as stated by P.W.3. He further stated that on 10th May, 1992, he along-with P.W. 1 went to the office at Panchgani. Ravindra Dudhane was with them. He waited out of Talathi office. The accused asked P.W.1 whether he brought money demanded by

him. Complainant handed over Rs.400/-. Accused told P.W.1 that unless he pays balance amount, he would not do the work. P.W.3 is close relative of P.W.1. His version has to be scrutinized cautiously. He has contradicted P.W.1. In the cross-examination he stated that it requires about one hour to reach Satara from Panchgani by S.T. bus. The office of Talathi is at Panchgani. P.W.1 had told him that he wanted to enter the name of legal heir to the land of his grand father and such an application was pending before Talathi. P.W.3 has stated that application was written by accused while P.W.1 has given confusing versions about who wrote the application. P.W.3 did not see any such application in the office of Talathi. The talk of demand of Rs.1,000/-, had taken place in the office of Talathi on 7th May, 1992. Whereas, according to complainant, on 7th May, 1992, they went to the house of the accused and since he was not present at his residence, they went to the house of his brother where he was available and paid an amount of Rs.100/-. The demand of Rs.1,000/-, was made on 1st May, 1992 at the office of the accused. In the light of nature of contradictions between P.W.1 and P.W.3, it would be difficult to accept their version, which is full of doubt.

14 P.W.4 Sambhaji Ghodake acted as a panch witness. According to him, he was called at office of ACB at Satara. On 12th May, 1992, he went to office of ACB at Satara. Other pancha (P.W.2) also visited office of ACB. They were introduced to complainant. Complaint was narrated to them. Arrangement was made to conduct trap. He was instructed to be with raiding party. They proceeded by private vehicle. They went to Bonderwadi. Thus P.W.4 has not referred to the visit of raiding party and others at the office of the accused at Panchgani. Complainant and P.W.2 proceeded towards house of accused while others scattered around house of accused. Complainant gave signal. Accused was caught. Tainted notes were recovered. Further procedure was completed. Since crowd had gathered, the accused was taken to Tahsil office at Panchgani. Documents seized from office. In cross-examination, he stated that, while they proceeded to Bonderwadi from Satara on 12th May, 1992, on the way they did not go to office of Talathi at Panchgani. Initially before they left office of ACB, Dy. S.P. Pandhare had instructed them that they should go to Panchgani and then to Bonderwadi. Thus, according to this witness, the raiding party or complainant did not go to Panchgani office. He further stated that Dy.S.P. Mr.Pandhare did not make enquiry in transit whether accused is available at Panchgani or not. If one walks half of distance from the house of accused, his house is seen. There are no houses near house of accused. Member of raiding party were hiding themselves behind the trees for about 15 minutes. The panchanama of seizure of currency notes, clothes and other articles was made at Panchgani. On perusal of panchanama Exhibit- 17 it is not stated that accused was taken to Tahsil office since people had gathered near house of accused. According to this witness panchanama of seizure was recorded at panchgani. The other witness had not corroborated this version.

15 P.W.5 Ashok Salagare is the panch witness for seizure of diary produced by accused. On 19th May, 1992, the diary produced by the accused was seized.

There is no incriminating against the accused in his evidence. He was not cross-examined. P.W.6 Laxman Sawant was working as Tahasildar at Mahabaleshwar. He had referred to the procedure for mutation entries. He was shown mutation register of Khingar. The entry since 26th April, 1991 in the register are in handwriting of accused. There are signatures of accused. Entries in Varas Register are in handwriting of accused. P.W.7 Tukaram Dudhane knows Sitaram Bhilare. Sitaram is no more. He was having his property at village Dabhil, Taluka Poladpur. Santosh is son of Sitaram. Ganpti was having agricultural land. P.W.8 Dagadu Rajpure is agriculturist. According to him, he knows the accused. He had purchased grass from him. The evidence of this witness is not relevant. Evidence of P.W.Nos.5, 6, 7 and 8 does not disclose anything incriminating against the appellant to support the charge. P.W.9 Bajirao Shadge was working as Revenue Circle Inspector at Panchgani, Mahabaleshwar. He was asked to verify the accounts with accused on 12th May, 1992. He verified the account and reported that all the dues recovered by the accused were deposited with Government. He submitted written report to Tahasildar. The last payment was made by him at State Bank, Mahabaleshwar on 5th March, 1992. According to him he worked as Revenue Circle Officer for seven years. If application is submitted to Talathi, he is required to make inquiry within 30 days and to make entry accordingly. If the concerned person does not come on oral summons, he is issued notice in writing. Accused was working under him. P.W.10 Ravindra Dudhane stated that on 10th May, 1992 he alongwith Santosh Bhilare and Anand Bhilare had been to Talathi's office at Panchgani. He waited outside the office of Talathi. P.W.1 and P.W.3 entered office of Talathi. They returned after 15 minutes. They told him that P.W.1 has paid Rs.400/- to accused. P.W.11 Rajaram Mane was Sub Divisional Officer at Wai. He received letter from ACB about raid effected on the accused. He was appointing authority and was requested to grant sanction for prosecution. He accorded sanction. He was working as Deputy Collector since 13 years. He worked as SDO. He stated that if an application is submitted for mutation in the revenue record, notices are issued to interested persons and 15 days time is given for return of such notices. If no objection is lodged, mutation is certified. It is pertinent to note that the accused had told the complainant that such notices are required to be issued. However, it seems that complainant wanted immediate action and entry of his name in the record of rights. P.W.11 further stated that he did not ask the ACB for furnishing the complaint or panchanama for statement recorded during trap. He dictated the sanctioned order to his clerk. It is apparent that he did not call for any documents. There was no draft of sanction order. The relevant documents, such as, panchanama and statements recorded during trap were not placed before him. It appears that the sanction was accorded without perusing relevant documents.

16 P.W.12 Baburao Pandhare, is the police inspector. He conducted investigation. He deposed that, P.W.1 approached his office on 11th May, 1992. He gave complaint of demand of bribe by accused. The complainant and panchas were called on 12th May, 1992. The complainant and panchas visited office of ACB on

12th May, 1992. Pre- trap preparation were made. Instructions were given to P.W.1, P.W.2 and P.W.4. Pre-trap panchanama was recorded. All the members of the raiding party proceeded to Panchgani and Bonderwadi. Complainant and panchas went to house of accused. Other waited for signal. Complainant gave signal. Accused was caught. Amount was recovered. It was seized. Documents recovered. Investigation was conducted. Sanction was obtained. Charge-sheet was filed. He admitted that, on 12th May, 1992, initially they had not been to office of Talathi at Panchgani or in the Bazar. He did not give instructions to panchas that they should initially go to the office of Talathi at Panchgani and if he is not available, go to Bazar and then S.T. stand etc. The evidence of other witnesses is contrary to this aspect. They did not go to office of accused on 12th May, 1992. Except P.W.1, none had supported the fact that all of them went to office of Talathi and to Bazar.

17 Thus, the entire case of the prosecution speaks volume of doubt and in such eventuality, the benefit of doubt must be given to the accused. The prosecution has to establish its case beyond all reasonable doubt. Demand and acceptance of bribe has not been established. It is dangerous to accept the version of complainant and other witnesses. In the case of *Sujit Biswan Vs. State of Assam* 2013(3) BOM CR (Cri) 352, it is held that, suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "must be" true, but, has to upgrade its in the domain of "must be true", in order to steer clear of any possible surmise or conjecture. The Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused. In *A. Submir Vs. State of Kerala* (2009) 6 SCC 587, it is ruled that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and that the accused should be considered innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record conviction. In *B. Jayraj Vs. State of Andhra Pradesh* (2014) 13 SCC 55., it was observed that, mere possession and recovery of currency notes from accused without proof of demand would not establish offence under Section 7 as well as 13(1) (d) of the Act. In the case of *P. Satyanarayan Murthy* (Supra) it is held that, the proof of demand of illegal gratification is the gravamen of offence under Sections 7, 3(1)(d) of the act. Mere acceptance of any amount as illegal gratification or recovery, dehors. The proof of demand would not be sufficient to bring home charge. Similar view was adopted in the case of *State of Punjab Vs. Madan Mohan Lal Verma* (Supra). This Court in the case of *Uttam Shere* (Supra) has held that, when there exists plausible explanation from accused, merely because tainted currency notes found in possession of accused, statutory presumption as envisaged under Section 20 cannot be drawn against accused. It is settled law that before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by prosecution.

18 Considering the nature of evidence on record, I am of the opinion that the

prosecution has failed to prove its case beyond reasonable doubt. The conviction of the accused, therefore, required to be set aside. Hence, I pass the following order:

:: ORDER ::

(i) Criminal Appeal No.761 of 1998, is allowed;

(ii) The impugned judgment and order dated 22nd September, 1998, passed by learned Special Judge, Satara in Special Case No.16 of 1992, convicting the appellant, is set aside and the appellant is acquitted of all the charges;

(iii) Criminal Appeal No.761 of 1998, stands disposed of accordingly.