

(2021) 10 BOM CK 0026
In the Bombay High Court
Case No : Criminal Appeal No. 597 Of 2012

Dilip S/O. Gangadhar Sonar

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 07-10-2021

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2), 20
Code Of Criminal Procedure, 1973 — Section 313
Indian Penal Code, 1860 — Section 165A

Citation : (2021) 10 BOM CK 0026

Hon'ble Judges : Surendra P. Tavade, J

Bench : Single Bench

Advocate : C.P. Sengaonkar, R.N. Chavan, S.N. Morampalle

Final Decision : Allowed

Judgement

Surendra P. Tavade, J

1. The appellant being aggrieved by and dissatisfied with the judgment and order passed by the Ad-hoc District Judge-1 & Additional Sessions Judge, Jalgaon, in Special Case No.1 of 2011, has preferred this appeal. The original accused was convicted for the offence punishable under sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. He was sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2000/- in default to suffer rigorous imprisonment for three months for the offence punishable under section 7 of the Prevention of Corruption Act. The original accused was also sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.3000/- in default of payment of fine to undergo rigorous imprisonment for four months for the offence punishable under sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. During pendency of this appeal the original accused passed away. His wife got herself substituted before this Court with a bid to purge him. She was allowed to continue with the appeal.

2. Facts giving rise to this appeal can be summarized as under :-

3. The original accused was serving as a Personal Secretary in the office of Civil Surgeon, Jalgaon. He used to scrutinize medical bills of the Government servants and used to place before the Civil Surgeon for sanction. The complainant Rajiv Hari Jamodkar was serving as a Junior Clerk in the office of Collector, Jalgaon. On 19.04.2010 his mother had undergone eye operation in Ganpati Hospital, Jalna. He spent Rs.8895/-towards said operation and other medical expenses. In order to get the medical bill reimbursed, he submitted application in his office and annexed necessary documents. It was necessary for the complainant to obtain certificate from the Civil Surgeon for reimbursement of medical bill. Hence, his office sent his application to the office of the Civil Surgeon on 02.08.2010. The said papers were received by the Civil Surgeon, Jalgaon on 03.08.2010.

4. It is alleged that the complainant met original accused 3-4 times and made enquiry about his medical bill. The original accused told the complainant that his work will not be done within short period and he would inform him accordingly.

5. On 13.08.2010 the complainant met the original accused and requested him to do his work at the earliest. The original accused demanded Rs.800/- for the said work. The informant asked him as to whether he will give receipt of the said amount. The original accused answered in the negative. The original accused told the complainant that unless he receives Rs.800/-, he will not place his (complainant's) application before the Civil Surgeon. The original accused asked him to visit his office on 16.08.2010 along with money. The complainant was not inclined to pay the amount. Hence, on 16.08.2010 he went to the office of the Anti-corruption Bureau, Jalgaon. He narrated the facts to the officer who recorded his complaint and asked him to visit office at 01.00 p.m. Meanwhile, the ACB Officer called two persons, namely, Vijay Thakare and Kishor Jaware. Accordingly, the complainant visited the ACB office at 01.00 p.m. The panch witnesses were present there. They read the complaint and attested the same. The ACB Officer asked the complainant to produce cash and other articles and accordingly the complainant produced eight currency notes of Rs.100/- denomination each before the ASI Satodkar. Thereafter, ASI Satodkar explained them the characteristics of anthracene powder and the effects of ultraviolet light on it. ASI Satodkar applied anthracene powder to eight currency notes of Rs.100/-. Those were shown to the complainant and panch witnesses. Similarly, said notes were kept in left shirt pocket of the complainant with instructions to give it to the original accused only on demand. The complainant was instructed that after acceptance of bribe by the original accused, he should give signal to the raiding party by scratching his head. The panch witness No.1 was instructed to accompany the complainant and observe the transactions.

The panch witness No.2 was also asked to remain with the raiding party. Thereafter, pre-trap panchanama was prepared (Exh.16). It was signed by the panch witnesses and the Investigating Officer.

6. On the same day at about 03.30 p.m. all of them left the ACB Office by the Govt. vehicle and came to Civil Hospital, Jalgaon. The vehicle was parked in the

parking area of the Civil Hospital. All of them alighted from the vehicle. The complainant and panch witness No.1 went to the office of the original accused. The original accused was not present in the office. At about 4=15 to 04=30 p.m. the original accused returned to his office.

The complainant and panch witness met him. The complainant made enquiry about his medical bill. The original accused asked the complainant whether he has brought money. The complainant replied in the affirmative. The original accused asked him to hand-over money, so that he will keep the bill before the Civil Surgeon. The complainant asked the original accused to reduce the amount. Accordingly, original accused asked him to pay Rs.700/-. The complainant told him that he would return after short time by meeting one patient in the ward and asked the original accused to prepare bill. Thereafter, the complainant and panch witness returned to the vehicle of ACB Office and narrated the incident. I.O. Deshmukh asked the complainant and panch witness to meet the original accused again.

7. The complainant and panch witness again came to the office of the original accused. The complainant met the original accused and asked the original accused whether his bill has been prepared. The original accused again demanded money. The complainant took out Rs.700/-from his left shirt pocket and gave the same to the original accused. The original accused accepted the same with right hand and kept notes in his left shirt pocket. Thereafter, the complainant gave pre-determined signal to the raiding party in the acceptance of bribe by the original accused. The members of the raiding party rushed to the office of the original accused. The original accused came to be apprehended. The ACB Officer Deshmukh (PW-4) introduced himself to the original accused. The complainant was asked to stay out of the office. The ACB Officer Deshmukh (PW-4) and panch witness No.2 took personal search of the original accused. The marked notes were found in the left shirt pocket of the original accused. It was seized. Said currency notes were examined in the ultraviolet light. Greenish glitterance was found on the seven notes of Rs.100/-. Similarly, one note of 500/- denomination was found in the pocket of the original accused. It was also seized. The numbers of the marked currency notes were tallied with the panchanama. Said currency notes were seized along with one note of Rs.500/-. The shirt of the original accused was seized. It was seen under the ultraviolet light. Greenish glitterance was found near opening of left shirt pocket. Said shirt was seized under panchanama. The hands of panch No.2 were scanned under ultraviolet light. Greenish glitterance was found on the finger tips of his right hand. The complainant was also called in the room. He was examined under ultraviolet light in darkness. Greenish glitterance was found on the finger tips of his right hand as well as near the opening of left shirt pocket. Search of the complainant was also taken. He was found in possession of one tainted currency note of Rs.100/-, which was also seized. The post trap panchanama (Exh.17) was prepared. Thereafter, the Dy.SP lodged FIR against the original accused (Exh.24).

8. After due investigation charge-sheet came to be filed against the original accused. During pendency of the appeal the original accused was released on bail. The charge was framed against the original accused for the offences punishable under sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. The original accused pleaded not guilty and claimed to be tried. The defence of the original accused is of total denial. According to him he had scrutinized bill of the complainant. It is also his case that he was taking the bills to the Civil Surgeon for sanction. The complainant planted notes in his pocket and falsely implicated him.

9. To prove the charge against the original accused, the prosecution has relied on evidence of four witnesses. The original accused has also led evidence of (DW-1) Shrikant Halkunde.

10. On going through the evidence on record the Trial Court held the original accused guilty for the offences charged against him. He was sentenced as mentioned above.

11. Heard learned Counsel for the appellant-original accused. He submits that the evidence of the complainant is not corroborated by PW-3 Vijay Thakare on material particulars. It is contended that the sanctioning authority was not competent to accord sanction. The sanction order is not legal and valid document. It is contended that the original accused was not competent to sanction the medical bills. It is contended that there were scoring in the medical bill. Said flaws were brought to the notice of the complainant. Therefore, he was annoyed, and he falsely implicated the original accused. It is also contended that the evidence of the complainant and panch witnesses is not cogent and consistent on material particulars. The prosecution has failed to prove alleged demand of bribe. It is contended that there were many persons present at the time of alleged trap. But the Investigating officer has not recorded statement of said persons. It is contended that peon of the original accused was very much present in the office, who had seen the entire alleged transaction. He should have been examined by the prosecution, but ultimately the original accused has examined him as defence witness who has categorically stated that the original complainant put the money in the pocket of the original accused forcibly. The original accused has also made grievance before the I.O. Deshmukh about thrusting of money in his pocket immediately after the alleged raid. The said facts are not properly considered by the Trial Court. It is contended that the Trial Court has failed to appreciate the prosecution evidence via-a-viz defence evidence. Therefore, the order of the Trial Court needs to be set aside. Hence, by allowing this appeal, original accused be acquitted.

12. On the other hand, learned APP submits that the evidence of the complainant and panch witness is corroborative to each other on the point of demand and acceptance of bribe. The prosecution has established that the original accused was authorized to inspect the bills and produce it before the Civil Surgeon for sanction. It is also proved on record that for placing the medical bill before the

Civil Surgeon the original accused demanded money from the complainant in presence of panch witness. There is sufficient material against the original accused. The Trial Court has correctly appreciated the evidence on record. He submitted that the defence witness was subordinate staff of the original accused. Therefore, to oblige the original accused he gave false evidence, which was correctly discarded by the Trial Court. It is submitted that the judgment and order of the Trial Court is correct and proper and there is no need to interfere with the same.

13. To prove the charge against the original accused, the prosecution has relied on evidence of the complainant and the panch witnesses. According to the complainant he had presented medical bill of his mother in the office of Civil Surgeon. The original accused was duty bound to scrutinize the bill and place it before the Civil Surgeon. Hence, he had met the original accused on many occasions. On 16.08.2010 he met the original accused and enquired about medical bill of his mother. The original accused told him that in order to get his bill passed, he will have to pay Rs.800/-. The original accused also told the complainant to pay the said amount on 16.08.2010. The complainant was not inclined to pay the amount. Therefore, he went to the ACB Office, Jalgaon on 16.08.2010. He described the incident before I.O. Deshmukh, who recorded his complaint (Exh.12) The complainant was asked to visit ACB Office at about 01=00 p.m. In the meantime the I.O. Deshmukh called two panch witnesses, namely, Vijay Thakare and Kishor Javare. It is also come in the evidence that complaint was read by the panch witnesses. They had gone through it and attested it. It is also come in the evidence of the complainant that he was asked to produce articles possessed by him. Accordingly, he produced cash of Rs.1600/-. Out of said amount, an amount of Rs.800/- was kept aside and rest of the amount was returned to him. He further deposed that he was narrated characteristics of anthracene powder and its effect under ultraviolet light in darkness. Said demo was shown to the complainant and panch witnesses by ASI Satodkar. The complainant further deposed that he produced eight currency notes of Rs.100/-denomination each. ASI Satodkar applied anthracene power on the said note. Said marked notes were kept in his left shirt pocket with directions to hand over to the original accused as and when demanded bribe money by the original accused. It is also come in the evidence of the complainant that panch witness Vijay Thakare was asked to accompany him to the office of the original accused and observe the transaction. Accordingly, pre-trap panchanama came to be prepared (Exh.16).

14. It is also come in the evidence that after pre-trap panchanama he along with panch witness and members of raiding party reached the Civil Hospital by Government vehicle. The vehicle was parked in the parking area of the hospital. It is also come in the evidence of the complainant and panch witness that they went to the office of the original accused. The original accused was not present in the office. He came in between 04=15 to 04=30 p.m. The complainant further deposed that he met the original accused and enquired about his bill. The

original accused asked him whether he brought money. The complainant answered in the affirmative. The original accused told him in-case he has brought money, then he would give it to him and then he will put up his bill before the Civil Surgeon. It is deposed by the the complainant that he asked the original accused to reduce the amount. Accordingly, the original accused asked him to pay Rs.700/-. The complainant told him that he would return in short time after seeing one patient in the ward. Accordingly, he along with panch witness returned to the vehicle and met the I.O. Deshmukh. Further it is come in the evidence of the complainant that after discussion with I.O. Deshmukh, he returned to the office of the original accused along with panch witness Vijay Thakare. He met the original accused and asked him whether he has prepared bill. The original accused once again demanded money from him. Out of Rs.800/- he took out Rs.700/- from his left shirt pocket. He gave it to the original accused. He accepted the same with right hand and kept the same in his left shirt pocket. Thereafter, he gave pre-determined signal to the raiding party. The members of the raiding party came to the office of the original accused. The original accused was apprehended. The complainant was asked to go out of the office. Thereafter, witness I.O. Deshmukh made enquiry with panch Vijay Thakare.

15. It is deposed by Vijay Thakare that the original accused demanded money and thereafter the complainant paid the same. He also disclosed that the original accused kept the marked currency notes in left shirt pocket. Accordingly, search of the original accused was taken. The marked notes were recovered from the left shirt pocket of the original accused, which were seized. I.O. Deshmukh asked the team members to examine the hands and shirt of the original accused under ultraviolet light in darkness. They found greenish glitterance on the finger tips as well as left shirt pocket of the original accused. Similarly, the complainant was examined under ultraviolet light. His finger tips of right hand and edges of shirt pocket were also found greenish glitterance. He further deposed that the complainant was found in possession of one currency note of Rs.100/- which was also found greenish glitterance under ultraviolet light. Said note was seized under panchanama. The shirt of the original accused was also seized under panchanama. The hands of panch witness No.2 were also examined under ultraviolet light, which was having greenish glitterance. Thereafter, witness I.O. Shivaji Deshmukh (PW-1) prepared post-trap panchanama and original accused was put under arrest. It is come in the evidence that the statements of the witnesses were recorded.

16. In the cross-examination the complainant admitted that he met the original accused on 16.08.2010. When he went to the office of the original accused, he was not present. The original accused returned to his office at about 04=15 to 04=30 p.m. But the panch witness deposed that when he accompanied the complainant to the office of the original accused, he was very much present there. The complainant deposed that the original accused asked him whether he has brought money. He answered in the affirmative. Similar evidence is given by the panch witness Vijay Thakare. He also deposed that complainant asked the

original accused whether he has done his work. ("Aaple Kam Kele Aahe Kay?"). The original accused also asked the complainant whether he has brought money. The complainant asked to reduce the amount. Accordingly, original accused asked him to pay Rs.700/-. So, on going through evidence of the complainant and panch witnesses, it appears that it is some what similar, but in cross-examination the panch witness has categorically admitted that when he met the original accused for the first time, there was no talk about money and the complainant told said fact to witness I.O. Shivaji Deshmukh. This admission washed out the theory of the complainant that on meeting the original accused he demanded money from him.

17. Learned Counsel for the appellant submits that if evidence of the panch witness is read as it is, it reveals that original accused made enquiry with the complainant whether he has brought money. Thereafter, he told the complainant that he will put up his papers before the Civil Surgeon. According to learned Counsel for the appellant/original accused, such conversation will not help the prosecution to prove the demand as contemplated under the provisions of Prevention of Corruption Act.

18. To substantiate this point he relied on the case of Mukhtiar Singh (since deceased) through his Legal Representatives Vs. State of Punjab (2017) 8 SCC 136. In the said case also the complainant therein met the original accused and had discussion about his work. The original accused asked him whether he has brought money and asked him to pay. In view of the said facts, the Apex Court observed that the High Court, however, recorded that there was no direct demand of illegal gratification by the original accused from the complainant in the presence of the shadow witness in the police station, but the query made by him (original accused) of the money being brought or not did amount to such demand. In addition, the currency notes of Rs.2000/- which were recovered by the trap team, did substantiate the accusation of demand as well. The High Court held that the imputation of false implication at the instance of the Superintendent of Police, as made by the original accused in Section 313 CrPC statement, in absence of any evidence, did not merit acceptance. The Apex Court further held that the evidence of the complainant and the panch witness is not cogent and cognate on the point of demand. Therefore, the original accused therein was acquitted.

19. In the present case, the panch witness has categorically admitted that in the first meeting the original accused did not demand money from the complainant and said fact was disclosed to I.O. Shivaji Deshmukh. If such evidence is taken into account, it can be said that the prosecution has failed to establish the demand of bribe amount as alleged in the pre-trap panchanama.

20. The complainant further deposed that he disclosed the discussion held between himself and the original accused to I.O. Deshmukh. Thereafter, he was asked to handover money to the original accused. It is come in the evidence that he went to the office of the original accused again to meet him. He asked

whether he prepared the bill. He once again demanded money from him. Hence, out of Rs.800/- he took out Rs.700/- from his left shirt pocket and gave it to original accused. The original accused accepted the same with right hand and kept it in his left shirt pocket. Thereafter, he gave pre-determined signal to the raiding party. On this point, the evidence of the panch witness is also crucial. According to him he was asked to accompany the complainant again to the office of the original accused. Accordingly, he went to the office of the original accused. The complainant gave tainted currency notes to the original accused. The original accused accepted the same with right hand and kept the same in his left shirt pocket. Thereafter, the complainant gave pre-determined signal to the raiding party. If the evidence of panch witness is read as it is, it can be said that his evidence is conspicuously silent on the point of demand of money by the original accused from the complainant. The complainant has stated that when he met original accused, the original accused demanded money. The evidence of the panch witness is completely silent on the demand by the original accused. On the contrary, he deposed that the complainant gave tainted currency notes to original accused which he accepted. So, on second occasion also, there is no cogent and cognate evidence on the point of demand of money by the original accused.

21. Learned Counsel for the appellant submits that the defence of the original accused is that the money was thrust into his pocket by the complainant. He invited my attention to the evidence of I.O. Shivaji Deshmukh (P.W.4), who categorically admitted in his cross-examination that he made enquiry with the original accused, who disclosed him that when he was going into cabin of the Civil Surgeon, the complainant put cash amount in his pocket. So, it can be said that after the trap the original accused gave explanation of possession of marked note to the Investigating Officer.

22. Learned Counsel for the appellant also relied on the evidence of defence witness Shrikant Halkunde (DW-1). He deposed that he was present in the office of the original accused during the entire transaction. He has categorically stated that on the given day, at about 04=00 p.m. original accused asked him to produce files of medical bills. Accordingly, he took out bunch of files and placed before the original accused. 5-6 persons were sitting around him. He took out 2-3 files from those files and was about to proceed towards cabin of the Civil Surgeon. He followed him. Some persons sitting along with the original accused also followed him. He further deposed that one of them put money in to the left shirt pocket of the original accused. Thereafter two persons who were following the original accused caught him immediately. According to learned Counsel, the original accused was apprehended in the hall adjacent to Cabin of Civil Surgeon. It is established on record that the office of the original accused is nearby the cabin of the Civil Surgeon. The original accused was required to cross the passage and the hall to enter into the cabins of the Civil Surgeon. On perusal of the evidence of defence witness it appears that while the original accused was proceedings towards cabin of Civil Surgeon, he was apprehended by the Officer

of ACB. Said fact is also deposed by the complainant.

23. On this point, learned Counsel for the appellant submits that mere recovery of tainted money from the original accused is not enough in absence of evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. He relied on the ratio laid down in the case of C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, (2009) 2 SCC (Cri.) 1, wherein it was held that the accused can rebut charge either through cross-examination of prosecution witness or by adducing reliable evidence. It was further held that burden of proof on accused under section 20 is not the same as the burden placed on prosecution to prove case beyond reasonable doubt. In the present case, the appellant at the earliest point of time explained that marked notes were put in his pocket by the complainant. Similar suggestion was also put to the I.O. He had also admitted that after apprehension of the original accused, he explained that the notes were thrust into his pocket.

24. Learned Counsel for the appellant also relied on the case of T. Subramanian Vs. State of T.N. (2006) 1 SCC 401, wherein it was held that mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish guilt of the accused. If accused offers reasonable and probable explanation based on evidence that the money was accepted by him, other than as an illegal gratification, accused would be entitled to acquittal. In the present case the original accused has explained that he was carrying the proposal of the complainant to place it before the Civil Surgeon. In the meantime, the complainant thrust money into his pocket. Said fact was also explained by the original accused to the I.O. immediately after he was apprehended by P.I. Deshmukh. The evidence of defence witness also substantiates theory put forth by the original accused. Therefore, it is not proved beyond doubt that the original accused had accepted the money as illegal gratification.

25. The learned Counsel for the appellant submits that the prosecution is required to establish demand as well as acceptance of bribe by the original accused beyond shadow of reasonable doubt. If the prosecution fails to prove the demand and acceptance of bribe, by leading clinching evidence, the original accused cannot be held guilty. To substantiate this point he relied on the case of Panalal Damodar Rathi Vs. State of Maharashtra (1979) 4 SCC 526, wherein it was held that there could be no doubt that evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A IPC making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. In the present case, the evidence of the complainant and the panch witness is not cogent and cognate on the point of demand of bribe amount and its acceptance by the original accused.

26. The counsel for the original accused submits that the prosecution is not able

to prove demand of bribe beyond shadow of reasonable doubt. The evidence of witnesses disclose that the accused did not make any demand of money and the complainant was trying to offer money without there being demand. Learned Counsel for the appellant has relied on the judgment of this Court in the case of Ramesh Appasaheb Lad Vs. The State of Maharashtra , 2011 ALL MR(Cri.) 3764. Reliance is also placed on the judgment of the Supreme Court in the case of Ramjanam Singh Vs. State of Bihar, AIR 1956 SC 643 and another decision of this Court in the case of Yuvraj Chintaman Selokar Vs. State of Maharashtra, 2012 ALL MR (Cri) 2921.

27. The evidence of panch witness is very crucial to prove the demand. In examination-in-chief he supported version given by the complainant, but in cross-examination he categorically admitted that when he met accused for the first time, there was no talk about money and the complainant had stated said fact before the I.O. Deshmukh. He has also admitted that when he was directed to accompany the complainant for second time, he went to the office of the original accused. He further deposed that the complainant met the original accused and handed over money to the original accused. So, his evidence is also silent on the point of demand of money on his second visit to the office of the original accused. Therefore, it can be said that the prosecution is not able to prove demand of bribe by the accused beyond reasonable doubt.

28. It can be said that the original accused raised plea of false implication, namely, thrusting of notes in his pocket by the complainant. Said defence is substantiated by the admission of the Investigating Officer Deshmukh and the evidence of defence witness Shrikant Halkunde. On going through the evidence of the complainant and the panch witness, it can be said that there is no cogent and clinching evidence on the point of demand and acceptance of bribe money by the original accused. Similarly, the prosecution has not examined independent persons available on the spot to prove the transaction alleged by the complainant.

29. The prosecution has examined PW-1 Dr.Dharurkar, to prove the sanction. According to PW-1 Dharurkar, in the year 2019 he was working as Dy. Director, Health Services, Nashik Circle. At the relevant time the original accused was working as Steno-Typist attached to Civil Surgeon, Jalgaon. He received papers of trap case from ACB, Nashik. He had gone through all papers and applied his mind and after going through papers, he got himself satisfied that it was a fit case to accord sanction for the prosecution, accordingly he granted sanction (Exh.10). In cross-examination he admitted that he had received draft of sanction order along with papers. He kept the draft with him. He also admitted that concluding paragraph was also there in the draft of the sanction order. It was for the first time he issued sanction order. He also admitted that sanction order which he passed was almost the same as per the draft forwarded to him. He deposed that he was appointing and removal authority of a person holding post of Steno-typist as there were directions from the Government. But he admitted that he is unable to produce such notification. On the basis of said

admission, learned counsel for the appellant submits that PW-1 Dr. Dharurkar was working as a Dy. Director, Health Services. He was not authorized to appoint or remove a person holding post of Steno-typist. According to witness he acquired said authority by way of direction issued by the Government. Therefore, said notification was just required to appreciate whether the witness was appointing or removing authority of the original accused. It is true that the witness has admitted that he received the direction from the Government by way of notification to issue sanction order. Therefore, said notification was very crucial which was not produced on record. Therefore, it is doubtful whether witness Dr. Dharurkar was a person in authority to issue sanction order to prosecute the original accused.

30. Learned Counsel for the appellant also submitted that on going through sanction (Exh.10) it appears that sanctioning authority has not elaborated the facts constituting offence alleged against the original accused. On perusal of the sanction order it appears that the sanctioning authority has given brief facts of the case, wherein it is mentioned that the original accused had demanded Rs.800/- from the complainant. Therefore, it cannot be said that the facts constituting offence were mentioned in the sanction order.

31. The sanctioning authority PW-1 has admitted that the contents of draft sanction and the sanction issued by him are similar. On the basis of said admission, learned Counsel submits that the sanction order is nothing but replica of draft. Therefore, it shows non-application of mind. To substantiate his point, he relied on the ratio in the case of Bhagwan Mahadeo Sathe Vs. State & Anr., 2011 ALL MR (Cri) 1221, wherein it was observed that the record indicates that the draft sanction letter was forwarded to the sanctioning authority along with other papers. The actual sanction which is granted is verbatim reproduction of the draft sanction. This also clearly discloses that there was a non-application of mind while granting sanction to prosecute. Said ratio is squarely applicable to the facts of present case.

32. Therefore, the sanction produced on record appears to be not proper and correct. In absence of valid sanction order, the prosecution fails. In view of above discussion, I am of the opinion that there are many discrepancies in the evidence of the complainant and panch witness on the point of demand of bribe by the original accused. The defence of the original accused that the bribe notes were thrust into his shirt pocket appears to be probable. Therefore, the prosecution has failed to establish charge levelled against the applicant beyond reasonable doubt. The original accused is entitled for acquittal. Hence, I pass the following order :-

ORDER

(i) The appeal is allowed.

(ii) The judgment and order passed in Special Case No.1 of 2011 dated 17.09.2012 by Ad-hoc District Judge and Additional Sessions Judge, Jalgaon is

quashed and set aside.

(iii) The original appellant/accused is hereby acquitted of the offences punishable under section 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

(iv) Fine amount, if any, paid by the appellant, be refunded to the applicant, after the appeal period is over.