

(2019) 12 BOM CK 0092
In the Bombay High Court
Case No : Criminal Appeal No. 13 Of 2004

Kashinath Shiru Ahire

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

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

Citation : (2019) 12 BOM CK 0092

Hon'ble Judges : K.K. Sonawane, J

Bench : Single Bench

Advocate : A.B. Kale, D.N. Pingale, B.V. Virdhe

Final Decision : Disposed Of

Judgement

1. The instant appeal calls-in-question the legality and propriety of the impugned Judgment and order of conviction and resultant sentence rendered by the learned Special Judge, Dhule, in Special Case No. 92 of 1999 dated 09-02-2003. The appellant-accused convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short "Act of 1988") and he has been sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for three months. He has also convicted for the offence punishable under section 13(1)(d) read with section 13(2) of the Act of 1988 and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 1000/- in default to suffer rigorous imprisonment for three months. Both the sentences shall run concurrently.

2. The prosecution case sans unnecessary factual aspects in brief is that, the appellant-accused at the relevant time was the public servant, employed as maintenance surveyor in the office of Land Record, Sindkheda District Dhule. It has been alleged that the complainant Mr. Shaligram Patil was indulging in the business of flour mill since 1979 to 1995 at village Virdel, Taluka Sindkheda. But, thereafter, he stopped the business of flour mill and returned to his native at

Murukwade. However, in the year 1979, he had purchased the house property No. 407 admeasuring 9.14 X 4.80 meter area of his flour mill from owner Rama S/o Daulat Choudhary by registered sale deed for a consideration of Rs. 2000/. But, he did not get mutated his name in the documents of office of land record after registration of sale deed. Therefore, on 03-04-1998 he visited to the office of Land Record to get "Sanad" of house property No. 407 located at village Virdel from the Office of Land Record in his favour. He met with the appellant-accused Mr. Ahire in the Office and given all the relevant documents for mutation of his name in the official record. But, appellant-accused made demand of Rs. 300/ as bribe and asked the complainant to bring the original owner Rama Chaudhary for recording his statement in the Office. After about 15 days, the complainant and original owner of house No. 407, visited to the appellant-accused in the office. The statement of owner Mr.Rama Chaudhary was recorded by the accused. Thereafter, the complainant was advised to see Mr.Holey, superior of appellant-accused (i.e. original accused No. 2 who has been acquitted by trial Court from charges of bribery in this case.) But, the Superior Officer Mr.Holey was not available in the office. Therefore, again the complainant came to the office of appellant-accused on 27-04-1988 and met with Mr. Holey, Assistant Taluka Inspector, Land Record, Sindhkheda. He placed demand of bribe of Rs.300/- for showing favour to the complainant. After negotiation, the complainant prepared himself to give bribe of Rs.300/- to the appellant-accused Mr.Ahire and his superior Officer Mr.Holey. It was agreed to accept the bribe of Rs.300/- from complainant on 06-05-1998 in the Office at Sindhkhed. The complainant Mr.Shaligram Patil was not willing to pay the bribe, therefore, he approached to ACB Sleuth, Dhule and filed the complaint. The Investigating Officer (IO) Mr.Khairnar, Deputy Superintendent of Police procured presence of two panch witnesses for further process. They both were appraised about the demand of bribe and its acceptance on 06-05-1998 by the appellant-accused in the Office. Thereafter, the formalities of pre-trap panchnama were completed and all the members of raiding party including complainant Mr.Shaligram Patil, etc. started proceeding towards Office of Land Record of the accused at Shindhkheda in Police vehicle. The trap was laid and appellant-accused Mr.Ahire was caught raid handed while accepting the bribe amount from the complainant. The detail post-trap panchnama was drawn in presence of panchas. IO recorded statement of appellant-accused for accepting the tainted currency notes as bribe from complainant. Thereafter, IO Mr. Khairnar lodged the complaint for penal action against the appellant-accused.

3. Pursuant to First Information Report (FIR) of Police Personnel, Dy.S.P. Mr. Khairnar, the Police of Sindhkheda Police Station registered the Crime No.3012 of 1998 for the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Act of 1988 and set the penal law in motion. IO recorded statements of witnesses acquainted with the facts of the case. He collected relevant documents. During the investigation, it was transpired that Mr.Holey, Assistant Inspector of Land Record, superior of appellant-accused had an involvement into

the crime. Therefore, IO obtained sanction from concerned competent authority for prosecution against both the appellant-accused and his superior Mr.Holey. After completion of investigation, IO filed charge-sheet against both of them for the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Act of 1988 bearing Special Case No. 92 of 1999. The learned Special Judge framed the charges against both the accused i.e. present appellant and his Superior Officer Shri Holey, Assistant Inspector of Land Record, for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Act of 1988. Both the accused pleaded not guilty and claimed for trial. The prosecution adduced the evidence of in all five witnesses to prove the charges against accused. The statement of both the accused under Section 313(1)(b) of the Cr.P.C. were recorded by learned trial Court. After hearing both sides, the learned trial Court held the appellant-accused guilty for the offences punishable under Sections 7, 13(1)(d) read with section 13(2) of the Act of 1988 and imposed the resultant sentence as indicated above. However, the learned Special Judge simultaneously observed that, the evidence adduced on record on behalf of prosecution against so called accused No. 2 Mr. Holey, Assistant Inspector of Land Record, is not sufficient to bring home his guilt within the purview of law. Therefore, the learned trial Court extended the benefit of doubt in the prosecution case and exonerated the accused No.2-Mr. Holey from the charges pitted against him. Albeit, validity and legality of acquittal of accused No. 2 - Mr Holey is not put into controversy on behalf of prosecution -State of Maharashtra. However, the impugned judgment of conviction and resultant sentence imposed on the appellant-accused by the learned trial Court is the subject-matter of present appeal.

4. The learned counsel Mr.Kale appearing for appellant-accused vehemently submits that the impugned Judgment and order of conviction and resultant sentence of the appellant-accused is erroneous, illegal and contrary to provisions of Law. The learned trial Court did not appreciate the evidence adduced on record in its proper perspective and committed error in convicting the sole accused in this case. There are material discrepancies in the evidence of prosecution witnesses. The learned counsel contended that the evidence of prosecution witnesses is not sufficient to prove the factum of demand of bribe by the appellant-accused. The complainant - Mr. Shaligram visited to the office of Land Record and met with the accused for the first point of time on 03-04-1998 for his work. It has been alleged that at that time the accused-appellant made demand of bribe of Rs.300/-. Thereafter, there was no demand of bribe on the part of appellant-accused. The complainant visited to accused with vendor Mr. Rama Chaudhary for recording his statement for mutation of complainant's name in the property register. Thereafter, on 27-04-1998 complainant Mr. Shaligram had an meeting with accused Mr. Holey, Superior Officer of appellant-accused. Mr. Holey demanded bribe of Rs.300/- for himself and for appellant-accused. However, the appellant-accused was not present in the cabin at that time. The complainant did not approach to ACB Sleuth immediately on 27-04-1998 to

ventilate grievances. There was no verification of demand by ACB Personnel in presence of panchas. The learned counsel Mr. Kale explained the circumstances prevailing over in the office of accused at the time of trap. The entire mutation work of complainant was completed on 05-05-1998 i.e. day before trap and only the extract of document was remained to be issued after depositing the requisite charges. Therefore, no question arises for any demand of bribe by the appellant-accused. According to learned counsel Mr. Kale, there are material discrepancies in the evidence of PW-1 Mr. Shaligram and PW2- Panch Mr. Thombre on the actual conversation of demand of bribe in between complainant and accused at the time of alleged trap. There was no demand of money by the appellant but when appellant-accused had gone out of office room for chewing tobacco, that time the complainant suo-moto kept the currency notes beneath the paper on the table of accused. He contends that prosecution failed to prove the demand and acceptance of tainted currency notes as illegal gratification by the appellant-accused. The learned trial Court did not appreciate the circumstances in its proper perspective and committed error in convicting of appellant sole and exonerated the co-accused in this crime. He alleged that the finding of conviction of appellant is perverse, illegal and deserves to be set aside and quashed.

5. Learned counsel for appellant in support of his submissions placed reliance on the judicial precedents in the cases viz- Yuvraj Chintaman Selokar Versus State of Maharashtra reported in 2012(4) Bom.C.R. (Cri.) 371, Pandharinath Shelke Versus State of Maharashtra reported in 2005 (2) Bom.C.R.(Cri.) 940, Suresh Kumar Shrivastav Versus State of M.P. reported in 1994 Cri.L.J. 3738, Ram Swaroop Rathore Versus State of M.P. 2000 Cri.L.J. 1882(1), G.V. Najnundiah Versus State (Delhi Administration) reported in AIR 1987 Supreme Court, 2402, Madan Mohan Singh Versus State of UP 1954 Cri.L.J.1656 (Supreme Court) (1), Ramesh Ramdas Vaidya Versus State of Maharashtra reported in 2003 (O)BCI 166, Avinash Sitaram Garware Versus State of Maharashtra reported in 2008(1) Bom.C.R. (Cri) 260, Sat Paul Versus Delhi Administration reported in 1975 DGLS (soft) 374 : 1976 AIR (SC) 294, Sewakdas Tukaram Jumde Versus State of Maharashtra reported in 2013(3) Bom.C.R (Cri) 195, State of Maharashtra Versus Anant Gurunath Jottrao reported in 2006 (Supp) Bom.C.R. 923, Khushalchand Yashwant Gaikwad Versus State of Maharashtra reported in 2018 DGLS (Bom) 816 : 2018 (4) Bom.C.R. (Cri.)257, Govind Anand Karvande and another Versus State of Maharashtra, reported in 2016 DGLS (Bom) 1175 : 2016 All MR.(Cri) 5003, Amir Jan Versus State by Inspector of Police, Bureau of Investigations, Karnataka Loakyutha, City, reported in LEX (Kar) 2000, 6 61, Tirath Prakash Versus State of Delhi reported in LEX (DLH) 2001 7 149, State of Maharashtra Versus Dnyanoba (Criminal Appeal No. 254 of 2000 dated 1st March, 2011) reported in 2011 All MR (Cri.)-0-1051, State of H.P. Versus Tilak Raj (March, 30, 2009) : 2009 Cri.L.J.-0-4739 and Pyare Lal Versus State reported in 2008 ILRDH 17- 91.

6. The learned APP raised the objection and submits that the learned trial Court appreciated the factual aspect of the matter in proper manner. There is no error

or perversity in the findings of conviction of appellant-accused. Hence, there is no propriety to cause interference in it.

7. Having given anxious consideration to the arguments canvassed on behalf of both sides, and after intense scrutiny of the oral and circumstantial evidence adduced on record, it reveals that the argument advanced on behalf of appellant-accused in the matter, appears much more formidable and appreciable one. Before embarking into the merits of the matter, it is imperative to take into consideration that in cases of bribery, the factum of demand of illegal gratification is required to be considered as sine-quo-non to constitute the offence punishable under sections 7,13 (1)(d) read with section 13(2) of Act of 1988. The bare recovery of tainted currency notes from the possession of accused cannot itself constitute the offence unless it is proved beyond all reasonable doubts that accused made demand of alleged gratification and voluntarily accepted the same knowing it to be bribe amount. The Honourable Apex Court in the case of Khaleel Ahmed Versus State of Karnataka reported in (2015) 16 Supreme Court Cases, 350 enunciated the legal guidelines in paragraphs No. 17 and 18 as follows:-

"17. We will first address the contention regarding proof of demand of illegal gratification. It is a well settled position of law that demand of illegal gratification is a sine-qua-non for the offences under Sections 7 and 13(1)(d). Conversely, in the absence of proof of demand of illegal gratification, the offences under Sections 7 and 13(1)(d) cannot be made out. In State of Maharashtra v. Dnaneshwar Laxman Rao Wankhede, this Court has held:

(SCC P. 204, Para 16)

"16. Indisputably, the demand of illegal gratification is a sine-qua-non for the constitution of an offence under the provisions of the PC Act."

18. More recently, in B Jayaraj V. State of A.P, this Court has held: (SCC. P.58, paras 7-8)

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine-qua-non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe....

8. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

8. In the backdrop of aforesaid legal guidelines, it is imperative to scrutinize the evidence of prosecution witnesses to ascertain whether there was demand of illegal gratifications on the part of appellant- accused to show favour to the

complainant-PW-1 Mr. Shaligram to get mutate his name for the house No. 407 purchased by him in the official record of property register maintained and preserved in the office of Land Record, Taluka Sindkheda.

9. PW-1 Mr. Shaligram deposed that on 03-04-1998, he had been to the office of Town Planner, Sindhkheda to get his name mutated in the official record for the house property No. 407 purchased by him from Mr. Rama Choudhary in the year 1979. He met with the appellant-accused and requested him to do his work. But the appellant-accused demanded Rs. 300/- as bribe under the pretext that his proceeding is too old of year 1979 and he has to file appeal. However, after negotiation, the complainant agreed to pay Rs.300/- as bribe to accused. Thereafter, he once again visited to accused after about fortnight. The accused asked him to bring vendor of sale deed for recording his statement. Accordingly, after about 2/3 days he took the vendor Mr. Rama Choudhary to the office of Land Record at Sindhkheda. The accused-appellant recorded his statement. The appellant - accused advised him to see superior i.e. accused No. 2. Mr. Holey. But he was not available in the office, therefore, he was asked to come later on for enquiry. The PW-1 Mr. Shaligram further testified that on 27-04-1998, he met with an accused in the office. The appellant-accused disclosed him that his file is ready and same will be put up before his Superior Officer. The PW 1- Mr. Shaligram stated that as per direction of appellant-accused he went inside the cabin of accused Mr. Holey to see him. The Superior Mr. Holey placed demand of Rs. 300/- as bribe and disclosed that out of Rs. 300/- he will take Rs. 150/- and rest of Rs.150/- will be given to appellant-accused. The Superior Officer Mr. Holey asked the complainant to come on 06-05-1998 for the documents of mutation of house property in his name. Thereafter, on 06-05-1998, PW -1 Mr. Shaligram approached to ACB Sleuth and filed the complaint for demand of bribe by both the appellant and his Superior Officer Mr. Holey.

10. At this juncture, it is discernible on minute scrutiny of the events occurred since inception of visit of complainant to the office of Land Record, Sindhkheda, as referred above that there was demand of bribe, only at once on the part of appellant-accused. It has been alleged that when the complainant on 03-04-1998 visited to the accused for mutation of his name in official record in respect of house property bearing No. 407 that time the accused-appellant placed demand of Rs.300/- under pretext that matter is too old and appeal was required to be filed before the Superior officer. But, later-on there were no allegations that the appellant-accused insisted the complainant for bribe amount. In contrast, the appellant-accused completed the entire task of mutation of complainant's name in official record, prior to alleged trap. Moreover, there was no document available on record to show that proceeding of appeal was being filed in the name of complainant PW1- Mr. Shaligram The prosecution did not unfurl the mode and manner in which appellant-accused completed the procedural formalities for mutation of name of PW-1 Mr. Shaligram in the official record. As referred supra, complainant PW1- Mr. Shaligram had an occasion to see the appellant-accused for about four to five times uptil the date of trap. But,

it transpired that in these four to five visits the appellant-accused did not make any demand of bribe to the complainant. It is strange to appreciate that there was no attempt on the part of ACB Sleuth to get verify the factum of demand of bribe on the part of appellant-accused in presence of panch witnesses. The conduct and demeanour of the appellant-accused while dealing with the file of mutation work of PW-1 Mr. Shaligram since beginning appears to be in consonance with normal reaction and normal human behavioural pattern. Had there been any demand of illegal gratification on the part of appellant-accused to the complainant there would have persistent demand from the appellant-accused on each and every visit of the complainant to him. But, except following alleged conversation of demand of bribe on 03-04-1998 at the time of first visit of the appellant-accused, there was no whisper that appellant-accused made demand of bribe to the complainant.

11. It has also brought on record that alleged work of mutation of name of complainant in the property Register was found completed on the part of appellant-accused prior to date of trap and nothing remained to be done. When the complainant visited to the appellant-accused at the time of trap that time accused advised the complainant to deposit the copying charges of Rs.5/- with the clerk Mr. Warule and get extract of Property Register from him. Accordingly, the complainant PW-1 Mr. Shaligram paid legal fees of Rs. 5/- to the clerk Mr. Warule and obtained the copy of extract of Property Register (Exhibit-30) of the house property No. 407 of village Virdel after mutation of his name in the official record. These circumstances conjure up the image that the appellant-accused kept the entire work of mutation of name of the PW-1 Shaligram completed and nothing remained to be done, then no question arises of advancing any demand of bribe by the appellant-accused for showing favour to the complainant-PW-1 Mr. Shaligram. It is also worth to mention that there were no allegation that the appellant-accused insisted for bribe from the complainant prior to issuing extract of document (Exhibit-30) of mutation entry of the name of complainant in the officials record . According to prosecution, after receipt of document (Exhibit-30) pertains to mutation entry, the complainant came near the office table of appellant-accused and kept the tainted currency notes beneath the papers lying on the table. These are the mitigating circumstances in favour of appellant-accused for appreciation while evaluating his guilt for the charges of bribery.

12. It would be reiterated that complainant PW-1 Shaligram on 27-04-1998 after recording statement of vendor Mr. Rama Chaudhary once again visited to the office of appellant-accused. The Superior Officer of appellant-accused i.e. accused No. 2-Mr. Holey was present in his cabin. The complainant met with Mr. Holey in his cabin and had an conversation about mutation work of his name in the official record for house property No. 407 of village Virdel. According to PW-1 Mr. Shaligram, the accused Mr. Holey made demand of Rs.300/- as bribe for his work. Accused No. 2 - Mr. Holey described that from total sum of Rs.300/-, he would receive amount of Rs.150/- and rest of amount of Rs.150/- will be paid to the appellant - accused. It is to be noted that at the time of alleged conversation

the appellant-accused was not present in the cabin accompanied with complainant. Therefore, the appellant-accused cannot be blamed for the alleged conversation of demand of bribe occurred in the cabin, in absence of appellant-accused. Moreover, the appellant-accused made demand of bribe to the complainant on his first visit on 03-04-1998. Thereafter, there was no demand of bribe by the appellant. However, on 27-04-1998 the Superior Officer-accused Mr. Holey, made demand of bribe for showing favour to the complainant in the work of mutating his name in the office record. Despite the demand of bribe on two occasions once by appellant-accused on 03-04-1998 and another by Superior Officer Mr. Holey on 27-04-1998, there was no attempt on the part of PW-1 Shaligram to lodge the complaint to the ACB Sleuth for allegation of demand of bribe by the appellant-accused at the earliest prior to 06-05-1998. But, complainant PW-1 Shaligram approached to ACB Sleuth at belated stage on 06-05-1998 and ventilated the grievance for demand of bribe to show favour to mutate his name in official record. The delay in approaching to the ACB Sleuth by the complainant PW-1 Shaligram created a dent in the veracity of allegations nurtured against appellant-accused. There is no any corroboration available on record to appreciate the sole version of complainant for the allegation that appellant-accused made demand of bribe to the complainant for mutating his name in the official record.

13. The Honourable Apex Court in the case of Pannalal Damodhar Rathi Versus State of Maharashtra reported in 1979 Cri.L.J. 936 has held that position of the complainant is not better than that of accomplice and, therefore, unless there is corroboration to his testimony by any other independent witnesses, the evidence of complainant alone cannot be relied upon to determine the question of demand of bribe made by accused. As referred above, except the version of PW-1 Mr. Shaligram there is no any other sort of evidence available on record to fortify the legal issue of demand of bribe by the accused. In contrast, the attending circumstances available on record as discussed above, are found inconsistent with the guilt, but more consonance with the innocence of appellant-accused.

14. There is also variance in the evidence of complainant PW-1 Shaligram and panch witness PW-2 Ramesh Thombre on the actual demand and acceptance of tainted currency notes as bribe on the part of appellant-accused at the time of alleged trap. In paragraph No. 7 of the examination-in-chief of complainant PW-1 Shaligram deposed as under:

"7.Thereafter, at about 12.15/12.30 p.m. I myself, both panch witnesses, Shri Khairnar and other members of raiding party started proceeding towards Sindkheda in a jeep. We reached Sindkheda at about 1.45 p.m.. The jeep was stopped near 'Peer Darwaja'. The instructions were repeated by Shri Khairnar. At about 2.00 p.m. I myself and panch No. 1, Ramesh Thombare reached near the office of Town Planner. After entering the office we both went towards accused No. 1. I wished accused No.1, accused No. 1 also wished me. While we were going towards accused No. 1 I informed to Ramesh Thombare that, he is the

accused No.1. Accused No.1 was sitting in his chair on the northern side of office facing to south. I sat on a chair which was on south side of the table and Ramesh Thombare sat on a chair which was on the western side of table. I made enquiry with accused No.1 as to whether my name is entered in the Sanad. Accused No. 1 told me that, my name is entered in the Sanad. Accused No. 1 also told me that, for getting extract of Sanad. I will have to pay Rs.5/- towards official fees, and I should deposit the amount of Rs.5/- with one Warule. Accused No.1 told me that, yet Shri Warule has not arrived in the office and we will have to wait for him. Meanwhile, Shri Warule arrived in the office. I went towards him and gave currency note of Rs.10/- which will be the legal fees towards extract. Shri Warule passed receipt of Rs.5/-and returned Rs.5/- to me. After depositing legal fees with Shri Warule, I returned back to accused No.1. Thereafter, accused No.1 asked me as to whether I have brought the amount, as agreed. Accused No.1 also told me that, he will take Rs.150/- and accused No. 2 will take Rs. 150/-, and I should give that amount. I made enquiry with the accused No.1 as accused No.2 is not seen in the Office. Accused No.1 told me that, accused No. 2 is out of the office for the official work. Accused No.1 also told me that, I should give him Rs.150/- of his and Rs.150/- of accused No. 2. Thereafter, I took out the amount from my left pocket of shirt by my right hand and held it before accused No. 1.

At that time accused No. 1 asked me to keep the said amount beneath a white paper, which was lying on the table, and accordingly I kept the amount beneath the paper. After my placing the amount beneath the paper, accused No. 1 asked me as to whether his Saheb i.e. superior have seen while placing me the amount beneath the paper. At that time Saheb i.e. Superior Shri Shirsath was present in his cabin, and the table of accused No. 1 was visible from the cabin of Shri Shirsath. I told that, in front of Shri Shirsath one person is standing and so nothing is visible to Shri Shirsath. Thereafter, I got up from the chair and came near the door and gave the agreed signal by raising my right sleeve upto arm by my left hand....."

15. The aforesaid circumstances reflect that prior to demand of bribe the appellant-accused had already given information to the complainant that his name has been entered in "Sanad" and he was advised to deposit official fees of Rs. 5/- for getting copy of "Sanad" from clerk Mr. Warule. Accordingly, the complainant deposited amount of Rs. 5/- with clerk Mr. Warule and obtained the extract of "Sanad" (Exhibit-30). In the cross- examination, complainant PW-1 Mr. Shaligram conceded that after payment of Rs.5/- towards legal fees of copying charges he received the document of 'Sanad' i.e. property extract (Exhibit-30) from clerk Mr. Warule. It reveals that after receipt of document "Sanad" the complainant again came to the table of appellant-accused, and thereafter, he placed the tainted currency notes beneath the papers on the table of appellant-accused. It has been alleged that accused made demand of bribe, and thereafter, he placed the currency notes on his table. It would be reiterated that had there been any demand of bribe, it would be reasonable expectation that appellant-accused would have made demand of bribe and accepted it prior to issuance of

extract of "Sanad" in favour of complainant PW-1 Shaligram. But, it appears that appellant-accused did not pursue the complainant for demand of bribe nor he had made any endeavour to get receive the bribe prior to complete the work of complainant in all respect. But, the circumstances constrained to appreciate that the complainant himself on his volition returned to the table of complainant after receipt of document "Sanad" and he ventured to keep tainted currency notes beneath the papers on the table of appellant-accused. According to complainant, appellant-accused asked him as to whether he had brought amount as agreed, and thereafter the complainant kept tainted currency notes on the table of appellant-accused. But, the version of shadow panch PW-2 Mr. Thombre appears somewhat different in nature. It has brought on record that after deposit of Rs.5/- with Mr. Warule, the complainant returned to the appellant-accused and told him that he has brought the amount of Rs.300/-, comprising Rs.150/- for appellant-accused and Rs.150/- for accused No.2 Mr. Holey. But, Mr. Holey was not present in the office. Therefore, PW-1 Mr. Shaligram kept the entire amount of Rs.300/-beneath white papers lying on table of appellant-accused at his instance. In the cross-examination panch PW-2 Mr.Thombre conceded that the complainant PW-1 Shaligram on his own volition disclosed to accused No. 1 that he had brought the amount of Rs.300/- as told by him and thereafter, paid the tainted currency notes to the appellant - accused However, panch PW-2 Mr. Thombre denied the suggestion that at the time of trap the appellant-accused had gone out of the office room for chewing the tobacco and within five minutes returned to his table. Meanwhile, the complainant put the tainted currency notes beneath the papers on table of appellant-accused.

16. Be that as it may, the attending circumstances of the present matter in hand, manifestly demonstrate that except the single attempt of demand of bribe by accused there were no allegations that appellant-accused made repeated demand of bribe on each and every visit of the complainant to him. There was no attempt to get verify the demand of bribe on the part of appellant-accused in presence of panch witnesses. Moreover, no any corroboration is available on record to fortify the demand of bribe by appellant-accused. In such circumstances, bare on the sole version of complainant PW-1 Shaligram, it would unsafe to draw adverse inference that the appellant-accused made demand of bribe to complainant. In contrast, the conduct and demeanour of the appellant-accused while performing his official function for mutation work of the complainant appears to be in consonance with normal re-action and human behaivournal pattern. The appellant-accused completed the mutation work of complainant prior to trap. The extract of document of "Sanad" was also delivered in favour of the complainant before alleged demand and acceptance of bribe as shown during the course of alleged trap. These circumstances are not only consistent with innocence of the appellant-accused, but also inconsistent with his guilt.

17. As referred above, it is rule of law that demand of illegal gratification is a sine quo-non to constitute the offence under Act of 1988. If the evidence of

prosecution is not sufficient to prove the factum of demand of bribe, obviously, the entire edifice of the prosecution would collapse, and consequently, the appellant-accused cannot be held guilty for the offence punishable under Sections 7, 13(1)(d) read with section 13(2) of the Act of 1988. Moreover, explanation offered on behalf of appellant-accused during trial also found plausible and believable one. The tainted currency notes came to be recovered from the office table of the appellant-accused and possibility cannot be ruled out that same notes were kept beneath the papers lying on the table without knowledge or tacit agreement on the part of appellant-accused. Therefore, recovery of tainted currency notes in the light of defence propounded on behalf of appellant-accused would not lend support to the prosecution to bring home guilt of the appellant-accused.

18. The Apex Court in the case of K.S. Panduranga Versus State of Karnataka reported in (2013) 2 Supreme Court Cases (Cri) 257 has held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent to constitute an offence. Their Lordships in paragraph No. 39 observed as follows:

"39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt."

19. Moreover, in the case of Banarsi Dass Versus State of Haryana reported in (2010)4 Supreme Court Cases 450 the Honourable Apex Court in paragraph No. 24 has observed as follows:

"24. In M.K. Harshan v. State of Kerala this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under : (SCC PP 723-24. para 8)

"8.It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with

the tacit approval of the accused that the money had been put in the drawer as an illegal gratification." (Emphasis supplied)

20. In the light of aforesaid legal guidelines, in the matter in hand, it can be concluded that approach of the learned trial Court while dealing with circumstances on record to find out the factum of demand of bribe which is sine quo-non to convict the appellant-accused for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Act of 1988 is erroneous, perverse and not as per provisions of law. The learned trial Court relied upon the evidence of complainant PW-1 Mr. Shaligram and PW-2 Shadow Panch on the aspect of demand of illegal gratification from the complainant. Though there is no substantive evidence in this regard, the appellant accused was erroneously convicted for the charges pitted against him.

21. It is also worth to mention that the learned trial court was pleased to absolve the co-accused No. 2 - Mr. Holey for the charges of demand of bribe and its acceptance as envisaged under Sections 7, 13(1)(d) read with Section 13(2) of the Act of 1988. It was observed that accused No. 2- Mr. Holey was not present in the office at the time of alleged trap, and consequently, he cannot be held guilty for demand as well as acceptance of tainted currency notes on his behalf. It is to be noted that on 27-04-1998 the complainant had an conversation with the accused No. 2-Mr. Holey for mutation of his name in the official record for property House bearing No. 407 of village Virdel. It has been alleged that accused No. 2 -Mr. Holey made demand of bribe of Rs.300/-for himself and appellant-accused. However, the learned trial Court proceeded to exonerate the accused No. 2- Mr. Holey for the charges pitted against him. The prosecution did not prefer any appeal against the acquittal of co-accused No.2-Mr. Holey in this matter. Therefore, order of acquittal of accused No. 2-Mr. Holey became conclusive and final one. In such circumstances, when learned trial Court arrived at the conclusion that there is doubt about the allegation of demand of bribe nurtured on behalf of prosecution against one of the accomplices of the appellant-accused, then it would preposterous and incomprehensible to draw adverse inference against another co-accused for the identical charges of bribery against him. The acquittal of co-accused Mr. Holey also would cause serious flaw in the prosecution case against the present appellant-accused.

22. In the above premise, there is no impediment to arrive at the conclusion that the impugned Judgment and order of conviction and resultant sentence imposed on the appellant-accused as indicated above, is perverse, bad-in-law and deserves to be set aside and quashed. Accordingly, the appeal stands allowed. The impugned Judgment and order of conviction and resultant sentence passed by the learned Special Judge, Dhule, is hereby set aside and quashed. The appellant-accused is acquitted for the offence punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988. The bail bonds of the appellant-accused stands cancelled. The fine amount, if any, deposited by the appellant-accused be refunded to him. The rest of the order of trial Court about

muddemal property is made absolute and confirmed.

23. In sequel, the appeal is hereby disposed of in above terms. No order as to costs.