(2021) 10 BOM CK 0032

In the Bombay High Court

Case No : Criminal Appeal No. 910 Of 2015

Satish Murlidhar Magar APPELLANT

Vs

State Of Maharashtra And Others RESPONDENT

Date of Decision : 07-10-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 294A, 313, 374
Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2), 20

Citation : (2021) 10 BOM CK 0032

Hon'ble Judges : Surendra P. Tavade, J

Bench : Single Bench

Advocate : M.A.Tandale, R.R. Bagul

Final Decision : Allowed

Judgement

Surendra P. Tavade, J

1. This appeal is preferred under Section 374 of the Code of Criminal Procedure challenging the Judgment and order dated 18th November, 2015 passed by the learned Additional Sessions Judge Jalgaon in Special (A.C.B.) Case No. 16 of 2014. The appellant is convicted for the ofence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter shall referred to as the P.C. Act for short) and sentenced to sufer simple imprisonment for two years and he also sentenced to pay fne of Rs. 10,000/- in default, he directed to undergo simple imprisonment for three months. The appellants is also convicted for the ofence punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act and sentenced to sufer simple imprisonment for two years. He is sentenced to pay fne of Rupees Ten Thousand and in default, he is directed to undergo simple imprisonment for three months.

The prosecution case can be summarized as under :

2. The complainant Krushna Mundhe is resident of village Rohini, Taluka Chalisgaon, District Jalgaon. He earns his livelihood from agricultural land. In the

year, 2008, house under Gharkul scheme was sanctioned in name of his mother Sumanbai Mundhe. She received two cheques dated 24.11.2008 and 13.12.2008 for Rs. 5,000/- and 15,000/- respectively under the Gharkul scheme. Sumanbai was entitled for remaining amount of Rs. 22,000/- under the said scheme. One Ghuge had raised dispute that Sumanbai had two houses in village Rohini, therefore, she was not eligible for Gharkul scheme. Therefore, the amount of Rs. 22,000/- was blocked by the Panchayat Samiti Office. The said Ghuge withdrew his objecection. Hence the complainant met accused who was Gramsevak of village Rohini. The report of Gram Panchayat was required for payment of remaining amount of money under Gharukul scheme. Hence the complainant used to meet the accused for payment of subsidy. The accused disclosed to the complainant that he will have to pay Rs. 3,000/- so that he can issue cheque of remaining amount. The accused also told the complainant that unless amount of Rs. 3,000/- is paid, he will not issue cheque of remaining amount of Gharkul scheme. The complainant was not ready to pay bribe amount to the accused, hence he visited Anti Corruption Bureau office at Jalgaon on 5.5.2014. He narrated the facts to Police Inspector Anti Corruption Bureau. Accordingly, the complaint of complainant was reduced into writing. The complainant read his complaint and signed it. (Exh.17). Thereafter, Police Inspector Shinde (Investigating Officer) wrote letters to the Civil Surgeon, Government Hospial, Jalgaon and requested to depute two employees for the purpose of secret action (Exh.16/ 26). Accordingly, Sunil Choudhary and Kuldeep Borse came to the office of Anti Corruption Bureau. The investigating officer introduced the said employees to the complainant and asked them to work as a panch witnesses. They agreed to it. The complainant narrated the contents of the complaint to panch witnesses. Accordingly the panch witnesses signed the complaint. The investigating officer asked complainant, panch witness to visit Anti Corruption Bureau Office at 6.00 a.m. on 06.05.2014.

3. On 06.05.2014, the complainant and the witnesses attended the office of Anti Corruption Bureau Jalgaon at about 6.00 a.m. The Investigating officer decided to verify the demand of the accused. He instructed complainant that he should go to the office of the accused along with panch witness No.1 Kuldeep Borse and should discuss with the accused about the work and if he demands bribe then he should seek time for the payment of the bribe amount. The investigating officer also instructed panch Borse (P.W. No.1) that he should accompanied the complainant and should keep watch on the talks between the complainant and the accused. Panch No.2 was instructed to accompanied raiding party. It was also instructed to the complainant and panch witness Borse that voice reorder will be used at the time of verifcation of demand. Police Constable Sanjecay Ahire took out one voice recorder and he recorded voice samples of the complainant and panch witnesses on the memory card. The said recording was made available to the complainant and panch witnesses. At about 6.35 a.m. the investigating officer took complainant, panch witnesses and proceeded by one Government vehicle and other raiding members by one private vehicle towards village Rohini.

They reached village Rohini at about 8.40. a.m. They parked their vehicles at some distance from village Rohini. The investigating officer instructed, the Police Constable Sanjecay Ahire to keep voice recorder on the person of the complainant inside the shirt. The complainant and the panch witness Borse was instructed to switched on the voice recorder before entering into the office of the accused. Accordingly, the complainant and panch witness Borse went to the office of the accused.

4. At about 9:05 a.m the the complainant and panch witness No.1 Borse returned back to investigating officer near the Government vehicle. Constable Sanjecay Ahire took possession of voice reorder from the person of the complainant. Panch witness No.1 Borse disclosed that complainant entered in the office of Gram Panchayat and met the accused. The accused demanded Rs. 3, 000/- from the complainant. The similar facts were disclosed by the complainant to the investigating officer. Thereafter, the voice recorder was played wherein also there was demand of bribe from the accused. The script of conversation was prepared. The memory card of the recorder was removed and it was kept in the envelop and it was sealed. The investigating officer prepared demand verifcation panchnama (Exh.21) which was signed by the panch witnesses and the complainant.

5. The investigating officer decided to prepare pre-trap panchnama. He asked the complainant to produce articles possessed by him. The complainant produced cash of Rs. 3,500/- one mobile hand set before the investigating officer. Out of the said amount, the investigating officer kept fve currency notes of Rs. 500/- denomination each and fve currency notes of Rs. 100/- denomination each, amounting to Rs. 3000/- and remaining fve currency notes of Rs.100/- amounting to Rs. 500/- and mobile handset was returned to the complainant. The numbers of currency note were noted down. One of the member of raiding team applied anthracene power on each note. Thereafter the said note were seen under the light of ultraviolet lamp. Due to ultraviolet rays the currency notes were glittering in the darkness. The marked currency notes were kept in the left pocket of the shirt of the complainant. He was directed to hand over the same to the accused if he demands the bribe amount, the complainant should take out the bribe amount from his left pocket of the shirt by right hand and give it to the accused. The complainant was also instructed to give signal to raiding party after acceptance of the bribe amount by the accused. The said procedure was shown to the complainant and the panch witnesses and accordingly pre-trap panchnama was explained and which was signed by the panch witnesses. The panch witness No.1 Shri. Borse was instructed to accompany complainant and should keep watch on the fact whether accused demands the bribe and accepts bribe amount or not. Similarly, the complainant was also given voice recorder with direction to switched it on before entering into the office of the accused. Accordingly, the complainant and panch witnesses visited the premises of the accused, the complainant switched on the voice recorder before entering into the office of the accused.

6. After some time the complainant came out of the office of the accused and gave predetermined single to the raiding party members. Accordingly the investigating officer and other raiding members rushed to the Gram Panchayat office. Constable Sanjecay Ahire took out the voice recorder from the person of the complainant and switched it of. The panch witnesses disclosed that the accused demanded the bribe amount from the complainant. Accordingly the complainant took out money from his left pocket of the shirt and handed over to the accused who by right hand accepted it and kept it/ in the right pocket of his trouser. The Constable Vijecay Jadhav held both the hands of the accused. Thereafter the investigating officer and raiding party members disclosed their identity to the accused. Thereafter enquiry was made with the accused he gave his name, address and designation. The panch witness Sunil Chudhary took out the bribe amount from the right pocket of the trouser of the accused. The accused was asked to produce document of the complainant accordingly accused produced the complaint application fled by Ghuge. The said application was seized. Thereafter the accused was taken to the Guest house of M.S.E.B. Chalisgaon for further proceeding and accordingly the post trap panchnama was prepared. The hands and clothes of the accused were examined in darkness under the light of ultraviolet lamp. It was noticed that the fngers of right hand and on the edges of the right pocket of trouser of accused were glittering. Thereafter, accused was put under arrest. The marked currency notes were seized under panchnama. The personal search of the accused was also taken. The investigating officer played the voice recorder and transcription/ script of the conversation was reduced into writing under panchnama. The memory card was sealed in the envelop. Trouser of the accused was also seized under the panchnama. The statement of the panch witnesses were recorded. After completion of trap panchnama, the investigating officer lodged complaint with Chalisgaon Police Station (Exh.31.) The investigating officer recorded statement of the witnesses. The voice recorder was sent to Forensic Laboratory, Mumbai for identifcation of voice. Similarly, the investigating officer obtained sanction from the competent authority. After completion of the investigation charge sheet came to be fled against the accused for the ofence punishable under Section 7, 13(1) (d) read with 13(2) of the P. C. Act.

7. The charge came to be framed against the accused. The accused pleaded not guilty and claimed to be tried. The defence of the accused is that the trap money was thrusted upon him. It was not his duty to issue cheque of subsidy amount. The said work was entrusted to Panchayat Samiti. It is also case of the accused that the mother of the accused had not paid the house tax and water tax of her house. The accused had demanded house and water tax from the complainant. Similarly, the accused had also asked complainant to produce document regarding the house of his mother. The said documents were not given by the complainant. Similarly, he did not pay the outstanding taxes of the house of his mother. It is also case of the accused that he had asked the complainant to pay the arrears of the taxes and thereafter he would submit his report to the

Panchayat Samiti for the payment of remaining subsidiary amount. It is also case of the accused that the complainant paid Rs. 3000/- towards the payment of taxes. He was about to prepare receipt for the same but mean time police arrested him.

8. To prove the charge against the appellant, the prosecution has relied on the evidence of complainant, panch witness Borse and the investigating officer Mr. Anil Shinde. To prove the arrears of the taxes amount from the complainant the accused has examined Gram Sevak Yuvrajec Rathod (D.W. No.1).

9. On going through the evidence on record the trial Court held appellant guilty for the ofence charged and sentenced him as mentioned herein above.

10. The said conviction order is impugned in this appeal. The learned counsel on behalf of the appellant submits that, appellant has been falsely implicated in this case The prosecution has not proved pre-trap panchnama. The complainant has admitted that on 06.05.2014, he directly came to village Rohini. He did not visit the office of Anti Corruption Bureau at Jalgaon. Thereby he denied the procedure alleged to have been explained by the investigating officer to him. Similarly, the complainant also admitted that he met panch Borse and brought him to village Rohini. Thereby he tried to impress that Borse was also not present at the time of pre-trap panchnama, therefore, the prosecution has failed to establish the pre trap panchnama. It is also contended that the conversation of demand alleged to have been recorded in the memory card is not proved by the prosecution. The alleged recorder and seized memory cards are not produced on record. Similarly, the report of voice sample is also not produced on record. It is contended that the complainant has admitted that after payment of Rs. 3,000/- the accused asked him to wait for receipt but he immediately went out of the office and gave pre determined signal to the investigating officer. Hence it is submitted that the amount was not accepted as bribe. Therefore, he submitted that money was accepted towards payment of arrears of taxes. It is contended that the sanctioning authority has not applied its mind. The relevant papers were not perused by the sanctioning authority and he accorded sanction mechanically which is illegal. It is contended that the appellant explained that he had accepted currency notes towards the payment of taxes and said fact is proved through the defence witnesses. It is contended that the prosecution has not examined the eye witnesses who were present at the time of alleged incident. It is contended that the trial Court has not considered the above fact in proper perspective and come to erroneous conclusion. Hence it is prayed that the Judgment and order passed by the learned Additional Sessions Judge be set-aside and appellant be acquitted.

11. On the other hand learned Additional Public Prosecutor submitted that the demand of bribe amount is proved through the evidence of the complainant and panch witnesses. It is contended that the appellant was required to submit his report to Panchayat Samiti for issuance of cheque. Therefore, it was duty of the appellant to do certain official work for issuance of cheque and for that purpose

he demanded money. It is also submitted that the panch witnesses has substantiated the pre trap and post trap panchnama. His evidence is cogent to prove the demand as well as the acceptance of bribe amount. The defence witnesses has simply established that the mother of the applicant was in arrears of house and water taxes. He also submitted that the sanction order is admitted by the defence under Section 294-A of the Code of Criminal Procedure, therefore, the appellant cannot make grievance about same. It is contended that the trial Court has rightly considered the evidence on record properly and come to correct conclusion, there is no need to interfere with the fndings of trial Court.

12. The entire case revolves around the evidence of the complainant and panch witnesses. Therefore, I have to scrutinize the evidence of the said witnesses. The complainant has deposed that under Gharkul Scheme, house was sanctioned in the year 2008 in the name of his mother Sumanbai. His mother has received two cheques of Rs.5,000/- and Rs. 15,000/-respectively towards the Gharkul scheme The said cheques were encashed by his mother and an amount of rupees twenty two thousand was outstanding from the Panchayat Samiti. He also deposed that one Murlidhr Ghuge had lodged the complaint with Panchayat Samit, therefore, payment of remaining amount of subsidy was withheld by the Panchayat Samiti. It is further come in his evidence that Murlidhar Ghuge had withdrawn his complaint, therefore, the complainant met the appellant and requested him to issue cheque in favour of his mother. It is come in the evidence of the complainant that the appellant had demanded Rs. 3,000/- and disclosed that unless amount of Rs. 3,000/- is paid, he will not submit his report to Panchayat Samiti. According to the complainant, he got annoyed and went to Anti Corruption Bureau Office Jalgaon and made oral complaint. It was reduced into writing (Exh.17).

He further deposed that after recording the complaint Police Inspector Shinde (P.W.3) called two Government servants namely Choudhary and Borse in the Anti Corruption Bureau Office. He was introduced to said panch witnesses. Thereafter, the panch witnesses read his complaint and signed the same. Police Inspector Shri. Shinde told the complainant that he would verify the demand on next day and asked them to visit Anti Corruption Bureau Office at 6.00 a.m. on the next date.

13. Accordingly, the complainant and panch witnesses reached Anti Corruption Bureau Office around 6.00 a.m. on 6. 05.2014. He further deposed that, he was instructed to meet the appellant along with panch witness Borse and discuss with him about his work for reducing the bribe amount. The panch witnesses Borse was also instructed to accompanied him and some instructions were also given to panch witnesses. He further deposed that he was instructed to use voice recorder. The practical demo of voice recorder was shown to him and panch witnesses. He was asked to start the recorder before entering into the office of appellant. Accordingly, he was asked to keep the voice recorder inside his Banian. He further deposed that pre trap panchnama (Exh.22) was prepared and

thereafter he along with panch witnesses and raiding party members boarded in two vehicles and reached to village Rohin at about 9.00 a.m. The vehicles were stopped near Chalisgaon road. After alighting from the vehicles voice recorder was kept inside the Banian and it was switched on. He along with panch witnesses entered into the Gram Panchayat office and met the accused. Other raiding party members scattered nearby the vehicles. He further deposed that he met the appellant and discussed with him about the issuance of cheque. At that time the appellant demanded Rs. 3,000/- from him. He told the appellant that he would pay the amount and returned back towards the investigating officer. The voice recorder possessed by him was taken out. It was played wherein it was recorded that accused had demanded money. Accordingly, memory card was sealed in the packet. Similarly, the script of the conversation was prepared (P.W. No.2).

14. The above evidence was reiterated by the panch witnesses Borse and the Investigating Officer Shinde (P.W. No.3).

15. But in the cross examination, the complainant categorically admitted that on 5.5.2014 he had been to Anti Corruption Bureau office. On the next date i.e. the day of trap, he met police inspector Shinde at Chalisgaon at about 8:00 a.m. on that day he came to Chalisgaon at the instance of Sarpanch Anil Nagare. He admitted that he did not visit the office of the Anti Corruption Bureau Jalgaon on 06.05.2014 at 6:00 a.m. He also admitted that he did not accompany Dy. S.P. Shri. Gavare, Shri. Anil Shinde and panch witnesses and other raiding members in Jeep and reached village Rohini at about 8.40. a.m. He categorically admitted that, he met raiding party members on Chalisgaon - Hirapur road. He also admitted that on the day of fling complaint (Exh. 17) panch witnesses did not meet him at Anti Corruption Bureau office. He does not know when and at which place panchas had signed the complaint. He also admitted that at the time of post trap panchnama, Sarpanch Anil Nagare had accompanied him and Panch Borse to the office of Rohini.

16. If the above admissions are taken into account, it can be said that he has washed out his own evidence given in the examination-in-chief. Similarly, he also gave a contrary evidence, to the evidence of panch witnesses and the investigating officer. He denied the entire procedure deposed by himself as well as panch witnesses and the investigating officer regarding pre trap panchnama. He admits that panchas did not meet him on 05.05.2014 at Anti Corruption Bureau Office. He also admitted that he does not know when and at what place panch witness put their signatures on his complaint. So the said admission also create doubt about the verifcation of the contents of the complaint by the investigating officer in presence of the panch witnesses. Therefore, the very genesis of the prosecution case come under the clouds.

17. The complainant further deposed that after meeting the accused he handed over voice recorder to Sanjecay Ahire. According to him, the said voice recorder was played and the conversation was heard by him, panch witnesses and the

investigating officer and accordingly script of recorded conversation was prepared. Similar evidence is given by the panch witnesses and the investigating officer. The complainant also deposed that after alleged acceptance of bribe by the appellant he handed over voice recorder to Sanjecay Ahire. The said recorder was played in his presence. The conversation recorded in the memory card was heard by him, panch witnesses and the investigating officer. Thereafter, the script of conversation was prepared.

18. So it can be said that twice voice recorder was played and the conversation alleged to have been recorded on memory card was heard by the complainant, the investigating officer and the panch witnesses. The prosecution has produced on record transcription of recorded conversation, but to my surprise the memory cards are not produced on record. According to the investigating officer, both the memory cards were sent to analysis but unfortunately the report of the forensic laboratory is not produced on record, therefore, the evidence of the complainant and investigating officer is doubtful regarding the contents recorded in the voice recorder. I must mention here that the panch witnesses Borse has categorically admitted in his cross examination at paragraph No. 26 that at the time of trap, conversation of about half an hour was recorded in the voice recorder. The script of the said conversation was prepared. In the said conversation, the talks of the accused regarding the demand of money was not recorded. In view of the above evidence, the transcription prepared by the Investigating Officer has no legal signifcance. So it is come in the evidence of panch witnesses that the conversation recorded in the memory card was not regarding demand of money. That may be cause for non production of the memory cards and its report before the trial Court. So it can be said that the evidence of panch witnesses, complainant and the investigating officer is not cogent and cognet and clinching on the point of recording of conversation of demand of bribe money by the appellant.

19. Coming back to the evidence of the complainant, he deposed that as per the instruction of the investigating officer he went to Gram Panchayat Office and met accused. He discussed with the appellant in presence of panch witnesses. The appellant demanded Rs. 3,000/- accordingly he handed over marked currency notes to the appellant which he accepted and kept it in his right pocket of his trouser. Thereafter, he came out of the office and gave pre determined signal to the investigating officer who rushed to the office of the appellant and apprehended him. He further deposed that the bribe amount was seized from the person of the appellant. The said currency notes were seen in the ultraviolet rays and found glittering efect of the same. He further deposed that he handed over voice recorder to the investigating officer. In view of the above evidence the admissions of the complainant are also required to be considered. He admitted that accused had demanded photographs of constructed house. He had also asked him to bring the form of proposal for fnal payment from the Panchayat Samiti. Both these conditions were not fulflled by him. He also admitted that in paragraph No. 14 of his cross-examination that when he gave money to accused,

the accused asked him to have receipt of payment. He also admitted that even though accused asked him to collect receipt he did not stop there and went to give pre-determined signal to the investigating officer. If these admissions are taken into the account, it can be said that the said admissions substantiated the defence of the appellant. It is specifc case of the appellant that the mother of the complainant was in arrears of house and water tax. He had demanded the arrears of tax from the complainant. On this point the appellant has also examined GramSevak Yuvrajec Rathod of village Rohini, who had categorically deposed that the mother of the complainant Sumanbai was having two house properties bearing Gram Panchayat No. 360 and 529. As on 07.05.2014, taxes of Rs. 3940/- was due and recoverable from the mother of the complainant. He also deposed that Gramsevak has to recover the Gram Panchayat taxes. The said evidence is simply denied, but it is not denied that, the mother of the complainant was in arrears of house and water tax. The defence witness Yuvrajec Rathod had produced on record form No. 9 of Gram Panchayat Rohini wherein, it is mentioned that the mother of the complainant is having two house properties namely 360 and 529/1. The said form No.9 shows that the mother of the appellant was in arrears of house and water tax to the extent of Rs. 5188/-. So it is established by the appellant that mother of the complainant was in arrears of house and water tax. If the admissions of the complainant is taken into account, it can be said that, the appellant had demanded the arrears of tax from the complainant. The complainant has also admitted that when he gave money to accused, the accused asked him to collect the receipt of payment. Had appellant accepted the amount as a bribe, he would not have asked the complainant to collect the receipt. It means the complainant also realized that the appellant might prepare receipt for tax, therefore, he hurriedly went out of the office and gave predetermined signal. Therefore, there is substance in the defence raised by the appellant. Similarly, the defence raised by the appellant appears to be probable and it is compatible with the prosecution case.

20. The complainant has admitted in his cross-examination that when he went to pay the amount, 3-4 persons were sitting in front of the appellant. On the basis of said admission, learned counsel for the appellant submitted that the investigating officer ought to have recorded the statements of said witnesses so that the real transaction could have been brought on record. It is true that the complainant and panch witnesses have admitted that independent witnesses were present at the time of alleged acceptance of bribe. But no eforts are taken by the investigating officer to examine the same. The learned counsel for the appellant realied on the ratio in the case of Ram Prakash Arora Vs. The State of Punjab AIR 1973 Supreme Court 498 wherein it is observed that '' Evidence of interested and partisan witnesses who are concerned in the success of the trap must be tested in the same way as that of any other interested witnesses. In a proper case the Court may look for independent corroboration before convicting the accused persons.''

21. In the present case there was possibility of independent corroboration

through independent witnesses who were available on the spot at the time of incident. But the investigating officer has not taken care to record their statements.

22. Panch witness Borse has denied the theory put forth by the complainant that he directly came to village Rohini for verifcation of the demand. Panch witness has also denied that he had accompanied the complainant to Rohini on motor cycle on 06.05.2014. So it can be said that the evidence of the complainant and panch witness is not corroborating to each other. On the point of preparation of pre-trap panchnama. In fact the complainant has resile from the contents of pre trap and verifcation of demand of bribe panchnama. Therefore, the evidence of the complainant and witnesses is not cogent and cognet, clinching on the point of pre-trap panchnama.

23. On scrutiny of the evidence of the complainant and the panch witness it can be said that there are several discrepancies in their evidence. The complainant himself stated that, he did not visit the office of the Anti Corruption Bureau in the morning of 06.05.2014. He also admitted that panch witness were not present on the date of recording it. He does not know when and where the complainant signed the pachnama. So the complainant has given complete go-by to the procedure stated by the investigating officer and the panch witnesses.

24. The law relating to requirement of proving the bribe is well settled in the case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede 2010 (2) SCC (Cri.) 385 It is held that''demand of illegal gratifcation is sine qua non to constitute ofence under the PC Act. For arriving at conclusion as to whether all ingredients of illegal gratifcation, viz. demand, acceptance and recovery have been satisfed or not, facts and circumstances brought on record must be considered in their entirety. Presumptive evidence as laid down under Section 20 must also be considered, but in respect thereof, it is trite law that, standard of burden of proof on accused vis-a-vis standard of burden of proof on prosecution would difer. Even in case where burden is on accused, prosecution must prove foundational facts. Before calling an accused to explain as to how amount in question was found in his possession, foundational facts must be established. While invoking provisions of Section 20, explanation ofered by accused, if any, is required to be considered only on touch stone of preponderance of probability, and not on proof beyond all reasonable doubt. This view has been reiterated in several decisions. It is not necessary to refer all the other decisions relied upon by the learned counsel for the appellant. ''

25. The complainant and panch witnesses have deposed that the conversation between the complainant and the appellant was recorded on voice recorder but the original memory cards are not produced on record. Similarly, the report of voice samples is also not produced on record. The panch witness has also admitted that the alleged demand of money by the appellant was not recorded in the voice recorder. So it can be said that in the conversation, demand of bribe was not recorded. So, there is no clinching evidence on the point of demand of

money by the appellant.

26. The discrepancies in the evidence which creates doubt about the authenticity of the prosecution case can be summarized as under :

(i). The case of the prosecution is that the complaint of P.W. No.1 was recorded by the Anti Corruption Bureau on 5.5. 2014. However, the complainant admitted that his complaint was not verifed by panch witness on the same day. He does not know when the panch witnesses signed his complaint. So the process of verifcation of complaint is not proved by the prosecution. It creates doubt about the genuineness of the lodging of the complaint.

(ii). The complainant has admitted that he did not visit the office of the Anti Corruption Bureu, Jalgaon on 06.05.2014 at about 6.00 A.M. He admitted that in stead of visiting Anti Corruption Bureau Office for pre-trap panchnama he reached village Rohini at about 8.40 A.M. along with panch witness Borse. The said admissions are against the evidence of panch witnesses and the investigating officer. Similarly, by the said admissions the complainant has denied the procedure and the contents of the panchnama stated by the panch witnesses and the investigating officer as well as the contents of the pre-trap panchnama.

(iii) The complainant admitted that his mother was in arrears of taxes and the appellant had demanded the amount of tax from him. He also admitted that after receiving the alleged bribe amount the appellant had asked him to collect the receipt for the same. The said fact inter alia supports the defence of the accused that he had received Rs. 3,000/- towards the payment of arrears of taxes.

(iv) According to the prosecution it was decided to verify the demand made by the accused the conversation of the demand was recorded in the memory card. The Audio caste was not played. It was not produced in the evidence. Forensic Laboratory report is not on record on which date the voice samples of the complainant and accused were taken. Therefore, the evidence on the point of demand is completely lacking. Considering the fact that neither tape recorder nor memory card or forensic Laboratory report was proved in the trial which indicate that the prosecution has suppressed genesis of the prosecution case. The investigating officer has admitted that not a single paper in connection with Gharkul scheme was found in the office of the accused.

27. On the point of acceptance, the appellant in his statement recorded under Section 313 has given specifc explanation and he has stated that he accepted the notes but towards the arrears of house and water tax of the mother of the complainant. The defence of the accused appears to be probable and it is proved on record that the mother of the complainant was in arrears of taxes, which the appellant had demanded from the complainant. So there is possibility that the complainant paid the taxes and pretended that the accused demanded bribe from him for issuance of cheque. In fact Panchayat Samiti was authorized to issue cheque, on the basis of report of the Gram Panchayat. So it was expected from the appellant to submit his report, after compliance made by the

complainant. The complainant has categorically admitted that, appellant had asked him to produce photographs of the constructed house and the original form of scheme but he never complied with the said requirement. Therefore, the appellant was not supposed to submit the report to the Panchayat Samiti for issuance of cheque in favour of the mother of the complainant. Therefore, in my opinion, prosecution has miserably failed to prove the demand and acceptance of the bribe at the instance of the appellant. submitted that the prosecution has not proved the sanction order (Exh.34). He also submits that sanction order does not show application of mind of the authority. The sanction is granted mechanically without getting satisfed with the material placed before it. Therefore, sanction accorded by the authority is faulty. Therefore, entire prosecution fails.

29. On the other hand, learned Additional Public Prosecutor submits that the sanction order (Exh.34) is admitted by the appellant with specifc remark on the sanction order that the contents of the document is admitted by the appellant. Therefore, the appellant cannot make any grievance about the sanction. It is true that the sanction is admitted by the appellant but still the appellant can point out the faws and lacunas in the sanction order. It appears that sanctioning authority has given the details of prosecution case. It is mentioned that the Authority had gone through the charge sheet fled against the appellant and then accorded sanction.

30. On perusal of sanction order, learned counsel for the appellants submits that it was incumbent upon the prosecution to prove that the valid sanction has been granted by the sanctioning authority, namely, the authority had satisfed that a case for sanction has been made out constituting the ofence. This should be done in two ways :

(I) By producing the original sanction which itself contains the facts constituting the ofence and the grounds of satisfaction

(2) By adducing evidence aliunde to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it.

31. The learned counsel for the appellant has relied on the ratio laid down in the case of State of Maharashtra Through C.B.I. Vs. Mahesh G. Jain 2014 ALL SCR 177 wherein the Apex Court has observed that ''Grant of sanction is irrefragably a sacrosanct act and is intended to provide safeguard to public servant against frivolous and vexatious litigations. Satisfaction of the sanctioning authority is essential to validate an order granting sanction from the various decisions of supreme court, the following principles can be culled out :-

(a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfed that a case for sanction has been made out.

(b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and after consideration of the circumstances, has granted sanction for prosecution.

(c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.

(d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the ofence.

(e) The adequacy of material placed before the sanctioning authority cannot be gone into by the Court as it does not sit in appeal over the sanction order.

(f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

(g) The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper technical approach to test its validity. '

32. The counsel for the appellant also relied on the ratio laid down in the case of State of Karnataka Vs. Ameerjan (2007) 11 Supreme Court Cases 273 it was held that '' the sanction order must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority-Materials collected during investigation which would prima facie establish existence of evidence in regard to commission of ofence by the public servant concerned, held, should be available before the sanctioning authority before the order of sanction is passed.''

33. Learned counsel for the applicant relied on the ratio laid down in case of C.B.I. Vs. Ashok Kumar Aggarwal AIR 2014 Supreme Court 827 wherein it was held that ''sanction order should to show that authority has considered all relevant facts and applied its mind- Prosecution is under obligation to place entire record before sanctioning authority and satisfy Court that authority has applied its mind. ''

34. On going through above case law one has to scrutinize the sanction order (Exh.34). The sanctioning authority has given details of appellant namely his date of appointment, promotion and transfer. It is also mentioned that the appellant was suspended as he accepted bribe from the complainant. It is also mentioned that the authority has gone through the charge sheet fled by Chalisgaon Police Station against the appellant and satisfed that sanction is required to be granted. There is no mentioned in the sanction order whether the sanctioning authority has gone through all relevant facts and applied its mind. The mere statement in the sanction order that sanctioning order had gone through the charge sheet is not sufficient. It was expected from the sanctioning authority to satisfy himself that the contents of the charge sheet reveals that the

ofence under prevention of corruption act is made out against the appellant. But no such observations is made by the sanctioning authority while according the sanction.(Exh.34). On applying the above case law, the facts of the present case, it is my considered view that, the sanctioning authority has not applied its mind before according sanction. There are no specifc reasons how the sanctioning authority come to particular conclusion for according sanction. Therefore, the sanction order appears to be not proper and valid. Therefore, the prosecution is also fails on this count. In the result, I pass the following order :

ORDER

(I) The present Criminal Appeal No. 910 of 2015 is allowed.

(ii) The impugned order dated 18.11.2015 passed by the learned Additional Sessions Judge, Jalgaon in Special ACB Case No. 16 of 2014 convicting the appellant for the ofence punishable under Section 7 of the P. C. Act and sentenced him to sufer simple imprisonment and fne as well as convicting him for the ofence punishable under section 13(1)(d) read with Section 13(2) of the P. C. Act and sentencing him to imprisonment and fne is set-aside and the appellant is acquitted for the said ofence. An amount of fne, if paid by the appellant be refunded to him.

(iii) The appeal stands disposed of accordingly.

