
(2018) 03 BOM CK 0001
In the Bombay High Court
Case No : 145 of 2004

Uttam S/o Ramaji Shere

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

[Prevention of Corruption Act, 1988](#), [Section 20](#), [Section 7](#), [Section 13\(2\)](#), [Section 13\(1\)\(d\)](#) - Presumption where public servant accepts gratification other than legal remuneration - Public servant taking gratification other than legal remuneration in respect of an official act - Criminal misconduct by a public servant - Criminal misconduct by a public servant

Citation : (2018) 03 BOM CK 0001

Hon'ble Judges : V. M. Deshpande

Bench : Single Bench

Advocate : Sumeet Joshi, Nitin R. Rode

Final Decision : Allowed

Judgement

1. The present appeal takes exception to the judgment and order of conviction passed by the learned Judge of Special Court, Akola, constituted for trying the cases arising out of Prevention of Corruption Act, 1988, in Special Case No.2/2001 dated 20.02.2004. By the impugned judgment, the learned Judge has convicted the appellant for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act" for the sake of brevity).

On account of his conviction, under Section 7 of the P.C. Act, the appellant was directed to suffer rigorous imprisonment for six months and to pay fine of Rs.200/ and in default of payment of fine, to undergo further rigorous imprisonment for one month.

Insofar as his conviction for the offence punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act is concern, the learned Judge awarded

sentence of rigorous imprisonment for a period of one year and to pay of Rs.200/ and in default of payment of fine, to undergo further rigorous imprisonment for one month.

The learned Judge directed that both the sentences shall run concurrently.

2. The facts giving rise to the present appeal can be detailed as under : (a) Shri Yadavrao Damu Patil (PW7), was discharging his duties as Deputy Superintendent of Police with Anti Corruption Bureau, Akola during the period from 22.6.2000 to 28.5.2003. On 18.7.2000, Sanjay Shivaji Shirsat (PW1) came to the Bureau and lodged report with him. The report was reduced into writing. The report is at Exh.21.

(b) The report Exh.21 lodged by PW1 Sanjay Shirsat recites that he has taken education upto 12th standard. The office of Mahatma Fule Backward Development Corporation, Akola (hereinafter referred to as "the Corporation" for the sake of brevity) imparts vocational training to the students belonging to the backward classes and such students are also given stipend during the period of training. Therefore, on 15.7.2000, he along with his friend Anand Ingle (PW3) and Vijaykumar Shegokar, all educated unemployed, went to the office of the said Corporation. There they noticed that on the notice board an information was displayed that for Thane district, vocational training for trades Mason, Tailoring, Radio and TV repairing, Three wheeler mechanic is to be conducted. Therefore, they went inside for enquiry and met with Mr. Shere (appellant/accused), who was manning the training table. There they asked that the information displayed on the notice board does not contain the training in computer and they were interested in the same. Upon that, according to the complaint, the appellant/accused informed them that if they wish to have computer training that can be done at Akola itself. He asked them to apply separately and accordingly, the complainant Sanjay and his two friends submitted their application in prescribed format and handed over the same to the appellant. As per the complaint, thereafter the appellant asked these three applicants that if they wish to have the training, they will have to pay Rs.50/per candidate and after they were selected, they will have to pay Rs.100/by each of them. Upon that, as per the complaint, it was informed that the said amount is not with them and thereafter, they were asked to visit on Monday and on that day, all three persons need not come and only presence of complainant will be sufficient.

According to the complaint, on 17.7.2000 (Monday), the complainant again visited the office of the Corporation and met the appellant and pleaded that he could not arrange for the money, however, on that it was stated to him that unless and until the amount is paid, the complainant and his friends will not be selected. Upon that, the complainant pleaded for time and on that as per the complaint, the appellant stated that by tomorrow Rs.150/for each should be given then only they will be selected.

Since, the complainant was not ready to give bribe to the appellant, he

approached to the Anti Corruption Bureau and lodged his complaint.

(c) PW7 Yadaorao Patil, Dy.S.P., after receipt of complaint (Exh.21) issued a letter to the Executive Engineer, Minor Irrigation Department, Akola for providing two panch witnesses, since the said officer decided to lay a trap on the appellant. The request letter to the Executive Engineer is at Exh.55. Accordingly, Shri Manish Vasant Deshmukh (PW2) and Shri Rajendra Nalkande (PW4) were sent from the office of Executive Engineer to act as panchas.

After their arrival, PW.7 Shri Patil introduced both the panchas to the complainant Sanjay, after obtaining their consent to act as panchas. A copy of the complaint (Exh.21) was also given to these panchas to ascertain truthfulness of the said. Thereafter, PW.7 Shri Patil asked the complainant Sanjay (PW1) to produce the amount, which was to be paid as bribe. Accordingly, he produced three currency notes of Rs.50/denomination. The serial numbers of the currency notes were noted down. P.W.7 Shri Patil, after completing all preparatory steps to lay trap, prepared panchanama No.1 (Exh.22). Needless to mention, the demonstration of use of phenolphthalein powder was also explained to the complainant and panchas and those three currency notes were smeared in the said powder.

(d) It was decided that PW2 Manish Deshmukh shall act as shadow panch and he was asked to remain constantly with the complainant. He was also asked to listen the conversation between the appellant/accused and the complainant. It was also asked by PW.7 Shri Patil that unless and until there is a demand, the smeared amount shall not be handed over to the appellant/accused. The complainant was asked to give signal by folding the sleeves of his shirt after the bribe amount is accepted by the appellant.

(e) Thereafter, the raiding party, which consisted of Shri Yadaorao Patil (PW7), PW1 Sanjay Shirsat, the complainant and two panch witnesses along with other persons from Anti Corruption Bureau proceeded towards the office of Corporation in a government vehicle. When they reached to the hospital of Dr. Laddha, the instructions given to the P.W.1 Sanjay Shirsat and P.W.2 Manish Deshmukh were revised. Thereafter, they were asked to go to the office. Accordingly, they went to the office. The raiding party was waiting in the vicinity. At 13.35 hours, P.W.1 Sanjay gave prearranged signal from the road in front of the office. On that PW7 Shri Patil and other members of the raiding party and P.W.2 Manish Deshmukh apprehended the appellant. PW2 Manish Deshmukh, the shadow panch pointed towards the appellant as the person, who accepted the smeared currency notes. On that, the appellant was caught hold by Police Constable Vijay. Shri Patil (PW7) introduced to appellant. He was in frightened condition. He disclosed his name "Shere babu" and informed that he works as Assistant in the Corporation. Thereafter, the solution of Sodium Carbonate was prepared. The appellant was asked to dip the fingers of right hand in the solution and as soon as he dipped his fingers in the solution, the colour of the solution turned violet. The said solution was seized under seizure panchanama (Exh.23). So also the smeared

currency notes were also seized from the appellant under seizure panchnama (Exh.24). The clothes on the person of the appellant were also seized by drawing seizure panchanama (Exh.25). The Investigating Officer Shri Patil (PW7) also seized the application forms submitted by complainant Sanjay (PW1) and his friends Anand (PW3) and Vijay Shegokar and those applications are at Exhs.18, 27 and 28, respectively.

(f) The Investigating Officer thereafter asked complainant Manish (PW2) to narrate the happenings that occurred after they visited the appellant till he was apprehended. The Investigating Officer thereafter prepared posttrap panchanama and the posttrap panchanama is at Exh.30. The Investigating Officer thereafter conducted the other investigation and then prepared a report to be lodged with Police Station, City Kotwali, Akola. Accordingly, the report (Exh.28) was lodged. The Police Station Officer of the said police station registered the crime bearing Crime No.3111/2000 for the offences punishable under Sections 7, 13(1) (d) read with Section 13(2) of the P.C. Act. The printed first information report is at Exh.59. The Investigating Officer Shri Patil thereafter recorded the statements of the witnesses. The entire papers of the investigation along with his report were sent to the office of the Superintendent of Police, Anti Corruption Bureau, Nagpur, which in turn sent the papers of the investigation to the Sanctioning Authority. The Managing Director of the Corporation Dr. Rameshchandra Sagar (PW6) accorded sanction to prosecute the appellant vide Sanction Order (Exh.51).

(g) The learned Special Judge and 3rd Additional Sessions Judge, Akola framed the Charge (Exh.4) against the appellant for the offences punishable under Sections 7, 13(i)(d) punishable under Section 13(ii) the P.C. Act. The appellant abjured his guilt and claimed for his trial.

(h) In order to bring home the guilt of the appellant, the prosecution has examined in all eight witnesses, they are (1) PW1 Sanjay Shirsat, the complainant, who lodged the complaint with the Anti Corruption Bureau (2) PW2 Manish Deshmukh, who acted as shadow panch and also proved various panchanamas, (3) PW3 Anand Ingle, friend of the complainant, who also gave his application (Exh.28) for obtaining training in computer, (4) PW.4 Rajendra Nalkande, who acted as panch no.2 in this trap case, (5) PW5 Bhimrao Manwar, Assistant General Manager of the Corporation, (6) PW6 Rameshchandra Sagar, the sanctioning authority who gave sanction (Exh.51), (7) PW7 Yadavrao Patil, Dy. Superintendent of Police, the Investigating Officer and (8) PW8 Ganesh Ane, who registered the offence against the appellant on the basis of report lodged by PW7 Yadavrao Patil.

(i) The learned Judge of the Court below after appreciation of the prosecution case and after evaluating the evidence as adduced on record, including oral as well as documentary, during the course of trial found that the prosecution has proved its case against the appellant beyond reasonable doubt and therefore passed the judgment of conviction and order of sentence as stated in the

opening paragraph of this judgment. Hence, this appeal.

3. I have heard Shri Sumeet Joshi, the learned counsel for the appellant and Shri N. R. Rode, the learned Additional Public Prosecutor for the State in extenso. Also minutely scrutinized the entire record of the prosecution with their able assistance.

4. It is the submission of Shri Joshi, the learned counsel for the appellant that in this case, the prosecution has utterly failed to prove that at any point of time the appellant demanded the amount or the amount, which was seized from the possession of the appellant, was towards any demand made by him. He submitted that the prosecution has lost its shin when complainant Sanjay and his friend Anand (PW3) themselves did not support the prosecution. He submitted that in fact the amount, which was given by the complainant Sanjay, was towards repayment of the loan obtained from the appellant. He submitted that his this defence was not surfaced only during the course of the trial, but it was his defence right from the day when he was apprehended by the Anti Corruption Bureau on 18.7.2000 itself. He submitted that the learned Judge of the Court below has utterly failed to consider the explanation offered by him. He submitted that his explanation was sufficient to discharge the statutory presumption as available against him under Section 20 of the P.C. Act. In that behalf, he relied on the reported pronouncement of the Hon"ble Apex Court in the case of T.Subramaniun .vs. State of Tamil Nadu reported in 2006 All MR 620 (S.C.) and two decisions of this Court, one in the case of Bismillakha Salarkha Pathan .vs. State of Maharashtra, reported in 2003(5) Mh.L.J. 243 and another unreported decision in Criminal Appeal No. 65 of 2003 (Madhukar S/o Gangaramji Paturde .vs. State of Maharashtra). He also submitted that if evidence of P.W.2 Manish Deshmukh, panch witness is evaluated in its correct perspective, then it is his submission that it cannot be said that on the day of the trap, the appellant had made any demand. He relied on the decisions of the Hon"ble Apex Court in P.Satyanarayana Murthy .vs. The District Inspector of Police and another, reported in 2015 All SCR 3171 ; in M.R. Purushottam .vs. State of Karnataka reported in 2014 All SCR 3840 and a very recent decision of the Hon"ble Apex Court in Mukhtiar Singh (d) thru. LR .vs. State of Punjab reported in 2017 All SCR (Cri) 1270 and prayed that the appeal be allowed. Per contra, Mr. Rode, the learned Additional Public Prosecutor for the State would submit that though, complainant Sanjay and his friend Anand (PW3) did not support the prosecution, the evidence of independent witness Manish Deshmukh (PW2) coupled with the fact that the smeared amount was found in possession of the appellant, is sufficient to record the guilt of conviction as recorded by the Court below. He submitted that the learned Judge has rightly disbelieved the explanation given by the appellant as his statement was recorded after three days of trap i.e. on 21.7.2000. He, therefore, supported the impugned judgment and prayed for dismissal of the appeal.

5. P.W.5 Bhimrao Manwar at the relevant time was working as District Manager in

the Corporation, having its office at Akola. Total seven employees were working in the office of the Corporation. The appellant was working as an Assistant there. The evidence of this witness throws light on the functioning of the Corporation. The Corporation is one arm of the government. Its function is to provide financial support to the candidates belonging to the backward classes and also to provide training to the members of the backward classes. It gives training of driving, computer and other trades like radio and TV repairing etc. Every year, in the month of June or July, a press note is issued to local dailies for publication of training programmes undertaken by the Corporation. A notice to that effect is also displayed on the notice board of the Corporation and its other offices. The training Courses of training to be imparted at other districts of the State of Maharashtra are also displayed on the notice board of the office of Corporation. In the month of May 20002001, the Akola Office invited applications for several training programmes and it is the prosecution case that in pursuance to that, there was an occasion for the complainant and his two other friends to visit the office of the Corporation to make the application.

6. In the present case, the first demand was made on 15.7.2000. On this day, complainant PW1 Sanjay, his friend PW3 Anand and another friend Vijay had been to the Corporation and there they met the appellant and at that time, the appellant demanded Rs.50/from each of them and also demanded Rs.100/after they were selected. The complaint is at Exh.21. The complaint is not a substantive piece of evidence. It can be used for the purposes of corroboration or contradiction of the maker.

7. PW1 Sanjay, the complainant and his friend PW3 Anand did not support the prosecution. Their third friend Vijay Shegokar was not examined by the prosecution. Merely, because the prosecution witness has turned hostile, that by itself is not sufficient to discard his entire evidence, is the law laid down by the Hon"ble Apex Court in the case of Khujji @ Surendra Tiwari .vs. State of Madhya Pradesh, reported in AIR 1991 SC 1853 and the evidence of such witness need not be discarded only on that count, but proper weightage should be given to the evidence of such witness to the extent the said witness supports the prosecution case.

8. P.W.1 Sanjay and P.W.3 Anand are silent in their respective evidence with regard to the first demand allegedly made by the appellant on 15.7.2000. Exh.21, does not disclose regarding the presence of coemployees of the appellant when such a demand was made. Therefore, it is not expected from the prosecution to adduce the evidence in that behalf through any independent witness. For the reasons best known to the prosecution, the third unemployed youth Vijay Shegokar is not examined by the prosecution, who could have thrown light on the demand dated 15.7.2000 made by the appellant. Thus, the entire prosecution case in respect of the first demand is solely dependent on the evidence of PW1 Sanjay and PW3 Anand, who are not supporting the prosecution. Therefore, merely because a reference is made in that behalf in the

complaint, in my view, it cannot be held as substantive piece of evidence and therefore, in my view, the prosecution has failed to prove that on 15.7.2000 the appellant made demand of Rs.50/per candidate from the complainant and his fiends Anand and Vijay.

9. The second demand, as per the prosecution, is made on the day of the trap. The trap was led on 18.7.2000. Even in that behalf, the prosecution is not finding support from its star witness i.e. P.W.1 Sanjay, the complainant. Insofar as evidence of PW1 Sanjay is concerned, before he was declared hostile, it shows that after going to the office of the Corporation, the appellant alone was sitting in the office and he told the appellant that he has brought the amount of handloan taken from him and he should accept the same. He asked the appellant to step outside the office for having tea and accordingly, they went for taking tea and therefore, as per the say of PW1 Sanjay, the appellant accepted the amount from him smeared with powder, which were kept by the appellant in his pocket.

10. The prosecution case is fully supported by P.W.2 Manish Deshmukh. This prosecution witness was a shadow panch and he was in the company with complainant Sanjay throughout. His presence with complainant Sanjay at the time of trap is not denied by the appellant.

11. Since, the smeared currency notes were found in possession of the appellant and the Chemical Analyser's report (Exh.17) corroborates that the liquid of handwash of the appellant so also the liquid obtained by dipping pocket of fullpant of the appellant, in which the smeared notes were kept, were containing phenolphthalein powder and sodium carbonate.

12. The law is settled that mere possession and recovery of currency notes from the accused, without proof of demand, will not bring home the guilt for the offence under section 13(1)(d) of the P.C. Act and there cannot be conviction merely because the tainted notes were found in possession and/or they were recovered from the person of the accused and/or there is corroborative piece of evidence in the nature of Chemical Analyser's report, unless by clinching evidence, the prosecution proves that acceptance of the tainted amount was preceded by demand to gain the accused unlawfully.

13. Clause (d) of subsection 1 of Section 13 of the Corruption Act reads as under :

13. Criminal misconduct by a public servant.-

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) , (b), (c)

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage;

or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

14. Therefore, to bring home the guilt of the accused for this charge, the prosecution is under an obligation to prove that there was a demand. In the present case, as observed, the prosecution wants to prove demand on the day of the trap through the evidence of shadow witness P.W.2 Manish. Now, let us scrutinize as to whether the evidence of this witness is sufficient to record the finding of guilt by reaching to the conclusion that on the day of the trap, the appellant had demanded illegal gratification.

15. The evidence of P.W.2 Manish would disclose that after the jeep was stopped near Dr. Laddha Hospital, instructions were revised to him and the complainant by the Investigating Officer. Thereafter, he and complainant Sanjay went to the office. That time, one person was sitting inside the office. Complainant Sanjay saluted the appellant and they exchanged pleasantries with each other. It would be useful to reproduce the relevant portion of the evidence as appearing in the examination in chief itself of P.W.2 Manish, since the Court is required to decide as to whether from his evidence, the prosecution has proved the demand. "Complainant Sirsat saluted Shere babu by saying "Jai Bhim Shere Babu". Shere babu replied by saying "Jai Bhim". Sirsat then asked whether his work is done. Shere babu asked him as to what happened about his work. Complainant then told Shere that he had brought the amount. Sirsat told Shere babu that he is Manish Gaikwad and he also wants to take training of computer. Sirsat then told as to come for having tea to Shere babu. The tea stall was across the road on left side. We three persons then went for having tea. After coming out of the gate of compound of that office, complainant told Shere babu that he has brought the amount and whether he should give it. Upon that, Shere told "Give". The complainant then took out the currency notes from right pocket of his pant by his right hand and gave it to Shere. Shere babu accepted that money by his right hand. Shere put those notes in right pocket of his pant.

16. From the aforesaid, it is clear that there was no direct demand that the complainant should pay the amount to the appellant and unless that amount is paid, the work of the appellant and his friends will not be done. His evidence only shows that the complainant asked whether his work is done and the appellant replied as to what happened to his work and thereafter, the complainant informed the appellant that he has brought the amount. Thereafter, they came out of the gate of the compound of the office and the complainant told the appellant that he has brought the amount and whether he should give it and upon that, the appellant told "Give".

17. In my view, Shri Joshi, the learned counsel for the applicant has rightly relied

on the authoritative pronouncement of the Hon''ble Apex Court in P.Satyanarayana Murty .vs. District Inspector of Police and another's case cited supra. Paragraph 23 of the said judgment reads as under : "23. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW1S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs. 500/from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to correlate this statement of PW1S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW1S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under Section 7 or 13(1)(d)(i)&(ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3.10.1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4.10.1996. However, the testimony of PW1S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or 13(1)(d)(i)&(ii) of the Act against the appellant has been proved beyond reasonable doubt."

18. In another reported case in M.R. Purushottham .vs. State of Karanataka, cited supra, the complainant therein (PW1 Ramesh) did not support the prosecution. The shadow witness PW3 Kumarswamy supported the prosecution. The Hon''ble Apex Court in the aforesaid case has placed reliance on Three Judge Bench's decision of the Hon''ble Apex Court in B. Jayaraj .vs. State of Andhra Pradesh [2014(4) SCALE 81], to hold that when PW1 Ramesh, the complainant, had disowned what he had stated in his complaint (Exbt.P11) before PW4 Inspector Santosh Kumar and there is no evidence to prove that the accused had made any demand, the evidence of PW3 Kumarswamy and contents of Exh.P1, the complaint, cannot be relied upon to conclude that the said material furnishes proof of demand allegedly made by the accused. The present case, in my view, is much closure to M.R. Purushottam's case cited supra.

19. Further, in the most recent case in Mukhtiar Singh (d) thru. his Lrs .vs. State of Punjab, cited supra, the Hon''ble Apex Court in paragraph 25 of the said Judgment rules as under : "25. It would thus be patent from the materials on

record that the evidence with regard to the demand of illegal gratification either of Rs.3,000/which had been paid or of Rs.2,000/as made on the day of trap operation is wholly inadequate to comply with the prerequisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs.3,000/at the first instance is alleged to have been paid i.e. Santosh Singh Lamberdar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs.3,000/as well as the demand of Rs.2,000/has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act."

20. On the touch stone of the law laid down by the Hon"ble Apex Court in the aforesaid three reported cases and the quality of the evidence of PW2 Manish, who is totally silent on the aspect that there was a specific demand from the appellant and in that response, the amount was paid, it would be rather risky to accept the evidence of PW2 Manish, especially when it is established on record through PW5 Bhimrao Manwar that the appellant was not entrusted with the work of selecting candidate for training. PW5 Bhimrao has also deposed from the witness box in his examination in chief itself that the appellant, who was an Assistant in the office, was entrusted with the work of accepting the applications for training programme, he was also entrusted with the work of registration of the applications, scrutiny of application, preparation of call list and then issue calls after receipt of orders from the District Manager. Evidence of PW5 Bhimrao Manwar shows that at the relevant time, he was the District Manager. The last date of submission of application form was 31.7.2000 and he was the officer entrusted with the work of supervision in the office. His evidence further discloses that the applications received at the office are entered in the register and after the last date, the applications were used to put before him and he used to issue call letters to the candidates. He also thrown light as to who were the members of the Selection Committee and as per his evidence, PW5 Bhimrao himself, Regional Officer, District Social Officer and representative of ITI were the members of the Selection Committee. Not only that, it is his evidence that the appellant was not concerned with the process of selection.

21. On the backdrop of above evidence of PW5 Manwar, the prosecution case will have to be evaluated as to whether the prosecution has proved the guilt of the

appellant when prescribed forms duly filled in by the complainant PW1 Sanjay, PW3 Anand and their friend Vijay Shegokar were found in the office itself and were found to be noted in the register. Further, as per the evidence of PW5 Bhimrao, the last date of submission of the application was 31.7.2000 and the trap was led on 18.7.2000 i.e. much prior to the last date of submission of the form. Looking to the evidence of PW5 Bhimrao, it is clear that the appellant was not in a position to influence the process of selection. Therefore, in my view, the prosecution case is having inherent lacuna that for doing the work of complainant and his two friends, the appellant had demanded the amount or gratification.

22. Section 20 of the P.C. Act states about presumption, however, the said presumption is rebuttable one. In the present case, admittedly, currency notes smeared with phenolphthalein powder were found in possession of the appellant. His defence is that there was a prior loan transaction between him and the complainant and the amount which was found in his possession, was in fact his amount as it could be seen from the answer, which he has given to question no.61 when the appellant was examined by the learned Judge of the Court below under Section 313 of the Code of Criminal Procedure. In addition to that, he has filed his additional written statement (Exh.76), in which he has stated that complainant Sanjay was selected for Auto Driver training prior to this incident and therefore, he was on visiting terms with his office. Thus, they were acquainted with each other. It is also stated in his written statement that since the complainant was not having money to go for training, he borrowed Rs.150/ from the appellant. The said amount was demanded back by him from Sanjay. His statement further states that Sanjay and his friends presumed that if the amount borrowed from him is not returned, then they would not be selected for training and taking the advantage of the said fact, a false case was instituted against him.

23. Shri Joshi, the learned counsel for the appellant has relied on the judgments in T.Subramanian .vs. State of Tamilnadu and Bismillakh S/o Salarkha Pathan .vs. State of Maharashtra, cited supra. The relevant observation of this Court in Bismillakha"s case in paragraph 9, reads as under : ".....However, there is one more important circumstance and i.e. the statement to be found in the post trap panchanama to the effect that immediately after the trap was sprung, both the accused were asked by P.I. Dhok and they gave their version regarding acceptance of money. It is the express prosecution case which can be found in the panchanama that the version given by accused was reduced to writing and signed by the panchas as well as P.I. Dhok. The contents of what was mentioned in these two writings was not found in the panchanama as those were separate documents. However, for the reasons best known to the prosecution, these documents have not been brought before the Court in the trial. The panchas examined as well as P.W.7 Dhok but do not utter a single word about this first version given by the two accused in writing immediately after the trap was sprank. This circumstances of suppressing the first version as given by two accused, according to him, is very important circumstance which raised a shadow

of doubt about the veracity of the prosecution case. The duty of the prosecution is to bring the entire truth as found before the Court. It appears to me that these two vital documents have been kept back from the trial. In my view, in such circumstances, these writing were evidence which could be produced and which were in the hands of the investigating agency and which could have been produced as evidence in the Court but was not produced. By virtue of Section 114 of the Indian Evidence Act, the Court would be entitled to presume that had these documents been produced, they would not have favoured the prosecution which had withheld these documents. Useful reference can be made to illustration (g) of Section 114 of the Indian Evidence Act, in this regard."

24. In the light of the aforesaid, let us scrutinize what happened after the trap was successful. After receipt of prearranged signal, the raiding party apprehended the appellant. Evidence of PW.2 Manish reveals that thereafter, panch no.2 Rajendra (PW4) asked him as to what happened when he and Shirsat left the raiding party. As per PW2 Manish, he disclosed all the events, which took place. Thereafter, panchanama no.2, known as posttrap panchanama, was prepared and it is at Exh.30. The said is proved document. The prosecution is heavily relying on this document also. It would be useful to note down the relevant recitals as appearing in Exh.30. "When Deputy Superintendent of Police Shri Y. D. Patil asked Shri Uttam Ramji Shere, Assistant to make the written statement in his own handwriting about his say in respect of demanding and accepting the bribe of Rs.150/from the complainant, Shri Uttam Ramji Shere gave the written statement in his own handwriting. We the panchas and you put the signatures on it. Then, you included the said statement in the papers."

25. Thus, the contemporaneous document executed just in proximity of time of completion of raid, the Investigating Officer Shri Patil (PW7) asked the appellant to make the written statement in his own handwriting about his say. Not only that, the aforesaid recitals show that the appellant gave his written statement and it was included in the investigation papers. Even the Investigating Officer, Shri Patil in his examination in chief stated as under : "accused "Shere" was asked to submit his submission. Accordingly, he submitted his explanation."

Thus, there cannot be the slightest doubt that the appellant gave his written explanation. Not only that the contemporaneous document shows that it was included in the papers. However, this important piece of evidence is not coming on record. The Investigating Officer is not giving any explanation as to why this important piece of evidence is not finding place in the prosecution case.

26. The Investigating Officer is expected to conduct the investigation impartially. It is not expected from any Investigating Officer that he will take side either of the complainant or the accused person. His duty is to collect the evidence and material during the course of any enquiry or during the course of investigation of a crime. The Investigating Officers, therefore, are expected to place on record all the evidence and material collected during the course of enquiry and investigation. Thereafter, it is the job of the Court to decide as to which part of

the evidence is admissible and whether the evidence so collected during the course of enquiry or the investigation, is sufficient to hold that the accused has committed the offence for which he is charged. The Investigating Officer cannot take on himself a job of the Court and shall not withhold any piece of material that is collected during the course of the investigation.

When written explanation was offered by the appellant and it was made part and parcel of the papers, in my view, it was the duty of the Investigating Officer to place the same on record and it was duty of the Court as to what importance should be attached to the said written explanation. In my view, nonfiling of the written explanation supports the case of the appellant that he accepted the amount, which was given to him by the complainant in a transaction of returning the loan amount. Thus, in my view, right from the beginning it was the defence of the appellant by offering the explanation. Therefore, it can not be said that the defence of the appellant that he accepted the amount towards repayment of loan, was first time taken by him during the course of the trial only. In my view, for suppressing the material piece of evidence from the Court, an adverse inference is required to be drawn against the prosecution. Further, even when the statement of the appellant was recorded on 21.7.2000 by the Investigating Officer, that time also he offered the same explanation. That time the chargesheet was not filed. This particular explanation is disbelieved by the learned Judge of the Court below on the ground that the date of trap is 18.07.2000 and his statement is recorded on 21.7.2000 and therefore, it is an after thought. The learned Additional Public Prosecutor Shri Rode supports this line of reasoning by pointing out that after the appellant was apprehended, he felt uneasiness and therefore, he was taken in the hospital and therefore, his statement was recorded on 21.7.2000. In my view, the reasoning given by the learned Judge of the Court below cannot stand to the scrutiny of law for the following reasons :

(a) there is nothing on record to show that the appellant was admitted as an indoor patient from 18.7.2000 to 21.7.2000 ;

(b) No medical papers are brought on record by the prosecution to show that from 18.7.2000 to 21.7.2000, the appellant was not in a position to give his statement and therefore, his statement was not recorded prior to 21.7.2000.

If that be so, if the Investigating Officer is recording the statement on 21.7.2000, the appellant cannot be put to blame. Therefore, in my opinion, the appellant had given plausible explanation as it is disclosed not only during the course of the trial but when his statement on 21.7.2000 was recorded by the Investigating Officer and even prior to that on 18.7.2000, he gave his written explanation, which is willfully suppressed by the prosecution. Therefore, merely because the tainted currency notes were found in possession of the appellant, when there exists plausible explanation from the appellant, the statutory presumption as envisaged under section 20 of the P.C. Act cannot be drawn against the appellant.

27. The conspectus of reappreciation of the entire prosecution case, in my view, shows that the prosecution has utterly failed to prove the first demand on 15.7.2000 and even the second demand on 18.7.2000. Not only that, though the tainted currency notes were found in possession of the appellant, the appellant has given plausible explanation recording the same. Consequently, I pass the following order : ORDER

1. The criminal appeal is allowed.
2. The judgment and order of conviction passed by the learned Special Judge and 3rd Additional Sessions Judge, Akola in Special Case No. 2/2001 dated 20.2.2004 is hereby quashed and set aside.
3. The appellant is acquitted of the offence punishable under Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.
4. The bail bonds of the appellant stand cancelled.
5. The appeal is allowed and disposed of.