IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1115 OF 2003

Shailendra Manikrao Bakare
Age: about 43 years, Occ. : Service,
Residing at Ramakramalkaji Wada,
Khadki, Dist. Pune. ...Appellant

Versus

The State of Maharashtra,
(At the instrance of Inspector of Police,
Anti-Corruption Bureau, Pune) …Respondent

Mr. Zaid Qureshi, for the Appellant (through VC), for the Appellant.
Mr. D. J. Haldankar, APP, for the Respondent-State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 9th JULY 2026
PRONOUNCED ON : 23rd JULY 2026

JUDGMENT:

1. This Appeal is directed against a judgment and order dated 19th August 2003, passed by the learned Special Judge, Pune, in Special Case No. 16 of 1998, arising out of CR No. 333 of 1997, registered with the Anti Corruption Bureau, Pune, whereby the accused came to be convicted for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (“the PC

Act, 1988") and sentenced to undergo Rigorous Imprisonment for one year and pay a fine of Rs.2000/-, on each count with default stipulation.

2. Shorn of Superfluities, the gravamen of indictment against the accused runs as under:

2.1 Dr. Hemant Chikhalikar (the first informant) had filed a complaint case, being RCC No. 1889 of 1994, alleging the commission of offence of defamation by the accused therein, before the Court of Judicial Magistrate, First Class, Pune. The accused therein did not appear before the Court, hence at the instance of the first informant, the learned Magistrate had ordered issue of a bailable warrant against the accused therein.

2.2 On 20th September 1997, the first informant approached the Appellant-Accused, who was then posted as the Bench Clerk in the Court of the learned Magistrate on whose file the said complaint was pending. The first informant deposited the process fees, and requested the accused to take steps for the issuance of warrant. The accused called the first informant on 22nd September 1997.

2.3 The first informant alleged that, on 22nd September 1997 when he approached the accused at 11.30 am, the latter called him to come at 5.00 pm. Since it was not possible for the first informant to again come to the Court on 22nd September 1997, the first informant approached the accused on 26th September 1997 at about 2.30 pm. The accused allegedly demanded a bribe of Rs.500/- for the issue of the warrant. The accused asked the first informant to come with the bribe amount at 5.00 pm.

2.4 The first informant thus approached the office of the Anti Corruption Bureau, Pune and lodged the complaint. Two panch witnesses were summoned. The pre-trap formalities were completed. Anthracene powder was applied to five currency notes of Rs.100/- denomination and delivered to the first informant to tender the same to the accused, when demanded.

2.5 At about 4.30 pm on 26th September 1997 a trap was laid. A panch witness accompanied the first informant to the Court hall to verify the demand. As the accused took out the file and assured the first informant that the warrant would be issued on Monday and asked the complainant to comply with the demand of the accused., the first informant tendered the tainted currency notes to the accused. The latter accepted the said currency notes and kept those notes in the left pocket of his shirt. A predetermined signal was given to the raiding party. Thereupon the raiding party swooped in and apprehended the accused.

2.6 In the personal search of the accused, the tainted currency notes were found in the pocket of his shirt. Upon inspection of the currency notes, in the light of an ultra violet lamp, bluish fluorescence was noticed on the tainted currency notes as well as the fingers of the right hand of the accused and pocket of the shirt of the accused. Post trap panchnama was drawn.

2.7 The accused came to be arrested, and after finding the complicity of the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, 1998, the accused was sent for trial.

2.8 The learned Special Judge, framed charge against the accused for the offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of the PC Act 1988. The accused abjured his guilt.

2.9 At the trial, to substantiate the indictment against the accused prosecution examined three witnesses, namely, Dr. Hemant Chikhalikar, (PW-1); the first informant, Rajendra Dabhade, (PW-2); the panch witness, and Tulshidas Pawar, (PW-3); the Investigating Officer.

2.10 In his defence the accused examined Madhukar Bakare, (DW-1) who was allegedly present in the Court hall at the time of the alleged occurrence.

2.11 After appraisal of the evidence, the learned Special Judge was persuaded to return a finding that the accused demanded and accepted the amount of Rs.500/- as gratification other than legal remuneration as a motive or reward for the issue of a warrant and the accused by abusing his position as a public servant obtained for himself illegal gratification of Rs.500/- and, thus, the accused committed offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, 1998.

2.12 Being aggrieved, the accused has preferred this Appeal.

3. I have heard Mr. Zaid Qureshi, the learned Counsel for the Appellant, and Mr. D.J. Haldankar, the learned APP, for the Respondent-State, at some length. With the assistance of the learned Counsel for the parties, I have also perused the evidence and material on record.

4. Mr. Qureshi, the learned Counsel for the Appellant, submitted that the learned Special Judge committed a grave error in returning a finding of guilt. The prosecution case suffered from insurmountable infirmities. Firstly, the very fact that the first informant had filed the complaint at the given time and place, allegedly consequent to the demand of bribe by the Appellant, is improbalised by the version of the first informant and the Investigating officer. Secondly, the version of the first informant bristles with improvements and inconsistencies, which render his testimony unworthy of credence. Thirdly, there was no demand as such; which is a *sine qua non* for an offence punishable under Section 7 of the P.C. Act, 1988. Fourthly, there is not an iota of evidence to establish the verification of the demand. Fifthly, the defence evidence, completely demolishes the prosecution case, and the learned Special Judge committed a manifest error in completely discarding the evidence of the defence witnesses which commands equal weight.

Therefore, the impugned judgment of conviction which is based on surmises and conjectures, and not legal evidence, deserves to be quashed and set aside.

5. Per contra, Mr. D. J. Haldankar, the learned APP, stoutly supported the impugned judgment. It was submitted that the guilt of the accused was established by cogent evidence. The alleged discrepancies in the testimony of the first informant and the Investigating Officer are not of such a nature as to throw the entire prosecution case overboard. Taking the Court through the evidence of the first informant, in particular, Mr. Haldankar, would urge that, all the elements of demand, acceptance and recovery can be said to have been duly proved. Thus, the Appeal, being devoid of substance, deserves to be dismissed, urged Mr. Haldankar.

6. Before appreciating the aforesaid rival submissions canvassed across the bar, a brief resume of the evidence adduced by the prosecution may be apposite.

7. Dr. Hemant Chikhalikar, the first informant, after informing the Court about the criminal complaint lodged by him for defamation before the Court of the learned Magistrate and the order of warrant issued against the accused therein, testified to the fact that on 26th September 1997, he approached the accused at 2.30 pm. At that time, the accused allegedly demanded a bribe of Rs.500/- and stated that only after receipt of the said amount, he would make arrangement for the issue of warrant against the accused in the said criminal case. The accused allegedly asked the first informant to come alongwith the bribe amount at 5.00 pm. Thereafter, the first informant went to the office of the Anti-Corruption Bureau to lodge the compliant.

8. Dr. Chikhalikar (PW-1) after apprising the Court about the pre-trap formalities deposed that, at 4.30 pm the raiding party left the office of the Anti-Corruption Bureau to reach the Court. After the Presiding Officer retired to his Chamber, the first informant and the panch witnesses approached the accused. The accused assured him that his work would be done on Monday and called upon the first informant to do the work of accused then and there. Thereupon, the first informant tendered the tainted currency notes, the accused accepted the same and kept those currency notes in the left pocket of his shirt. Thereafter, the raiding party apprehended the accused.

9. Mr. Rajendra Dabhade (PW-2), the panch witness, claimed to have visited the office of the Anti-Corruption Bureau at 3.00 pm. He further deposed, after the verification of the complaint and pre-trap formalities, the raiding party left the office of the Anti-Corruption Bureau at 4.45 pm. It reached the District Court premises, Pune. He and the first informant approached the accused.

10. Mr Dabhade (PW2) wants to impress upon the Court that, the first informant enquired with the accused as to whether the warrant was prepared. The accused replied in the negative and stated that if the amount as demanded by the accused was paid to him, he would prepare the warrant on Monday. Thereupon, the first informant tendered the tainted currency notes to the accused. Mr. Rajendra Dabhade (PW-2) lends support to the claim of Dr. Chikhalikar (PW-1) on the recovery of the tainted currency notes from the accused.

11. Mr. Tulshidas Pawar, (PW-3), the then Police Inspector, Anti-Corruption Bureau, Pune, furnished the details of the pre-trap and post-trap events. The accused was allegedly found in possession of the tainted currency notes. Thereupon, the accused was apprehended.

12. It would be contextually relevant to note that Mr. Madhukar Bakare (DW-1), the witness examined by the accused in his defence, wants the Court to believe that on 26th September 1997, he had gone to the Court of the concerned Magistrate in connection with a private complaint filed by him. Two persons approached the accused. One of those persons confronted the accused as to why the summons was not issued. At about 5.20 pm after the Presiding Officer retired to his Chamber, when the first informant perused the record of his case, the first informant appeared to be in an excited state. The accused assured the first informant that he would prepare the warrant on Monday. While the accused was keeping the file of the first informant back in the cupboard, the first informant thrusted some currency notes into the pocket of the shirt of the accused. A raiding party came and the accused was apprehended.

13. In the backdrop of the aforesaid evidence, the following facts appear to be rather incontrovertible. First, the capacity of the accused as tthe public servant. Second, the presence of the accused and the first informant at the time of the alleged occurrence. Third, the recovery of the tainted currency notes from the possession of the accused. The controversy revolves around the question whether the accused had demanded and accepted the money by way of gratification other than legal remuneration. Was it a case of the acceptance and demand or that of thrusting of the tainted currency notes as deposed to by Madhukar Bakare (DW-1).

14. For an answer, the recourse to the manner in which the witnesses fared in the cross-examination assumes significance. Mr. Tulshidas Pawar (PW-3), the Investigating Officer, conceded in the cross-examination that on 26th September 1997, the first informant had come to the office of the Anti-Corruption Bureau at about 10.00 to 10.30 am. He had taken the first informant to the Chamber of the Superintendent of Police. Mr. Tulshidas Pawar (PW-3) was candid enough to concede that, before arranging the trap, he had not verified the demand of bribe by the accused. He went on to concede that as soon as he nabbed the accused, the latter told him that he had not accepted any amount nor committed any mischief.

15. The aforesaid admissions, especially as regards the time of visit of the first informant to the office of the Anti-Corruption Bureau to file the complaint, are of critical salience. The first informant wants the Court to believe that the alleged demand was made for the first time at 2.30 pm on 26th September 1997. He immediately rushed to the office of the Anti-Corruption Bureau and filed the complaint. In contrast, Mr. Tulshidas Pawar (PW-3) categorically deposed that the first informant came to the office of Anti-Corruption Bureau at about 10.00 to 10.30 am on 26th September 1997 and the complaint was filed. This discrepancy in the time of reporting the matter to the Anti-Corruption Bureau, in the peculiar facts of the case, cannot be brushed aside as a trivial difference of time in regard to the occurrence in the testimony of two witnesses.

16. It is imperative to note that the raid was conducted on the very day on which the first informant lodged the complaint, nay, under a couple of hours of the lodging of the complaint, if the version of the first informant is to be believed. If the demand was made at 2.30 pm on 26th September 1997, then the first informant could not have lodged the complaint about the unlawful demand at 10.00 am on 26th September

1997. Conversely, if the version of the first informant is given primacy, then the very conduct of the raid, within two hours of filing of the complaint, renders the entire trap process suspect.

17. The Court cannot lose sight of the fact that the first informant deposed that he approached the office of the Anti-Corruption Bureau after the demand was made at 2.30 pm, and the raiding party allegedly left the office of the Anti-Corruption Bureau for the trap at 4.30 pm, under less than two hours. The prosecution wants the Court to believe that under less than two hours time, the complaint was reduced to writing; the panch witnesses, who happened to be public servants, were summoned; the complaint was verified by the panch witnesses, pre-trap formalities were completed and by 4.30 pm the raiding party left the office of the Anti-Corruption Bureau.

18. If the aforesaid sequence of events is considered, the prosecution version is improbalised by the tasks allegedly completed within the window period of hardly two hours. If the complaint was filed after 2.30 pm, some amount of time must have been consumed requisitioning the services of the public servants as panch witnesses. Mr. Rajendra Dabhade (PW-2) informs the Court that he and Mr. Vijay Sadanapure, another panch, had left their office upon being called and reached the office of the Anti-Corruption Bureau at 3.00 pm on 26th September 1997. The complaint was thereafter verified.

19. It appears to be utterly improbable that under a couple of minutes of the filing of the compliant, the panch witnesses would reach the office of the Anti-Corruption Bureau at 3.00 pm. Thus, the clear and categorical admissions of Mr. Tulshidas Pawar (PW-3) that the first informant had approached the office of the Anti-Corruption Bureau on the morning of 26^{th} September 1997, in the circumstances of the case, appears more nearer to the truth. However, by that time, on the own showing of the first informant, there was no demand of bribe by the accused.

20. Secondly, on the aspect of the verification of the demand, there is not an iota of evidence. The admission that there was no independent verification of the demand erodes the veracity of the prosecution case. In the absence of proof of demand, which is a *sine qua non* for the constitution of the offence, the charge of acceptance of illegal gratification, punishable under Section 7 of the P.C. Act, 1988, cannot be sustained. The endeavour of the prosecution to sustain the charge against the accused on the strength of the testimony of Dr. Chikhalikar (PW-1), the first informant, and Mr. Rajendra Dabhade (PW-2), the panch witness, is also not free from infirmities.

21. According to Dr. Chikhalikar (PW-1), the accused told him to come on Monday and he would do the work of the first informant and simultaneously the first informant told the accused that he should do the work of the accused then and there. In contrast, Mr. Rajendra Dabhade (PW-2) informed the Court that, the accused stated in specific terms that he would do the work of the first informant if the first informant paid the amount as was demanded by the accused. There is a material variance in the version of the first informant and Mr. Rajendra Dabhade (PW-2) as regards the alleged demand made by the accused.

22. If viewed in the backdrop of a critical infirmities, in the prosecution case as regards the time of filing of the complaint and the completion of all the formalities, right from the filing of the complaint to its verification, to requesting the public servants, to completion of pre-trap formalities, it would be rather hazardous to place implicit reliance on such contradictory testimony of Dr. Chikhalikar (PW-1) and Mr. Rajendra Dabhade (PW-2) to sustain the alleged demand of illegal gratification, especially in the absence of verification of the demand.

23. It is well neigh settled that mere proof of acceptance and recovery of tainted currency notes is not sufficient to bring home the charge under Section 7 of the P.C. Act, 1988. On the mere proof of the tainted currency notes having changed the hands, it cannot be presumed that the money was accepted pursuant to a demand of illegal gratification. The entire chain of demand, acceptance and recovery has to be complete. If there is no proof of initial demand, the proof of two other components, namely, acceptance and recovery of tainted currency notes, which in a given case may form part of one and the same act, would not be sufficient.

24. A useful reference in this context can be made to the judgment of the Supreme Court in the case of **State of Maharashtra Vs Dnyaneshwar Laxman Rao Wankhede,**[1] wherein it was enunciated as under:

> "16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

25. This well-settled legal position was reiterated by the Supreme Court in a recent pronouncement in the case of **P Somaraju Vs State of Andhra Pradesh.**[2] The Supreme Court observed as under:

1 (2009) 15 sCC 200.

2 AIR 2025 SC 5313.

> "18. The statutory presumption under Section 20 of the PC Act is not automatic and arises only once the foundational facts of demand and acceptance are proved. The same has been reiterated time and again by this Court; in the recent decision of Rajesh Gupta Vs State through Central Bureau of Investigation, (2022 INSC 359) it was held:
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> > "17. For an offence under Section 7 of PC Act, the demand of illegal gratification is a sine qua non to prove the guilt. Mere recovery of currency notes cannot constitute an offence under Section 7 of PC Act, unless it is proved beyond reasonable doubt that accused voluntarily accepted the money, knowing it to be a bribe. The proof of acceptance of illegal gratification can follow only if there is proof of demand."
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> 19. It is therefore vital to examine these elements before the circumstance of recovery can assume any significance. We once again rely on the observation of this Court in Rajesh Gupta (supra):
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> > "16. ....The law is well-settled by the judgments of this Court in Panna Damodar Rathi vs. State of Maharashtra (1979) 4 SCC 526 and Ayyasami vs. State of Tamil Nadu (1992) 1 SCC 304, whereby it has been clarified that the sole testimony of the complainant, who is the interested witness, cannot be relied upon without having corroboration with the independent evidence."

26. In a case of the present nature, where the inconsistencies in the prosecution case and the improbabilities of the prosecution version stare in the face, the prosecution cannot draw mileage from the presumption contained in Section 20 of the P.C. Act, 1988, as it then stood. It is trite, where the demand has not been proved, Section 20 will have no application. (**Union of India Through Inspector CBI Vs Purnandu Biswas,**[3] **T Subramanian Vs State of T. N.**[4] and **Om Prakash Vs State of Haryana.**[5]

27. At this juncture, it is necessary to note that the accused has offered a version which compets in probability. Mr. Tulshidas Pawar (PW-3) conceded in the cross-examination that the accused has instantaneously offered the explanation that he had not accepted the money and committed no mischief. The testimony of Mr. Madhukar Bakare (DW-1) that the first informant thrusted the currency notes in the pocket of the accused, could not be impeached during the course of cross-examination. Nothing material could be elicited in the cross-examination of Mr. Madhukar Bakare (DW-1) to discredit his version.

28. In the aforesaid view of the matter, the learned Special Judge committed an error in convicting the accused by offering a gratuitous explanation regarding the conduct of the first informant. The visit of the first informant to the office of the Anti-Corruption Bureau on the morning of 26th September 1997 was sought to be downplayed by observing that the first informant might have thought that the accused was expecting some gratification from the first informant and,

3 (2005) 12 SCC 576.

4 (2006) 1 SCC 401.

5 (2006) 2 SCC 250.

therefore, he might have visited the Anti-Corruption Bureau office in the morning just to seek advice. Clearly, the learned Special Judge misdirected himself in ignoring the material contradiction and its effect on the probabilities of the case. Likewise, the discrepancy in the version of the first informant and Mr. Rajendra Dabhade (PW-2) on the crucial aspect of the demand of illegal gratification was brushed aside by a casual observation that, such contradictions were quite natural.

29. To conclude, the learned Special Judge committed a grave error in arriving at the finding of guilt of the accused on assumptions, surmises and conjectures sans legal evidence. Resultantly, the impugned judgment of conviction cannot be sustained.

30. The conspectus of the aforesaid consideration is that, the Appeal deserves to be allowed.

31. Hence, the following order:

: O R D E R :

(i) The Appeal stands allowed.

(ii) The impugned judgment and order dated 19th August 2003 stand quashed and set aside.

(iii) The Appellant-accused stands acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act, 1988.

(iv) The amount of fine deposited by the Appellant be refunded to the Appellant.

(v) The bail bond stands cancelled and the surety stands discharged.

(vi) R & P be sent back to the Court of the Special Judge.

[N. J. JAMADAR, J.]