



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 361 OF 2013

The State of Maharashtra
Through Police Station, Soyegaon,
Dist. Aurangabad. ..Appellant

Versus

1. Ramesh Vitthalrao Thakur
Age: 36 years, Occu.: Service,
R/o. Plot No.10/1, Saptshrungi Society,
N-7, Cidco, Aurangabad.
2. Prakash Madhav Suryawanshi
Age : 48 years, Occu.: Service,
R/o. Sindurni, Khatik Galli,
Tq.Jamner, Dist.Jalgaon.Respondent

.....
APP for Appellant : Shri P.P. Dawalkar
Advocate for Respondents : Shri C.P. Sengaonkar (through VC)
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 17 MARCH, 2026

PRONOUNCED ON : 18 MARCH, 2026

JUDGMENT :

1. This appeal challenges judgment and order dated 28-08-2012 passed by learned Assistant Sessions Judge, Aurangabad in Special Case (ACB) No.10 of 2010, in which accused was tried for offence u/s 7, 13(2) read with 13(1)(d) and 12 of the Prevention of Corruption Act, 1988.

FACTS IN BRIEF

2. In brief, prosecution was launched against both accused, who were working in Panchayat Samiti in the capacity of Block Education Officer and Clerk respectively on accusations of demand of Rs.30,000/- to avoid action of suspension of PW1 complainant, an Incharge Head Master in Central Primary School, Jarandi, Tq.Soygaon, Dist.Aurangabad, in pursuance to inspection of the school carried out on 19-01-2010. It is a specific case of prosecution that, accused no.1 demanded above amount through accused no.2 and accordingly, accused no.2 accepted it. On complaint of PW1 to above extent, ACB authorities entertained it, planned and executed trap and after apprehending both accused, chargesheeted them and their trial ended up in acquittal. Hence, State has come in appeal.

SUBMISSIONS

On behalf of appellant State :

3. Learned APP would apprise this Court about above background and would submit that, there is no dispute that accused no.1 was working as Block Education Officer in Panchayat Samiti, Soygaon. That, he had conducted inspection of the school of which complainant was Incharge Head Master. That, certain irregularities

were noticed during inspection and on the basis of same, action of suspension was proposed to be taken, but to drop the same, through accused no.2, accused no.1 has demanded bribe.

4. He further pointed out that, on receipt of complaint to above extent from PW1 complainant, PW4 Investigating Officer had planned trap. In the said trap, PW2 shadow panch was engaged. That, both of them had conducted verification of demand and pre-trap panchanama was drawn on getting convinced about demand. That, both of them were given necessary instructions. PW1 complainant was directed to pay bribe on demand whereas PW2 shadow pancha was asked to be watchful and hear the conversation of demand and also both of them approached accused in their office to comply the demand. To that extent, both these witnesses are consistent. However, learned trial court erred in holding such witnesses contradicting each other and are at variance.

5. He next submitted that, here, demand as well as acceptance was cogently proved and therefore, essential ingredients for attracting charges were very much available in the prosecution evidence, but the same have been incorrectly appreciated. According

to him, minor variances are given undue importance when the core of the prosecution had remained intact.

6. Lastly, he submitted that PW3 Sanctioning Authority was also examined and after due application of mind, sanction was accorded. Therefore, on all counts and scores, case of prosecution was proved beyond reasonable doubt and ought to have been accepted for recording conviction, but learned trial Court having failed, he urges to interfere by allowing the appeal.

On behalf of Respondents/Accused :

7. Per contra Shri Sengaonkar, learned counsel, who appeared through Video Conference, would justify the order of acquittal by submitting that, at the outset, there was no motive to put up demand as according to him, it has come in prosecution evidence i.e. none other than Sanctioning Authority that, accused no.1 was not competent to take any action. That, PW1 complainant has himself admitted to that extent in cross-examination and therefore, there is no question of putting up demand of bribe. He emphasized that, what PW1 complainant has deposed is mere an apprehension of some action likely to be taken, but no such action was taken and for

the more reason, there was no motive to put up demand.

8. He further took this court through the evidence of PW1 complainant and PW2 shadow pancha and would point out that, there are glaring inconsistencies in the testimony of these witnesses even when they claim to be together at the time of demand verification as well as main trap. He pointed out that, events narrated by each of them during alleged trap are distinct and do not tally with each other rendering their evidence doubtful. According to him, neither of them are lending support to each other.

9. He further pointed out that, according to PW1 complainant tainted currency was kept in an envelop and handed over to accused no.2 in similar manner, but contrary to it, PW2 shadow pancha deposed that, direct currency was handed over and even counted by accused no.2. Therefore, according to him, both witnesses are at variance on material counts.

10. He pointed out that, there is nothing to suggest that accused no.2 had demanded bribe on behalf of accused no.1 and moreover, it is prosecution case that, accused no.1 had never made demand with

PW1 complainant to which even complainant has admitted in cross-examination. For above reasons, he questions the credibility and veracity of prosecution story.

11. He further pointed out that, according to PW1 complainant demand verification was got satisfied by voice recording, but PW2 shadow pancha does not support PW1 complainant on that count and it is pointed out that, there is no transcript of alleged recorded conversation.

12. Criticizing the case of prosecution on valid sanction, he submitted that, had the PW3 Sanctioning Authority really applied its mind, the said authority would have noticed that there was no substance in the proposed prosecution as he too has admitted that accused no.1 was incompetent to initiate any action. Lastly, he submitted that judgment of trial Court being well reasoned and based on correct appreciation of available evidence, needs no interference.

EVIDENCE BEFORE TRIAL COURT

This being appeal, a brief account of prosecution evidence is reproduced as under :

13. **PW1** Rajendra Sonawane, complainant has deposed at exh.8 on the point of he working as Incharge Head Master of above named school. He testified that on 19-01-2010, Block Education Officer and his staff inspected the school wherein deficiencies were found regarding his work. On 20-01-2010, when he visited Panchayat Samiti, he claims to have learnt from accused no.2, a Clerk, that action of suspension from service would be taken against him. That, accused no.1, Block Education Officer is going to forward report to Zilla Parishad and to stop the said action, he will have to pay Rs.60,000/- to accused no.1. Expressing inability to pay so much, PW1 complainant claims to have left the office. Further on 02-02-2010, when he again went to Panchayat Samiti, he was served with a show cause notice for the deficiencies noted in the inspection and therefore, he himself claims to have approached accused no.2, who had told him that to avoid suspension, he has to pay Rs.60,000/-. But again he told his inability to pay such amount and then accused no.2 told him that, he will have to pay atleast Rs.30,000/- and he further claims to have realized from accused no.2 about accused no.1 demanding Rs.30,000/-. Therefore, he lodged report exh.9. In further evidence, he stated visiting ACB office, arrival of panchas, and then necessary instructions being given by

PW4 Investigating Officer..

In paragraph 6 of the examination-in-chief, he stated the events which took place in the ACB office and then accompanying PW2 shadow pancha to the office of accused at 11:30 a.m., i.e. in the office of accused no.1, but again meeting accused no.2 and made enquiry about accused no.1. According to him, accused no.2 told him that accused no.1 is not in the office and he would come at 12:30 p.m. and therefore, they came back towards raiding party and then, again PW4 Investigating Officer decided to send them back at around 01:00 p.m. This time he deposed that, when he had approached accused no.2, at that time, he had told to give amount to him, if it is brought, but PW1 complainant expressed his desire to meet accused no.1 and talk with him.

In paragraph 7 of examination-in-chief, he narrated about accompanying PW2 shadow pancha at 01:00 p.m. and this time, he met accused no.1 in the office and he claims to have talked with accused no.1 informing him that accused no.2, Clerk had told him about report of his suspension and had demanded amount and so he had come to talk to accused no.1, but accused no.1 told him that he is busy in welcoming *Sabhapati* and asked him to come at 04:00 p.m. with amount of Rs.30,000/-. All this was again reported to PW4

Investigating Officer, who prepared panchanama and thereafter, he deposed about preparations being made for application of anthracene powder.

In paragraph 11 of examination-in-chief, this witness has narrated that he and PW2 shadow pancha went to office of accused no.1 at 04:00 p.m. and when accused no.1 was accordingly approached, this witness states that, he told accused no.1 that he had brought the amount. According to this witness, accused no.1 told to pay amount to accused no.2. He also further deposed that, at that time he told accused no.1 that he has brought the amount as agreed. He further deposed that, accordingly, he and PW2 shadow pancha went towards accused no.2 and told him that, accused no.1 had directed to give the amount to him, but accused no.2 initially asked them to wait for some time and that he would first talk with accused no.1 and accordingly accused no.2 went to the office of accused no.1 and complainant and pancha also followed him. This witness deposed that accused no.1 instructed by making sign to accused no.2 to accept the amount and thereafter, accused no.2 suggested for going out for taking tea and they went to "Jai Bhole Hotel" and even on way, accused no.2 questioned PW1 complainant whether PW2 was from ACB office and he was told that he was rather, his father-in-

law and that he had arranged the said amount. After taking tea, accused no.2 demanded Rs.30,000/-, which was removed with right hand and held before accused no.2, who accepted the amount, first counted it with both hands and then kept in the right side pocket of pant and this was followed by relay of signal, followed by apprehension by raiding party.

While under **cross-examination**, complainant had admitted that on 02-02-2010 itself he had received information that in all seven Officers were in the inspection team including accused no.1. He admitted that, in inspection, directions were given to him to comply to deficiencies and submit report to Block Education Officer. He admitted that, at such time, he was aware that only Chief Executive Officer of Zilla Parishad can suspend him and he merely had apprehension that, if accused no.1 submitted report to Zilla Parishad, then action would be taken. He admitted that, he was directed to submit explanation, but except him, all other Teachers had tendered explanation. He admitted that, till lodging complaint, he was not served with any notice, but according to him, he was knowing that notice would be issued to him. However, he admitted that he was asked to come after receipt of notice and he further candidly admitted that, other Teachers were pressurizing him to take action in

capacity of Head Master against accused no.1. He admitted that, before laying trap, PW4 Investigating Officer had told him that, if trap is not successful, then action would be taken against him. He admitted in paragraph 17 of the cross-examination that accused no.1 never demanded bribe amount from him. He is unable to remember whether he has stated in his statement that on 02-02-2010, bribe amount was demanded to avoid action of suspension. He admitted that, accused no.1 had no power to suspend him or dismiss him. In further cross-examination, he answered that PW2 shadow pancha was directed to use tape-recorder at the time of verification demand as well as at the time of actual acceptance and even tape recorder was handed over to PW2 shadow pancha, but he admitted that, he had not seen the tape-recorder, however, he claims to have heard the conversation. He is unable to state the manner in which accused no.1 made sign to accused no.2 to accept the bribe and further admitted that, he did not see said sign at all. He admitted that, accused no.2 was apprehended at the counter of the hotel while making payment.

Omissions are brought in paragraph 20 pertaining to contents of supplementary statement on the point of he meeting accused no.2 and being asked by accused no.2 to give the amount if brought, but

this witness telling him in turn that he would first talk to accused no.1. Omission is also brought to the extent that when he met accused no.1, he told him that whether amount is brought as agreed, but such material was missing from his supplementary statement. He also admitted that, before deposing, copies of complaint and supplementary statement were handed over to him for reading.

14. **PW2** Hemant Devidasrao Satalkar is the shadow pancha and in initial examination-in-chief, he stated about approaching ACB office, meeting complainant, instructions being given by Investigating Officer to hear the conversation and accompanying complainant and therefore, he accompanied complainant to the office of Block Education Officer, Panchayat Samiti, Soygaon. According to him, accused no.1 was not present there and therefore, they approached accused no.2, who told them that accused no.1 had not come, but had told accused no.2 to take whatever is brought, but complainant told that he wanted to meet accused no.1 and therefore, they went back to the raiding party and informed Investigating Officer, but according to this witness, it was informed that, accused no.2 has told that accused no.1 is likely to come back at 01:30 p.m. According to this witness, he and complainant again went to the office of accused

no.1 at 02:15 p.m., but at that time, accused no.1 had not come and therefore, they stayed in the office as they had learnt from accused no.2 that, accused no.1 is likely to come in 30-45 minutes. Accordingly, between 03:00 p.m. to 03:30 p.m., accused no.1 reached and he and complainant entered in his cabin and complainant asked what has happened about his work, upon which accused no.1 told that he does not have time as *Sabhapati* is coming in the office and accordingly, they were directed to come at 04:30 p.m. He further deposed that, accused no.1 asked the complainant whether he has brought the thing which was told and it be given to accused no.2. According to him, at that time, accused no.1 asked complainant about this witness and he was told that he was his father-in-law and therefore, accused no.1 asked this witness to leave the chamber and to wait outside. Only so much talks had taken place in his presence and after five minutes, complainant came out and told this witness that they have to go back again to raiding party and accordingly, they went and informed Investigating Officer about such events and this witness claims that, at that time, he realized that accused no.1 was demanding amount to complainant to avoid proposed action.

Then he further deposed in paragraph 5 about events took place at 4:00 p.m. and according to this witness, when they were

entering the office of Panchayat Samiti, accused no.2 was seen coming out of the office and at that time, complainant offered him to come for tea and accused no.2 consented and they all went to have tea. According to this witness, he himself, complainant, accused no.2, and another person and as such all four went for tea. They had tea and accused no.2 told complainant whether he had brought the thing, which was agreed and if it is brought, it should be given to him and accordingly, complainant removed the pocket from right side of his pant pocket and gave to accused no.2, who accepted and directly kept the pocket in the front side of pant pocket.

ANALYSIS

15. Thus, on analysis of above evidence, as submitted, witnesses PW1 complainant and PW2 shadow pancha, who were in each others company, are not consistent. On meticulous re-appreciation, it is emerging that, PW1 complainant merely apprehended action and till filing complaint, he was also not served with any notice. Evidence of PW1 complainant shows that, his entire interaction was with accused no.2, a Clerk. Apparently thus, there is no demand by accused no.1 and there is admission to that extent by PW1 complainant in cross-examination. According to PW1 complainant, he has learnt from accused no.2, that action of suspension would be taken, but

admittedly, no action has ever been taken thereafter in the backdrop of alleged inspection report. It is noticed that, initial demand is also attributed to accused no.2, but at the instance of accused no.1. However, there is no material to show that accused no.2 was acting on instructions of accused no.1. Even initial bargain of Rs.60,000/- to Rs.30,000/- is also with accused no.2, who is a Clerk. PW1 Complainant seems to have presumed that, accused no.1 has demanded amount through accused no.2.

16. It is emerging that initially PW1 complainant and PW2 shadow pancha approached office of accused nos.1 and 2 at 11:30 a.m. but accused no.1 was not present. According to PW1 complainant, at the instance of Investigating Officer, they again went at 01:00 p.m. but even at that time, accused no.1 was not present and both witnesses claim that they have learnt from accused no.2, that accused no.1 would come after 30-45 minutes. Therefore, till such time, there was no contact between PW1 complainant and accused no.1. Even as pointed out that after meeting accused no.1 in his chamber, PW1 complainant himself prior to any demand by accused no.1, seems to have offered bribe as he declared immediately after approaching accused no.1 that he has brought the amount. He further deposed

that said amount was brought as agreed, but apparently there is no evidence about prior meeting or agreement between accused no.1 and PW1 complainant. Further, witnesses are stating that accused no.1 made sign to accused no.2 to accept, but in cross-examination, they are unable to state the mode or manner of sign. Further complainant himself has admitted that on being pressurized by other Teachers, he has lodged complaint and deposed and agreed that Investigating Officer has threatened him about consequences, if trap is not successful.

17. There is admittedly no evidence about conversation of demand being recorded. PW1 complainant though speaks about it and deposed that PW2 shadow pancha was made to carry voice recorder, PW2 has not uttered any thing to that extent. Even material omissions are brought while under cross-examination regarding the contents of the supplementary statement, which are discussed above.

18. Similarly, PW2 shadow pancha, who is expected to lend corroboration to PW1 complainant, who has deposed that when they approached office of accused no.1, he was not present and therefore, they approached accused no.2, but according to this witness, at that

moment itself, accused no.2 suggested giving whatever is brought. However, PW1 complainant insisted to meet accused no.1 personally. But as stated above, even during meeting with accused no.1, PW1 complainant himself has offered bribe prior to it being demanded. PW2 shadow pancha is found to be deposing about visit being paid to the office of accused no.1 at 02:15 p.m. and 3:30 p.m. and not 04:00 p.m. as stated by PW1 complainant.

19. On the contrary, evidence of PW2 shadow pancha goes to show that after entering chamber of accused no.1, he was asked to leave the chamber and after five minutes thereafter, PW1 complainant has come out and suggested to going back to raiding party. This witness claims that, at such time, he realized that there was demand by accused, but he has not specified which of the accused i.e. either accused no.1 or accused no.2. Moreover, even accused no.2 is reported to have asked “whether thing is brought” and if it is brought then it be given. There is no reference of demand of money.

20. Further PW1 complainant and PW2 shadow pancha are also found at variance on the events that took place after approaching accused no.2 because according to PW1 complainant, after

approaching accused no.2 at his place, he was offered to come for tea and thereafter they left, but according to PW2 shadow pancha, while they were returning back to office of accused no.1, at that time, accused no.2 was seen leaving office and then there was offer of tea. PW2 shadow pancha speaks of four persons going for taking tea and he specifically stated about he himself, informant, accused no.2 and another person accompanying them for taking tea. Who is this mystery man i.e. fourth person is not understood and if at all there was any, then he would have been a crucial witness, but said person does not seem to have been named or examined.

21. Similarly, PW1 complainant and PW2 shadow pancha are at variance on the point of manner of paying tainted currency as according to PW1 complainant, currency in a pocket being handed over and it being first counted and then pocketed, but PW2 shadow pancha differs on this count, as according to him, accused no.2 directly accepted the currency and pocketed it.

Therefore, for above reasons, there are indeed variances in the testimony of PW1 complainant and PW2 shadow pancha rendering the case of prosecution doubtful.

22. Therefore, though there is sanction and though recovery is

effected that too from accused no.2, there is no motive nor there is any demand by accused no.1 nor there is any material to suggest that accused no.2 acted at the behest of accused no.1 and accepted the bribe. Evidence of PW1 complainant shows that he admitted that he was pressurized by both other Teachers as well as Investigating Officer. Resultantly, evidence of prosecution is not free from doubt.

23. Perused the judgment under challenge, substantive evidence adduced by prosecution seems to have been appreciated and conclusion seems to have been drawn. What was the perversity or illegality or error in the same has not been demonstrated so as to interfere in the impugned judgment and order. Hence, following order is passed :

ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE