



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

CRIMINAL APPEAL NO.267 OF 2007

Tulshidas s/o Yemaji Zaveri,
Aged 47 years, Occu. Service as
District Manager, Maharashtra State
Other Backward Classes Finance
and Development Corporation Ltd.,
District Office, Osmanabad,
R/o Soalpur, Tq. & Dist. Solapur.

...Appellant
(accused No.1)

-VERSUS-

The State of Maharashtra.

...Respondent

...
Shri R.N. Dhorde, Senior Advocate i/by Shri Vikram R. Dhorde,
Advocate for the appellant.
Mrs. Bharati B. Gunjal, APP for the respondent/ State.
...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 21 September 2026

Pronounced on : 08 October 2026

JUDGMENT :-

1. Heard Mr. R. N. Dhorde, the learned Senior Advocate duly assisted by Mr. Vikram R. Dhorde, the learned Advocate for the appellant/ accused No.1 and Mrs. Bharati B. Gujnal, the learned APP for the respondent/ State.

2. The appellant is challenging the impugned judgment

and order dated 03.07.2007 passed by the learned Special Judge, Osmanabad, in Special Case (AC) No.4 of 2005, whereby the appellant came to be convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for two months. The appellant is also convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for four months. Both the sentences are directed to run concurrently.

3. The factual matrix of the case is as under:-

(a) At the relevant point of time, appellant/ accused No.1 was working as the District Manager in the office of the Maharashtra State Other Backward Classes Finance and Development Corporation Limited, having its office at Osmanabad. At the relevant point of time, only two persons were working at the Osmanabad office, namely, the appellant and PW-5 Pohare, who was working as an Accountant.

(b) The complainant PW-1 Kailas Sarpale belongs to the Other Backward Classes category. He had decided to avail loan of Rs.40,000/- in the name of his father for goat-farm business. Therefore, on 08.09.2004, the complainant and his father Nagnath Sarpale went to the office of accused No.1. They obtained the prescribed application form on payment of Rs.10/- to accused No.1. They accordingly collected the relevant documents required for the proposal.

(c) Thereafter, on 13.09.2004, the complainant PW1 along with his father Nagnath went to the office of accused No.1. They completed and submitted the application and attached all the necessary documents with the said proposal. The appellant/ accused No.1 asked the complainant to come to his office again on 15.09.2004.

(d) On 15.09.2004 at about 11.00 a.m., PW1-complainant met the appellant/ accused No.1 at his office. He inquired about his proposal for availing the loan. The appellant allegedly demanded Rs.1,000/- for forwarding the loan proposal to the bank. However, the complainant expressed his inability to pay the said amount and accordingly, the demand was reduced to

Rs.600/-. The complainant was asked to bring the said amount on 16.09.2004 during office hours.

(e) The complainant being unwilling to pay the amount, approached the office of the ACB at Osmanabad on 16.09.2004. He met PW-4 Inspector Najan of the ACB, who reduced his complaint into writing. Accordingly, two panchas, namely Shrihari Lomte (PW2) and Sudhir Kasegaonkar, were called and the necessary formalities for laying the trap were complied with. Six currency notes of Rs.100/- denomination each were treated with anthracene powder. The complainant was instructed to hand over the amount only upon demand being made by the appellant and PW-2 Shrihari Lomte was directed to accompany him as a shadow witness.

(f) At about 12.10 p.m., the complainant and PW-2 entered the office of accused No.1. Accused No.1 asked the complainant whether he had brought Rs.600/-. After receiving an affirmative response, accused No.1 directed accused No.2 to accept the amount. Accused No.2 allegedly accepted and counted the currency notes with both hands. Thereafter, he kept the said amount inside the cabin of the appellant/ accused No.1.

(g) After the aforesaid payment was made, the complainant gave the predetermined signal. The trap party accordingly entered the office. Anthracene traces were found on both hands of accused No.2. However, anthracene powder was not found on the hands of the appellant. The six tainted currency notes came to be recovered from the cabin. The serial numbers of the said currency notes were tallied and recorded in the spot panchanama at Exhibit 22. The loan file was also seized.

(h) On the basis of the aforesaid incident, PW-4 Investigating Officer Najan lodged the report under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The said offence came to be registered as Crime No.45 of 2004 against the two accused persons, namely, appellant-accused No.1 and accused No.2 (Chandrakant Baburao Mali).

(i) The relevant documents were forwarded to the competent authority for according sanction. Sanction came to be granted on 16.09.2004 by PW-3 (Avinash Gote), who was the Managing Director of the said Corporation. Accordingly, the charge-sheet came to be filed on 04.10.2005 under Sections 7 and

13(1)(d) read with Section 13(2) of the Act. The charge came to be framed. The appellant pleaded not guilty and claimed to be tried.

(j) In order to prove its case, the prosecution examined five witnesses, namely, PW1-Kailash Sarpale, the complainant, who was examined at Exhibit 17. PW-2 Shrihari Lomte, the shadow panch, was examined at Exhibit 20. PW-3 Avinash Gote, the sanctioning authority, was examined at Exhibit 24. PW-4 Kishan Najan, the Police Inspector, was examined at Exhibit 26. PW-5 Amol Pohare, who was serving as Accountant in the office of the appellant-accused, was examined at Exhibit 36.

(k) After recording the aforesaid evidence and the statement of the appellant under Section 313 of the Code of Criminal Procedure, the learned Special Judge was pleased to hold the appellant/ accused No.1 guilty of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and accordingly passed the impugned order of conviction and sentence. Accused No.2 (Chandrakant Baburao Mali) is not found guilty of the offences and is acquitted.

(1) Hence, being aggrieved by the said judgment dated 03.07.2007 passed by the learned Special Judge, the appellant has approached this Court by filing the instant Criminal Appeal.

4. The learned Senior Counsel Mr. Dhorde for the appellant vehemently submitted that the appellant has been falsely implicated at the behest of PW-5 (Amol Pohare), who was the only subordinate officer working in his office and who was having grudge against the appellant, as he was not relieved by the appellant despite his transfer to another place. It is further submitted that the loan file was with PW-5 and the said file had not reached the appellant. PW-5 was present in the office on the date of the trap. Even the tainted notes were lying on the table of PW-5. However, the ACB officers dragged accused No.2 from the cabin. He was assaulted and compelled to lift the tainted currency notes. Accused No.2 maintained that he had attended the office in connection with a cheque concerning subsidy payable on his own sanctioned loan.

5. According to the learned senior counsel, the prosecution failed to prove its case beyond reasonable doubt. Both the foundational demand and voluntary acceptance have not

been proved by the prosecution. The alleged demand of 15.09.2004 rests only on the evidence of PW-1/ complainant, whereas the office record shows that the loan file had not been scrutinized or placed before the appellant. The evidence of PW-3 (Avinash Gote) also discloses that, as per the prescribed procedure, the beneficiary was required to pay Rs.10/- to the cashier and obtain the form, which was thereafter required to be filled in and submitted to the cashier along with the necessary documents. After the cashier verified the papers, the same were to be placed before the District Manager along with a note. PW-3 admitted that the cashier had put no note on the said file and that the file had not reached the desk of the District Manager. It is, therefore, submitted by the learned senior counsel for the appellant that the examination-in-chief of PW1 does not inspire confidence. PW5-Pohare also admitted that the forms pertaining to the complainant's loan case were in his custody and that he had personally accepted Rs.10/- from the complainant's father Nagnath.

6. The learned senior counsel Mr. Dhorde further pointed out that no anthracene powder was detected on the hands

or personal articles of the appellant. Even the money was not recovered from the person of the appellant. PW-2 panch witness has also admitted that the shining was found on one corner of the table outside the cabin. He has also admitted that PW-5 was present and that accused No.2 put his hand in his trouser pocket after emerging from the cabin. However, the said pockets were not tested. The learned Senior Counsel further submitted that PW-5 claimed to be absent on 16.09.2004. However, PW-5 specifically stated that he was present. It is also pointed out that PW-5 had no written leave application for 16.09.2004 and that the post-trap panchanama allegedly contains whitening or alteration regarding the presence or absence of PW-5. It is further pointed out that, with the aforesaid quality of evidence, the prosecution cannot claim that it has proved the demand and acceptance of the bribe amount by the appellant-accused.

7. Upon all these issues, the learned Senior Counsel Mr. Dhorde submitted that the conviction of the appellant is not sustainable. The impugned judgment and order has been passed ignoring the aforesaid vital aspects and, therefore, is illegal and incorrect. Hence, the learned senior counsel for the appellant

strongly prayed for allowing the instant appeal.

8. *Per contra*, the learned APP strongly supported the judgment passed by the learned Special Court. According to the learned APP, PW-1 consistently proved the demand of Rs.1,000/- on 15.09.2004 and the said demand was reduced to Rs.600/-. She has relied upon the pre-trap panchanama and post-trap panchanama. According to her, PW-2 (panch witness Lomte) was an independent Government employee who accompanied PW-1/complainant at the time of the trap. He witnessed the incident of demand and also witnessed that appellant/accused No.1 directed accused No.2 to accept the notes. Thus, according to the learned APP, PW-2 was also witness to the spot panchanamas and, therefore, the case of the prosecution is fully established as regards demand and acceptance.

9. The learned APP further submitted that the absence of anthracene powder on the hands of the appellant is immaterial because the prosecution never alleged that he physically touched the currency notes. According to her, the minor discrepancies regarding the gunny bag, extra furniture, construction of the cabin or internal directions, do not affect the aspect of demand

and transfer of the notes and recovery. The omissions are not so material as to destroy the direct and reliable evidence. Hence, she prayed for dismissal of the instant appeal.

10. Before examining the evidence tendered by the prosecution witnesses, it would be useful to refer to the guidelines laid down by the Hon'ble Apex Court with regard to Sections 7 and 13 of the Prevention of Corruption Act, 1988. The Hon'ble Supreme Court in *P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh, (2015) 10 SCC 152*, held that proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and, in the absence thereof, the charge would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de-hors proof of demand, would not, by itself, be sufficient to bring home the charge under the aforesaid provisions. Therefore, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or Section 13 of the Act would not, by itself, entail his conviction thereunder.

11. The Constitution Bench of the Hon'ble Apex Court in *Neeraj Dutta v. State (Government of NCT of Delhi), (2023) 4 SCC 731*, after analysing various decisions of the Apex Court and the provisions of the Indian Evidence Act and the Prevention of Corruption Act, observed that proof of demand and acceptance of illegal gratification by a public servant, as a fact in issue, is a *sine qua non* for establishing the guilt of the accused public servant under Sections 7 and 13(1)(d) of the Act. The prosecution has to first prove the demand for illegal gratification and the subsequent acceptance as a matter of fact. Such fact in issue can be proved either by direct evidence, which may be in the nature of oral or documentary evidence, or by circumstantial evidence. However, the prosecution is required to establish the circumstances from which such demand and acceptance can safely be inferred. In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by a public servant, it is to be borne in mind that if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance under Section 7. On the other hand, if the public servant makes a demand and the

bribe giver accepts the demand and tenders the demanded gratification, which in turn is received by the public servant, it is a case of obtainment attracting Section 13(1)(d)(i) and (ii) of the Act, as applicable to the facts of the case. Thus, mere acceptance or receipt of illegal gratification without anything more would not make out an offence under Section 7 or Section 13(1)(d) of the Act. The prosecution must establish the necessary ingredients of the respective offence, including the demand and acceptance/obtainment, as the case may be.

12. Now, coming to the facts of the present case, the PW-1 complainant has deposed that, in order to forward his loan proposal, appellant-accused No.1 demanded Rs.600/-. When the complainant and PW-2 panch witness entered the office of the appellant, he is alleged to have asked the complainant whether he had brought Rs.600/-. After receiving an affirmative response, the appellant allegedly directed accused No.2 to accept the amount. Accused No.2 allegedly accepted and counted the currency notes with both hands and, upon the direction of the appellant, kept them inside the cabin of the appellant. The defence is that the loan file, which was required to be forwarded

to the bank, had not reached the table of the appellant-accused No.1 and was lying with PW-5 (Amol Pohare).

13. The evidence of PW-1/ complainant does not inspire confidence. PW1-complainant, in his examination-in-chief, deposed that the appellant personally demanded and accepted Rs.10/- towards the application fee and handed over the loan application form and instructed him regarding the necessary documents. However, in his cross-examination, the said PW1 totally reversed his stand and stated that PW-5 (Amol Pohare) had accepted Rs.10/- and issued the application form to the complainant by putting his signature on the form. Thus, there is contradiction between the evidence of PW1 and PW5. PW-5 categorically stated in his cross-examination that he collected Rs.10/- and issued the application form. PW-5 also stated that he made an entry in the name of Nagnath in the concerned register and obtained his thumb impression. Thus, as regards the demand and receipt of the application fee, there are contradictory statements in the evidence of PW1 and PW5.

14. PW1, in his deposition, stated that the appellant had asked accused No.2 to keep the amount in his cabin in a corner.

However, the complainant PW-1, in his cross-examination, stated that the bribe money was kept in the corner of the cabin in a gunny bag filled with books. In fact, the money was not checked in the presence of the complainant. It is also stated by PW1-complainant that he went alone and that the appellant demanded Rs.1,000/- and later reduced the demand to Rs.600/-. However, PW-5 in his deposition stated that PW1 and his father came to the office and met the appellant. It was also stated by PW1 that the appellant checked the documents, tagged them and dealt with the file. However, the evidence of PW-3 (Avinash Gote, sanctioning authority) discloses that he had received the xerox copies of the application of the complainant and all the documents accompanying it. Those papers were attached from the cupboard of PW5, the Accountant, and there was no note put up by the Accountant on the file. Thus, according to the evidence of PW-3, the file had not reached the appellant-accused No.1 and, as per the office procedure, the file remained under the control and custody of the Accountant i.e. PW-5. The said file was seized from him.

15. PW-1/ complainant further stated that when he

offered the money, accused No.2 initially asked the appellant to accept the amount. However, in cross-examination, the said PW-1 admitted that he had stated this vital detail to the police in his statement, but the Investigating Officer had omitted to record the aforesaid fact. Thus, the aforesaid evidence deposed by PW1 does not inspire confidence and creates reasonable doubt as regards the prosecution case.

16. PW-2, panch witness, in his examination-in-chief, has admitted that there was no shining on the hands of the appellant. In his cross-examination, he has also admitted that on 16.09.2004, the Accountant PW-5 was present. PW-3, in his cross-examination, also admitted that PW-5 had been transferred from Osmanabad to Aurangabad, but the appellant-accused No.1, being the District Manager, did not relieve him. A second transfer order was also passed after one month and PW-5 was transferred to Beed office, but the appellant did not relieve him.

17. The aforesaid quality of evidence does not inspire confidence. The case of the prosecution is required to be proved beyond reasonable doubt. Various doubts have been created by the aforesaid testimonies of the prosecution witnesses, which in

the facts of the present case, are material and fatal to the case of the prosecution. In that view of the matter, the case against the appellant cannot be said to have been proved beyond reasonable doubt.

18. Considering the legal provisions pertaining to Sections 7 and 13 of the Act and the guidelines laid down by the Hon'ble Apex Court, it is crystal clear that the prosecution has failed to prove the demand of illegal gratification against the appellant beyond reasonable doubt. There are material inconsistencies in the testimonies of the prosecution witnesses. The recovery of the tainted currency notes from the cabin of the appellant, in the absence of reliable proof of demand and acceptance/obtainment by the appellant, cannot by itself sustain his conviction.

19. It is also necessary to consider the statutory presumption under Section 20 of the Prevention of Corruption Act, 1988. In the present case, the prosecution has failed to establish beyond reasonable doubt that the appellant himself accepted or obtained the alleged illegal gratification. The evidence on record shows that it was accused No.2 who accepted

and counted the tainted currency notes and anthracene traces were found on his hands, whereas no anthracene traces were found on the hands of the appellant. Though the tainted currency notes were subsequently recovered from the cabin of the appellant, such recovery, in the facts of the present case, by itself cannot establish the acceptance or obtainment of the illegal gratification by the appellant. Therefore, the foundational facts necessary for drawing the statutory presumption under Section 20 against the appellant have not been established by the prosecution.

20. In that view of the matter, the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The appellant is, therefore, entitled to the benefit of doubt. The impugned judgment and order passed by the learned trial Court, therefore, deserves to be quashed and set aside. Hence, the following order:

ORDER

- (a) The Criminal Appeal is allowed.
- (b) The impugned judgment and order dated 03.07.2007 passed by the learned Special Judge, Osmanabad, in Special Case

(AC) No.4 of 2005, convicting and sentencing the appellant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, is quashed and set aside.

(c) The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

(d) The bail bond, if any, stands cancelled. The surety, if any, stands discharged.

(e) Fine amount, if paid, shall be refunded to the appellant.

(f) The record and proceedings be sent back to the concerned Court.