Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 484 OF 2018

Kailas Ramdas Sangle
Age 42 years,
Residing at B/503,
Senchury Co.op. Hsg. Soc. 1,
Bldg. No.100, Tilaknagar,
Chembur, Mumbai – 400 089 .. Appellant

Vs.

The State of Maharashtra .. Respondent

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Mr. Satyaram R. Gaud a/w Maniram R. Gaud and Ms. Shikhani Shah for the appellant
Mr. P.P. Jadhav, APP for the respondent – State

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ALONG WITH
CRIMINAL APPEAL NO. 1494 OF 2018

The State of Maharashtra .. Appellant

Vs.

Kailas Ramdas Sangle,
Age 42 years,
Residing at B/503,
Senchury Co.op. Hsg. Soc. 1,
Bldg. No.100, Tilaknagar,
Chembur, Mumbai – 400 089 .. Respondent

....

Mr. P.P. Jadhav, APP for the appellant – State
Mr. Satyaram R. Gaud a/w Maniram R. Gaud, Ms. Shikhani Shah, Wilson K. Jaiswal, Usman Memon for the respondent

....

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 5th FEBRUARY, 2025.
PRONOUNCED ON : 7th FEBRUARY, 2025.

JUDGMENT :-

1. By this appeal the appellant – accused challenges the impugned judgment and order of conviction and sentence rendered by the Special Judge, Greater Mumbai on 31.03.2018 for the offences punishable under Sections 7 r/w 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short "P.C. Act").

2. The learned Judge, by the impugned judgment, sentenced the appellant to undergo rigorous imprisonment for 2 years for the offence punishable under Section 7 of the P.C. Act *inter alia* directing him to pay fine of Rs.2,000/- in default to suffer simple imprisonment for 3 months. He has also been sentenced to undergo rigorous imprisonment for 2 years and fine of Rs.2,000/- for the offences punishable under Sections 13(2) of the P.C. Act, in default to suffer simple imprisonment for 3 months.

3. The State Government has also preferred an appeal for enhancement of sentence on the ground of its inadequacy in view of Section 377(1) of the Cr.P.C. Obviously, the fate of an appeal by the State would depend upon outcome of the appeal preferred by the appellant against his conviction and sentence. In case, the appeal of the appellant is dismissed then only this Court would be required to consider whether the sentence awarded by the trial Court was inadequate.

4. Turning to the facts of the present case, which can be encapsulated as follows.

5. The appellant was working as an Assistant Police Inspector (API) in the month of April, 2014 with Crime Branch, Mumbai. Indisputably, he was a public servant within the meaning of Section 2(c) of the P.C. Act. PW1 complainant – Rizwankhan Isar Ahmed was in the custody of the appellant in connection with C.R. No.31 of 2014. It is the case of the prosecution that the appellant demanded and attempted to obtain Rs.2 lac as a gratification other than legal remuneration for himself and after

discussion agreed to accept Rs.1 lac being the first installment. He accepted Rs.1 lac from one Abu Barkatali in the presence of complainant as a gratification and also agreed to accept remaining amount of Rs.1 lac through PW-8 Ranjitsingh after release of the complainant. The bribe alleged to have been accepted by the appellant to favour the complainant – Rizwankhan by helping him in the said crime, including return of his trucks, which were involved in transporting illicit Gutkha (Tobacco) by evading the octroi duty.

6. It is alleged that on 22.04.2014, after the release of the complainant – Rizwankhan on bail in the said crime, on 23.04.2014 to 25.04.2014 the appellant contacted the witness PW-8 Ranjitsingh on phone as per the previous talk and thereafter demanded and attempted to obtain balance amount of gratification to the tune of Rs.1 lac.

7. On 26.04.2014, during the meeting with the complainant - Rizwankhan and the witness PW-8 Ranjitsingh, the appellant attempted to obtain from PW-8 Ranjitsingh an amount of Rs.1 lac in a Scorpio Jeep while proceeding to Konark Bunder,

Mumbai. As such, the public servant had accepted the gratification other than legal remuneration to favour the complainant by corrupt or illegal means by abusing his position as a public servant.

8. Since the complainant – Rizwankhan was not ready to give bribe to the appellant, he lodged a complaint (Exh.17) on 25.04.2014 with Anti Corruption Bureau Office, Mumbai. The Investigating Officer decided to verify the complaint in the presence of panchas. Accordingly, two persons were summoned at the ACB Office. Introductory speeches on DVR / SD cards came to be recorded. The complainant - Rizwankhan, thereafter, went to meet the appellant at his office. During conversation between the complainant, appellant and PW-8 Ranjitsingh, it transpired that the appellant had, in fact, made a demand of bribe to the complainant. A pre-trap panchanama was laid and the complainant - Rizwankhan was directed to bring currency notes of Rs.1 lac. The currency notes were sprinkled with anthracene powder.

9. On 26.04.2014 the complainant - Rizwankhan, PW-2

Sharayu Bansode and PW-8 Ranjitsingh and proceeded to meet the appellant. The complainant – Rizwankhan paid Rs.1 lac in the form of the currency notes to the appellant. The complainant - Rizwankhan gave a predetermined signal to the Investigating Officer and thereafter, the appellant was caught raid handed on the spot.

10. The other formalities of checking and inspecting the hands and pockets etc. were done by the Investigating Officer. When the currency notes and other articles were inspected under ultraviolet rays, they noticed green shades. The SD cards on which conversations were recorded, were sent to the CFSL for analysis. Even voice samples of the appellant, complainant – Rizwankhan and PW-8 Ranjitsingh were obtained. The Investigating Officer also obtained the Certificate under Section 65B of the Indian Evidence Act. After completing the formalities of investigation, a chargesheet is lodged and charge was framed against the appellant under Section 7 and 13(1)(d) and 13(2) of the P.C. Act. The appellant pleaded not guilty and claimed a trial.

11. The defence of the appellant, during trial, was denial of acceptance of any illegal gratification other than legal remuneration and that false implication in this case. The appellant has raised several grounds including validity of the sanction order as well as non-examination of the Sanctioning Authority and other material witnesses apart from other grounds. The prosecution examined as many as 9 witnesses. The learned Special Judge, after going through the evidence of the prosecution witnesses and after hearing the respective parties, by the judgment and order dated 31.03.2018 convicted and sentenced the appellant as aforesaid.

12. At the outset, Mr. Gaud, learned Counsel appearing for the appellant submitted that there are inherent defects in the prosecution case, in the sense, there was no demand by the appellant to the complainant - Rizwankhan but it was by PW-8 Ranjitsingh and, therefore, the prosecution has failed to prove the demand of the bribe. Mr. Gaud questioned if the trucks and the goods had already been released by the order of the Court and even the complainant – Rizwankhan was released on bail, there was no question of demanding any bribe by the appellant

from complainant - Rizwankhan. Mr. Gaud had taken me through the deposition of various witnesses and tried to substantiate the fact that, in view of the material omissions on record, it is doubtful whether the prosecution has proved its case beyond all reasonable doubts.

13. Learned Counsel for the appellant has also invited my attention to the discrepancies in the transcript and the recorded conversions between the appellant, complainant – Rizwankhan and PW-8 Ranjitsingh *vis-a-vis* the audio clip, which was heard by me in the Court, in the presence of respective Counsel. According to Mr. Gaud, even though the voices have not been clearly identifiable, yet, there is material discrepancy wherein it can be heard that the appellant alleged to have said the word in Hindi "**दो ना**"... The transcript indicates "**दे**" i.e. something else, which is in Marathi. Learned Counsel would argue that even there is a contradiction as regards the demand of exact amount, apart from the fact that the sanction itself is defective, in the sense, merely because it was admitted by the defence during cross, would not *ipso facto* mean that sanction is valid, particularly when the prosecution did not examine the

Sanctioning Authority, which was not a competent authority to accord the sanction. Mr. Gaud would also argue as regards hash value of the voice of the complainant - Rizwankhan which was recorded on electronic devices.

14. *Per contra*, learned APP strongly supported the impugned judgment by contending that the prosecution has not only proved the demand and acceptance of illegal gratification by the appellant, but also has established from the transcript and the voice recorder that there was conversation of demand between the complainant – Rizwankhan and the appellant. Apart from inviting my attention to pre-trap and post-trap panchanamas, learned APP strongly urged to dismiss the appeal on the ground that the appellant being an Officer in uniform, should not have indulged in such act.

15. Before analyzing the evidence and the material on record, I must say that the learned Special Judge under the P.C. Act, Greater Mumbai has not correctly and properly appreciated the evidence and the other material on record especially in a case, in which the appellant has been tried for the offences punishable

under Sections 7 r/w 13(1)(d) and 13(2) of the P.C. Act. The judgment is cryptic. Even case laws cited in para 8 of the judgment has not been discussed by the learned Judge. Be that as it may.

16. In order to substantiate the guilt of the appellant, prosecution examined as many as 9 witnesses. The written complaint dated 25.04.2014 is proved at Exh.17. Verification panchanama is proved at Exh.19. Pre-trap panchanama is proved at Exh.21. Post-trap panchanama is proved at Exh.40. FIR is proved at Exh.23. Voice sample panchanama is proved at Exh.25. Sanction order is proved at Exh.53. The statements of the accused – appellant under Section 313 of the Cr.P.C. are at Exh.55 and 55A.

17. The written complaint Exh.17 dated 25.04.2014 reveals that the complainant has a transport business. He transports goods by hiring the trucks. The goods are transported from Surat to Bombay. On 20.02.2014, four trucks of the complainant were intercepted by the Yellow Gate Police for evading octroi duty and also for transporting banned Guthka

(Tobacco) from Surat to Bombay. The complainant was arrested by the appellant on 16.04.2014. The complainant - Rizwankhan contacted PW-8 Ranjitsingh who happened to be his father's friend and was in the same business. He requested PW-8 Ranjitsingh to help him. The appellant in the presence of PW-8 Ranjitsingh demanded a bribe of Rs.2 lac. Since the complainant – Rizwankhan was unable to fulfill the demand, at that moment, he agreed to pay Rs.1 lac at that time and balance of Rs.1 lac after his release from the custody. Accordingly, a friend of the complainant namely Abu Barkatali paid Rs.1 lac to the appellant. Admittedly, the prosecution has not examined the said Abu Barkatali and, therefore, this important evidence in the form of payment of fist installment of bribe has not been properly established. The evidence of complainant - Rizwankhan further reveals that after his release on 22.04.2014, since PW-8 Ranjitsingh had promised to pay the balance amount of Rs.1 lac to the appellant, the appellant called him on his phone on 23.04.2014 and also on 25.04.2014. It is interesting to note that Abu Barkatali, who alleged to have paid Rs. 1 lac to the appellant at the A.C.B. Office at the behest of the complainant -

Rizwankhan and cited as a witness, is also the owner of the truck bearing Registration No. MH-04-FP-723, which was seized by the police for transporting banned Gutkha (Tobacco) along with the complainant - Rizwankhan. This also creates a doubt about the authenticity of the prosecution case as to whether the amount was paid by Abu Barkatali to the appellant for his work or at the behest of the appellant?

18. Since the complainant was not willing to part with money, he lodged the present complaint. Before going through the panchanama and other proceedings, it would be interesting to note that the FIR (Exh.23) is also dated 25.04.2014, which is something unusual and strange, creating a doubt about the genuineness and authenticity of the FIR. In the normal course, an FIR ought to have been lodged after the successful post-trap panchanama (Exh.40), which was completed on 26.04.2014. The prosecution has failed to explain as to how both the complaint (Exh.17) and FIR (Exh.23) are of the same date? Secondly, an FIR (Exh.23) depicts that it was lodged by the complainant on 25.04.2014 at 17:45. This is as if the

Investigating Agency had already concluded that there would be a successful trap and commission of a cognizable offence and, therefore, an FIR also came to be lodged on the very day, when the complaint was registered with the office of the A.C.B. on 25.04.2014, which is at Exh.17. More astonishing is the statement of the complainant – Rizwankhan, which was recorded on 26.04.2014 by the Investigating Officer- ACP, Chandrakant Thorat. It indicates that since the complainant - Rizwankhan was not willing to offer bribe to the appellant, he lodged a complaint against the appellant with the A.C.B. along with PW-8 Ranjitsingh. Since the complainant - Rizwankhan was unable to write, his complaint was typed on a computer in Marathi by ACP, Chandrakant Thorat. When attention of the witness was drawn during his cross-examination to that part of the statement as well as his signature over the FIR, interestingly, he testified that he did not remember as to whether his statement was recorded by the A.C.B. during the period from 25.04.2014 to 27.04.2014. Surprisingly, he even admits in his cross-examination that he cannot say whether the signature which was on the FIR was, in fact, his signature and even whether the date

which was put by him beneath the signature. The complainant - Rizwankhan himself was in doubt about his signature and the date which appears to be put in his handwriting. This is a big blow to the prosecutions case when the complainant – Rizwankhan himself refused to identify and vouch not only his statement but also his signature and date, beneath the FIR. However, subsequently though he admits that this could be his signature, but that is only his endorsement that he received the copy of the FIR. Here also, he raised a doubt that the date put beneath his signature was in his handwriting. He, however, admits his signature over Exh.17, but not the date. The fact that he had stated before the police that PW-8 Ranjitsingh received a phone call from the appellant and that during the trap, DVR was given to him and the conversation was recorded in it, is proved to be a material omission. The statement in the transcript indicating conversation between the appellant and the complainant that 'किसके लिए बुलाया है?', 'लाओ', 'कितना है?', 'एक लाख', is also proved to be a material omission. The complainant – Rizwankhan also categorically admits in cross-examination that he did not state at the time of lodging a complaint that PW-8

Ranjitsingh told him that the appellant is demanding Rs.1 lac. This is also proved to be an omission. He further admits that he did not state at the time of lodging a complaint that thereafter the appellant demanded Rs.2 lac from him, which also proved to be an omission. He states that he had stated at the time of filing of the complaint that he had taken Rs.1 lac from Abu Barkatali and gave it to the accused, is also an omission which has not been proved by the prosecution.

19. Complainant – Rizwankhan admits in his cross-examination that his trucks have been released as per the order of the Court along with the goods. He was also released by an order of the Court. Before filing the complaint with the A.C.B. all the six trucks have already been released by the Court, then the question arose as to what was the reason for the appellant to demand illegal gratification from the complainant other than the legal remuneration?

20. There are catena of decisions in that regard. Suffice it to refer a latest decision of the Supreme Court in case of **Neeraj**

Dutta Vs. State (Govt. of N.C.T. of Delhi)[1]. The ratio laid down by the Supreme Court is that in view of Section 7 and 13(1)(d) of the P.C. Act where there are allegations of the demand of bribe, it is held that considering the issue of proof of demand under Section 7, demand cannot be a simpliciter demand for money but has to be demand of gratification other than legal remuneration. It would be apposite to extract para 13 and 14 of the judgment, which reads as under:-

> *"13. Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved. In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d), which is punishable under Section 13(2) of the PC Act. Clause (d) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and*

1 2023 All SCR (Cri.) 665

acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence.

14. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. Therefore, in this case, we will have to examine whether there is any direct evidence of demand. If we come to a conclusion that there is no direct evidence of demand, this Court will have to consider whether there is any circumstantial evidence to prove the demand."

21. The allegations of demand of gratification and acceptance made by the public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench referred hereinabove does not dilute this elementary requirement

of proof beyond a reasonable doubt. It has been laid down that proof need not be only by direct, oral or documentary evidence, but it can be by way of other evidence, including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand of gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of guilt.

22. From the evidence of this witness coupled with another important witness namely PW-8 Ranjitsingh, it is difficult to accept that the alleged demand was made by the appellant, in fact, as a gratification other than legal remuneration. Similar is the view echoed by another well known judgment of the Supreme Court in case of **B. Jayaraj Vs. State of A.P.**[2] . It is held that in the cases under Sections 7, 13 and 20 of the P.C. Act, mere possession and recovery of currency notes from the accused without proof of demand, cannot constitute offence under Section 7 of the P.C. Act. Further in absence of proof of acceptance of illegal gratification, presumption under Section 20 cannot be drawn that such gratification was received for doing

2 (2014) ALL SCR 1619

or forbearing to do any official act. The Supreme Court, therefore, set aside the conviction of the accused under Section 7 as well as under Sections 13(1)(d)(i)(ii) r/w Section 13(2) of the P.C. Act.

23. The learned Counsel for the appellant has not only placed reliance upon these two decisions but also in case of **State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede**[3]. Para 16 and 19 to 21 are extracted below:-.

> *"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.*

3 (2009) ALL MR (Cri.) 3127

> *19. It is, therefore, highly doubtful that the version of the complainant was true. It is in the aforementioned backdrop only the evidence of DW-1 is to be considered. Even otherwise, in our opinion, the prosecution has failed to prove its case. It is, therefore, not a case where the High Court, as has been contended by Ms. Divan, has failed to take into consideration the legal implication of the provisions of Section 20 of the Act and/or placed too much reliance on the minor inconsistencies in the statements of the prosecution witnesses.*
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> *20. Even in a case where the burden is on the accused, it is well-known, the prosecution must prove the foundational facts. [See* ***Noor Aga Vs. State of Punjab, 2008(9) SCALE 691 : [2008 ALL SCR 2161]*** *and* ***Jayendra Vishnu Thakur v. State of Maharashtra and Anr. 2009 (7) SCALE 757: (2009) ALL SCR 1996].***
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> *21. It is also a well-settled principle of law that where it is possible to have both the views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail. [See* ***Dilip and Another Vs. State of M.P., (2007)1 SCC 450: (2007 ALL MR (Cri) 823 (S.C.))*** *and* ***Gagan Kanojia and Another Vs. State of Punjab, (2006) 13 SCC 516].****"*

24. Turning back to the evidence of PW-8 Ranjitsingh, who is another important witness of the prosecution indicates that the complainant – Rizwankhan was released on bail on 22.04.2014 and thereafter, he used to receive call from the appellant from 23.04.2014 to 25.04.2014 for demand of Rs.1 lac. His other evidence regarding the pre-trap panchanama, summoning the panch witnesses namely; PW2 - Sharayu Bansode and PW7 - Rajesh Chakkar by the A.C.B. and other factors need not be

discussed. What is important to note is that, this witness when met with the appellant for the first time at the A.C.B. office along with the complainant – Rizwankhan, appears to have said and as testified by him that at about 4:00 p.m. he came back to the A.C.B. office along with the amount of Rs.1 lac consisting of 100 currency notes of Rs.1,000/- each. Surprisingly, he does not refer Abu Barkatali, as according to the prosecution and complainant - Rizwankhan, it was Abu Barkatali who came with the first installment of Rs.1 lac to be paid to the appellant. Adverse inference is required to be drawn for not examining Abu Barkatali, who appears to be an important witness. This is a material discrepancy as regards the demand as contemplated under Section 7 of the P.C. Act and as discussed in the aforesaid decisions.

25. This witness was driving a car at the time of incident after the pre-trap panchanama when the actual raid was to be conducted. PW-2 Sharayu Bansode, panch witness, was sitting beside him in the front seat, whereas the appellant and the complainant - Rizwankhan were occupying the rear seat of the car. Admittedly, the DVR was affixed in the *baniyan* of the

complainant to record the conversation. This witness was instructed by the Investigating Officer that if the public servant namely; the appellant accepts the bribe amount in the running car, then, this witness should start the parking lights of the car as a signal to the car following with the A.C.B. team. He was *inter alia* directed that, in case the appellant accept the bribe in a stationary car, then in that case, the complainant – Rizwankhan would come out of the car and remove his cap from the head and thereby give a signal to the Investigating Officer. As such, the complainant - Rizwankhan along with this witness PW-8 Ranjitsingh, the panch were travelling in a Scorpio Car bearing Registration No. MH-43-R-1083 who were followed by the raiding party in two Sumo Jeeps and a Motorcycle. The evidence of PW-8 Ranjitsingh further reveals that when he was driving the car, the complainant asked the appellant as to why he has been called upon, to which the appellant alleged to have said 'लाये हो लाये हो कितना है' and complainant – Rizwankhan replied 'एक लाख रुपये'. As already discussed hereinabove, the complainant had a different story to tell, upon which the complainant answered Rs.1 lac. The evidence further reveals

that thereafter the appellant asked the complainant 'दे'. The transcript, however, describe something else. The transcript at page 156 of the record indicates some different version. As such, there are material discrepancies in the evidence of complainant - Rizwankhan, PW8 - Ranjitsingh *vis-a-vis* the transcript and what has been heard in the Court on the DVR which was played by the prosecution. The relevant transcript reveals thus :-

लोकसेवक श्री. सांगळे	हा मै चला जाता हु..... क्युकी आप मत हो परेशान.....
तकारदार श्री. खान	नही काम तो थोडा बहुत है.... काम तो है.....
लोकसेवक श्री. सांगळे	मै उतर जाता हु.....
तकारदार श्री. खान	ये जो बोले वो तो लेके जाओ ..... इसकेलिए बुलाया ..... पिकनिक करने आये है क्या साहब
लोकसेवक श्री. सांगळे	दो ना .....
तकारदार श्री. खान	तुम भी यार कसमसे .... बुलाया तो दो ना इनको ..... बोलते भी नही एकदम खामोसी मे अपना बैठे हो .....
साक्षीदार श्री. सिंग	मै समझा तुमने दे दिये.....
तकारदार श्री. खान	अरे वा..... बहुत होशियार आदमी हो तुम यार..... ऐसा कैसा दे दिये.....
लोकसेवक श्री. सांगळे	कितना एक है....
तकारदार श्री. खान	एक है..... बाकी कर देंगे साहब..... टेन्शन मत लो....
लोकसेवक श्री. सांगळे	नही नही उसका टेन्शन नही है.....

तकारदार श्री. खान	टुट गये हम लोग साहब टुट गये....
लोकसेवक श्री. सांगळे	नही नही अब उसका टेन्शन नही.....
तकारदार श्री. खान	एकदम टुट गये..... सहीमे ..... चलेगा हा चलो....
लोकसेवक श्री. सांगळे	चलो आउ मै.....
साक्षीदार श्री. सिंग	चलो.....

26. PW-8 Ranjitsingh thereafter testified that the complainant by his right hand took out two currency note bundles from his kurta pocket and gave it to the accused, who accepted the same by his right hand and put the same in his right pant pocket. Whether this was going on in the moving car or stationery car is not clear as PW-8 Ranjitsingh has not said anything. He testified that thereafter the complainant got down from the car and gave a pre-determined signal by removing his cap. The raiding team, thereafter, immediately caught the appellant on the spot. Learned Counsel for the appellant is right in contending that PW-8 Ranjitsingh is an interested witness since admittedly, he was a friend of complainant's father, having the same business and was helping the complainant in this case. He would be obviously interested in a successful trap. It appears that he tried to safeguard the interest of the complainant – Rizwankhan by

stating that he did not know whether the complainant had committed offence under the Octroi Act.

27. As already stated, if all the trucks along with the goods were alrady released by an order of the Court and since the appellant was thoroughly investigating and going to the root of the case as rightly argued by the learned Counsel for the appellant, there is likelihood of he being falsely implicated in this case by the complainant - Rizwankhan only to thwart his further efforts to go in-depth of the offence, in which the complainant - Rizwankhan and his friends were tried for transporting banned Guthka (tobacco) from the State of Gujarat into the State of Maharashtra.

28. The first verification panchanama dated 25.04.2014 which is said to have been started at 04:30 p.m. and concluded at 08:45 p.m. has not been tendered. It appears that PW-7 Rajesh Chakkar and PW-2 Sharayu Bansode were the witnesses of the said panchanama. PW-3 Sagar Pednekar testified that he brought one recorder, one Micro-SD Card of 4 GB of Sandisk make, wherein voice samples of the complainant, PW-8 Ranjitsingh and

PW7 Rajesh Chakkar were recorded. It is an admitted fact that alleged conversation was not clear due to bad network. It was interrupted at several places. In the absence of the said panchanama, it is difficult to accept the prosecution case as a true one.

29. As regards second verification panchanama dated 26.04.2024, it has come on record through the evidence of witnesses that since the first panchanama was not successful, in the sense, voice could not be recorded properly, after formatting the said conversation recorded in the Micro-SD card, fresh conversation was recorded by using the same card. This also gives rise to a reasonable doubt about the authenticity of the second verification panchanama and, therefore, it is difficult to accept that the prosecution has proved the alleged demand of the bribe by the appellant. It reveals from the record that there was no panch witness accompanied with the complainant - Rizwankhan and PW-8 Ranjitsingh at the time of actual demand and, therefore, in light of the fact that PW-8 Ranjitsingh being an interested witness, it is difficult to accept that in fact, there was a demand by the appellant, especially when PW2 – Sharayu

Bansode turned hostile.

30. It is the case of the prosecution that the pre-trap panchanama started at 03:35 p.m. by applying anthracene powder over the currency notes, which were brought by the complainant - Rizwankhan and PW-8 Ranjitsingh from their home, located at Mumbai Central. However, PW-8 Ranjitsingh who had accompanied the complainant – Rizwankhan for collecting the currency notes admits in his cross-examination that he returned back to the A.C.B. office at 4:00 p.m. on the same day. The question arises as to how come anthracene powder was applied at 3:35 p.m. before commencing the pre-trap panchanama, when the currency notes itself were made available with A.C.B. office at 4:00 p.m.?

31. Interestingly and as already stated, PW-2 Sharayu Bansode turned hostile. She candidly admits in her examination-in-chief that she did not accompany the complainant - Rizwankhan and PW-8 Ranjitsingh during second verification and that she did not witness as to what had occurred at Maharashtra Hotel, Carnac Bundar Road and as such, this is also a big blow to the

prosecution story.

32. PW-3 Sagar Pednekar admits that if there is addition or subtraction in the electronic record, the hash value gets changed. It is true that if no hash value is drawn, there is possibility of tampering of electronic record. He further admits that in the present case, no hash value has been drawn which results in drawing an inference that the voice recording on the same SD card by formatting the first recording, itself raises a doubt about the authenticity of the voices.

33. PW-5 Reshma Ahire is the voice analyzer and had conducted the spectrographic test admits that she has not mentioned anything about the common factor and disputed factor in her report. She also admits that she had not mentioned in the report the test she had carried out to conclude that the voice sample was similar. She further admits that while making the analysis she did not find that there were some gaps/distortion in both admitted and disputed version. At some places, the sound was not audible. She also admits that these defects could be occurred due to non-working of the recording unit.

34. In this case, the appellant has examined a defence witness namely Shivaji Maruti Mane, ACP, Crime Branch. He was the second Investigating Officer appointed in the earlier Gutkha case by the Crime Branch, Mumbai after the present appellant. He testified that charge-sheet has been filed in that case against 20 persons, who were paying less octroi and thereby causing loss of crores of rupees to the exchequer i.e. the Corporation. The Tax Inspector Mr. Vijay Naik was also arrested in which the complainant - Rizwankhan was also the one of the main accused. The complainant - Rizwankhan who is the accused had paid fine of Rs.35 lac when the investigation was handed over to this witness. It appears that the learned Special Judge has ignored this material evidence adduced on behalf of the appellant as well as the other major discrepancies noted hereinabove.

35. Learned Counsel has also invited my attention to one crucial fact that at the time of alleged raid, it is an admitted fact that in the trap panchanama itself, on 26.04.2014 one officer of the police, namely Sanjay Shinde was present along with the appellant while accepting the alleged gratification. Even, PW-1

complainant – Rizwankhan accepted this fact in the cross that the appellant was accompanied by one more Police Officer. However, the prosecution has not examined that material witness from which again an adverse inference can be drawn against the prosecution.

36. It is the contention of the prosecution that since the sanction is admitted by the defence and, therefore, the prosecution did not examine the Sanctioning Authority.

37. It is pertinent to note that the appellant did not admit validity of the sanction. Even, otherwise, this is a case where the sanction has been accorded by the Commissioner of Police, who is admittedly not a Competent Authority to accord saction. The Competent Authority is the Director General of Police. The Commissioner of Police is lower in rank to that of the Competent Authority namely, Director General of Police and, therefore, the entire trial is vitiated for want of valid and proper sanction. The learned trial Court has erred in observing that the defence has admitted the sanction and, therefore, the prosecution did not prove the same. Learned Counsel for the

appellant has, therefore, rightly placed reliance on a judgment of his Court in the case of **State of Maharashtra Vs. Ajay Ratansingh Parmar**[4]. It would be apposite to extract the observations made by the learned Single Judge in para 14, 15 and 16, which read as under:-

> *"14. The conjoint reading of the evidence of the complainant and shadow witness coupled with the FIR shows that there are material inconsistencies. The reasonable doubt is created about the initial demand raised by the accused. The learned Counsel appearing for the Respondent (Orgi. Accused) would submit that mere recovery of currency notes is not sufficient to establish the guilt. In this regard, he relied on the decision in the case of* ***i) Suraj Mal V/s. State (Delhi Administration) {(1979) 4 SCC 725}: [2014 ALL SCR (O.C.C.) 251], ii) Panalal Damodar Rathi V/s. State of Maharashtra {(1979) 4 SCC 526} : [1979 ALL MR Online 57 (S.C.)], iii) Laxman S/o. Nanabhau Bangar & Anr. V/s. The State of Maharashtra {2019 ALL MR (Cri) 2523}.*** *Neither police have verified the demand nor recorded conversation of demand. The complainant's interested words on the said point are not reliable.*
>
> *15. Having regard to the inconsistencies of the evidence it becomes difficult to rely unless corroborated by independent circumstances. Particularly the real aggrieved person i.e. Ranjit was not examined nor it is explained as to why the complainant took lead in the issue that too in absence of Ranjit Tagge. The trial Court after considering all these inconsistencies recorded a finding of acquittal giving rise to the double presumption leaning in favour of the accused.*

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> *16. The view taken by the trial Court is probable which cannot be said to be illegal or improper or contrary to the provisions of law. The order of acquittal needs no interference, hence, the appeal stands dismissed. Appeal dismissed."*

38. It has been clearly observed that the accused was serving as an Assistant Police Inspector. The sanction order in that case was accorded by the Commissioner of Police, who was below the rank of Director General of Police and was not a Competent Authority. He was, therefore, not a Competent Authority to accord sanction and, therefore, the sanction was invalid. The ratio is squarely applicable to the present case and, therefore, on this count also, the prosecution has failed.

39. Corollary of the aforesaid discussion is that the impugned judgment of conviction warrants interference in appeal. As such, the following order is expedient.

ORDER

(i) The Appeal is allowed.

(ii) The judgment and order dated 31.03.2018 passed by

the Special Judge, Greater Mumbai in Special Case No.3 of 2015 is quashed and set aside.

(iii) The conviction of the appellant is set aside.

(iv) The appellant is acquitted of the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. His bail bond stands cancelled.

(v) Fine amount, if paid, be returned to the appellant.

40. The appeal stands disposed of in the aforesaid terms.

41. In view of the acquittal of the appellant, the appeal preferred by the State for enhancement of the sentence has become infructuous and hence, stands disposed of.

(PRITHVIRAJ K. CHAVAN, J.)