
(2022) 06 BOM CK 0074

Bombay High Court

Case No: Criminal Appeal No.1512 Of 2004

Bhikaji Vishnu Patil

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision: June 20, 2022

Acts Referred:

- Prevention Of Corruption Act, 1988 - Section 7, 13(1)(d), 13(2), 20
- Code Of Criminal Procedure, 1973 - Section 374, 313

Hon'ble Judges: Prakash D. Naik, J

Bench: Single Bench

Advocate: Shekhar A. Ingawale, S.R.Agarkar

Final Decision: Allowed

Judgement

Ã, Prakash D. Naik, J

1. The appellant was charged for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988.

2. The judgment was reserved after hearing both the sides.

Thereafter the appeal was listed on 2nd May 2022. Further submissions were heard and again closed for judgment.

3. The brief facts of the prosecution case are as under :

i) The complainant Bhairavnath Ganpati Khandekar is resident Bolawi village, Tq. Kagal. His father Ganpati Khandekar holds 4 to 5 acres of land at

village Bolawi. ComplaintÃ¢â€s father and brothers are cultivating the said land;

ii) Since there was no source of irrigation for the land, father of complainant applied to Panchayat Samiti, Kagal for sanctioning a well under Jawahar

Water Scheme in the month of December-1999 and prayed for subsidy for constructing well. Necessary papers were attached to the application;

(iii) The Block Development Officer of Panchayat Samiti Kagal informed the father of complainant to execute the agreement for constructing well.

Accordingly, complainant's father went to the office of Panchayat Samiti, Kagal in the month of March-2000 and executed necessary agreement

and agreed to incur the excess expenses for constructing well than the amount of subsidy of Rs.45,000/-. He also agreed to complete the engraving of

well within time. On the application of complainant's father the concerned Sectional Engineer prepared estimate and budget and shown the place

as to where the well is to be engraved. Accordingly, work of constructing well had started in the month of April-2000 and it was completed upto 20

feet deep;

iv) The first installment of subsidy of Rs.8,968/- was granted to the beneficiary in the month of July-2000 and the second installment of Rs.8,965/- in

the month of November-2001. The work of engraving the well was completed however, the construction was incomplete;

v) The father of complainant was granted subsidy of Rs.45,000/- out of which he received an amount of Rs.17,963/-. The complainant and his father

approached Sectional Engineer Mr. B.V. Patil (accused). In the month of November-2001 and they inquired with him about the balance amount of

subsidy. The accused told them that no amount of subsidy is available and on availability of such funds, he will do the work as early as possible. He

told them to meet in the next week;

vi) The complainant and his father met the accused in the month of November-2001 i.e. in the last week and at that time the accused told them that he

would arrange to issue the cheque of remaining subsidy as early as possible provided, they should pay him Rs.1,500/-. The complainant requested the

accused to arrange the amount of subsidy in time. They have completed the work of well by borrowing loan from other persons. He was not in

position to pay the amount and requested the accused that he would pay the amount after the receipt of cheque. The accused told them that once the

cheque is received by them, nobody would turn and they should pay the amount first and then he will do the work. The complainant and his father

showed inability to pay such amount and went away;

vii) On 3rd December, 2001, the complainant went to the office of accused at Kagal and inquired with him about the subsidy. The accused inquired

with the complainant whether he has brought the amount as stated on the previous occasion. The complainant told him that he was not in a position to

pay the amount. The accused told him that unless and until the complainant pays an amount of Rs.1,500/-, he will not do the work of issuing cheque.

The complainant requested the accused to reduce some amount on which the accused told him that he should initially pay an amount of Rs.1,000/- and

the balance amount after the receipt of the cheque. The complainant then told the accused that he has no money and he would arrange for the same

within two days. Thereafter, the accused told him that he is out of station for two days and he was directed to bring the amount on 7th December,

2001 in the office at Kolhapur. The complainant agreed for the same and went away;

viii) When the complainant returned to his house, he disclosed this fact to his father and told him that the accused has stated that unless an amount of

Rs.1,000/- is paid to him, he would not issue the cheque. The complainant also informed his father that he is lodging complaint against the accused

with Anti Corruption Bureau at Kolhapur;

ix) The complainant approached Anti Corruption Bureau office at Kolhapur on 6th December, 2001 and filed his complaint. The complainant was

asked to remain present on 7th December, 2001 at 10:00 a.m. in the Anti Corruption Bureau office at Kolhapur. On receipt of the complaint the

investigating officer issued a letter to Deputy Regional Transport Office, Kolhapur requesting to send two employees from the office on 7th

December, 2001 for the purpose of trap;

x) As directed, the complainant visited office of Anti Corruption Bureau office at Kolhapur on 7th December, 2001 at 10:00 a.m. The Panchas also

visited the office at about 10:30 a.m. on 7th December, 2001;

xi) The complainant narrated his grievance to the Panch witnesses. He arranged an amount of Rs.1,000/- for the purpose of using it for trap. The

procedural formalities such as giving instructions to Panch witnesses and raiding party as well as applying anthracene powder to the currency notes

was completed. Pre-trap Panchanama was prepared in the office of Anti Corruption Bureau at Kolhapur and after taking necessary material for the

purpose of raid, all of them proceeded towards the office of accused;

xii) The complainant and Panch No.1 proceeded towards the office of the accused and Panch No.2 and members of raiding party were following

them. The complainant and the Panch No.1 entered into the office of accused and after some time complainant, Panch No.1 and one another person

came out from the office and they went to take tea in the hotel. After some time they came out of the hotel, the accused demanded the amount of

Rs.1,000/- from complainant and on his demand the complainant took out the tainted currency notes from his pocket and handed over the same to

accused who accepted it and kept it in pocket of his pant. Thereafter, the complainant gave a predetermined signal to the raiding party by moving his

left hand on his head and on giving such signal the raiding party rushed to the spot and caught the hands of the accused. The tainted currency notes

were recovered from the accused. Further procedure was conducted. Post-trap Panchanama was recorded. The investigating officer then recorded

statements of various witnesses. Sanction was accorded. Charge sheet was filed.

4. Charge was framed against the accused vide order dated 29th August, 2003 for commission of offences punishable under Sections 7, 13(a)(d) r/w

13(2) of Prevention of Corruption Act, 1988.

5. The prosecution examined PW-1 Bhairavnath Ganpati Khandekar who is the complainant, PW-2 Aabasaheb Chaughule acted as a Punch witness,

PW-3 Subhas Madhav Kulkarni, Deputy Engineer in Zilla Parishad, PW-4 Prabhakar Krishraj Deshmukh, Sanctioning authority and PW-5 Sanjay

Wamanrao Nikam, Investigating Officer.

6. The statement of the accused was recorded under Section 313 of Code of Criminal Procedure. The accused also submitted his written statement as

a part of his explanation to the statement under Section 313 of Code of Criminal Procedure.

7. Vide Judgment and order dated 21st December, 2004, the appellant was convicted for the offences under Sections 7, 13(1)(d) punishable under

Section 13(2) of the Prevention of Corruption Act, 1988. He was sentenced to suffer imprisonment for two years and to pay fine of Rs.2,500/- for the

offence punishable under Section 7 of the Prevention of Corruption Act, 1988. He is also sentenced to suffer imprisonment for two years and pay fine

of Rs.2,500/- for the conviction under section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988. The impugned judgment of

conviction passed by the Special Judge, Kolhapur is under challenge in this appeal preferred by the appellant under Section 374 of Code of Criminal

Procedure.

8. PW-1 Bhairavnath Khandekar has deposed that his father owns and possesses 4 to 5 acres of agricultural land at village Bolawi. His father and

two brothers are cultivating the said land. He is conducting tailoring business at Murgud. He is residing at Bolawi. Since there was no source of

irrigation, they applied to Panchayat Samiti Kagal to grant a well under Jawahar Yojana, in the month of December-1999 and prayed for subsidy for

digging well under the said scheme. The necessary documents were annexed to the application. In the month of March-2000, they were called for

executing necessary agreement. The complainant and his father went to Panchayat Samiti Kagal and executed the agreement on stamp paper of

Rs.20/- and agreed to incur the excess expenses for digging well besides subsidy amount of Rs.45,000/-. Thereafter, Section Engineer, Bhikaji Patil

(accused) had been to the village and pointed out the place where the well was to be dugged. In April-2000 the work of excavation of well had

commenced. There was excavation of well up to 20 feet in April-2000. The complainant received a cheque for Rs.8,968/- from Panchayat Samiti,

Kagal being the first installment of subsidy and the second cheque for an amount of Rs.8,965/- being the second installment of subsidy. The digging

work of well was completed. The construction work was remaining. They went to Panchayat Samiti, Kagal and inquired with the accused about the

balance amount of subsidy. The accused told them to meet in the next week. The complainant and his father met the accused in second week of

November-2000, then the accused told them that he will arrange to issue cheque for remaining amount of subsidy provided they pay him the amount of

Rs.1,500/-. They expressed inability to pay the amount and told him that they have completed the work of excavation by borrowing loan. They also

told the accused that they are unable to pay the amount and returned back. The accused told them that Unless they pay amount of Rs.1,500/-, they

will not receive the cheque for remaining amount of subsidy. On 3rd December, 2001, he again went to the office of Panchayat Samiti, Kagal and met

the accused and inquired with him as to whether the subsidy is granted. The accused told him that the subsidy amount is not yet granted and even if it

is granted, he will not issue the cheque for the same unless he is paid Rs.1,500/-. The complainant told him that he has no money. However, he is

ready to pay Rs.1,500/- to the accused after he receives the cheque amount. The accused told him that after the receipt of cheque he would not be

paid the amount and therefore, the amount should be paid before issuance of cheque. The complainant then told the accused that he was not in a

position to arrange such amount and therefore, the amount may be reduced. The accused then told the complainant that he can pay an amount of

Rs.1,000/- before issuance of cheque and the balance amount after issuance of cheque. The complainant agreed to pay and told him that he would

bring the money within two days. The complainant returned home and he decided to disclose the said fact to his father and decided to lodge complaint

against the accused with the Anti Corruption Bureau at Kolhapur. On 6th December, 2001, he visited the office of Anti corruption Bureau at Kolhapur

and lodged his complaint. It was reduced into writing as per he say, he was called on the next day for the purpose of trap. The complainant again

visited the office of Anti Corruption Bureau at Kolhapur on 7th December, 2001, along with the amount of Rs.1,000/-. The Panch witnesses were

present in the office of Anti Corruption Bureau at Kolhapur, they were informed about the complaint. Procedural formalities were completed.

Anthracene powder was applied to the currency notes. Instructions were given to complainant, Panch witnesses and other members of raiding party.

One of the Pancha was directed to be with the complainant. Pre-trap Panchanama was recorded and all of them proceeded towards the office of the

accused. The complainant and Panch witness (PW-2) entered the office of the accused. The accused told him to have a cup of tea and they started

to walk towards the hotel namely Shudh Shanti Bhawan. They had tea. They came out of the hotel thereafter, they went towards Swaroop Plastic

Traders. The complainant inquired with the accused about his work, the accused also inquired whether he has brought the amount. The complainant

again inquired about the work. The accused told him that after the payment of money, his work would be done, he demanded Rs.1,000/-. The

complainant took out the currency notes and held it before the accused. Another panch and members of raiding party were at some distance.

Complainant, panch were visible to them. The amount was accepted by the accused. The complainant gave signal to the raiding party. The raiding

party rushed to the spot and caught the accused. Further procedure was completed, the amount was recovered from the accused. Post-trap

Panchanama was recorded.

9. PW-2 Aabasaheb Chaughule acted as a Panch witness. He was instructed to visit the office of Anti Corruption Bureau at Kolhapur. On his visit to

the office of Anti Corruption Bureau, he was narrated the complaint of PW-1. The procedural formalities for conducting raid were completed on 7th

December, 2001, appropriate instructions were given to Panch witnesses and other members of raiding party. He was instructed to accompany the

complainant and approach the accused. He accompanied the complainant to the office of Deputy Engineer Rural Water Supply, Zillha Parishad

Kolhapur. The other Panch witnesses and members of raiding party followed them up to the gate of the office. The members of raiding party and the

other Panchas were waiting outside. PW-2 entered in the room along with PW-1. Five persons were present in the office. The accused told the

complainant to come outside to have tea. The accused started going towards the hotel. He was followed by them. The members of raiding party were

standing on the road. They went towards the hotel Shudh Shanti Bhawan, which was adjacent to the office of accused. They had tea. The accused

came out of hotel and went up to the shop of Swaroop Plastic. The complainant was standing in front of the accused and PW-2 was standing by the

side of complainant. The members of raiding party were at a distance of 15 to 20 feet. They were visible to the members of raiding party and vice-

versa. The accused inquired with complainant whether he had brought the money. The complainant inquired with the accused as to when his work

would be done. The accused told the complainant that if you pay the amount, he will do the work within one week and would arrange to issue the

cheque. The complainant told the accused that he has brought Rs.1,000/- and took out the amount and held the same before the accused. The amount

was accepted by the accused by left hand and it was kept in left side pant pocket. The complainant gave predetermined signal. The raiding party

caught hands of the accused. The currency notes were recovered. The hands of the accused were examined. Clothes were seen under ultraviolet

lamp. The notes were examined under the ultraviolet lamp which showed shining. Further procedure was completed. Post-trap Panchanama was recorded.

10. PW-3 Subhash Madhav Kulkarni was serving as a Deputy Engineer at Zilla Parishad, Kolhapur. He deposed that the accused was Sectional

Engineer for Kagal taluka. The schemes under the office were relating to rural water supply, Jawahar Well and Jeevan Dhara Well. Such schemes

are to be supervised by Sectional Engineer. The beneficiaries of the scheme were given subsidy of Rs.45,000/-. The proposal of such scheme was

received to their office through B.D.O. of Panchayat Samiti and Sectional Engineer. Proposals are sent to the office for technical sanction and for

preparation of plans and estimates. The plans and estimates were prepared through Sectional Engineer. The proposals are scrutinized and sent to

higher authority for sanction. After sanction of proposal, the communication is made to the concerned B.D.O. The directions are given to beneficiaries

to start work through B.D.O. of Panchayat Samiti. Sectional Engineer has to go on the site and do the line out of the work. Sectional Engineer has to

visit the work site and see progress of work. He has to prepare valuation of work done by beneficiary and supply to beneficiary. The amount of

subsidy is released considering the progress of work. The measurement of work is to be conducted by Sectional Engineer and it is to be recorded in

the book and prepare contingent bill and send it to office. On receipt of the bill, it is scrutinized and sent to concerned B.D.O. for payment. The

amount is disbursed by B.D.O. to the beneficiary. Unless the Sectional Engineer sends the bill no payment can be made to the beneficiary. The

Sectional Engineer has to stay at his office at taluka on each Monday and Thursday. He was present in the office on 7th December, 2001. The

accused had visited office at Kolhapur for getting sanction of bills. He was caught and brought before him by Anti Corruption Bureau. The officers of

Anti Corruption Bureau requested him to go to another room as they were required to prepare some documents. Hence, he went away. The plan and

estimate of beneficiary was prepared by Shri. Shinde, Sectional Engineer. On completion of estimate Shri. Shinde was transferred to Shirol. The

accused was posted in his place. He was supervising the work of beneficiary Ganpat Khandekar. The amount of Rs.17,000/- to Rs.18,000/- was paid

to beneficiary. Two bills for payment of subsidy amount were prepared by accused. Two bills were shown to him. Those were signed by PW-3. The

document shown to him with application are necessary documents required for the proposal of the scheme to the beneficiary. The remaining amount

of subsidy was to be paid to beneficiary till the date of incident. After the incident entire amount of subsidy was paid to beneficiary.

11. PW-4 Prabhakar Krishnraj Deshmukh was serving as a Chief Executive Officer, Zilla Parishad, Kolhapur, from December-2001 to May-2004.

According to him, he was having power to appoint and remove, the officer like Sectional Engineer. The papers of investigation were sent to him for

sanction to prosecute the accused. On receipt of those papers he perused them and that accorded sanction to prosecute accused. Along with the

papers of investigation draft sanction order was sent to him. He use the draft sanction as the format of order.

12. Sanjay Wamanrao Nikam is the Investigating Officer. He was serving in ACB. He stated that the complainant had visited the office of ACB on

6th December 2001 and lodged his complaint. He narrated the demand of bribe made by the accused and the nature of work for which the bribe was

demanded. He was told to visit the office of ACB on 7th December 2001. Panchas were called. The accused and the panch witnesses visited ACB

office on 7th December 2001. The complaint was narrated to the panch witnesses. Appropriate instructions were given to the panch witnesses,

complainant and other members of raiding party. The complainant was instructed to go the office of accused, meet him, open the talk of work and

give the amount only on demand of accused. Complainant was also instructed that if the accused accepts the amount, he should come out of the office

of accused and give signal to raiding party. In case he enquires about the panch witness he should tell the accused that the said person is his elder

brother. If the accused instructs to give the amount to some other person, it should be given to such person. Pancha no.1 was instructed to accompany

the complainant and observe the events of conversation between complainant and accused. Pre-trap panchanama was recorded. On the same day all

of them started towards the office of accused. Complainant and panch no.1 went ahead. The other members of raiding party waited outside. After

some time the complainant, panch no.1 entered the office of accused. The complainant, panch no.1 and the other person came out of the office and

went to take tea. He saw that the complainant took out the amount from the pocket and it was given to the accused, who accepted it and kept it in his

pocket. The complainant gave signal. The raiding party rushed to the spot and caught the accused. Thereafter they went to the office of accused.

Mr.Kulkarni was present. The complainant was directed to stay outside. The accused was examined. Currency notes were recovered from him.

Person of the accused was examined under the light of ultra violet lamp. Bluish shining was seen on the left hand of the accused and on the front

portion of the left side of pocket. Further procedure was completed. Personal search of the accused was conducted. Currency note of Rs.100/-, pen

and pencil were found in left hand chest pocket of his shirt, hand kerchief in his right hand pocket pant. Those articles were seen under the ultra violet

lamp, however, no bluish shining was appearing on them.

Investigation was conducted. Statements of witnesses were recorded. Investigation was completed. Sanction was accorded. Charge sheet was filed.

13. The statement of the accused was recorded under Section 313 of Cr.P.C. The accused submitted his written statement by way of his defense and

an explanation u/s.313 of Cr.P.C. In the said statement it is stated that he was working as Sectional Engineer at Zilla Parishad under the hands of

Deputy Engineer, Division-3, Kolhapur. The proposal of well submitted by Ganpati Khandekar under Jawahar Well Scheme was sanctioned. He was

supervising the same. The well was required to be excavated at the height of 15 meters and the construction of 4 meters was required to be carried

out. While he was at Kagal the work of excavation was not completed and work of construction was also not conducted. During his tenure of

employment at Kagal, the excavation was carried out only to the extent of 3 meters. During the tenure of Shinde, 2.50 meters excavation was

conducted. It is false that the entire well was excavated. This is evident from the record. Deputy Engineer Kulkarni in his evidence has stated that he

is required to prepare bills and unless the bills are forwarded, the amount is not sanctioned. The said version is false. After the grant of sanction the

measurements are conducted by Zilla Parishad on instructions of Deputy Engineer and the same are required to be recorded in the measurement

book. Thereafter the Deputy Engineer gets the bill prepared through the staff working under him. His deposition in that regard is false. Both the bills

sanctioned are before the Court. Those bills were not prepared by him (accused). It is not signed by him. It is not in his handwriting. The bills were

prepared in the office of Deputy Engineer. On 7th December 2001 the complainant had visited him to enquire whether the subsequent instalment of

subsidy will be granted to him. He was informed that the grant is not yet sanctioned by the Government and till then the subsidy will not be available to

him. The complainant called him for cup of tea and hence he accompanied him. The complainant was sitting on the left side on the bench. After

having tea while they were returning to office in the mid way, the ACB officers caught him and took him in front of Mr.Kulkarni. They told

Mr.Kulkarni that he has been arrested in case of bribe. Mr.Khandekar enquired with him about the papers. The papers were called by Mr.Kulkarni.

Nothing was done in the office of Mr.Kulkarni. The procedure of examination under ultra violet lamp or recording of panchanama was not done in the

office of Mr.Kulkarni. False panchanama was prepared in the office of ACB. He never demanded money from the complainant. The question of

demanding money from complainant did not arise. He did not accept money from the complainant.

14. Learned Advocate Mr. Ingawale submitted that the appellant has been falsely implicated in this case. The evidence of witnesses does not inspire

confidence. The question of demanding money for issuing cheque does not arise. The father of complainant is the beneficiary as he entered into

agreement for construction of well under Jawahar Yojana and not the complainant. Allegations about initial demand of bribe was in the presence of

father of complainant who is direct beneficiary but the prosecution has not examined him. The well under scheme was excavated at village Bolavi

where the father and brother of complainant were having land. The complainant stays at Murgud which is about 12 to 13 Kms away from Bolavi and

doing tailoring work. The father of complainant entered into agreement for grant of well under Jawahar Pani Yojana and received two cheques for

initial work. The father of complainant received around Rs.18,000/- out of Rs.45,000/-. The well was to be excavated up to 15 meters and then it was

required to be constructed from outside. At the time of incident the well was not even dugged up to even 20 feet. The complainant was aware that no

grant was allotted at the relevant time. He admitted that when the complainant went to meet the accused at that time the accused had taken the

measurement of the work done and submitted bills to the Deputy Engineer. There was no work pending with the accused. As per the evidence of

PW-3, after receipt of bills they scrutinized the correctness of bills and sent them to BDO. PW-3 admitted that the bills sent by their office may or

may not be paid by BDO. The concerned BDO has discretion to pay the amount as per circumstances of the case. PW-3 admitted that no payment of

subsidy was made in December-2001 or January-2002 and subsequent grants were received in December-2002. There are discrepancies about the

dates of demand in the examination-in-chief of complainant. PW-1 stated that the first demand of bribe was in November-2001 and the second

demand was on 3rd December 2001 and the trap was on 7th December 2001. In the cross-examination he stated that he had been to the office of

accused in first week of January-2002. When he had been to the office of accused, there was subject of bribe. The second visit was in the second

week of January-2002. There is inconsistency about the place of acceptance of bribe. In the examination-in-chief the complainant has deposed that

the accused demanded and accepted the amount outside the hotel in front of Swaroop Plastic Shop. In the cross-examination he stated that they were

sitting in the hotel. He gave the amount to the accused and after coming out he gave signal. The demand and acceptance should be proved

simultaneously by the prosecution beyond reasonable shadow of doubt. The first demand of November-2001 and December-2001 was not proved. In

the cross-examination the complainant himself stated that he went to the office of accused. On the second visit there was demand of bribe and the

said visit was in January-2002 which would mean that demand was made in November-2001 and December-2001. The father of complainant who is

the beneficiary and in whose presence the demand was made has not been examined by the prosecution. There is discrepancy in acceptance of the

bribe amount. According to complainant, the accused demanded and accepted the bribe when they came out of the hotel and standing near Swaroop

Plastic Shop. In the cross-examination he stated that the amount was given to accused and the said act was not visible to others while in the hotel.

The Investigating Officer has admitted that Rs.100/- currency note and other articles were found in the shirt pocket of accused. It is enigmatic as to

how only tainted money could be found in the left side pant pocket of the accused, when all the other articles including cash was found in the chest

pocket. Ordinarily a person receiving amount without any suspicion that he was being trapped would keep all the cash at one place rather than keeping

some in other pocket. Finding of tainted currency notes on the left side pant pocket is consistent with the story that the amount was slipped in the

pocket when the accused was sitting by the side of complainant in the hotel. Demand and acceptance is not proved. Even while invoking presumption

u/s.20 of the P.C.Act, the Court is required to consider the explanation offered by the accused, if any, on the touchstone of preponderance of

probability and not on the touchstone of proof beyond all reasonable doubt.

15. Learned APP submitted that the demand and acceptance has been proved beyond all reasonable doubt. The evidence of PW-1 and PW-2

establishes that on the date of trap the accused had demanded the money and it was accepted by the accused. The currency notes with anthracene

powder were recovered from the possession of the accused. The presumption u/s.20 of the P.C.Act supports the prosecution case. There is no

reason to discard the evidence of PW-1 and PW-2. The evidence of PW-3 also supports the prosecution case. The prosecution has established that

the complainant had approached the accused to enquire about the issuance of the cheque towards the subsidy. The accused had demanded the

amount of Rs.1,500/-. The accused had told the complainant that unless he is paid Rs.1,500/-, the cheque towards the subsidy would not be issued. It

was then subsequently negotiated that the complainant shall pay Rs.1,000/- before issuance of cheque of subsidy and the balance amount to be paid

subsequently. The complaint was lodged with ACB. Panch witnesses were called by the Investigating Officer. They were explained about the

complaint of PW-1. Panch no.1 was instructed to accompany PW-1. Panch no.2 was instructed to be with raiding party. Pre-trap panchanama was

recorded after making all the arrangements for trap. The amount of Rs.1,000/- was arranged by complainant. Anthracene powder was applied to the

currency notes. Instructions were given to the complainant to hand over the tainted currency notes to the accused on demand and to give pre-

determined signal to the raiding party. After recording pre-trap panchanama the complainant and panch no.1 proceeded to the office of accused. They

were followed by the panch no.2 and the members of raiding party. They waited outside. Thereafter the complainant and PW-1 entered the office of

accused. The accused took them towards the hotel for cup of tea. The complainant enquired about his work. The accused demanded money. The

amount was handed over to the accused. It was accepted by him. The amount was kept in his pocket by the accused. The raiding party was at a

close distance from the accused and the complainant. They rushed to the spot and caught hold the hands of the accused. The currency notes were

recovered from his possession. The oral evidence of witnesses and the documentary evidence on record establishes that the accused demanded and

accepted the bribe. After the accused was apprehended, he was taken to the office of PW-3 who is the Deputy Engineer. Evidence of PW-3

discloses that the bills were prepared by the accused. The further action was in the hands of accused. He was searched by the raiding party. The

defence of the accused that he has been falsely implicated in the case cannot be accepted. There is no effective cross-examination to disbelieve the

evidence of the prosecution witnesses. The documents were put forth before the sanctioning authority. On applying mind to the facts of the case and

the documents submitted, the sanctioning authority had granted sanction to prosecute the appellant. The charge sheet was filed. The evidence of PW-

1, PW-2 and PW-3 corroborates the prosecution case. The defence of the accused is not plausible and it is after thought. Thus, the prosecution has

established its case. The evidence has been appreciated by the Trial Court in proper perspective and the accused has been convicted for the aforesaid

offences. The appeal preferred by the appellant may be dismissed.

16. On analysis of the evidence adduced by the prosecution it can be gathered that the complainant's father was the beneficiary of the subject

scheme of constructing well. The complainant's father had applied for the scheme and had sought subsidy in accordance with the said scheme.

According to the complainant he had visited the office of accused along with his father for enquiring about the subsequent subsidy. It is an admitted

position that the complainant's father was in receipt of two instalments of subsidy and thereby received about Rs.17,000/- from the scheme.

According to the complainant, he had excavated the well and the construction was remaining. The complainant's father was entitled for the

subsequent payment of subsidy in accordance with the scheme. The accused demanded Rs.1,500/- and the complainant proceeded to lodge complaint

against him with ACB. On 7th December 2001 the complainant proceeded to the office of accused where the accused had demanded and accepted

the amount of Rs.1,000/-. The evidence of PW-1 is discrepant. In the light of the discrepancies, there is doubt about genuineness of his version. From

the cross-examination of PW-1 (complainant), it can be seen that he had stated that his business is at Murgud. Distance between Bolavi and Murgud

is between 12 to 13 Kms. His father is doing agricultural work. His father had submitted application in Panchayat Samiti for subsidy of well. The

subsidy is being given through BDO. He do not know whether there was agreement to dig the well up to 50 feet. It was agreed that they have to

construct the well from hard rock. The accused has no power either to grant or refuse subsidy. They were trying to get subsidy from April-2000.

They received two instalments of subsidy. When the accused had reported to his higher officer, the well was dug up to 10 feet. The complainant's

father had received Rs.17,933/- by way of two instalments from the BDO. The aforesaid version of complainant which is spelt out in his cross-

examination makes it clear that the accused has no power to grant or refuse subsidy. The complainant's family was trying to get subsidy since

April-2000. It is admitted that the well was constructed to the extent of 10 feet when the accused had reported to the higher officers. The complainant

further stated that he do not remember at what time he went to the office of BDO to enquire about the subsequent subsidy instalment. He admitted

that Government used to allot some amount to Panchayat Samiti for distributing the amount to beneficiaries. When he enquired with the office of

BDO about subsequent instalment of subsidy, at that time, he was told that no grant amount has been allowed by the Government. Thus, although the

complainant was aware that no grant amount has been allowed by the government, the question of releasing the further subsidy to the complainant by

issuance of cheque by the accused who was not empowered to grant such amount does not arise. PW-1 subsequently admitted that he learnt in the

month of January-2002 that the grant amount is received by BDO office from government. Therefore he went to meet the accused. When he met the

accused he had taken measurement of the work. The accused sent bills of work to Deputy Engineer. According to him the well was excavated to 35

feet, however, there was no material on record to substantiate the fact that the well was excavated to the extent of 35 feet. After the trap, another

Engineer had taken the measurement of the depth of the well. PW-1 is apparently silent as to what was the measurement conducted by another

Engineer and to what extent the well was excavated. The silence is deliberate. He admitted that the officers of ACB were visible from the open

space. There is no separate cabin or office room for the accused in the office of Deputy Engineer, Kolhapur. There are 7 to 8 officers sitting in the

office. No person from outside was present in the office. When he had been to the office of accused, there was no talk between between him and the

accused with regards to his work. It is pertinent to note that the complainant and PW-1 had proceeded to the office of the accused to trap the

accused, in the event he demands the money towards bribe and accept the same. There is every possibility that the complainant had concocted the

version of demand and acceptance of amount, outside the office of the accused realizing that the story could not have been concocted about demand

and acceptance in the office since there was no separate cabin to the accused and there were several other persons present in the office. If the

accused and the complainant had visited the office of the accused and he was present in the office, as per the instructions he was supposed to strike

the conversation about his work when he approaches the accused. Admittedly there was no discussion about the work in the office and allegedly the

accused, complainant and the panch witness went outside the office towards the hotel where allegedly the incident in question had occurred. This

itself creates doubt about the veracity of evidence of the complainant and the panch witness. The complainant further admitted that they were sitting

in the corner of the hotel. He was sitting at the left side of accused and panch was sitting in front of them. There were some customers in the hotel.

They were at a long distance from the counter. The officials of ACB were not visible from the place in the hotel. The persons from the hotel were not

visible to the raiding party. There was discussion about the work. The accused told him that the amount of subsidy has been received and it will be

paid. They were talking in low voice. He had given the amount to the accused which was not visible to the others. Thereafter they went outside the

hotel and gave signal. It is relevant to note that the case of the complainant was contrary in the examination-in-chief. It is admitted that there were

other customers in the hotel. The alleged conversation as deposed by the complainant in the cross-examination was in the hotel. It is difficult to believe

that the conversation could place in low voice and that the amount was accepted by the accused in the hotel. In the examination-in-chief, however, the

amount was accepted outside the hotel and according to the complainant, the raiding party was standing at a visible distance from where both the

sides could see each other.

17. PW-2 in his cross-examination has stated that the work of preparing panchanama was not going on when he reached the office of ACB. It was

the grievance of the complainant that he received two instalments of subsidy for well under Jawahar scheme. He did not receive the third instalment

in time. The complainant told him that the amount is to be paid by Section Engineer, Rural Sub Division Water Supply, Kolhapur. He had not disclosed

that the amount is to be received from Taluka Panchayat Samiti. He did not tell him that the amount is to be sanctioned by the government to

Panchayat Samiti. The complainant had stated that the accused demanded bribe for releasing the instalment in the next week. Half an hour was

required for hearing the grievances of the complainant and reading the complaint. The writing of panchanama had started when the complainant

disclosed his grievance and he do not remember at what time the typing of panchanama had commenced. It was instructed to the accused to open the

topic of work and hand over the amount to the accused. It was not instructed to the complainant that he should not hand over the bribe amount to the

accused, if he refused to hand over the cheque. It was not informed to them as to when the pre-determined signal is required to be given. There is

open space in front of office of accused. The office of accused is towards Western side of the gate. When they entered in the office of accused, the

members of raiding party were not visible to them. Four persons were in the office of accused. The complainant had not opened the subject of his

work. Two to three customers were present in the hotel. They were sitting in one corner of the hotel. When they were taking tea, no subject of the

work was opened. There was no discussion during that period. The members of ACB were not visible from the place where they were sitting in the

hotel. He did not give instructions to the complainant to open the subject of his work. The shop of Swaroop Plastic is at some height from the road.

Counter of plastic shop is adjacent to the platform. He did not see whether there were persons in the plastic shop. From the aforesaid version, it can

be seen that while the complainant and the panch had visited the office of the accused, other persons were present in the office. While they entered

the hotel, there were other customers. The complainant did not strike the conversation about his work either in the office or in the hotel. The

complainant is silent as to why he did not have any conversation about the work either in the office or in the hotel. Thus, there was no demand of bribe

by the accused in the office or at the hotel where they had visited for having cup of tea. He admitted that the members of ACB were on the road at a

distance of 15 to 20 feet. The members of raiding party were visible from the platform of Swaroop Plastic. Complainant enquired with the accused as

to when he is going to do his work which was audible to him. The accused realized that if the complainant pays the amount, he will arrange to pay the

amount in the next week. The members of raiding party rushed the spot after signal. The accused was caught. The I.O. directed his subordinate to

catch hands of the accused. The I.O. did not enquire with him about the accused. He on his own disclosed about the accused to the I.O. He disclosed

the name of the accused and that the accused had accepted the bribe amount. No other person gathered on observing the incident. They went to the

office of accused. The cabin of Mr.Kulkarni is not adjacent to the hall in which the accused was sitting. Mr.Kulkarni was present in his office.

Accused was taken to him. Mr.Kulkarni was informed that accused was trapped. The I.O. did not direct the accused or Mr.Kulkarni to take their

personal search. It was shown to Mr.Kulkarni that anthracene powder was appearing on the fingers as well as portion of pocket of pant of the

accused. Mr.Kulkarni had admitted that he has seen the anthracene powder on the person of the accused. The currency note numbers were not noted

down at that time. The trap panchanama was prepared in the office of ACB. Currency notes were not shown to the complainant. Personal search of

the complainant was taken by I.O. The pocket of complainant was not inspected by the I.O. The other articles were seen under ultra violet lamp.

However, there was no bluish shining appearing on them. The version of this witness as well as the complainant is not supported by PW-3

Mr.Kulkarni which is evident from his examination-in-chief. The evidence of PW-2 makes it clear that the discussion about the work of complainant

was ensued outside the hotel and that the alleged demand was made near the shop of Swaroop Plastic and that the amount was accepted therein and

the raiding party was standing at visible distance. This version runs counter to the version of complainant reflected in examination-in-chief.

18. PW-3 is the Deputy Engineer. In his cross-examination it is brought on record that the BDO office was to decide the payment of subsidy or part

payment or refuse to pay the amount. The nature of work of the accused was to prepare lay-out, to send the measurements and to record

measurement of work in measurement book and send it to them. The accused has no right to correct the bill or to refuse the bill. Thus, it is apparent

that nature of the work of the accused is as stated above and the decision about payment of subsidy was within the domain of BDO office. The

accused was not empowered to do so. In these circumstances the question of issuance of cheque or making it available to the complainant by the

appellant-accused did not arise. PW-3 is silent in his evidence about the fact that the accused was brought to his office and examined in his presence

or that it was disclosed to him that anthracene powder was noted on his person. PW-3 has merely stated that the accused was brought to his chamber

and he was requested to go out of the chamber/office. The version of PW-1, PW-2 and PW-3 is therefore, contradictory to each other. PW-3 has

also stated that the accused had submitted two bills with regards to the subsidy of the complainant and the bills were signed by him. However, there is

no evidence to establish that the bills were signed by the appellant-accused. PW-3 further admitted that at the time of sanction of Jawahar Well

Scheme, no budget was available with BDO. After receipt of amount of subsidy by BDO, it is intimated to their office. On receipt of such intimation

directions were issued to concerned Sectional Engineer to take measurement of the well and submit bills.

The bills sent by the office may or may not be paid by BDO office. It is the discretion of BDO office to pay the amount or subsidy. As per the

scheme the well was to be excavated up to 15 meters. There is no document on record to show the measurement of work at the time of presentation

of two bills. These bills were submitted in July and November-2001. The aforesaid evidence of PW-3 supports the defence of the accused that the

complainant had not carried out the excavation of the well to the extent of 15 meter which was requirement to grant subsidy. There is no evidence to

support the contention of the complainant that the excavation was to the extent of 20 feet. The evidence of PW-3 further mentions that subsequent

grants were received by BDO in December-2002. Thus, on the date of demand, there were no grants received by BDO. No payment of subsidy

amount was made to anybody in December-2001 or January-2002. As per the estimate, half of the amount is for digging and the remaining amount is

for construction of the well. The complainant or his father had not approached PW-3 complaining about the payment of subsidy amount. On the day of

trap incident the well was not dugged up to 15 meters. He do not know whether the well was constructed or not. The Sectional Engineer was

permitted to attend his office and to attend the field work except on Monday and Thursday. The office is divided into two parts, K.T.Vare at Village

Belevadi is under his jurisdiction. On 7th December 2001 he was to visit K.T.Vare at Belevadi. Before that he had sent message to accused and

called him. When the accused was brought to his office, he was in the office for two hours. He supplied some relevant documents to ACB. Thus, the

version of PW-3 runs counter to the version of PW-1 and PW-2. It also supports the defence of the accused.

19. PW-4 Prakhbar Deshmukh who is sanctioning authority has stated in the cross-examination that he did not personally verify the person who

appointed the accused. The measurement book is sent to Deputy Engineer along with the bill. The signature of the Sectional Engineer who prepared

the bill should appear on the bill. At the time of scrutiny of the papers he saw bill Exhibit-34 and according to him it is prepared by accused. He is

unable to tell whether there is signature or handwriting of the accused on the bill. Thus, there is no authentic evidence to show that the bill was

prepared by the accused or the signature appearing on the bill was that of the accused. The evidence of this witness further mentions that the duties

of Sectional Engineer are as per Rules and as per the directions of the Head of the Department. He do not remember the duties of the Sectional

Engineer as per the Rules. He verified the duties of Sectional Engineer as per Rules. On perusal of papers of investigation it was revealed to him that

the accused had demanded bribe for taking measurement of the work for preparing bill and giving subsidy. The right to sanction the bill are with

concerned BDO. It is not the case of complainant that the amount was demanded for measurement or for preparing bill. PW-3 further stated that

according to the requirement, Sectional Engineer has to decide about taking measurement. He do not remember whether there are orders from the

superior of the accused to take measurement or not. He is unable to state whether the measurement work was taken or not. The draft sanction may

be in the office. The documents relating to the case are with him. He has gone through the documents to refresh his memory. On receipt of papers his

subordinate gave him information in writing. The office note was given by subordinate and it was containing the documents sent to the office. He read

the draft sanction. He had gone through the draft sanction. He has not brought on record the draft sanction which was utilized by him for preparing

the sanction order.

20. The cross-examination of PW-5-Investigating Officer it is evident that according to him he discussed with Deputy S.P. for the arrangement of a

trap. No written directions were issued to him to investigate the present case. No permission is taken from the Magistrate to investigate into the

matter. It was the complaint of complainant that the accused told him that he will arrange to make the payment of third instalment of subsidy provided

he gives amount of Rs.1,500/- within a week. He enquired whether the work of complainant was within the powers of accused. He did not receive in

writing with regards to the powers of accused. He received oral information from PW-3. He has recorded his statement. Complainant was indirect

beneficiary of subsidiary. The father of the complainant is beneficiary. He completed first phase of work in April-2000 for which the payment was

received after one and half year. According to complainant, last instalment of subsidy was received in November-2001. Thereafter the complainant

went to the accused for negotiations within eight days. After the trap he enquired whether the grant for subsidy is allowed or not. He came to know

that no grants were allowed. He enquired with the father of complainant. All the relevant papers were seized from the clerk Dinde. The clerk was

working with Deputy Engineer. Mr.Dinde was working with the office of Deputy Engineer. He do not remember whether there is endorsement or

signature of accused on any of the papers seized from Mr.Dinde. From the contents of the complaint he came to know that grant is not allotted to the

work of complainant. There are directions to verify prima facie about the allegations of the complainant in trap case. He has not verified before the

trap whether the grants were granted for the work of the complainant. He did not instruct the complainant to enquire with the accused as to whether

the grants were allotted or not. They had not taken with them writing material, such as, papers and pen. When complainant and panch entered into the

office of accused, he was not in the campus of the office of accused. The room in which the complainant and panch initially entered is having door

facing towards West. Some of the rooms were facing towards East. After the trap, the accused was taken to the room facing towards South where

PW-3 was present. He did not feel it necessary to enquire with Mr.Kulkarni whether an independent room is available. Due to closing of window and

door there was darkness in the room. When they entered in that room he was not sure where the accused had kept the bribe amount. The bribe

amount was not shown immediately to complainant when it was received from the accused. The panchanama was began after the search of the

accused had commenced. The trap panchanama was typewritten on the typewriter belonged to the office. It is difficult to believe that the

panchanama was prepared in the office of the accused in the light of the circumstances depicted from the evidence of PW-5. The entire case is

suspicious.

21. Learned counsel for appellant had relied upon the decision of Supreme Court in the case of State of Maharashtra Vs. Dnyaneshwar Laxmanrao

(2009)15-SCC-200, decision of this Court dated 24th April 2012 delivered in Criminal Appeal No.88 of 2010. The Supreme Court in the decision cited

has observed that presumption where public servant accepts gratification other than legal remuneration, the demand of illegal gratification is sine-qua-

non for constitution of an offence under the provisions of the Act for arriving at a 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 record in their entirety. For the said purpose, the presumptive evidence laid down in Section 20 of the Act must also be

taken into consideration but the standard of burden of proof on the accused viz-a-viz that on the prosecution would defer. Before 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 provision of Section 20, 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. Even in the case burden is on the accused, prosecution

must prove the foundational facts. The other decision relied upon by learned counsel for appellant was based on the discrepancies appearing in the

evidence before the Court and the finding of tainted money and other articles in different pockets.

22. Thus, on scrutiny of evidence of the aforesaid witnesses it is evident that the accused cannot be convicted on the basis of such evidence. The

evidence on record is full of discrepancies which creates doubt about its genuineness. PW-1 has admitted that he was informed on enquiry with BDO

that no grant was allotted by government. It is not clear as to why the complainant was expecting that the accused would arrange for issuance of

cheque towards the subsidy. There is discrepancy with regards to the place of acceptance of bribe amount. From the examination-of-chief of this

witness it is apparent that there was no discussion about the work of the complainant and there was no demand in office as well as in the hotel. After

taking tea they came out of the hotel and went towards Swaroop Plastic. The complainant then made enquiry about his work and the accused had

allegedly demanded and accepted the money at the open place. In the cross-examination he admitted that there was no talk about the work in the

office or in the hotel as the officials were not visible from the hotel. The discussion took place in low voice. Suggestion was given to him which was

denied by him that he had inserted the amount in the pant pocket of the accused. The evidence of PW-2 indicate that there was no discussion of work

and there was no demand in the office. There was no demand in the hotel. The demand was outside the hotel and the acceptance was in front of

Swaroop Plastic. The amount was found in left side pant pocket of the accused. The accused was allegedly taken to the office of PW-3. According to

PW-2 anthracene powder was appearing on the fingers and pant pocket of the accused and that was shown to PW-3. According to PW-2, PW-3 had

admitted that he had seen the anthracene powder on the person of accused. However, the evidence of PW-3 does not support the version of PW-2.

PW-3 has merely stated that the accused was brought to his office by ACB and he was requested to go in another room. The evidence of PW-3

refers to the work/duties of Sectional Engineer. He stated that the Sectional Engineer has to take measurement of the work, record in the

measurement book, prepare bill and send them to his office. The accused had no right to correct the bill or return the bill. The bills forwarded may not

be accepted by office of BDO. As per the scheme the well was to be dug up up to 15 meters. Subsequent grants were not received by BDO office in

December-2001 or January-2002. In the light of version of all these witnesses, the benefit of doubt is required to be given to the accused. Hence, the

judgment of conviction is required to be set aside.

ORDER

(i) Criminal Appeal No.1512 of 2014 is allowed;

(ii) Impugned judgment and order dated 2nd December 2004 passed by Special Judge, Kolhapur in Special Case No.8 of 2002 convicting the appellant

is quashed and set aside and appellant is acquitted of all the charges;

(iii) Criminal Appeal stands disposed of.