IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.918 OF 2015

Devidas s/o Harichandra Bhaskar
Jalgaon. Tq. and Dist. Jalgaon. ... Appellant

Versus

The State of Maharashtra
Through Police Inspector,
Anti Corruption Bureau, Jalgaon
Dist. Jalgaon. ... Respondent

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Mr. M. A. Tandale, Advocate for appellant.
Mr. S. W. Munde, APP for respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 11th September, 2020
PRONOUNCED ON : 6th October, 2020

JUDGMENT :

. Present appeal has been filed by the original accused challenging his conviction in Special (A.C.B.) Case No.13 of 2012 by learned Additional Sessions Judge, Jalgaon on 26-11-2015, wherein he has been held guilty of committing offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act').

2. Appellant was serving as Assistant Superintendent at Civil Hospital, Jalgaon and it is not in dispute that he is a public servant. The original complainant Deepak Laxman Wadnere is the brother of one Mangala Hari Sonar, who was employed as security guard with District Prison at Jalgaon (public servant). The complainant had come with the case that his sister Mangala was married, however, she along with her children was residing with the complainant due to dispute with husband. Mangala had undergone heart operation on 29-12-2011. She was hospitalized till 05-01-2012. She was again admitted in hospital on 23-01-2012 due to stomach ache and vomiting. She has taken treatment in ICU in Indo American Hospital, Jalgaon. Thereafter, she was shifted to Rubi Hall Clinic at Pune from 30-01-2012 and was discharged on 06-02-2012. She resumed her service on 22-02-2012. Amount of Rs.5,04,051/- was spent on her medical treatment. She is entitled for the medical reimbursement and, therefore, she presented her medical bills on 15-05-2012 to District Superintendent of Jail, Jalgaon. Those bills were sent to Civil Hospital, Jalgaon for verification and sanction. The complainant says that as the hearing capacity of his sister is affected and as her heart has become weak, it was not possible for her to visit Civil Hospital in respect of sanction of her medical bills. Therefore, she had assigned the said job to the complainant. The complainant went to the hospital after about 15 days, after those bills were submitted. He came to know that present appellant/accused is assigned with the file and, therefore, after meeting appellant,

complainant requested him to get the work done regarding sanction of the bills. Initially, he was told to come again, but thereafter, the accused started avoiding by saying that he should come again and again. When the complainant visited the hospital on 17-07-2012 and met accused, upon inquiry by the complainant, accused told that the complainant will have to give amount of Rs.50,000/- for presenting the said bills to the District Civil Surgeon and getting certificate/sanction from him. Complainant, then told accused that since already huge amount has been spent by them for treatment of her sister, it will not be possible for him to give the amount demanded. Accused then told the complainant that he will have to give amount of Rs.25,000/- for getting the said sanction. Complainant told accused that he would inform the said fact to his sister and taking affirmation from her, he would give the amount. Complainant got assured that the amount of Rs.25,000/- demanded by accused is nothing but bribe. He decided to lodge complaint as he was not ready to give bribe. Accordingly, he went to Anti Corruption Bureau, Jalgaon and lodged complaint on 17-07-2012.

3. After the complaint was lodged, two panchas were arranged and in their presence verification panchnama was carried out. At the time of verification the complainant had given phone call in presence of ACB officer Mr. Garud and the two panchas. The recording of the conversation has been done. After the

verification was done it was decided to carry out raid. ACB officer explained the entire procedure, as to how the raid would be carried out, gave instructions to complainant and both the panchas. It was also explained to them, as to how the anthracene powder applied on the amount/ currency notes brought by the complainant would act and demonstration was shown. Pre-trap panchnama was carried out.

4. After the complainant went along with panch No.1 to the cabin of the accused, there was conversation. It is the prosecution story that the accused accepted the amount, which was an illegal gratification for presenting the medical bills submitted by the sister of the complainant for reimbursement, for sanction. After the raid was completed, panchnama was carried out. The accused was found with the tainted money. ACB officer Mr. Garud lodged complaint against the accused on behalf of State and carried out further investigation.

5. During the course of the investigation the statement of witnesses were recorded, accused came to be arrested, sanction to prosecute him was obtained and after the completion of investigation, charge sheet was filed.

6. After the accused appeared before the learned Special Judge, charge was framed at Exhibit-2 against him. The contents of the charge were read over

and explained to him in vernacular. He pleaded not guilty and, thereafter, the trial has been conducted. In all five witnesses have been examined by the prosecution to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the accused came to be convicted. He has been sentenced to undergo simple imprisonment for two years and to pay fine of Rs.25,000/-, in default, to suffer simple imprisonment for one year for the offence punishable under Section 7 of the PC Act. He has been further sentenced to undergo simple imprisonment for two years and to pay fine of Rs.25,000/-, in default, to suffer simple imprisonment for one year for committing offence under Section 13(1)(d) read with Section 13(2) of the PC Act. Both the sentences have been directed to run concurrently. This order of conviction is under challenge in this appeal.

7. Heard learned Advocate Mr. M. A. Tandale for appellant and learned APP Mr. S. W. Munde for respondent – prosecution. Perused the paperbook and evidence.

8. It has been vehemently submitted on behalf of the appellant that there is no dispute that the accused is a public servant, however, it is required to be seen as to whether the evidence that has been adduced by the prosecution was sufficient to prove the guilt of the accused beyond reasonable doubt. The complainant has stated that the medical bills of his sister were sent through her

office for verification and to get them sanctioned for reimbursement. The accused had demanded amount of Rs.50,000/- as bribe, however, it was settled to Rs.25,000/-. Whether this demand and acceptance is proved or not is required to be seen. Further, whether the prosecution could have adduced evidence of independent witness and whether the sanction that has been accorded by P.W.3 – Dr. Bhaskar Pawar is legal, are the points on which the appellant intends to insist. P.W.3 – Dr. Bhaskar Pawar has deposed that he was holding additional charge of the post of Deputy Director, Health Services, Nashik from 01-07-2012 to 05-12-2012. Thereafter, he is working in that capacity since 06-12-2012, after his promotion to the said post. He has accorded sanction on 30-10-2012. He thereby intends to say that on the day when the sanction was accorded, he was holding the post of Deputy Director, Health Services, Nashik by way of Additional Charge. In his cross examination, he has stated that his original post was Civil Surgeon, Nashik on 30-10-2012. The person holding the post of Civil Surgeon was not competent to accord sanction for prosecuting a Class-III employee. Prosecution has not brought on record the document showing that, P.W.3 Dr. Bhaskar Pawar was holding charge of Deputy Director of Health Services on 30-10-2012. In absence of that document it cannot be stated that the sanction which he has accorded i.e. Exhibit-34 is legal. It has been further submitted on behalf of the appellant that the evidence would show that there were in all three attempts to make the trap successful. Same panchas have been used on all the three

occasions. This fact itself throws doubt over the prosecution story and there is room to believe that just to make that raid successful, everybody has acted. Prosecution has not examined any independent witness, when it has come in the evidence of P.W.2 – panch No.1, that other staff members were sitting in the cabin of the accused at the relevant time. No explanation has been given by the Investigating Officer as to why he has not recorded statements of those independent witnesses or the staff members. In the examination-in-chief of P.W.2, he has stated that it was the de facto complainant who had asked the accused as to whether he should give the amount to him at that time itself. That means, there was no demand by the accused. In fact, the said amount was thrusted with the accused which does not amount to acceptance. Mere possession of tainted currency notes or recovery of the same from the accused is not sufficient to convict the accused, when he has given proper and probable explanation. The testimony of the complainant ought not to have been believed when he himself is like an accomplice. Taking into consideration these aspects, the learned Special Judge ought not to have come to the conclusion that the offence has not been proved beyond reasonable doubt. As the learned trial Judge has committed error, the said conviction deserves to be set aside.

9. Learned Advocate for the appellant has relied on some authorities. Those are categorized here on the basis of ratio involved. They are as follows:

(1) On the point of proof of Demand and Acceptance :-

i) **P. Satyanarayana Murthy Vs. The Dist. Inspector of Police and Anr. [2015 ALL SCR 3171]**

ii) **P. Satyanarayana Murthy Vs. Dist. Inspector of Police and Anr. [AIR 2015 SC 3549]**

iii) **Mukhtiar Singh (since deceased) through His Legal Representative Vs. State of Punjab [(2017) 8 SCC 136]**

"Proof of demand and acceptance of bribe amount is mandatory. Mere recovery of tainted money is not sufficient to conclude in favour of prosecution. There should be corroboration to the evidence about demand and acceptance."

(2) On repeated attempts of raid :-

i) **State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede [2009 CRI. L. J. 4425]**

ii) **B. Jayaraj Vs. State of A. P. [AIR 2014 SC (Supp) 1837]**

"When attempts of raid are repeated, then serious doubts are raised on the prosecution."

(3) On the point of Sanction :-

i) **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat [1997 CRI.L.J. 4059]**

ii) **State of Maharashtra Through C.B.I. Vs. Mahesh G. Jain [2014 ALL SCR 177]**

iii) State of Karnataka Vs. Ameerjan [(2017) 11 SCC 273]

iv) C.B.I. Vs. Ashok Kumar Aggarwal [AIR 2014 SC 827]

v) Nanjappa Vs. State of Karnataka [2015 ALL MR (Cri) 3318 (S.C.)]

vi) Mohd. Iqbal Ahmed Vs. State of A.P. [AIR 1979 SC 677]

vii) Ram Prakash Arora Vs. The State of Punjab [AIR 1973 SC 498]

> "Sanctioning authority should apply mind while according sanction to prosecute. It can be done only after proper and complete scrutiny of documents of investigation. Such authority cannot be delegated to any other authority. If there are doubts about sanction order, then accused should be acquitted."

10. Per contra, learned APP submitted that the demand and acceptance of the amount, which was absolutely not due from the complainant to the accused, has been proved and the said amount is nothing but illegal gratification. P.W.1 has categorically stated that the money was demanded for placing those bills before the Civil Surgeon and getting those bills sanctioned for reimbursement. In fact, no theory of thrusting was put forward by the appellant and no suggestion to that effect has been put to P.W.1 in his cross taken on behalf of the accused. Earlier two times, the trap could not get succeeded because the accused was not present in the office. Therefore, the trap could only be successful on third occasion cannot be taken as adverse circumstance. It has rather come on record in the testimony of the complainant as well as panch No.1, that as the accused was not present in the office, there was no attempt to give that amount of bribery on that day. Whenever

they met, at that time, the demand and acceptance has taken place. Therefore, failure on earlier two occasions cannot be taken as an adverse circumstance. The amount has been accepted in the cabin of the accused when there was nobody present there. Accused has not given satisfactory explanation about the tainted money found in his possession. Whatever lame explanation is tried to be given, it is required to be discarded as it does not amount to proper explanation. All the panchanama's have been proved properly which includes the pre-trap and post-trap panchanama. Further, if the amount would have been thrusted, then the hands of the accused would not have glittered in Ultraviolet Lamp focus. The panchas are the independent witnesses as they are the government servants and when they have supported the prosecution, they are definitely reliable. The sanction has been properly accorded. Additional charge of Deputy Director was given to the accused till 05-12-2012. There was no necessity to produce the said documents on record as in the sanction order, when the present witness has signed, then definitely it was with an authority and, therefore, with the said authority, he got the power to appoint as well as remove an employee of Class-III from his department. There was proper application of mind by him before according sanction. Accused had demanded the said amount for placing the bills for getting reimbursement/sanction before the Civil Surgeon. It amounts to illegal gratification and, therefore, he has been rightly convicted, as the offence has been proved beyond reasonable doubt.

11. Taking into consideration the above submissions, following points arise for determination, findings and reasons for the same are as follows.

POINTS

1 Whether the prosecution has proved demand and acceptance of the bribe by the accused from the complainant ?

2 Whether interference is required in the decision of convicting the present appellant ?

REASONS

12. At the outset, while deciding any case involving the offence under Anti Corruption Laws, the fact is required to be borne in mind, that the complainant's evidence will have to be scrutinized meticulously. Giving bribe is also an offence but then in order to arrest a person, who has demanded and then would be accepting the bribe, it has to be given; then the testimony of such person requires to be carefully tested. In ***Pannalal Damodar Rathi vs. State of Maharashtra, AIR 1979 SC 1191***; it has been held that :-

> "*There could be no doubt that the evidence of the complainant should be corroborated in material particulars After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and*

corroboration in material particulars connecting the accused with the crime has to be insisted upon".

12.1 Further, in ***M.O. Shamsudhin vs. State of Kerala, (1995) 3 SCC 351****;* wherein it has been held that :-

"the word 'accomplice' is not defined under the Indian Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in a crime. Reading section 133 and illustration (b) to section 114 of the Evidence Act together, the courts in India have held, that while it is not illegal to act upon the uncorroborated testimony of accomplice, the rule of prudence so universally followed has to amount to rule of law, that it is unsafe to act in the evidence of accomplice unless it is corroborated in material aspects so as to implicate the accused".

In this case the Hon'ble Supreme Court has thoroughly discussed as to how the evidence of bribe giver is required to be appreciated.

12.2 Further, reliance can be placed on the decision in ***Bhiva Doulu Patil vs. State of Maharashtra, AIR 1963 SC 599****;* wherein it has been held that :-

"the combined effect of section 133 and 114, illustration (b) may be stated as follows : according to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice is almost always unsafe to

convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will, as a matter of practice, nor accept the evidence of such a witness without corroboration in material particulars".

12.3 Further, reliance can be placed on the decision in ***Gulam Mahmood A. Malek vs. State of Gujarat, 1980 (Supp) SCC 684****;* wherein it has been held that :-

"the complainant himself is in the nature of an accomplice and his story is prima-facie suspect for which corroboration in material particulars is necessary".

13. P. W.-1 Deepak Wadnere is the complainant. In his examination-in-chief, he has reiterated his complaint and, thereafter, went on to narrate the happenings/events at the time of pre-trap as well as post trap panchanama. However, the first thing that has not been corroborated is that he was the representative of his sister. The prosecution has not examined Mangala Hari Sonar - sister of P.W.-1 Deepak, for whose work the alleged bribe was demanded. Independently, P.W.-1 Deepak had no work with the accused, but then he says that as his sister is heart patient and even had problem with hearing capacity, he was taking the follow up of the bill proposals of his sister. The corroboration ought to have been brought on record by the prosecution, that Mangala was incapacitated

to take the follow up. Without any authority by the sister, P.W.-1 Deepak could not have been authorized to demand sanction of the medical bills for reimbursement. We can understand that helping the sister, who has difficulty, would be the moral duty of the brother, but when it comes to the legal aspects involved, there should have been atleast oral confirmation about the entrustment of the work of follow up by Mangala to the complainant. When that basic aspect is missing, then agreeing to give bribe (though not willingly) under constrained circumstances, loses its legal sanctity.

14. According to the complainant, the bills which were submitted by his sister were to the tune of Rs.5,04,051/- and 10% of the same i.e. Rs.50,000/- was asked as bribe. Thereafter, he says that the said amount was settled for Rs.25,000/-. Here also it is not his case, nor it is extracted from him in the examination-in-chief, that he had informed the said fact to his sister to whom the amount was to be reimbursed and then she had also agreed to give that much amount as bribe through brother. Here the important question is that not only the accused is a public servant, but Mangala is also a public servant. She is serving as lady constable in Sub Jail, Jalgaon. One public servant cannot give bribe to another public servant. It is also an offence, as demand of bribe by the public servant is also an offence. On this point also, examination of Mangala by the prosecution was very much important. In his cross examination, P.W.-1 Deepak,

has stated that his sister never went to Civil Hospital in connection with medical bills. She never accompanied him to Civil Hospital in connection with said bills. In this connection, therefore, the question arises whether she would have been ready to give bribe, even if it would have been demanded.

15. According to the complainant, he went to the office of accused 5-6 times in connection with the bills submitted by his sister. In his cross examination, he has stated that he had not made complaint with Civil Surgeon alleging that the medical bills of his sister were not being sanctioned, as the person occupying the table of accused had told him that medical bills of his sister were not received by his office. He had not made complaint against Civil Surgeon in connection with sanctioning of medical bills of sister. On the contrary, he admits that at the time of his all 5-6 visits, he was told that the medical bills of his sister were not received by the office of Civil Surgeon. Therefore, if those medical bills had not received, where was the question of sanctioning or processing those bills for sanction.

16. As regards the events, those had taken place just before the raid, he has stated that there was rush in the cabin of accused and, therefore, the accused had asked them to wait for some time. After some time, he and panch No.1 were called by the accused and, therefore, they went near the accused. Accused told him that he will give certificate and then he says that he had demanded the money from him. He took out the bribe amount kept in the left pocket of his shirt

by his right hand and gave it to the accused. Accused counted the amount and then kept it in the right pocket of his trouser. If we see the testimony of P.W.-1 to this effect, then it is to be noted that he has told that when they were entering the cabin of the accused, at that time, 4-5 persons were discussing with the accused and later on they went outside the cabin. Thereafter, de facto complainant asked accused whether he should give the bribe amount. Thereafter, de facto complainant took out the bribe amount from his pocket by his right hand and asked the accused to count those notes. Accused then counted the notes. The discrepancy in the testimony of these two witnesses is, that as per the complainant accused had demanded the amount first and then he handed over, whereas the panch No.1 said that the complainant himself had asked the accused whether he should give the bribe amount. That means, he is negativating the demand by the accused. Both of them have stated that they were instructed by the Investigating Officer that unless the amount is demanded by the accused, that should not be given. If this is so, then as per the testimony of panch No.1, the complainant has not acted as per the instructions. Under this circumstance, the demand at the time of raid cannot be said to have been proved beyond reasonable doubt. Another fact that is required to be noted is that as per the prosecution story as well as the testimony of P.W. Nos.1 and 2, voice recorder has been used to record the voice/conversation. It appears that the same has not been played in Court when the evidence of both these witnesses was recorded. The record does not show it in

that way. The aspects involved in the tape recorded evidence/electronic evidence would be dealt with separately. But, at this stage, suffice it to say that the testimony of the complainant as well as panch No.1 could have been well corroborated, if the said voice recording would have been played at the time of trial.

17. The prosecution has come with the case and it has been tried to be proved through P.W.-1, P.W.-2 and the investigating officer that there was verification of the demand and panchanama to that effect has been prepared, which is at Exhibit-21. Panch No.1 has been posed as nephew of the complainant at that time. If we see the evidence of complainant as well as accused, as regards the contents of Exhibit-21, then it can be seen that one Gaikwad had intervened and on his say, the amount was reduced to Rs.25,000/-. It has not been brought on record by the prosecution that as to who is that Gaikwad and what role he has played. Complainant has not told in his complaint or in his examination-in-chief that he had disclosed about demand that was earlier made by the accused to the extent of Rs.50,000/- and then he had asked Gaikwad to help him. Therefore, the question arises as to how this person can intervene. The prosecution has not placed all the facts on record. It is stated that even at the time of event under panchanama – Exhibit-21, the voice recorder was used, however, the prosecution has not played it at the time of trial. Another point that had been harped upon by

the appellant is the sanction accorded by P.W.-3 to prosecute accused. P.W.-3 has stated that he was holding additional charge of post of Deputy Director, when he issued sanction Exhibit-34. His original post, on that day, was Civil Surgeon, Nashik and in clear terms he has stated that the person holding post of Civil Surgeon is not competent authority to appoint and remove Class-III employee. He says that he had accorded sanction on the basis of delegated power by the Government. He has not produced any document showing delegation of such powers along with sanction order Exhibit-34, nor those documents were produced at the time of his deposition. When his original post was not competent to accord sanction and only on the basis of delegated powers, if he is according the sanction, then it was mandatory for him to attach that document which gives him authority to accord the sanction along with the sanction order itself. The prosecution has not taken pains to get that document on record at the time of trial. Under such circumstance, taking into consideration the fact that the authentic source to delegate the power has not been brought on record, the sanction order Exhibit-34 will have to be held as illegal and improper. On this count also, the accused ought to have been acquitted. The learned Special Judge has not considered this aspect that production of that document is necessary in order to authenticate or legalize the sanction order. In other words, without production of the document of delegation of power to P.W.-3 Dr. Bhaskar; the sanction accorded by him Exhibit-34 becomes illegal. The ratio in the bunch of

authorities in para 9 (3) above on the point of sanction are applicable here.

18. P.W.4 – Garud is the Investigating Officer-cum-informant. He has given the details of the events by and large as per his First Information Report. He is corroborating the testimony of complainant and panch No.1, yet, for the aforesaid reason, that corroboration cannot prove the offence against accused beyond reasonable doubt. In fact, he has not stated as to why he has not even recorded the statement of Mangala. Another fact that is required to be noted is that he has taken voice sample of accused only. Panchanama to that effect has been produced at Exhibit-49 and it appears that the script of the earlier conversation was given to read to the accused. The said recording has been done in the music studio of All India Radio Station, Jalgaon. In clear words, P.W.-4 has admitted that he has not taken the voice sample of complainant. The logic behind taking voice sample of accused only has not been explained by him. Another fact is that the said audio series were sent to Forensic Science Laboratory, Kalina, Mumbai and the certificate has been given at Exhibit-53 about its examination stating that the specimen voice matches with the voice in two CD's i.e. Exhibit-1 and Exhibit-2. This certificate has been exhibited in view of Section 293 of the Code of Criminal Procedure and thereafter, P.W.-5 Nupur Kirkise has been cross examined by the accused. She has stated that as per the guidelines issued by the Central Forensic Science Laboratory, Chandigarh, it is necessary to record the voice

sample in presence of two panchas and the recording of voice samples of those panchas is also necessary along with its voice samples. She was unable to remember whether the voice samples of panchas were sent to her laboratory or not. If we see the conversations which are stated to be recorded through voice recorder, then it should have contained the voice of complainant, panch No.1 and the accused. But, here voice sample of only accused is taken. This cannot be the compliance of the legal requirements. Further, her cross examination would show that the original recording was not sent to her, but a copied CD was sent. Not only her evidence is believed by the learned Special Judge, but he himself has also played those recordings most probably in his chamber and it is stated that it was played on the laptop provided to him by the Indian Judiciary. He then certifies in the judgment that the script, starting from demand of the bribe amount, verification panchanama Exhibit-21 is perfectly written as per the said conversation and thereafter, he went on to discuss the contents of the said conversation. The basic fact is that unless it is proved by adopting all legal requirements, that the voice is that of accused, then only it can be said that the demand is proved and later on the acceptance to be proved. The learned Special Judge was not expected to play the said CD's on his laptop and come to the conclusion which was not in presence of the parties. This can be equated to the practice that is adopted by some of the judicial officers to compare the signatures on disputed documents with the signatures on the admitted documents themselves

by resorting to the provisions of Section 73 of the Indian Evidence Act. It will not be out of place to mention here the ratio laid down in ***State of Maharashtra Vs. Sukhdeo Singh and another (AIR 1992 SC 2100),*** wherein it has been held that :-

> *"Court should be slow to compare disputed document with admitted document for comparison, although Section 73 empowers the Court to compare disputed writings with the specimen/admitted writings shown to be genuine, prudence demands that Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard"*

Further, in ***Ajit Savant Majagavi Vs. State of Karnataka (AIR 1997 SC 3255),*** it was observed that :-

> *"Therefore, despite no legal bar to judge using his eyes, the judge should hesitate to base his findings with regard to identity of handwriting solely on comparison made by himself"*

19. Here, the learned Special Judge ought to have been slow, rather refrained himself from playing the CD on his laptop in his chamber, when by that time, it had already come on record that the Investigating Officer had not collected the voice sample of the complainant as well as panch No.1.

20. Here, in this case, though the CD's were produced, voice sample of the accused was also taken and the certificate of the expert was also taken, yet, as aforesaid it cannot be said as complete evidence in the form of electronic record, as voice sample of complainant and panch No.1 was not taken and was not got compared/verified from the expert. Further, the said conversation was not played in Court room at the relevant time during the proceedings. Mere production of the extract of the recorded version or even such verification of voice of the accused only is not sufficient. Each time when the conversation has been reproduced, it is stated that it has been got verified from the recorded conversation, then even before the trial Court it ought to have been produced and proved by admissible mode. Hon'ble Supreme Court in ***Ziyauddin Burhanuddin Bukhari vs. Brijmohan Ramdas Mehta, AIR 1975 SC 1788*** clearly laid down that :-

> *"The tape recorded speeches were "documents" as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs". Further, in* ***R.M. Malkani vs. State of Maharashtra, AIR 1973 SC 157****, it has been held that "tape recorded conversation is held admissible if it is relevant, if the voice is identified and the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape recorded conversation".*

21. In ***Ram Singh vs. Col. Ram Singh, AIR 1986 SC 3,*** following

guidelines have been laid down by the Hon'ble Supreme Court for admissibility of tape recorded conversation :

> *"1) The voice of the speaker must be duly identified by the maker of the record or by others who recognize his voice. Where the maker has denied the voice it will require very strict proof to determine whether or not it was really the voice of the speaker. 2) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence directly or circumstantial. 3) Every possibility of tampering with or erasure of a part of the tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible. 4) The statement must be relevant according to the rules of Evidence Act. 5) The recorded cassette must be carefully sealed and kept in safe or official custody. 6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance."*

22. One more important fact is that accused is the Class-III employee and he is not the sanctioning authority/verification authority of the medical bills. His job was to scrutinize the bills and place those bills before the Civil Surgeon for according sanction. It is not the case of the complainant that the said amount was demanded by the accused for giving it to Civil Surgeon, rather he says that he has no complaint against the Civil Surgeon. Therefore, there is no substance in the say of the complainant that he unwillingly gave consent to give bribe as he

believed that the bills of his sister would not be sanctioned. Under such circumstance, merely because the tainted amount was found with the accused, it cannot be said that offence has been proved against the accused beyond reasonable doubt. The evidence also shows that the raid was tried on three occasions. Even if we consider that as the accused himself was not present in the office that cannot be strictly termed as failed attempt, yet, the circumstance creates doubt over the prosecution story.

23. Taking into consideration in totality the reasons aforesaid, this Court comes to the conclusion that the offence is not proved against the accused beyond reasonable doubt. The conclusion drawn by the learned Special Judge is wrong and conviction awarded to the accused therefore deserves to be set aside. The appeal deserves to be allowed. Hence, the following order :-

ORDER

I) Appeal stands allowed.

II) The conviction awarded to the appellant in Special (A.C.B.) Case No.13 of 2012 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act on 26-11-2015 by learned Special Judge / Additional Sessions Judge, Jalgaon is hereby set aside.

III) The accused stands acquitted of the offence punishable under

Sections 7, 13(1)(d) read with Section 13(2) of the PC Act. His bail bonds stand cancelled.

IV) Fine amount deposited, if any, be refunded to the appellant after statutory period.

V) No change in the order of disposed of Muddemal.

[SMT. VIBHA KANKANWADI, J.]

SCM