

MHNG010003572019



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IN THE COURT OF ADDITIONAL SESSIONS JUDGE-06
AT NAGPUR

(Presided over by Dr. A.A.Joglekar)

Special ACB Case No.1/2019

Exh.No. 86

((FIR No. Crime No.217/2017 for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 (for short "PC Act") of Parshioni Police Station, District Nagpur).

Prosecution

:- State of Maharashtra,
Through Police Station Officer,
Police Station Parshioni,
District Nagpur.

Represented by

:- Shri L.B. Shendre, Learned Addl. Public
Prosecutor for the State.

Accused

- :-**
- 1. Ashish Marotrao Bawankule**
Age 31 Yrs., Occu. Sarpanch,
R/o Babulwada, Tah. Parshioni,
District Nagpur.
 - 2. Marotrao Madhukar Bawankule.... Abated**
 - 3. Haridas Tukaram Aakhare**
Age 43 Yrs., Occu. Service,
(Gram Panchyat Secretary),
R/o Shitalwadi, Tah. Ramtek,
District Nagpur.

Represented by

:- Shri N.D. Bhawe, Learned Advocate for the

accused No. 1.
 Accused No. 2 abated.
 Shri Jaltare, Learned Advocate for the
 accused No. 3.

**CHARGE : U/Section 7 of the Prevention of Corruption Act, 1988
 against accused No. 1 and 3**

PART “B”

(Para 44(ii) of Chapter VI of Criminal Manual)

Date of offence	:	16.12.2017
Date of FIR	:	16.12.2017
Date of Charge-sheet	:	11.01.2019
Date of Framing of Charge	:	18.01.2023
Date of commencement of evidence	:	07.07.2023
Date on which judgment is reserved	:	27.07.2026
Date of the judgment	:	11.08.2026
Date of the sentencing order, if any	:	----

Accused Details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Section 428, Cr.P.C.
1.	Ashish Marotrao Bawankule	16.12.17	18.12.17	U/Sec. 7 of Prevention of Corruption Act.	Acquitted	--	2 days
3.	Haridas Tukaram Aakhare	16.12.17	18.12.17	U/Sec. 7 of Prevention of Corruption Act.	Acquitted	--	2 days

Part 'C'
(Para 44(iii) of Chapter VI of Criminal Manual)

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution -

Rank	Name	Exh. No.	Nature of evidence
PW1	Hiteshwar Dhanraj Chole	14	Complainant
PW2	Bhushan Ashokrao Ankar	20	Panch Witness
PW3	Sanjay Lalasaheb Yadav	34	Sanctioning Authority
P W4	Shubhangi Amit Deshmukh	39	Investigating Officer

B. Defence witness, if any -

Rank	Name	Nature of evidence
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C. Court witnesses, if any -

Rank	Name	Nature of evidence
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LIST OF PROSECUTION EXHIBITS

A. Prosecution-

S.No.	Description	Exh. No.
1	Royalty Receipts and carbon copy book of royalty respectively	16/PW1 & 17/PW1
2	Photocopy of application at page No. 25 submitted by Sarpanch to Tahsildar	18/PW1

	for obtaining royalty	
3	A letter received from ACB at page No. 27 to Office of Gosikhurd Project Circle, Nagpur	P21/PW2
4	Letter of participation as panch at page No. 29	P22/PW2
5	Consent letter of PW2 at page No. 30 to participate as a panch	P23/PW2
6	Pre- trap and verification panchnamas	P24/PW2 & P25/PW2
7	Trap panchnama	P26/PW2
8	Panchnama	P27/PW2
9	Paper on which serial numbers were noted down at page No. 65	P28/PW2
10	Panchnama of transcript of recording at page No. 67	P29/PW2
11	Panchnama of Transcript vide page No. 77	P30/PW2
12	Panchnama of Transcript vide page No. 111	P31/PW2
13	Letter of Supdt. of Police, ACB at page No. 13	P35/PW3
14	Sanction for prosecution	P36/PW3
15	Covering letter of sanction	P37/PW3
16	Requisition at page No. 26	P40/PW4
17	Letter at page No. 28	P41/PW4
18	Consent letter of panch	P42/PW4
19	Certificate	P43/PW4
20	Memory card	P44/PW4
21	Hash generation certificate of recording vide page no. 64	P45/PW4
22	Personal search of complainant	P46/PW4
23	Hash generation certificate vide page	P47/PW4

	No. 74	
24	Memory card vide page No. 108	P48 and P49/PW4
25	Hash generation certificate vide page No.123	P50/PW4
26	FIR vide page No. 128	P51/PW4
27	Printed FIR	P52/PW4
28	Three Arrest forms	P53 to P55/PW4
29	Letter and station diary	P56 & 57/PW4
30	Voice sample of accused	P58/PW4
32	Letter to RFSL	P59/PW4
33	Panchnama of handwriting specimen of accused Akare	P60/PW4
34	Seizure memos of incriminating documents	P61 and 62/PW4
35	Letter to State Crime Detection Office	P63/PW4
36	Panchanama of collection of specimen hand writings	P64/PW4

Documents admitted under Section 294 of the Code of Criminal Procedure, 1973 -

S.No.	Exh. No.	Description
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B. LIST OF DEFENCE EXHIBITS

S.No.	Exh. No.	Description
1	----	----

C. LIST OF COURT EXHIBITS-

S.No.	Description	Exh. No.
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1	Charge	10
2	Statement u/sec. 313(1)(b) of Cr.P.C.	83 and 84

D. Material Objects -

S.No.	Exh. No.	Description
1	Article P1	Memory card of recording dated 9.11.2017, 11.11.2017 & 13.11.2017
2	Article P2	Memory card of recording dated 15.11.2017
3	Article P3	Memory card of recording dated 21.11.2017 and 22.11.2017

-: J U D G M E N T :-
(Delivered on the 11th August, 2026)

Accused persons stand prosecuted for the offences punishable under section 7 of the Prevention of Corruption Act. (In short PC Act) registered with Police Station Parshioni, District Nagpur, as C.R.No. 217/2017, upon a police report lodged by **complainant Hiteshwar Dhanraj Chole**. Charge-sheet is submitted by the Parshioni Police Station, District Nagpur.

THE GRAVAMEN OF THE PROSECUTION'S CASE IN BRIEF ENSUES AS UNDER :

2. It is stated that the complainant was a member of the Village Panchayat Aamgaon, in the year 2017. At that time an e-tender was flouted for the construction of pandan way. The said tender was allotted to one Sun Agrotech. It is further stated that the

complainant was assigned with supply of certain commodity vernacularly known as 'murum' for and on behalf of Sun Agrotech. Post completion of work by Sun Agrotech, village panchayat Aamgaon sanctioned the bill to the tune of Rs.2,93,674/-and the said amount was handed over to the erstwhile Sarpanch of village panchayat Aamgaon i.e. the accused No.1. It is also stated that father of the accused No.1 also told the complainant that five percent of the total disbursed sum was to be paid to the secretary of the village panchayat and ten percent to the accused No.1.

3. Hence the complainant unwanting to comply the demand lodged a complaint with the ACB Nagpur, and the case of demand was accordingly registered against the accused persons for the offence *ibid* and the sleuth of ACB, Nagpur investigated the same. In the investigation, police

- ◆ Recorded the statements of witnesses
- ◆ Arrested the accused persons,
- ◆ Prepared the pre-trap, post trap and arrest panchnama,

And after due completion of investigation, charge sheeted the accused persons.

4. Ld. Predecessor in office has framed charge against the accused No.1 & 3 vide Exh.10, for the offence *ibid* and read it over and explained the same to the accused persons in their language and after admitting of having understood the same, they pleaded not guilty and claimed to be tried vide Exh 11 and 12 qua their common

plea. As accused No.2 had expired during the pendency of trial, proceedings against the accused No.2 stood abated.

5. Post conclusion of trial, incriminating prosecution evidence was put to the accused Nos.1 and 2 in their examination under Sec. 313 (1)(b) of the Cr.P.C. vide Exh.83 & 84 at the record of this Court after the prosecution closed its evidence vide Exh.65. The defence of the accused is of total denial and of false implication.

6. Heard Learned APP Shri L.B. Shendre for the State and Ld. Advocate Shri N.D. Bhawe for the accused No. 1 and Ld. Advocate Shri Jaltare for accused No. 3, perused documents relied by parties along-with the written notes of argument filed by Ld. Advocate for accused No. 1.

7. In the aforesaid parlance following points arise for determination. I have recorded my findings for the reasons as follows :

Sr.No.	Points	Findings
1.	Does prosecution prove that the accused was a public servant at the time when such demand was placed by the accused ?	...Yes.
2.	Does the prosecution prove that sanction order at Exh. issued under section 19 of the P.C. Act for the prosecution of accused No. 1 and 3, are legal and valid ?	...No.
3.	Does the prosecution prove that during the period from 09.11.2017 to 22.11.2017 at the offices of Gram Panchayat Aamgaon and Salai, Tah.	...No.

	Parshioni, District Nagpur accused No. 1 being Sarpanch of Gram Panchayat Aamgaon and accused No. 3 being Secretary of said Gram Panchayat, Public Servants demanded bribe of 10% and 5% respectively of the total bill of construction of road to complainant Hiteshwar Chole as a gratification, other than legal remuneration, as a motive or reward from the complainant and thereby committed an offence punishable under Section 7 of Prevention of Corruption Act?	
4.	What Judgment / Order ?	As per final order.

:REASONS:

AS TO POINT NO. 1 :-

8. To bring home the guilt of the accused the prosecution must prove the following *sine qua non* elements beyond reasonable doubt. The prosecution must prove that the accused was a public servant and he actually asked or made a demand for an undue advantage. Further there must be a clear evidence that the public servant voluntarily accepted or obtained such illegal gratification knowingly that it was a bribe given as a motive or reward for performing or fore bearing an official duty. Apart from the same, while the demand must be proven, the nature of such demand is also to be specifically proven upon anvil of evidence.

9. First I would like to mention here the admitted facts.

Admittedly, at the time of the incident, accused No. 1 was the Sarpanch and accused No. 3 was the Secretary of village panchayat Aamgaon. Also, the complainant was the member of village panchayat Aamgaon. It also clearly transpires that the sum against the work assigned under tender to Sun Agrotech was duly disbursed prior to complaint. Further, the person from Sun Agrotech and the said Radheshyam were not examined by prosecution.

10. Ld. APP Mr. Shendre vehemently submits that prosecution has succeeded in securing the factum of demand and acceptance by a valuable evidence. PW1 complainant Hiteshwar Chole has deposed in accordance with the prosecution theory and has stated for floating of tenders and in furtherance of same, the assignment of supply at his disposal. Pursuant to conclusion of the assigned work, the accused person demanded such illegal gratification wherein the accused No. 1 was required to be paid 10% of the total valuation of the project while the accused No. 3 was to be paid 5% of such total valuation of project. The factum of demand is well corroborated with the evidence of PW2 panch Bhushan Ankar who has deposed in congruence with that of the prosecution theme. The sanction has went un-controverted and lastly the modus of investigation propels for the active participation of the accused person in the instant crime. Hence, the Ld. APP urged for conviction of the accused persons.

11. Per contra, Ld. Adv. for accused No.1 Mr. Bhawe submits that the prosecution witnesses have failed to display the participation of the accused No. 1. It is stated that PW1 complainant Hiteshwar

Chole has admittedly stated that the village panchayat Aamgaon under a resolution had assigned the work of construction of pandhan road to one Sun Agrotech and that PW1 complainant Hiteshwar Chole was assigned with supply of gaval (vernacularly known as murum) for the said work. PW1 has failed to state as to under what capacity he was assigned such work, more especially when there is no document propelling for such assignment of work being allotted to him. In such contingency there is no reason for the alleged demand by the accused persons. Further more, PW2 panch Bhushan Ankar also has not deposed as per the prosecution theory. He admittedly states for his anonymity as regards the knowledge for deriving hash value or the certificates generated to that effect. The said witness seems to be amenable as he admittedly stated for endorsing the concern documents at the instance of ACB Officials. Lastly, the factum of sanction and the modus of investigation lie under speculation as they failed to identify the factum of demand and acceptance being the pre-requisite to constitute the impugned charge. Hence, Ld. Advocate for accused No. 1 state that the prosecution has failed to prove their case beyond reasonable doubt and urged for acquittal.

12. Furthermore, Ld. Advocate for accused No. 3 Mr. Jaltare vehemently opposed the submissions made by the prosecution. He has categorically pointed out that the prosecution witnesses have failed to depose in the line of the prosecution theory, wherein PW1 complainant Chole has failed to acknowledge the factum of demand by the accused persons. He further states that there are several missing links wherein, none from Sun Agrotech is examined.

Furthermore, it is stated that friend of the complainant namely Radheshyam had conveyed the message as regards demand and even the said Radheshyam has not been examined. Further, Ld. Advocate for accused No. 3 has pointed out several infirmities inclusive of technical latches within the case of prosecution. He also pointed out for the broken chain of evidence wherein the memory cards were in the custody of investigating officer, thereby compromising the chain of evidence. Hence, Ld. Advocate for accused No. 3 also urged for an acquittal of the accused person.

13. The sheet anchor of the prosecution's case propels for the fact that the complainant was a member of the Village Panchayat Aamgaon, in the year 2017. At that time an e-tender was flouted for the construction of pandan way. The said tender was allotted to one Sun Agrotech. It is further stated that the complainant was assigned with supply of certain commodity vernacularly known as 'morum' for and on behalf of Sun Agrotech. Post completion of work by Sun Agrotech, village panchayat Aamgaon sanctioned the bill to the tune of Rs.2,93,674/-and the said amount was handed over to the erstwhile Sarpanch of village panchayat Aamgaon i.e. the accused No.1. It is also stated that father of the accused No.1 also told the complainant that five percent of the total disbursed sum was to be paid to the secretary of the village panchayat and ten percent to the accused No.1. Based on the factual matrix of the instant case, it is required that the prosecution initially has to establish that such gratification was demanded by a public servant.

As To Point No. 1 :-

14. As per section 2(c)(ii) of the PC Act, any person in the service or pay of a local authority is a public servant. The evidence adduced by the prosecution makes it clear that at the relevant time, accused No. 1 & 3 were attached with village panchayat Aamgaon as Sarpanch and Secretary /Village Development Officer. Accused No. 1 and 3 do not dispute the said fact. It is pertinent that undoubtedly accused No. 1 being Sarpanch is a public servant yet he can not be deemed to be a public servant u/section 21 of IPC. Therefore, no sanction is required to prosecute Sarpanch as he is not an employee of a State Government nor is he removable exclusively by the State Government. It is thus clear that accused No. 1 and 3 are a public servant within the meaning of section 2(c)(ii) of the PC Act. Accordingly, **I answer point No. 1 in the affirmative.**

As To Point No. 2 :-

15. PW3 Sanjay Yadav is the sanctioning authority. He deposed that he was attached with Zilla Parishad Nagpur as Chief Executive Officer since July 2018. He further stated to have received communication from the Superintendent of Police, ACB, appended with the investigation papers alongwith a requisition pertaining to public servant accused Haridas. Post verification of the documents and upon obtaining the opinion from the legal advisor and further applying mind to the entire record, he came to the conclusion for granting sanction for prosecution against accused No. 3 and accordingly, he accorded sanction (Exh. 37).

16. Upon anvil of cross examination, he admittedly states that a sitting village panchayat member can not be allotted with any development work within the vicinity of the said village. He has categorically stated that he had not found any such development work being assigned to a member of village panchayat as per the complaint, nor has he found the remuneration of the work being already paid online to the concerned contractor. It is evident that the prosecution theory is based upon the complaint of PW1 complainant Chole wherein he himself admittedly states of he being the member of village panchayat Aamgaon at the relevant time of incident. He also had deposed of the assignment of supply work of gaval (murum), which is reflected in the original complaint (Exh. 15), wherein PW1 complainant Chole categorically states that he was assigned with supply of murum by the village panchayat as such.

17. It is surprising that the said fact in spite of being the base of entire prosecution was ignored by the sanctioning authority. Sanctioning authority i.e. PW3 Sanjay Yadav was a erstwhile CEO of Zilla Parishad Nagpur and in spite of the same, he fails to locate the fact that PW1 complainant Chole was at the relevant time a sitting member of village Panchayat Aamgaon and was assigned with supply work as per his own contentions in the complaint. The said document ie. complaint (Exh. 15) is proved by PW1 complainant Chole. The said document is admittedly perused by PW3 Sanjay Yadav and yet he fails to identify such illegal assigning of work.

18. Where the complainant was himself a member of the Village Panchayat and had become a beneficiary of the very

Panchayat transaction which formed the basis of the corruption allegation, and such material circumstance was available in the investigation and was placed before and yet not considered by the competent sanctioning authority, the sanction under Section 19 of the Prevention of Corruption Act is naturally open to challenge propelling for non-application of mind. Thus, the Sanction apparently transpires for infirmity. Resultantly, **I answer point No. 2 in the negative.**

As To Point Nos. 3 and 4 :-

19. As far as the first demand is concerned, it is evident that as on 08.11.2017 PW1 complainant Chole had approached the office of the agency and admittedly the complaint was prepared. Further, PW1 complainant Chole has stated that he was directed by PW4 IO Shubhangi to attend the office on 9th also. He was instructed to have talk with accused No. 1 and 3 about the demand of money and accordingly, PW1 complainant Chole alongwith the witness went to Parshioni at the grocery shop of accused No. 1 by motorcycle. Accused No. 1 asked PW1 complainant Chole to talk to his father and as the father of accused No. 1 was not present, he returned back to the ACB team which awaited for the complainant at Parshioni.

20. Thereafter, on 2nd occasion again PW1 complainant Chole had approached the ACB office upon the instructions of PW4 IO Shubhangi along-with five currency notes in the denomination of Rs. 2000/- each. Post smearing the powder to the currency notes, those were kept in an envelope which was duly pasted at the open

end. Further, the said envelope was kept by the first complainant in his pant pocket. He was instructed to hand over the said envelope only after demand being made by accused No. 1 and 3. Lastly, he was instructed to signal the ACB team by dropping down any office personal articles post the envelope being handed over to the accused person. Accordingly, while a DVR being kept upon the person of PW1 complainant Chole, he proceeded to approach the accused persons.

21. PW1 complainant Chole along-with the panch, ACB team proceeded from the office and went to the shop of accused No. 1. PW1 complainant Chole met the father of accused No. 1. It is stated that they were making demand and had asked for making payment at one stretch and did not accept the money. Further, PW1 complainant Chole approached accused No. 3, he similarly asked for money at one stretch and denied to accept it.

22. PW1 complainant Chole categorically states that post 08.11.2017 until 22.11.2017, he repeatedly approached the accused No. 1 and 3 at their respective places, and as they insisted for the entire amount at one stretch, he was unable to tender such sum.

23. Testing the same upon the testimony of PW2 panch Bhushan Ankar, it reveals that PW1 complainant Chole had talked with accused No. 1 regarding the alleged work and in turn accused No. 1 had demanded a bribe of 10% of the amount to him. Further, the panch witness was introduced to the accused No. 1 as cousin of PW1 complainant Chole. Further, either returned back to the spot

where the ACB team was waiting. The voice recorder was thereafter switched off and it was played on laptop. PW2 panch Ankar was also independently asked about the conversation. It is pertinent that PW1 complainant Chole had merely stated about the DVR carried by him but has not stated about playing of such conversation on the laptop as such. It is also evident that the accused No.1 and 3 had not accepted the amount. On perusal of the pre-trap panchnama No. 1 (Exh. 24), it is evident that the accused has clearly denied to accept any such bribe wherein he has stated that "नाही नाही मी घेतच नाही न तसे मले पैसे पाहिजे भी नाही परसेंट नाही पाहिजे न काही नाही घेत आपण पैसे घेत नाही घेणारे घेईन पाहणारे पाहिन आपल्याले काही करा नाही लागत." Similarly, pre-trap panchnama No. 4 (Exh. 27) dated 14.11.2017 again spells out for the denial by accused No. 1 wherein, he has stated that "पैश्या पाण्याची गोष्ट आपण ना करतना पाहिजे ज्याच्या सोबत झालं (अस्पष्ट) आपण ना बोलत या टॉपीकवर नाही काही करत".

24. As regards the trap procedure panchnama No. 2 (Exh. 25), accused No. 1 has refused to accept bribe, trap procedure panchnama No. 3 (Exh. 26) dated 13.11.2017 the accused left without demanding any bribe, so has the father of accused refused to accept bribe offered by the complainant and the same is reflected in panchnama No. 5 (Exh. 29) dated 15.11.2017. In this regard, it clearly transpires that PW1 complainant Chole had not contacted the accused or his father and neither any verification of demand was conducted.

25. Further, as regards pre-trap panchnama No. 6 (Exh. 30) dated 21.11.2017, accused No. 3 has also apparently denied for

acceptance of money wherein he states that “ नाही नाही नाही आपण तस काम नाही करत मी तूम्हाले तवाही सांगितलं काही विषय नाही टेस्टिंग चे जे आहेत अडीज हजार रुपये थे ते तूम्ही देवून देजा”.

26. It is evident that in all the investigating agency had scribed seven pre-trap panchnamas and on every occasion, the memory card was kept in an envelope and was duly sealed. PW2 while under his testimonial evidence, has merely identified for the transcript but has not been confronted with the memory cards. Also that, PW1 complainant Chole has identified for three memory cards. The memory card of recording dated 09.11.2017, 11.11.2017 and 13.11.2017 is under Article P1, the memory card of recording dated 15.11.2017 is Article P2 and the memory card of recording dated 21.11.2017 and 22.11.2017 is at Article P3.

27. PW4 IO Shubhangi Deshmukh has upon anvil of cross examination, stated that the locker facility is not available with ACB office and therefore she could have placed the memory card with the nearest police station, but it was not done so. Apart from the same, the custody of the SD card remained with the investigating officer as such. It also clearly transpires that any of the pre-trap panchnama does not propel for the serial number of the memory card and that a separate seizure memo of the memory card is also not made. She also has admittedly stated that the memory cards were forwarded for spectrographic examination post the panchas were relieved. The details of the same are missing and even the carrier is not examined. As far as the recorded conversation is concerned in the instant case, the prosecution has placed on record certificate under section 65(B)

of the Indian Evidence Act thereby meaning that the prosecution intends to rely upon the copy of electronic record. In the instant case, the electronic record is in the form of recorded conversation between the accused and the complainant at the time of verification and alleged trap. Surprisingly no technical expert specifying such digital specification or records has been examined and therefore the authenticity of such electronic/digital record lies under speculation, more especially when the voice sample of the complainant is not obtained.

28. This court is guided by the judgment of the Hon'ble Apex Court in the case of **Anvar P.V. V/s. P.K. Basheer & Ors (AIR 2015 SC 180)** are relevant. The Hon'ble Supreme Court of India has observed that :-

"Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2).

The Hon'ble Apex Court also observed that;

Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

29. The Hon'ble Apex Court has observed that, all these safeguards are taken to ensure the source and authenticity, which are the hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. It is also observed that, the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

30. It is also evident that the DVR recordings are not appended with the certificate under section 65(B)(4) of the Evidence Act as such, thereby denting the tenability of the electronic evidence

laid at the record. Therefore, in such set of circumstances, the sole testimony of the complainant without corroboration is not substantive and cogent to draw the guilt of accused for alleged demand on the said dates ranging from 08.11.2017 until 22.11.2017.

31. The most surprising part in the instant case is while considering the recordings being scribed by way of transcripts PW4 IO Shubhangi Deshmukh had admittedly stated that the voice sample of the complainant was not taken. She also has not collected any evidence to substantiate that the voice on the DVR belongs to the complainant. Ld. Advocate for accused No. 1 has invited the attention of this Court to the fact that the memory card was in possession of PW4 IO Deshmukh for a period of two months prior to it being forwarded at RFSL. Thus, in the absence of such voice sample of the first complainant, the comparative analysis of the transcript will have no relevance. Furthermore, as regards the hash value certificates, those do not bare the signatures of the author of the certificates. Also that, under various judicial pronouncements and circulars issued, it is incumbent that the memory cards although new, are required to be formatted and which in the instant case are not accordingly done. Therefore, the digital evidence in corroborative nature is absolutely weak and does not substantiate for the case of prosecution.

32. Now adverting to modus of investigation, it is palpably clear that PW1 complainant Chole was himself an elected member of village panchayat Aamgaon and was aware of the fact that no member of village panchayat can accept or be assigned with any tender for any work as such. That is to say, the elected member of

village panchayat can not be a beneficiary. PW1 complainant Chole along-with PW4 IO Deshmukh has admittedly stated that the tender was allotted to Sun Agrotech and the payment of the same was issued to the Sun Agrotech via cheque as on 07.11.2017. Thus, there was no payment pending towards the company which was allotted with the tender. Also that, there is no complaint from the said company i.e. Sun Agrotech as regards any illegal gratification / bribe being demanded by any of the accused persons. PW1 complainant Chole apparently has no any connection with the Sun Agrotech which was allotted with tender and therefore the factum of false implication out of political rivalry can not be negated. PW3 Sanjay Yadav being sanctioning authority has also admittedly stated that no work of PW1 complainant Chole was pending with the accused and the application was sanctioned 14 days prior to the lodging of complaint.

33. PW1 complainant Chole was well aware that he can not be the beneficiary while he was an elected member of village panchayat. No any work was assigned to PW1 complainant Chole, nor has PW4 IO Deshmukh led such evidence to substantiate pendency of work. Further, the technical/digital evidence is not only fragile but the same does not comply with the mandatory compliances as held under the Circular No. 23/54/digital evidence/1253/2015, dated 12.10.2015 issued by Special I.G., State of Maharashtra and Circular No. 2015/7273, dated 04.06.2015 issued by the State of Maharashtra. Further, in this regard PW4 IO Deshmukh also has failed to collect the natural voice sample of the PW1 complainant Chole and the factum of demand was also not found to be clearly established as PW4 IO Deshmukh upon anvil of

cross examination, had admittedly stated for the fact that the demand was through Marotrao only. Thus, there being no any direct demand, the factum of acceptance will have no relevance.

34. Therefore, I hold that the evidence of the prosecution is not convincing and acceptable evidence, to connect the guilt with accused No. 1 and 3 and the prosecution has failed to prove alleged offence u/sec. 7 of PC Act against accused No. 1 and 3 beyond reasonable doubt. It is well settled that the demand of illegal gratification is sine quo non to constitute an offence u/Sec. 7 of the Prevention of the Corruption Act, unless it is proved beyond reasonable doubt that accused No. 1 to 3 had accepted money, knowing it to be a bribe. Thus, upon cautious scrutiny of the case record I hold that the prosecution has failed to prove the guilt of the accused on all counts beyond ambit of reasonable doubt. Resultantly, I answer point No. 3 in the negative and point No. 4 is answered accordingly. Hence order infra :-

- ORDER -

- 1] **Accused No.1] Ashish Marotrao Bawankule and 3] Haridas Tukaram Aakhare** are hereby **acquitted** vide Section 235(1) of the Criminal Procedure Code of the offence punishable u/Section 7 of the Prevention of Corruption Act, 1988.
- 2] Their bail bonds stand cancelled.
- 3] Accused shall furnish Personal Bonds and Surety Bonds of Rs.50,000/- each for six months, in view of compliance u/Section 437-A of the Criminal Procedure Code, with their current address proofs and undertakings that they will appear before the Appellate Court, in case the appeal is preferred.

- 4] Seized Muddemal three micro SD Cards (Article P1 to P3) be preserved for a period of five years and thereafter the same may be disposed of, if no appeal is preferred.
- 5] Currency notes if any be handed over to the ACB Office, Nagpur, as per rules.
- 6] Remnant marked and unmarked seized Muddemal being worthless, be destroyed after appeal period is over, as per rules.
- 7] Judgment dictated and declared in the open Court u/Sec 353 of the Code of Criminal Procedure.
- 8] Spl. ACB Case No. 1/2019 is accordingly disposed of.

Nagpur.
Dated :11.08.2026

(Dr. A.A. Joglekar)
Additional Sessions Judge-6,
Nagpur

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Name of Stenographer
13.08.2026	6.00 p.m.	Mrs. Kavita M. Balpande Stenographer (Grade-I)

Name of the Judge	DR. A.A. JOGLEKAR, Room No. 605
Date of Pronouncement of JUDGMENT /ORDER	11.08.2026
JUDGMENT /ORDER signed by P.O. on	13.08.2026
JUDGMENT /ORDER uploaded on	13.08.2026