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

CRIMINAL APPEAL NO.621 OF 2014

1. Ramchandra Dinkar Kharche,
Age: 40 years, Occu: Service,
R/o : Shradha Colony, Gat No.471,
Plot No.4, Jalgaon

2. Kailas Vitthal Sonawane,
Age: 54 years, Occu: Service,
R/o : Survey No.415, Plot No.19,
Shirsoli Road, Mohadi Phata,
Jalgaon

....APPELLANTS

VERSUS

State of Maharashtra

....RESPONDENT

.....

Mr M. A. Tandale, Advocate for Appellants
Ms B. B. Gunjal, APP for Respondent/State

.....

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 18 AUGUST, 2026

JUDGMENT :-

1. Heard Mr Tandale, learned Advocate for the appellants
and learned APP Ms Gunjal for respondent/State.

2. By this appeal, the appellants (accused) have challenged
the judgment and order of conviction and sentence dated 30/09/2014,
passed by the learned Additional Sessions Judge, Jalgaon in Special

(2)

(ACB) Case No.08/2012, convicting them for the offence punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the said Act').

3. The prosecution story in short is as under :-

The complainant/ Babu Shamrao Nerkar/PW-1 has filed complaint (Exhibit-11) before the Anti-Corruption Officer, Jalgaon on 18/11/2011, stating therein that his nephews namely, Sunil Suresh Nerkar and Somnath Suresh Nerkar are the Bhogwatadar of the open plot bearing Gut No.404/1 and Gut No.404/2, respectively, of village Fupanagari. The Grampanchayat Fupanagari passed Resolution No.7 on 29/09/2010, thereby recording names of the aforesaid nephews of complainant. At that time, accused No.2/appellant No.2/ Kailas Vitthal Sonawane was Gramsevak of Fupanagari. He had demanded the copies of Namuna No.8 to accused No.1 (Ramchandra Kharche) in respect of above plots to complainant. On 17/11/2011 the complainant made a phone call to accused No.1/Ramchandra Kharche, who was then Gramsevak of Fupanagari, for demanding copies of Namuna No.8 of the year 2011 in respect of the aforesaid plots. Accordingly, accused No.1/Kharche asked complainant to come near Mahabal stop and from there, they were supposed to go to accused No.2/Kailas

(3)

Sonawane, who was previously working as a Gramsevak of Fupanagari. Accordingly, complainant went there and demanded copies of Namuna No. 8 of the aforesaid plots. The accused No.1/Kharche told him that he was not having information about said proceedings, as previously accused No.2 was Gramsevak and said accused No.2 had given copies of Namuna No.8 of 2010. Thereafter, complainant and accused No.1 went to house of accused No.2. It is alleged that, for the purpose of issuing copies of Namuna No.8, accused No.2 had demanded money from Suresh Nerkar who is brother of complainant. Said Suresh had agreed to give money, but has not paid the same to him. Thereafter, accused No.2 told the complainant, if he desires to have copies of Namuna No.8, then he will have to pay Rs.7,000/- to both the accused. Accused No.1/Kharche further told the complainant that, unless and until the money is paid, the copies of Namuna No.8 will not be issued. They further informed him that the said amount be paid on 18/11/2011 in between 11.00 a.m. to 12.00 noon in the campus of Panchayat Samiti, Jalgaon. Accordingly, accused persons and the complainant left the place.

4. As the complainant was not willing to pay the bribe of Rs.7000/- to appellants/accused, he filed complaint with the Anti-Corruption Office, Jalgaon. After completing the formalities, the

(4)

Investigating Officer/Deputy Superintendent of Police Mr S. S. Deshmukh, Anti-Corruption Office, Jalgaon decided to lay trap on the accused persons. Prior to that, he decided to make verification of bribe demand. Therefore, he sent complainant and panch No.1 with digital voice recorder. After some time, they came back. Dy.S.P. Deshmukh took back voice recorder from them and further asked complainant as well as Panch as to what happened. Complainant and Panch No.1 told him that, both the accused have demanded bribe of Rs.3000/- to complainant. Therefore, Dy.S.P. Deshmukh asked the complainant and Panchas to come next day to the ACB office.

5. On 19/11/2011, at about 11.40 a.m., the trap was laid. The Dy.S.P. given instructions to all the members of the raiding team. The accused persons, during the trap, were sitting near the tea stall. After some time, when complainant gave signal of giving bribe amount to accused, to the members of raiding team, as instructed to him, all the members of raiding team went near the accused persons. The Dy.S.P. asked Panch No.1 as to where the bribe amount is kept. Panch No.1 told that accused No.1 has accepted bribe amount and given it to accused No.2 and the said amount was kept in the pocket of his shirt. Accordingly, the bribe amount was seized and both the accused were caught hold by raiding team. They were brought to the ACB office.

(5)

Necessary formalities were completed. When the hands of both the accused were examined in the darkness under the light of ultraviolet lamp, the same were found glittering with greenish colour. Accordingly, the Dy.S.P. took both the accused to the Zilha Peth Police Station, Jalgaon and lodged complaint at Exh.29. The statement of witnesses came to be recorded and accordingly, the proposal for according sanction to prosecute accused persons came to be forwarded. Subsequently, sanction order (Exh.30) came to be received. After completion of investigation, the Dy.S.P. filed charge-sheet against appellants.

6. On the basis of aforesaid charge-sheet, the charges were framed under Section 7, 12, 13(1)(d) read with 13(2) of the Act at Exh.

4. Accused pleaded not guilty and claimed to be tried. The prosecution, in order to prove their case, examined four witnesses, namely, PW-1/Bapu Shamrao Nerkar, complainant at Exh.10; PW-2/Dasbhau Nimba Wagh, Panch No.1 at Exh.15; PW-3/Shivaji Sakharam Deshmukh, Investigating Officer at Exh.27 and PW-4/ Shital Shajirao Ugale, who accorded sanction for prosecuting the accused, at Exh.37.

7. After recording the evidence, learned Additional Sessions Judge, Jalgaon convicted the appellants for the offence punishable

(6)

under Section 7, 12, 13(1)(d) read with Section 13(2) of the Act and sentenced them to undergo simple imprisonment for two years each and to pay fine of Rs.5,000/- each, in default to pay fine, simple imprisonment for three months.

8. Being aggrieved by the aforesaid judgment and order dated 30/09/2014, the appellants have approached this Court by filing present appeal.

9. Mr Tandale learned Advocate for the appellants submits that the prosecution has virtually failed to prove the charges against the appellants and the impugned judgment is contrary to law. According to him, in order to prove the charges under Sections 7, 12, 13(1) (d) and 13(2) of the Act, it was necessary for the prosecution to prove that there was valid demand, acceptance and recovery of the bribe amount. He submits that, mere possession and recovery of the currency notes from the accused, without proof of demand, cannot constitute offence under Section 7 of the Act. According to him, demand of illegal gratification is *sine qua non* to constitute offence under the Act, and unless it is proved beyond all reasonable doubt that the accused has voluntarily accepted the money, knowing it to be a bribe, offence under Section 7 of the Act cannot be proved.

(7)

10. Mr Tandale further submits that the complainant as well as Panch witnesses are the interested witnesses, who are concerned in the success of the trap, and therefore, their testimonies are liable to be tested more carefully. The Court is also required to seek independent corroboration before convicting the accused persons in such cases.

11. Mr Tandale further submits that, in the evidence of the complainant, he himself stated that, initially the accused persons have not accepted the bribe amount. This aspect goes to show that he himself stated that, at the time of giving money to accused No.1, he had returned back the said amount to complainant, and thereafter, complainant himself kept that amount in the hands of accused No.2. When the Anti Corruption Officer caught hold the accused, the amount was in the hands of accused No.2. Thereafter, since the amount was in the hands of accused No.2, the Anti Corruption Officials asked accused No.2 to keep the amount from his hands in his pocket. Mr Tandale, therefore, submits that this kind of evidence does not constitute sufficient incriminating material against accused persons, so as to attract offence under Section 7 and 12 of the Act.

12. Mr Tandale then submits that accused persons were working as Gramsevak at Fupanagari Grampanchayat. The

(8)

complainant was pursuing his case for sanctioning the plots for his nephews. According to Mr Tandale, the present appellants were working in the capacity of Gramsevek and Gramsevak at all not entitled to sanction such plots in favour of the nephews of the complainant. The said task was entrusted to the Collector of the District, and Gramsevak are at all cannot make such allotment or pass such sanction order. He further submits that the amount which has alleged to have been paid to the appellants/accused persons cannot be termed as bribe amount, as the same is not accepted for doing an official act, as the appellants are not empowered to issue the allotment/sanction order in respect of plots in question. Thus, according to Mr Tandale, the appellants cannot be said to have entrusted with the said official act, and therefore, the gratification in question cannot be considered as motive or reward for doing or forbearing to do an official act.

13. Mr Tandale further submits that the prosecution has failed to prove the aspect of alleged demand of bribe, acceptance thereof, and recovery of tainted money from the possession of the accused persons. He further submits that, even if the tainted amount is recovered from the possession of accused persons, in absence of proof of demand and

(9)

acceptance of money, as an illegal gratification, therefore not sufficient to establish guilt of the accused.

14. Mr Tandale also relies upon another aspect that the prosecution has obtained the sanction order after the prescribed period. He points out that the sanction order came to be issued on 07/08/2012. The proposal for prosecuting appellants was forwarded to the sanctioning authority on 03/03/2012. He submits that, as per the provisions of Section 19(1) of the Act, there is a time limit of three months for granting of sanction for prosecuting the accused persons. Accordingly, he submits that the prosecution has failed also on this aspect.

15. To buttress his aforesaid submissions, Mr Tandale relies upon the following judgments:-

- (I) B. Jayaraj Vs. State of A.P. , 2014 ALL SCR 1619;
- (II) C. M. Sharma Vs. State of A.P. Th. I.P., AIR 2011 Supreme Court 608;
- (III) T. Subramanian Vs. State of T.N., (2006) 1 Supreme Court Cases 401;
- (IV) Ram Prakash Arora Vs. The State of Punjab, AIR 1973 Supreme Court 498; and

(V) Vineet Narain and others Vs. Union of India and another, (1998) 1 Supreme Court Cases 226.

16. Accordingly Mr Tandale vehemently prays for allowing the instant appeal.

17. Per contra, learned APP strongly opposed the instant appeal. She submits that the prosecution has sufficiently established the guilt of the appellants before the learned Trial Court. The evidence as regards demand of bribe, acceptance as well as recovery is suggestive of the guilt that the accused have committed aforesaid offence. She then submits that the accused persons, in discharge of their official duty, have demanded amount of bribe from the complainant, and therefore, they are liable to be punished under the provisions of the Act.

18. With the assistance of learned Advocate for the appellants and learned APP for the respondent/State, after going through the record of the matter, it is found that the complainant Bapu Nerkar had lodged complaint with the Investigating Officer, alleging that accused persons who were working as Gramsevak at the relevant time have demanded bribe amount for issuing Namuna No. 8 in favour of his nephews. The complainant himself has stated that nephews were

interested in getting allotment of the said plots from the Government. He also admitted that the ultimate authority to sanction the plot vests with the Collector of the District and the Gramsevak are at all not concerned with the allotment work. He had stated that, he requested both the accused that they should forward the proposal through the Tahsildar to the Collector. He had also admitted that, for getting the plot sanctioned, the applicant is required to deposit an amount as per the Government rate. He had also admitted that, previously accused No.2 had raised objection that, as the plots sought to be claimed are belonging to the Government, the same cannot be allotted to his nephews. The complainant had also stated in his deposition that he had informed both the nephews to file application with the Government authorities for allotting the said plots to them, however, they have not filed the said application with the Government authorities for allotting the said plots. Upon criticizing this piece of evidence, the question arises as to what official duty the appellants were required to be performed in order to do favour with the informant.

19. In the case of **Dalpat Singh and another Vs. State of Rajasthan, AIR 1969 SC 17**, it has been held that following requirement are to be satisfied in order to attract the provisions of

(12)

Section 161 of the Indian Penal Code (which is now equivalent to Section 7 of the Act):-

- (I) That, the accused at the time of offence was, or expected to be, a public servant;
- (II) That, he accepted, or obtained, or agreed to accept, or attempted to obtain from some person a gratification;
- (III) That, such gratification was not a legal remuneration due to him, and
- (IV) That, he accepted the gratification in question as a motive or reward for (a) doing or forbearing to do an official act; or (b) showing, or forbearing to show favour or disfavour to someone in the exercise of his official functions.

20. With the aforesaid guidelines, as it is found that the appellants at all cannot be said to have entrusted with the work of allotment of plots to the nephews of complainant, any demand alleged to have made by the complainant, cannot be termed as a gratification as motive or reward for doing an official act.

21. The case of the prosecution is destroyed by the complainant himself when he specifically states in his deposition that,

initially when he offered the bribe amount during the trap to accused No.1, the said accused had returned back the said amount to him (complainant). Thereafter, immediately he had kept that amount in the hands of accused No.2. Thereafter, the Anti Corruption team caught hold accused No.2 when the amount was lying in the hands of accused No.2. The ACB officials asked accused No.2 to keep the amount from his hand to his pocket. Thus, with this quality of evidence, it is inappropriate to hold accused persons guilty for offence punishable under the Act. The prosecution case is also further destroyed by the complainant himself when he deposed that, it is true that he had filed false complaint against the accused. Therefore, it can be said that the complainant himself has at all not supported the case of the prosecution. Mr Tandale is right in relying upon the judgment of the Hon'ble Apex Court in **Ram Prakash Arora Vs. State of Punjab** (supra). The Hon'ble Apex Court in the said judgment stated that the complainant as well as Panch witnesses are the interested and partisan witnesses. They are concerned with the success of trap, and therefore, their evidence must be tested in the same way as that of any other interested witnesses. Hon'ble Apex Court also observed that, in a proper case, the Court should look for independent corroboration before convicting accused persons.

22. Mr Tandale is also right in relying upon the aspect that the prosecution has obtained the sanction order after the prescribed period. Though the sanction authority was not examined by the prosecution, the same came to be examined at the behest of the defence, which has filed application, and upon which, the learned Sessions Court passed the order at Exh.30, thereby allowing the defence to examine the said sanctioning authorities. Accordingly, the said authority/PW-4 came to be examined, whose evidence came to be relied. The Hon'ble Apex Court, in the matter of **Vinit Narain and others** (supra), upon which Mr Tandale relies, had issued various guidelines, wherein at Sr. No.15 of paragraph No.58 of the said judgment, it is observed that "*Time-limit of three months for grant of sanction for the prosecution must be strictly adhered to.*" Thus, Mr Tandale is right in submitting that, the prosecution has failed to issue the sanction order within a period of three months. Thus, the prosecution, by examining only four witnesses, have at all not proved the charges against the accused persons.

23. In view of the aforesaid discussion, in my considered opinion, the prosecution has virtually failed to prove that the appellants have committed the offence under the Act. Therefore, the appellants

(15)

cannot be held guilty for the aforesaid crime and the their appeal succeeds. Accordingly, I pass the following order :-

ORDER

- (I) The Criminal Appeal is allowed.
- (II) The judgment and order of conviction and sentence dated 30/09/2014, passed by the learned Additional Sessions Judge, Jalgaon in Special (ACB) Case No.08/2012, convicting them for the offence punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, is hereby quashed and set aside.
- (III) The appellants/accused are acquitted of the offence under the Act, for which they were charged.
- (IV) The bail bonds of the appellants, if any, stand cancelled,
- (V) The fine amount, if any deposited by the appellants pursuant to the order of Trial Court, shall be refunded to them, after due verification.

[SUSHIL M. GHODESWAR, J.]

sjk