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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 72 of 2002.

State of Maharashtra,] ..Appellant.

Vs.

Sattyappa Nayaku Kokate,
age 62 years, Retired Kotwal,
residing at Aurnal,
Taluka Gadhinglaj, District
Kolhapur]..Respondent.

Mr. S.V. Gavand, APP for the State of Maharashtra.
None for the Respondent.

CORAM :- SMT. BHARATI H.DANGRE J.

RESERVED ON :- 28th July, 2017.

PRONOUNCED ON:- 28th August, 2017.

JUDGMENT

1) The present appeal is filed by the State of

Maharashtra challenging the judgment and order of acquittal of accused No.2 – respondent by the Special Judge, Gadhinglaj, District Kolhapur, passed in Special Case No.3 of 2000 (State of Maharashtra Vs. Dattatraya Laxman and one Anr), thereby acquitting the respondent in the present appeal (original accused no.2) of the charges of abetment punishable under Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”).

2) By the said judgment, the learned Special Judge convicted accused No.1 for offence under Section 7 and sentenced to suffer RI for five years and fine of Rs.5000/- in default S.I. for three months. For conviction under Section 13 (2) accused No.1 was sentenced to undergo R.I. for six years and fine of Rs.10,000/- in default of fine amount simple imprisonment for six months. The respondent-accused No.2 was acquitted of the offence punishable under Section 12 of the P.C.Act. Being aggrieved by the said judgment and order of acquittal of accused No.2, the present appeal has been filed by the appellant-State.

3) The case of the prosecution in nut-shell is narrated in the subsequent paragraphs :-

(i) That a complaint was lodged by Shri Sudhir Bhimgonda Patil to the Anti Corruption Officer alleging that the accused No.1 who was working as Talathi Dundage had demanded an amount of Rs.1900/- from him for recording his name in the 7/12 extract register in respect of agriculture land Gat No.119 and 115 situated at village Mouje Dundage which the complainant had purchased from one Shiladevi Hiremath. It was alleged by him that he had submitted an application in the Talathi office Dundage for recording his name on 29th August, 1999 along with the necessary documents. It is alleged in the complaint that the accused no.1 was working as Talathi in the said office and on 29th August,

1999 he demanded a sum of Rs.2,000 for recording the mutation entry and for giving its effect in the record of 7/12 extract and 8A Extract of the purchased land. It is further alleged in the complaint that since he did not pay the amount, after two months when the complainant met the Talathi and enquired about his work, he was told that it is in progress and it would not be completed unless an amount of Rs.2000/- is paid and on his inability to pay such huge amount, the same was reduced to Rs.1900/-, as he was warned that if the amount is not paid the work would not be done. The complainant also alleged that the accused No.1 had threatened to cancel the entry through the Circle Inspector, if he would not collect the money by on 3rd December, 1999. He was asked to bring the amount on 3rd December, 1999 after 11:00 a.m., in the Talathi office.

(ii) On the report being lodged, the Anti Corruption Officials arranged a trap at Talathi office Dundage on 3rd December, 1999. In the trap, two panchas accompanied the complainant in the office of Talathi and on demand of bribe amount by accused no.1, the complainant handed over the tainted cash amount to accused No.2 who was present in the Talathi office as per instructions of accused no.1. On receiving the signal from the complainant, both the accused persons were rounded by the Anti Corruption Officials and the amount of tainted currency was recovered from the inner pocket of the accused no.2. The remaining procedure in respect of drawing panchnama, comparison of the serial number of the currency notes mentioned in the pre-trap panchnama and another documents were seized from accused no.1 and map of the

scene of offence was also obtained from the Taluka Inspector of Land Records (T.I.L.R.) office. For the purpose of grant of sanction copies of the relevant papers were submitted to the Sub-Divisional Officer Shri Sanjaysing Chavan (PW 2) who accorded sanction for prosecution and thereafter charge-sheet was submitted against both the accused for the offences punishable under Section 7, 12, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act. Charge was framed against both the accused.

4) The respondent/accused No.2 in the present appeal is a retired Kotwal and he pleaded not guilty to the charges levelled against him that on 3rd December, 1999 he abetted accused No.1 Talathi who was a public servant in the commission of offence punishable under Section 7 of the PC Act and thereby committed offence punishable under Section 12 of the Act.

5) The Special Judge after recording the evidence arrived at a finding that accused No.1 is liable to be convicted for the offence punishable under Section 7 and 13 (2) of the P.C. Act. However, on the other hand, accused No.2 deserves to be acquitted. The Special Judge recorded though the accused No.2 was present in the office of Talathi at the time of conversation between accused No.1 and the complainant he had no knowledge regarding the past events and no evidence is brought on record to show that accused No.2 was knowing as to for what purpose he accepted Rs.1900/- on behalf of accused No.1. The Special Judge recorded that he being a retired Kotwal, had only obeyed directions of the Talathi-accused No.1 to accept the amount from the complainant and, therefore, the evidence adduced by the prosecution falls short of demonstrating that he had knowingly aided or assisted accused no.1 while accepting bribe. In the result, he acquitted the respondent -original accused No.2.

6) I have heard Shri S.V.Gavand, A.P.P.for the State. The present appeal was admitted on 30th July, 2001. On 15th

September, 2015 this Court directed to appoint an Advocate under the Free Legal Aid Scheme for the respondent and Registry was directed to furnish him a copy of criminal appeal. On 16th March, 2017 the present appeal was directed to be heard along with Criminal Appeal No. 576 of 2001. Accordingly, Advocate Shri Swapnil Ovalekar was appointed as Legal Aid Counsel for the respondent. It is to be noted that Criminal Appeal No. 576 of 2001 is filed by original accused No.1 being aggrieved by his conviction in Special Case No.3 of 2000 by the Special Judge, Gadhinglaj on 30th July, 2001. R and P was therefore received in connection with Criminal Appeal No. 576 of 2001. On 16th March, 2017 this Court granted the application filed by the learned APP for hearing the State appeal expeditiously. On the said date none represented for the respondent. Further, the matter was listed on 16th June, 2017 and on the said date also none appeared for the Respondent when the matter was adjourned. On 28th June, 2017 Shri B.R.Patil instructed by Advocate Shri Ganesh Gole appeared for the respondent and requested for adjournment.

The matter was listed before me on 28th July, 2017. The learned APP was present on behalf of the State but again nobody appeared on behalf of the respondent. Since the record in connection with Criminal Appeal No. 576 of 2001 was tagged with the present Criminal Appeal No. 72 of 2002, I proceeded to hear the present appeal with the assistance of the learned APP.

7) The learned APP argued that the impugned judgment and order of acquittal of the respondent is not based on proper appreciation of facts and evidence on record. The learned APP argued that the Special Judge had erred in holding that accused No.2 had no knowledge regarding collection of money from the complainant since he was a retired Kotwal. On the other hand, the learned APP argued that the accused No. 2 was not convicted under Section 7 and Section 13 (2) of the PC Act and it was accused No.2 who had accepted the bribe and therefore he had sufficient knowledge as to why he was accepting the bribe. The learned APP therefore prayed for setting aside the judgment of the Special

Judge rendering acquittal of accused No.2 and prayed for conviction of the respondent (accused No.2).

8) I have perused the evidence on record. It is the case of the complainant that he had purchased a piece of agricultural land and had moved application to the Talathi office, Mauje Dundagi for recording mutation entry and for recording his name in village Form 7-12 extracts and 8A record. According to the complainant, the Talathi working on the said post, had told him that it would incur an expenditure of Rs.2,000/-. According to the complainant, when he visited the Talathi office after the gap of two months, Talathi Shri Bagdi reduced the amount by Rs.100 and asked the complainant to bring Rs.1900/-. In the complaint, the complainant alleged that without payment of the said amount his work could not be done. According to the complainant, there was a clear demand from accused No.1 Talathi for effecting mutation entries. He, thereafter approached the ACB office Kolhapur with a statement, on the basis of which a trap was laid on 3rd December, 1999 under the supervision of the ACB officer Shri Chougule, PW 3 along with

two shadow witnesses. As a part of trap the necessary formalities of applying the anthracene powder on the currency notes, carrying of panchnama, etc., were carried out. The evidence reveals that the Anti Corruption officials along with the complainant entered into the office of the Talathi on the date of the incident and the Talathi raised demand of the amount. The complainant in his evidence has stated before the trial Court that he was directed to fill up certain forms and hand over to one Shri Kamble and Badkar. In the evidence, the complainant has stated that at the time of incident, accused no.2 was present in the Talathi office and accused no.1 told the complainant to give the amount brought by him to Shri Kokate by pointing finger towards him. According to the complainant, PW No.1 went outside the Talathi office and entered inside the gymnasium and it is on that place the complainant handed over the currency notes from the pocket of his shirt to Shri Kokate i.e. the present respondent who accepted the said amount by his right hand and kept it in the inner pocket of his Bandi. Thereafter, the raiding party on receipt of the signal

entered the gymnasium and after completing the necessary formalities, the tainted notes were recovered from the pocket of Bandi of the respondent. The said case of the complainant is corroborated on material particulars as regards the presence of accused No.2 i.e. the present respondent in the office of Talathi and inside the gymnasium by PW 3 as well as PW 5. The prosecution however has not adduced any evidence to show that accused No.2 had raised any demand or was aware of the demand raised by accused no.1 to the complainant in discharge of his official duties of effecting the mutation entries as desired by the complainant. The complainant also mentions about the presence of accused No.2 respondent in the office of Talathi and had categorically stated that the Talathi (accused No.1) had directed the complainant to hand over the notes to accused No.2. From the evidence, it can be seen that he had no knowledge regarding any past events and rather did not get any time to think or ponder as to why the amount is being paid for.

9) The Hon'ble Apex Court in the case of Trilok Chand v.

State of Delhi reported in AIR 1977 S.C. 666, has held that intention to aid the commission of the crime, is the gist of the offence of abetment by aid and whether the intention on the part of the appellant was lacking, the offence under Section 12 of the PC Act cannot be said to be made out.

10) In the present case, the prosecution has not adduced any evidence to demonstrate that the respondent had knowingly aided or assisted accused No.1 while accepting bribe, in discharge of his public duties. Moreover, the respondent was a retired Kotwal and by no means he was in a position to get the work of the complainant done since effecting mutation entries was duty of Talathi which he was supposed to discharge with certification from the Circler Officer. Since the respondent was not holding any official position in the office of Talathi there was no question that he obliged the complainant for getting his work done by demanding any amount. It was only on the direction of accused no.1 that he accepted the amount which was demanded by the Talathi - accused no.1 from the complainant. The offence of abetment which is made

punishable under Section 12 of the PC Act is said to have been committed when a person abets any offence punishable under Section 7 or Section 11, whether or not such an offence has been committed in consequence of that abetment. However, to attract the said section, the element of mens rea is a must which presupposes a knowledge that he was accepting the said amount as an illegal gratification by and in the present case the prosecution has not laid any evidence to the effect that the respondent was aware either of the demand made by the Talathi to the complainant and or that the amount is to be accepted in pursuance of the said demand. In the absence of such positive evidence being laid by the prosecution, I do not find that the findings recorded by the learned Special Judge resulting into acquittal of the respondent is perverse and calls for any interference. The learned Special Judge has observed that the charge of Section 12 of the PC Act is not established against accused No.2 and therefore he has acquitted him of the said charge. I see no reason to interfere with the said finding since I do not find any perversity in the same as the

ingredients of Section 12 of the Act in reference to abetment are not made out. The attempt of the learned APP to argue that the judgment of the trial Court is not sustainable, as regards acquittal of accused No.2 does not warrant any merit and the arguments are liable to be rejected. Hence, I pass the following order:

ORDER

- 1) The appeal filed by the appellant-State is hereby dismissed.
- 2) The bail bonds of respondent-accused No.2 stand cancelled. He is set at liberty.

(SMT. BHARATI H.DANGRE J.)