

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPEAL NO.766 OF 2003

Rajendra S/o Kamal Narayan Jaiswal,
about 56 years, Occ: Business,
R/o Arvi, Tah. Arvi, Dist. Wardha.

... Appellant

// VERSUS //

State of Maharashtra through Police
Station Officer, Wardha (City), Police
Station, ACB, Wardha

... Respondent

Shri S.D.Dharaskar, Advocate for appellant
Ms. Kalyani Deshpande, APP for the State / Respondent.

**CORAM : ANIL S. KILOR, J.
DATED : 13th SEPTEMBER, 2022.**

ORAL JUDGMENT :

This appeal takes exception to the judgment and order dated 25th November, 2003 passed by the learned Special Court, Wardha constituted under the Prevention of Corruption Act, in Special Case no. 1 of 1995, convicting the appellant/accused no.2 for the offence punishable under Section 12 of Prevention of Corruption Act, 1988 (in short referred as "Act of 1988") and sentenced to suffer rigorous imprisonment for 18 months and to pay fine of Rs.2,000/-, in default to undergo Simple Imprisonment for a period of four months.

2. The brief facts of prosecution case is that PW-1 Complainant lodged a complaint to Anti Corruption Bureau, Nagpur on 9th July, 1990 alleging demand of bribe by accused No.1 PSI Govind Vaidya and as abettor, accused No.2, appellant.

3. It is alleged that Crime No.23 of 1987 was registered against the complainant for the offence punishable under Section 302 of the Indian Penal Code. The said offence was registered with the Police Station Arvi where the accused no.1 was working as PSI and he was the Investigating Officer in the said crime. It is further alleged that accused no.1 demanded Rs.10,000/- towards bribe to help the informant in the said criminal trial. It is further alleged that it was agreed that the complainant would pay Rs.1,000/- on each date of hearing to the accused no.1.

4. The complainant was not agreed to pay the bribe therefore he lodged the complaint with the ACB. Thereafter, pre-trap formalities were completed and the trap was conducted on 10th July, 1990. In the trap, the appellant was caught hold accepting the amount of bribe. Accordingly, he has been prosecuted for the offence punishable under Section 12 of the Act of 1988.

5. The Investigating Officer completed the investigation and filed the chargesheet. Thereupon the charge was framed and it was explained to the appellant/accused no.2. Whereupon, he pleaded not guilty and accordingly trial was conducted. The prosecution has

examined as many as five witnesses to bring home guilty against the appellant for the offence punishable under Section 12 of the Act, 1988.

6. The learned trial Court after marshalling and scrutinizing the oral as well as documentary evidence, passed the impugned judgment and order dated 25th November, 2003, convicting the appellant for the offence punishable under Section 12 of the Act, 1988 which is under challenge in the present appeal.

7. As far as the accused no.1 is concerned, he was discharged as no sanction was granted to prosecute him. The appeal against it got abated after the death of accused no.1.

8. I have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.

9. Learned counsel for the appellant submits that though the prosecution failed to establish and prove the charge under Section 12 of the Act, 1988 as regards abatement against the appellant, the learned trial Court committed error in convicting the appellant.

10. It is submitted that nothing has been brought on record by the prosecution against the appellant to show that there was an intention to facilitate or provide aid to the accused no.1 as required to attract Section 107 of Indian Penal Code and in absence of any such intention, no offence under Section 12 of the Act of 1988 would attract against the appellant.

11. On the other hand, learned Additional Public Prosecutor supports the impugned judgment and order and submits that learned trial Court after examining the oral as well as documentary evidence, recorded the reasons by holding that the appellant is the abettor and accordingly he is rightly convicted. She therefore submits that as there is no legal infirmity or illegality committed by the learned trial Court, this Court may not interfere with the conviction recorded by the trial Court.

12. In the backdrop of the above referred submissions, I have perused the record and proceedings and the impugned judgment and order of the trial Court.

13. The Hon'ble Supreme Court of India in the case of *Kartar Singh Vs. State of Punjab*¹ has observed thus:

“106. In order to bring a person abetting the doing of a thing, under any one of the clauses enumerated under Section 107, it is not only necessary to prove that the person who has abetted has taken part in the steps of the transactions but also in some way or other he has been connected with those steps of transaction which are criminal. The offence of abetment depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.”

14. From the above referred judgment, it is evident that the word “abet” is generally used with the word “aid” and similar words. In order to bring a person abetting the doing of a thing, under any one of the clauses enumerated under Section 107 of the Indian Penal Code, it is not only necessary to prove that the person who has abetted has taken part in the

¹ 1994(3) scc 569

steps of the transactions but also in some way or other, he has been connected with those steps of transaction which are criminal. The offence of abetment depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

15. In the teeth of the above referred well settled principle of law, now I proceed to examine whether the prosecution has established and proved the charge of abetment against the appellant/accused no.2. The oral testimony of PW-1 is relevant for the said purpose.

16. PW-1 in his chief states that on 2nd July, 1990, accused no.2 gave message to him that accused no.1 Shri Vaidya asked PW-1 to see him at Seloo in connection with the murder case. He further deposed that accused no.2 also told him that accused no. 1 would help PW-1 in the said murder case.

18. PW-1 further states that on 4th July, 1990 he went to Seloo and met Shri Vaidya accused no.1 whereupon accused no.1 demanded Rs.10,000/- to help PW-1 and to make self contradictory statements during trial. Thereafter, it was agreed by PW-1 that he would pay Rs.1,000/- daily during the hearing of the matter to accused no.1. The accused no.1 told PW-1 that on 10th July, 1990, PW-1 would have to pay Rs.1,000/- to him when he would meet him in the Court.

19. From the above referred oral testimony, it can be seen that while giving message of accused no.1 to the complainant and while asking him to meet accused no.1, the appellant did not refer to any demand of

bribe by accused no.1. It is further evident that while the alleged demand was made by the accused no.1 to the complainant, the complainant was alone and not made in presence of the appellant.

20. Moving further to examine the evidence as regards the intention or aid by the appellant.

21. PW-1 in his examination-in-chief states that on 9th July, 1990 after lodgment of the report with the ACB, when PW-1 went to the Court alongwith shadow witness Panch No.1 (PW-2), they saw the accused no.2 in the court campus. PW-1 and PW-2 met accused no.2 who told them that he had received telephone from accused Shri Vaidya and he would come in the Court. PW-1 asked the accused no.2 as to whether accused no.1 would help him. Accused no.2 in Hindi said “Pura Bharosa Rakho, Sahab Madat Kareng” (Have a complete faith, Saheb would certainly help).

22. He further states that thereafter accused no.1 came on scooter and asked accused no.2 as to whether PW-1 had paid Rs.1000/- to him. Whereupon, PW-1 states him that his man is coming with the said amount.

23. At this juncture, it is necessary to appreciate that, as per PW-1's own version the date for payment of Rs.1000/- was fixed as 10th July, 1990 and the amount was to be paid to accused no.1 and not to the accused no.2. However, on 9th July, 1990 when PW-1 went with the PW-2 to the Court there the accused no.1 came while accused no.2 was

present with the PW-1 and asked whether PW-1 paid the amount to accused no.2.

24. Thus, it create doubt about the veracity of the oral testimony of PW-1 that, the accused no.1 asked accused no.2 as to whether PW-1 had paid Rs.1000/- to him. Moreover, there is a reason to further create doubt as the complainant has nowhere stated in his deposition that at any time the accused no.1 asked the complainant to pay Rs.1,000/- to the accused no.2. Furthermore, as I have noted herein above that the above referred incident is dated 9th July, 1990, whereas, as per the first demand the complainant was supposed to pay Rs.1,000/- on 10th July, 1990 and not on 9th July, 1996.

25. PW-1 in his oral testimony has further stated that accused no.2 told PW-1 and PW-2 that accused no.1 was sitting in canteen in SP Office and he had directed to accept the money from PW-1. Thereafter PW-1 and PW-2 went alongwith accused no.2 where accused no.1 was standing in front of the canteen and asked him that accused no.2 demanded money and whether or not PW-1 should hand over the same to him. Thereupon, accused no.1 told all right, hand over to him. PW-1 further states that thereupon he took out folded currency note from his right side pocket of bangali shirt by right hand and raised the same before accused no.2. The accused no.2 received those notes and kept the same in right side pocket of his pant. After giving signal, the trap party caught hold the accused no.2.

26. As far as the abatement part is concerned, except the above referred oral testimony of the PW-1, there is no other evidence against the appellant.

27. After careful scrutiny of oral testimony of PW-1, complainant it can be seen that nowhere it is the case of PW-1 that the accused no.1 had any knowledge about the demand of any bribe or at any time it was disclosed by the complainant to the appellant about such demand by accused no.1. There is no evidence to show that while accepting the amount from the complainant the appellant had knowledge that the said amount was towards illegal gratification. Thus, there is no evidence to show that the accused no.2 has accepted the amount on behalf of accused no.1, as illegal gratification.

28. Section 107 of Indian Penal Code which contains the definition of abetment, has three clauses, and if an act of a person falls within the purview of any of them, it would amount to abetment. A person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing. The scope of the word "aids" has been clarified in Explanation 2. The said Explanation does not say what would or would not amount to "intentionally aids". It only explains what is meant by aiding simpliciter. This means that an act which merely amounts to aiding the commission of an offence is not abetment. The aiding must fall within "intentionally aiding" the doing of a thing. The commission of the act must be the dominant intention of the person who aids it.

29. In this case, the prosecution evidence falls short of establishing intentionally aiding by the appellant. In that view of the matter, I am of the opinion that the prosecution has failed to establish the charge against the appellant/accused no.2 and accordingly failed to bring home guilt against the appellant for the offence punishable under Section 12 of the Act, 1988.

30. In the circumstances, I have no hesitation to hold that the impugned judgment and order dated 25th November, 2003 passed by Special Judge, Wardha in Special Case No.1 of 1995, convicting the appellant/accused no.2 is illegal and liable to be quashed and set aside. Accordingly, I pass the following order.

- i. The criminal appeal is allowed;
- ii. The judgment and order dated 25th November, 2003 passed by Special Judge, Wardha in Special Case No.1 of 1995 is hereby quashed and set aside;
- iii. The appellant is acquitted of the offence punishable under Section 12 of the Prevention of Corruption Act, 1988.
- iv. His Bail Bonds shall stand cancelled.
- v. The Muddemal Property be dealt with as per order of the learned Special Judge.

[ANIL S. KILOR, J.]

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