IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1168 OF 2006

The State of Maharashtra … Appellant.
(Orig.Complainant)

Vs.

1. Subhash Ambadas Maindargi
Age 57 years, Occ: Service,
R/o. Sangola, District : Solapur. … Appeal stands dismissed vide ct's order dated 5.6.23

2. Fulchand Dagdu Nimbalkar,
Age 38 years, Occ.: Service,
R/o. Sangola, Tal.: Sangola,
District : Solapur. … Respondents.
(Orig.Respondents)

Mr AA Palkar, APP for appellant/State.
Mr Nitin Gaware-Patil, Advocate for respondent No.2.

Coram: R.N.Laddha, J.
Reserved on : 6 September 2023
Pronounced on : 30 October 2023.

Judgment :

The appellant/State has challenged the acquittal of respondent No.2 (original accused No.2) under Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') by a Special Court designated under the Act in Special Case No.10 of 2000.

2. The charge against respondent No.2 (accused No.2) was of aiding accused No.1 Subhash Ambadas Maindargi, who was respondent No.1 herein and expired during the pendency of this appeal. Hence, this Court, by an order dated 5.6.2023, dismissed the appeal against him and directed this appeal to proceed against respondent No.2 only.

3. Accused No.1, Subhash Ambadas Maindargi (since deceased), was the Sub-Registrar and accused No.2, Fulchand Dagdu Nimbalkar, was a Junior Clerk in the office of the Sub-Registrar, Sangola, at the relevant time. Popat Bapu Kedar, the complainant, entered into an agreement with Sadhu Nana Survase to purchase one acre of agricultural land from Gat No.100 of village Kharwatvadi. On 14.2.2000, the complainant and vendor, Sadhu Survase, went to the office of Sub-Registrar, Sangola, to enquire about the Government valuation of the land and expenses to be incurred for registration of conveyance. That time, accused No.1 demanded the complainant a bribe of Rs.6,000/- for decreasing the valuation of the land. However, the complainant informed accused No.1 that he did not have the amount and would pay it on a later date. Accused No.1 instructed them to bring the amount on a later date, after

which the sale deed would be registered.

4. The complainant contacted the Anti-Corruption Bureau in Sangali, where Officer Mr Satish Mane was present. The complainant informed him about the bribe demand by the accused, who then reduced his complaint into writing. Mr Mane asked the complainant to come to the ACB office the next day. Accordingly, on 15.2.2000, the complainant went to the ACB office. Vilasrao Waghmode and Jagannathrao Patil, who worked in the office of Regional Transport, Sangola, were appointed as panch witnesses. After verifying the contents of the complaint, currency notes worth Rs.6,000/- smeared with anthracene powder were given to the complainant. Vilasrao Waghmode was instructed to accompany the complainant during the trap arranged at the office of accused No.1.

5. The complainant, ACB Officers Mr Mane and Mr Sawant, and other police staff then went to Sangola to conduct the raid. On 15.2.2000, around 12:30 p.m., both the accused were in the office. The stamp vendor, Anant Jayvant Waghmode, kept the document of sale deed on the table of accused No.1. He then called Sagar, a Peon in his office and

asked him to obtain the signature of the vendor, purchaser and attesting witnesses, on the document of sale deed. Accused No.1 then obtained the document from Sagar, put the number on the sale deed and after that, issued the receipt for registration.

6. At that time, accused No.1 asked the complainant whether he had brought Rs.6,000/- for decreasing the valuation of the land as agreed earlier. The complainant replied in the affirmative. Accused No.1 looked towards accused No.2 and asked the complainant to give money to accused No.2, who, then accepted the same and handed it over to accused No.1. Accused No.1 accepted that amount and kept it in the drawer of his table.

7. Thereafter, the raid was conducted, and the amount was recovered from the table of accused No.1. The accused No.2 was also apprehended on the spot. A report was lodged at Sangola police station by Mr Mane (PW 4). Based on this report, an offence vide CR No.3002 of 2000 was registered against accused No.1 under Sections 7 and 13(1)(d) read with 13(2), and against accused No.2 under Section 12 of the Act.

8. Charge came to be framed against the accused for the

aforesaid offences. The accused abjured their guilt and claimed trial.

9. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of the witnesses, namely Vilasrao Akaram Waghmode (PW1); Nitin Nandkishore Kareer, the sanctioning authority (PW2); Popat Bapu Kedar, the complainant (PW 3); and Satish Balasaheb Mane, Deputy SP, ACB, Sangli, the investigating officer (PW4).

10. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, came to be thereafter recorded, consisting of a denial and false implication.

11. After hearing the learned Counsel for the parties, the learned trial Court held that the evidence regarding the demand and acceptance of the bribe was questionable in several significant ways. The defence put forth by the accused was found to be probable. As a result, both the accused were acquitted.

12. Being aggrieved by and dissatisfied with the order of acquittal, the appellant/State has preferred this appeal.

13. I have heard Mr AA Palkar, learned Additional Public Prosecutor for the State and Mr Nitin Gaware-Patil, learned Counsel for the accused/respondent no.2 and perused the judgment, grounds in the appeal memo, evidence of the prosecution witnesses and the entire material on record.

14. Mr AA Palkar, learned Additional Public Prosecutor, argued that the order of acquittal was not in accordance with the law. He submitted that the trial Court misinterpreted the evidence presented by the prosecution and was swayed by several assumptions not supported by the evidence on record, resulting in a grave miscarriage of justice. He submitted that minor inconsistencies, contradictions, embellishments or improvements on trivial matters that do not affect the core of the prosecution's case should not be grounds for rejecting the evidence entirely. He argued that the complainant provided a detailed account of events, which was corroborated by other witnesses. The learned APP, relying upon evidence of the complainant, submitted that the bribe amount was received by respondent No.2 only after instructions and clearance given by accused No.1, and there was no need for him to accept that amount. According to the learned APP, the evidence of

PW 2, Mr Nitin Kareer, demonstrates that he has thoughtfully accorded the sanction. Mr Satish Mane (PW4) testified that the necessary procedures for setting up the trap were followed.

15. Mr Nitin Gaware-Patil, the learned Counsel for the respondent/accused No.2, supported the line of reasoning adopted by the trial Court to record the finding of acquittal. He made various submissions countering the arguments on behalf of the appellant/State. He argued that offence under Section 7 or Section 13 of the Act itself has not been established. Hence, there is no question of the offence under Section 12 of the Act being committed by respondent No.2. He contends that there must first be an independent finding that an offence under Section 7 or other offences under the Act has been committed. According to him, there is absolutely no evidence available on record to show that accused No.1 demanded and accepted the bribe amount. He submitted that accused No.2 did not have conscious knowledge that it was a bribe amount.

16. The judgment of the trial Court shows that Mr Nitin Kareer (PW 2), the sanctioning authority, did not apply his

mind while granting permission to prosecute accused No.1. During cross-examination, it was revealed that a letter was issued by Joint District Registrar, Solapur, on 2.11.1999, which assigned a target of Rs.11,00,000/- for 1998-99 and Rs.10,00,000/- for 1999-2000 to the Sub-Registrar, Sangola, for the collection of funds for the Small Savings Scheme of the government. The witness admitted that if the target were not met by 20.3.2000, the Sub-Registrar would be held accountable. In paragraph 6 of his cross-examination, he categorically stated that while reviewing the documents, he discovered that the amount of Rs.6,000/- referred therein pertained to Small Savings.

17. Furthermore, the sanctioning authority has admitted that the stamp duty is to be collected based on the higher value between the Government valuation of the property and the consideration agreed between the parties. In the present case, the consideration agreed between the parties was Rs.55,000/- and the stamp duty of Rs.2,500/- was adequate and proper for this amount. He further admitted that after examining the panchanama, he found that accused No.1 had registered the document and issued a receipt for the registration fees without asking for any additional amount

from the complainant. These admissions suggest that the sanctioning authority had not applied his mind before according sanction.

18. The complainant's evidence suggests that he paid Rs.55,000/- to Sadhu Survase at his residence eight days before the execution of the sale deed. During cross-examination, the complainant admitted that accused No.1 informed him that if the actual consideration is less than the government valuation, then the parties are required to pay stamp duty on the amount of government valuation. Conversely, if the consideration amount is more than the government valuation, then stamp duty is required to be paid on the consideration amount. The complainant acknowledged that the sale deed reflected payment of consideration of Rs.55,000/-. Further, the complainant admitted that he requested accused No.1 to levy a stamp duty on Rs.10,000/-, but accused No.1 instructed him to pay a stamp duty of Rs.2,500/- on the sale deed for a consideration of Rs.55,000/-.

19. The complainant has admitted that on 14.2.2000, he visited the office of accused No.1 to show the contents of a sale deed. However, at that time, the sale deed was not

registered due to the unavailability of witnesses. On the same day, when he went to the office of the Anti-Corruption Bureau, the panch witnesses were not present there. The complainant has also admitted that no discussion took place between him and accused No.1 until the receipt of registration fees was issued, and its number was put on the sale deed. As soon as the receipt of registration fees was given to him, he came to know that the work of registration of sale deed was over. The complainant admitted that accused No.1 had called Bharat Ubale, an agent for Small Savings, and asked him to contribute to the Small Savings Scheme in his presence.

20. According to the sale deed, stamp papers were purchased on 14.2.2000. If the complainant's evidence regarding the negotiations for showing the valuation price of Rs.55,000/- on payment of bribe amount of Rs.6,000/- to accused No.1 is accepted, then it can be inferred that after preparing the sale deed from the stamp vendor, Anant Waghmode, there was no need for him, the vendor Sadhu Survase and stamp vendor Anant Waghmode to go to the office of the Sub-Registrar.

21. The evidence of Vilasrao Waghmode (PW 1) indicates

that accused No.1 called a Peon named Sagar and initiated the registration process. The registration fee was accepted, a receipt was issued, and a registration number was assigned to the document. Until that point, accused No.1 did not demand any bribe. This suggests that accused No.1 had completed all necessary procedures. Furthermore, PW 1's testimony shows that accused No.2 immediately returned the money to the complainant, who then gave it to accused No.1. This evidence is not consistent with the evidence of the complainant.

22. If accused No.1 had demanded Rs.6,000/- as an illegal gratification for registration of the sale deed, he would have asked for that amount first, but this did not happen.

23. In such circumstances, the learned trial Court rightly concluded that the evidence on record does not inspire confidence that accused No.1 demanded and accepted Rs.6,000/- on 15.2.2000 as illegal gratification.

24. The only evidence against accused No.2 is that accused No.1 looked at him, and asked the complainant to give that money to accused No.2, who then initially accepted it, waited for a while, then looked at accused No.1 and told the complainant to give that amount to accused No.1. The

evidence of panch witness, Vilasrao Waghmode (PW 1), however, is not consistent on this aspect. It cannot be held that accused No.2 was guilty of the offence punishable under Section 12 of the Act merely because he was entrusted with some money to be passed on to accused No.1. It was not established that he was party to the alleged understanding arrived at between the complainant and accused No.1 and he had accepted that amount with conscious knowledge that it was a bribe amount.

25. Section 12 of the Act provides for the abetment of any offence punishable under the Act. The term 'abetment' is not defined under the Act. Thus, it has to be referred to its exhaustive definition in Section 107 of the Indian Penal Code. For abetment to be established, it is necessary to demonstrate that the abettor 'intentionally' assisted in the commission of the crime. Simply proving that the alleged abettor's intervention was required for the crime to be committed is insufficient to meet the requirements of Section 107 IPC.

26. In the instant case, the prosecution did not accuse respondent No.2 of inciting or instigating the complainant to pay a bribe or conspiring to facilitate the receipt of a bribe.

There is no charge of conspiracy whatsoever. The only remaining aspect is that of aiding, and clause three of Section 107 IPC specifies that aiding must be done with intent. The prosecution has failed to provide evidence that respondent No.2 was dwelling under such intention. The only fact established by the prosecution is that the complainant handed over Rs.6,000/- to respondent No.2, but it could not be established as a bribe. There is nothing on record to show that he consciously accepted the alleged bribe amount.

27. In such circumstances, the trial Court, in my considered opinion, rightly found respondent/accused No.2 not guilty of the offence for which he was charged.

28. Resultantly, this appeal fails and is hereby dismissed.

[R.N. Laddha, J.]