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crap808.04

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

CRIMINAL APPEAL NO. 808 OF 2004

Jagannath Dadarao Thorat
[Original appellant] died through LRs.

.. Appellant
[original
accused No.1]

1-A. Bijubai w/o. Jagannath Thorat
Age. 59 years, Occ. Housewife.

1-B. Ranjit s/o. Jagannath Thorat
Age. 38 years, Occ. Service,

1-C. Swapna d/o. Jagannath Thorat
Age. 35 years, Occ. Household,

All R/o. N-11/L, Plot No. 63,
Hudco, Aurangabad.

VERSUS

The State of Maharashtra

.. Respondent

**WITH
CRIMINAL APPEAL NO. 825 OF 2004**

Sonuji alias Sonuba s/o. Chimaji Garodi
died through LRs.

.. Appellant
[original
accused No.2]

1A] Yogesh Sonuba Garodi,
Age. 34 years, Occ. Business
R/o. Harsul, Plot No. 73, 166/1,
Bharalsingh Nagar,
Aurangabad.

VERSUS

The State of Maharashtra

.. Respondent

Mr.Joydeep Chatterji, Advocate for the appellant in Cr. Appeal No. 808 of 2004.

Mr.V.D. Sapkal, Sr. Advocate i/b. Mr. S.R. Sapkal, Advocate for the appellant in Cr. Appeal No. 825 of 2004.

Mr. S.K. Shirse, AGP for the respondent-State.

CORAM : **KISHORE C. SANT, J.**
RESERVED ON : **23.08.2024**
PRONOUNCED ON : **11.11.2024**

J U D G M E N T :-

01. Both these appeals are arising out of the same judgment and order passed by the learned Special Judge, Aurangabad dated 26.11.2004, in Special Case No. 16 of 2001. The appeals are therefore heard and being decided together.

02. Criminal Appeal No. 808 of 2004 is filed by accused No.1 – Jagannath, who is held guilty for the offences punishable under sections 7 and 13 (1)(d) and 13(2) of the Prevention of Corruption Act [for short "said Act"]. He is sentenced to suffer rigorous imprisonment for six months with fine of Rs.1000/-, in default, to suffer rimple imprisonment for one month and to suffer rigorous imprisonment for one year with fine of Rs.1000/-, in default to suffer simple imprisonment for one month, respectively.

03. Appellant in Criminal Appeal No. 825 of 2004 – Sonuji Chimaji, accused no.2 is convicted for the offence punishable under section 12 of the said Act. He he sentenced to suffer rigorous imprisonment for a period of six months with fine of Rs.1000/-, in default, to suffer simple imprisonment for one months. The sentences are directed to run concurrently.

04. The prosecution story in short is that one Ambadas Shukla, a retired Tahsildar had made an application to the Municipal Corporation, Aurangabad, seeking permission to construct two rooms in the house. Since, there was no communication from the Corporation, he assumed that there is deemed permission granted for construction and he started construction on 05.11.2000. Both these accused persons were working as Building Inspector in the Municipal Corporation, Aurangabad. Accused No.1 was having jurisdiction over the area, where said Shukla had started construction. Accused No.1 visited construction site on 14.11.2000 and asked as to whether there is permission obtained from the Corporation and asked him to see him in the office on the same day. Shukla could not go to the office on that day. Therefore, again on 15.11.2000 at 11.00 a.m. accused No.1 paid a visit and seized building

material and moved it to the Corporation. Malati – wife of said Shuka reported this to her brother Rajendra – de-facto complainant. Rajendra met accused No.1 in the office where accused demanded an amount of Rs.10,000/- to allow him to take back the material that was seized. On this said Rajendra lodged a report with the Anti-Corruption Bureau [for short “ACB”]. On receipt of the report, the ACB decided to lay a trap. It is the case that the raid was conducted successfully. At the time of raid, accused No.1 asked Rajendra to hand over the amount of bribe to accused No.2. It is alleged that accused No.2 accepted the amount for and on behalf of accused No.1. The prosecution, thus, came to be launched against both the appellants.

05. The defence of the accused persons is that the action was taken by accused No.1 for illegal construction carried out by said Shukla. The amount was towards fine, whereas it is case of accused No.2 that he has not accepted the amount as a bribe. He was not aware of any of the talks between complainant – Rajendra and accused No.1. There is no question of his having knowledge of amount of bribe. Accused No.2 has not abetted any offence.

06. The Trial Court on recording the evidence and holding the

Trial, held accused No.1 guilty of the offences punishable under sections 7 and 13 (1)(d) r/w 13(2) of the said Act. Accused No.2 is held guilty for abettment punishable under section 12 of the Act. Thus the accused – present appellants are before this Court. Both the accused, thus, prayed for acquittal submitting that the Trial Court has wrongly held the accused persons guilty without sufficient material on record.

07. To prove the offence, the prosecution has examined five witnesses, namely, PW-1 complainant - Rajendra Kulkarni, PW-2 Panch – Shankar Rane, PW-3 – Malati Shukla, PW-4 – Investigating Officer Sanjiv Mendke abd PW-5 Shaileshkumar Sharma – Commissioner, Municipal Corporation, Aurangabad – sanctioning authority.

08. PW-1-Rajendra Sadashiv Kulkarni in his deposition stated that he happens to be brother of Malti, wife of Ambadas Shukla. She told him that on 13 and 14th November, 2000, one Building Inspector (accused No.1) met her husband and asked about building permission. On answering, he was called to the office of accused No.1 on next day. This witness, therefore, met accused No.1 on 15.11.2000 in the Office of Corporation. Accused No.1 in the said meeting demanded amount of Rs.10,000/-. Said amount of Rs. 10,000/- was reduced to Rs.7000/-.

Accused No.1 introduced him to accused no.2, who was in the office and told to pay the amount to accused No.2, when accused No.1 would not be there around. The complainant, therefore, went outside, lodged complaint with the ACB. In the office of the ACB, it was decided to lay a trap. The panchas were called in the office of the ACB. As decided raid was conducted. The panch witness – Rathod and complaint Rajendra went in the Encroachment Removal section. Accused No.1 was not present there. Accused No.2 was present. Rajendra wished accused no.2 and asked as to where is accused No.1. He was told to wait, stating that accused No.1 would come soon. He asked as to what was the work with accused No.1. P.W.-1 told that he had met accused No.1 the day before in presence of accused No.2. He than asked as to whether amount is brought as settled. This witness said yes and therefore he said that he wanted to see accused No.1. As accused No.1 was not there, he came out of the room. Within 2-3 minutes accused No.1 came on motor-cycle. Both wished each other. On that, this witness on his own told him that he has brought money as settled. While talking they came to the office, where accused no.1 told him to give money to accused No.2, telling accused No.2 to collect money from Rajendra. It is on this PW-1 took out the amount and handed it over to accused No.2. Accused No.2 Collected the amount by right hand and kept the said

amount in the right pocket of his pant. Accused No.2 on that told to make application to collect the material that was seized. On that PW-1 Rajendra came out and gave signal to the raiding party. This happened between 15.30 p.m. to 15.45 p.m. The members of the raiding party came there, asking PW-1 to stay out of the room and was called after some time for examination of hand under ultraviolet lamp. The fingers of his hand and some portion of pocket of his shirt reflected blue shine under the ultraviolet lamp.

. In the cross-examination, this witness identified notice received by Shukla dated 19.09.2000 issued by the Corporation (Exh.19). On 06.11.2000 Shukla had submitted application for permission. By letter dated 15.11.2000 the Corporation had sought some compliance. Certified copy of that application is also exhibited. As per letter dated 21.09.2000 and 15.11.2000, there was no presumption of permission available on those dates. He accepted that on 14.11.2000 accused No.1 had appraised all these facts to Shukla and had also asked to stop the construction work. It was Shukla who was insisting to complete the construction work and on that count there was some dispute between accused No.1 and Shukla. On that accused No.1 had asked said Shukla to come to office and make an application. However,

inspite of that Shukla did not go to Municipal Coproation on that day. On 15.11.2000, he learnt that accused No.1 was In-charge of Shreyanagar area. At 4.00 p.m. he submitted application for returning the material. On that accused No.1 told that he will have to pay amount of Rs.10,000/- to get the material back. He accepted that he did not pay that amount as there was deficit of Rs.3000/- and agreed to pay the amount on the next day. He also accepted that it was not true that accused No.1 asked him to see accused No.2 to know the procedure. He also accepted that on 16.11.2000 i.e. at the time of incident, accused No.2 did not demand money. He referred to accused no.2. Accused No.1 was in-fact about to leave the office when the ACB team came in.

. Accused No.2 in his cross taken from this witness that accused no.1 had never appraised accused No.2 that this witness happens to be brother-in-law of Shukla and had come to collect the material. It is also taken that accused No.2 was not aware of the details of the money and he never had told accused No.2 having come to collect building material. It is also taken that accused No.2 was not knowing as to for what money was paid. PW-1 told this accused No.2 that accused No.1 had directed him to pay the amount to accused No.2. It is also taken that this witness immediately told the ACB police that accused

No.2 is not involved.

09. So far as P.W. No.2-Shankar Mangu Rathod, who acted as panch is concerned, he stated about formality in the ACB Office. About actual incident, he stated that he and PW-1 went to office of Administrative Officer from Encroachment Removal Department at 4.00 p.m. PW-1 wished one person by name Garodi (accused No.2). Accused No.2 told that accused No.1 has not yet come and whether he has brought money. On that PW-1 told that he has brought money and wanted to see accused No.1. On that accused No.2 asked both these witnesses to stay outside. Within few minutes one person came and parked his bike. PW-1 told that he is accused No.1. Thus two witnesses went with him in his office and stood near his table, having phone. Accused No.1 asked PW-1 as to whether he has brought the amount as told. On saying yes, accused No.1 told him to meet accused no.1 and to pay him the money. Accused No.1 did not speak to accused No.2 in his presence. PW-1 told accused No.2 that accused No.1 has instructed him to pay money to accused No.2. On that he took out tainted notes and held before accused no.2, who collected the notes by his right hand and kept in right pocket of his pant and asked PW-1 to submit application. Thereafter, PW-1 went outside and gave signal. On receiving signal, the

raiding party immediately came to the office. On asking this witness, he told that the amount is paid to accused No.2. On examination, currency notes of accused No.2 were found showing blueish shining under ultraviolet lamp. Nobody else's hands were seen with anthracene powder, except accused No.2. Even right side pocket of pant of accused No.2 was showing blueish glitterence. He produced currency notes from his pocket. The currency notes were also found with anthracene powder. Thereafter, he stated about drawing of panchanama.

. In the cross-examination by accused No.1, omission is taken on record that PW-1 told accused No.2 - Garodi that he was told by accused no.1 to give him money. It is further taken in the cross that at the time of alleged incident there were 7-8 clerks working in the office and 10-12 other persons were also there in the office. Accused No.2 was sitting 10-15 feet away from accused No.1. Accused No.1 was talking on phone till raiding party came in the office. There was no incriminating document found on the table of accused No.1.

. In the cross-examination by accused No.2, PW-2 accepted that he was given two photocopies of panchanama with summons. He stated that accused No.2 was doing his work on his table. There was no

talk about money between accused No.1 and accused No.2. PW-1 had talked to accused No.2 in low voice as to where is accused No.1. There were 1 or 2 persons between PW-1 and accused No.2. Therefore, talk was going on. These two persons were also talking to accused No.2.

10. PW-3 Malati Ambadas Shukla stated that her husband had submitted an application in the Corporation seeking permission to construct rooms and thereafter started construction of two rooms on 05.11.2000. The rooms were to be constructed to run STD booth, adjoining the house. On 14.11.2000 when she was present with her husband at home, accused No.1 had been to the house and asked as to whether there is permission obtained to construct two rooms. On that Shuka had told him that he has already submitted application for permission. On that accused No.1 seized and carried building material and asked to stop construction and left the spot. Shukla, however, did not go to office of Corporation on that day. Thereafter, she told about this incident to PW-1.

. In the cross-examination, she accepted that she cannot identify the person to whom she had seen three years back. She had no talk with accused No.1. On 15.11.2000 accused No.1 had come along

with other persons on vehicle and also with police.

11. PW-4 – Sanjiv Vasant Rao Mendke is the Investigating Officer. He deposed about receiving of complaint from PW-1, deciding to conduct raid, carrying out of the investigation, seeking sanction etc.

. In the cross-examination, he stated that he did not conduct identification of accused No.1 from Shukla or his wife Malati. He accepted that the Encroachment Removal Staff is provided a police security. He did not record statement of any of the members of Encroachment Removal squad. He could not know that the Corporation has raised any objection during the stipulated period and under such circumstances, deemed permission cannot be presumed. He accepted that the Corporation had raised objection vide Exhs. 19 and 21. He did not find any entry in the name of accused No.1 of having attached the building material.

. In the cross by accused No.2, he accepted that accused No.2 told him that he did not know the complainant nor he was concerned with any amount.

12. So far as PW-5 – Shaileshkumar Sharma, Sanctioning Authority is concerned, he stated about grant of sanction and that he was an authority to appoint and remove the person to the post of building inspector. He stated about going through investigation papers and and grating sanction.

. In the cross-examination, nothing is taken. In cross by accused No.2, he stated that he had gone through the statements of both the accused before according sanction and sanction was not granted mechanically.

13. On this evidence, the learned Trial Court proceeded and found the accused persons guilty as stated above. The learned Senior Advocate Mr. Rajendra Deshmukh for accused No.2 vehemently argued that the prosecution case even if taken as it is, the allegations are only against accused No.1. There is no allegation and evidence that at any point of time accused No.2, demanded the amount. Further allegation only shows that accused No.2 only accepted the amount given to him by PW-1. PW-1 himself has stated that he has given the amount for accused No.2, without telling as to what for the amount is being paid. He thus submits that there is no question of accused No.2 having any

knowledge of the alleged demand by accused No.1. In any case, he submits, there is no abettment at the hands of accused No.2. To show that there was abettment, it was necessary for the prosecution to show that it is accused No.2 who aided, assisted or instigated accused No.1 to accept the bribe. There is no talk between accused No.1 and accused No.2 about any bribe amount. There is specific admission by PW-1 that accused No.2 was not involved in the whole transaction. He thus prays for acquittal of accused No.2.

14. So far as accused No.1 – appellant in Criminal Appeal No. 808 of 2004 is concerned, learned Advocate Mr. Chatterji submits that the amount is not given to accused No.1. There is nothing to show that there was any demand by accused No.1. There is no earlier talk between the parties, in presence of panchas. On record, there is material to show that accused No.1 had raised objection and had issued notices to said Shukla, which are at Exhs.19 and 21. The application for permission was filed on 19.08.2000, assuming that there was deemed permission, if there is no communication between the three months. However, said period of three months was yet to over and construction was started even before expiry of such period. This construction was carried out without any permission and it is for this reason the building material was

seized by accused No.1. It is because of this action of accused No.1 he is falsely implicated. The prosecution has utterly failed to prove prior demand, demand at the time of incident and acceptance pursuant to demand. All these three material things are lacking still the Trial Court has wrongly held accused No.1 guilty of the offence. He thus submits that the conviction and sentence of accused deserves to be quashed and set aside by acquitting accused No.1.

15. The learned APP Mr. Shirse strongly opposed the appeals. He submits that there was motive to ask for bribe, as accused No.1 had seized the material. PW-1 wanted the material back and therefore there was talk of settlement of the amount. PW-1 was specifically told to give money only on demand by the accused. It is thus clear that the amount was given only on demand. From the evidence of PW-1 that it is only on handing over tainted notes to accused No.2, accused No.2 asked PW-1 to submit an application and collect the material. This clearly shows that accused No.2 had the knowledge of the alleged demand by accused No.1. He submits that when the knowledge is shown to accused No.2, this acceptance of the amount raises presumption. Though the deemed permission was there, still the material was seized which shows that accused No.1 wanted some amount from Shukla. About sanction, he

submits that the sanctioning authority has rightly granted sanction and nothing is brought on record that the order was mechanically passed without application of mind. He submits that the panchanamas are duly proved. Anthracene powder on the tip of the fingers and pocket of the pant of accused No.2 was also found showing blueish glitterance under ultraviolet lamp. Thus, he prays for rejection of the appeals.

16. The learned Sr. Advocate for the appellant in Criminal Appeal No. 825 of 2004 has relied upon following judgments, which are discussed in foregoing paragraphs.

17. In the case of **Sharad Namdeorao Shirbhate Vs. State of Maharashtra, reported in 2007 All MR (Cri) 352**, this Court was considering offence under section 5(1)(d) & 2 of the Prevention of Corruption Act. The Court found that the demand of illegal gratification for work which was already done was unbelievable. The Court had also considered question of power of the sanctioning authority.

18. In the case of **Ramdas Waman Tadge Vs. State of Maharashtra, 2019 All M.R. (Cri) 1833**, this Court held that to prove offence under sections 7, 12 and 13(1)(d) and (2), it is must for the

prosecution to prove demand and acceptance. In the said case, it was found that the Junior Clerk had accepted bribe amount on behalf of his Senior Officer. There it had come on record that the Junior Clerk had accepted the amount on instruction of his senior. Said person had no knowledge as to for what the amount is to be accepted. It was held that in such circumstances, offence under section 12 of the PC Act cannot be said to have been proved.

19. In the case of **Mahadeo s/o. Sawalaram Tingre Vs.State of Maharashtra, reported in 2024 DGLS (Bom.) 1400**, there was allegation that the accused working as Talathi, had obtained signatures of the complainant on blank paper and demanded amount. When the amount was to be paid, the complainant met accused No.1. Accused No.1 in that case told that the amount be paid to accused No.2, a hotel owner. Accused No.2 accepted the amount. It was shown that accused No.2 was not aware about the alleged demand by accused No.1. He was also not aware of the previous talks between the complainant and accused No.1. It was held that in such circumstances, no offence would be proved under section 12 against accused No.2. The conviction under section 12 was set aside and accused No.2 was acquitted.

20. In the case of **Abdul Mannan Mohd. Yusuf Vs. State of Maharashtra, through ACB, reported in 2019 SCC OnLine Bom 824**, this Court considered the case under section 12 of the PC Act. The allegation was that he accepted the amount for the main accused. There was talk between complainant and accused No.1 and after that the accused No.1 told the complainant to give an amount to the accused No.2, who was owner of a pan shop. Thus the amount was paid to accused No.2. In that case this Court held that the prosecution has failed to prove that there was knowledge to accused No.2 and that he abetted the crime and acquitted accused No.2 therein.

21. In the case of **Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe Vs. State of Maharashtra reported in (1990) 1 SCC 299**, it is seen that this case was under old act. There also allegations were made against respondent No.2 of abettment. There the allegation was that accused No.1 and accused No.2 who were Head Constable and Constable respectively in the same police station. A statement of the complainant was recorded by accused No.1. Accused No.1 asked the complainant to go. While going out the complainant asked accused No.2, as to whether he can go. It is alleged that thereafter accused No.2 told the complainant that he can go, however,

told that accused No.1 is demanding Rs.200/- to compromise the matter and to file application to see accused No.1 settles the matter with him. Thereafter, it is alleged that there was no corroborative evidence to the testimony of the complainant. Accused No.2 had told that accused No.1 has demanded the amount. On that accused No.2 was entrusted with the amount to pass it on to accused No.1. It is held that merely giving amount to accused No.2 for handing over to accused No.1 is not sufficient to hold accused No.2 guilty of an offence. It was not established that accused No.2 was also a party to the arrangement. It is held that it was necessary to prove that accused No.2 also was sharing intention with accused No.1. In that case accused No.2 was acquitted by the Hon'ble Apex Court.

22. Considering all these judgments and from the evidence it is clear that the prosecution has not brought anything on record to show that accused No.2 was a party to the conspiracy or he was sharing the common intention. The prosecution has even failed to show that accused No.2 had any knowledge about the alleged demand by accused No.1.

23. So far as accused No.1 is concerned, it is clear that there is no direct acceptance by accused No.1 of the alleged bribe amount. It

has come on record that accused No.1 had taken action against Shukla - brother-in-law of PW-1. Said Shukla had started construction without any permission, though it is stated that there was deemed permission. However, it has come on record that accused No.1 had raised objection and had sent notices to said Shukla (Exhs.19 and 21). This fact is not denied. It has also come on record from the evidence of PW-1 that when he met accused No.1 at the time of incident, it is PW-1 who on his own told accused No.1 that he has brought amount and there is no demand by accused No.1. It is also brought on record that PW-1 has further accepted in the cross that he told raiding party that accused No.1 is not involved.

24. When accused No.1 had taken action, there was every reason for PW-1 and Shukla to implicate accused in the offence. Considering all above facts there is certainly lack of evidence to prove the guilt of the accused persons. This Court, therefore, holds that the conviction of both the accused persons is without sufficient evidence. From the impugned judgment, it is seen that the learned Court below has held the accused guilty by imagination. It needs to be kept in mind that it is for the prosecution to prove guilt beyond reasonable doubt. The Court cannot fill up gaps or lacuna of prosecution case by imagination presuming

certain facts.

25. For all these reasons recorded above and since there is no sufficient evidence, this Court holds that the impugned judgment and order deserves to be quashed and set aside by acquitting both the accused-appellants of all the charges levelled against them. Hence, following order :-

ORDER

- (i) Both the Criminal Appeals are allowed.
- (ii) The judgment and order dated 26.11.2004, passed by the Special Judge, Aurangabad, in Special Case No. 16 of 2001 is quashed and set aside.
- (iii) Appellant – Accused – Jagannath Dadarao Thorat is acquitted of the offences punishable under sections 7, 13 (1) (d) and 13 (2) of the Prevention of Corruption Act.
- (iv) Appellant – Accused – Sonuji Chimaji Garodi is acquitted of the offences punishable under section 12 of the Prevention of Corruption Act.

(v) Fine amount, if paid, shall be refunded to the appellants.

(vi) Bail bonds of the appellants stand discharged.

[KISHORE C. SANT, J.]