

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 472 OF 2007**

Arjun Baban Jagdhane

...Appellant

Versus

The State of Maharashtra

...Respondent

WITH**CRIMINAL APPEAL NO. 460 OF 2007****WITH****INTERIM APPLICATION NO. 814 OF 2023**

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Jagannath Shivram Jadhav

...Appellant

Versus

The State of Maharashtra

...Respondent

....

Mr. Ujwal Agandsurve Advocate for Appellant in Appeal No. 460 of 2007.

Mr. P. R. Arjunwadkar Advocate for Appellant in Criminal Appeal No. 472 of 2007.

Ms. Pallavi N. Dabholkar APP for Respondent-State.

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CORAM : PRAKASH D.NAIK, J.**DATE OF RESERVING JUDGMENT : 28th JULY 2023****DATE OF PRONOUNCING JUDGMENT : 05th JANUARY 2024****JUDGMENT:-**

1. The appellants are challenging the Judgment and Order dated 17th April 2007 passed by Special Judge under the Prevention of Corruption Act and Additional Sessions Judge for Greater Bombay in Special Case No. 42 of 2002.

2. The appellant in Criminal Appeal No.460 of 2007 was arraigned as accused No.1 whereas appellant in Criminal Appeal No.472 of 2007 was arraigned as accused No.2 in Special Case No. 42 of 2002. They are referred to as accused No.1 and accused No.2 for the sake of brevity.

3. Accused No.1 was convicted for the offence punishable under Section 7 of the Prevention of Corruption Act and sentenced to suffer Rigorous Imprisonment for four years and pay fine of Rs.25,000/-. He is also convicted for offence punishable under Section 13(1) (d) read with 13(2) of P.C. Act and sentenced to suffer Rigorous Imprisonment for seven years and pay fine of Rs.25,000/-.

4. Accused No.2 is convicted for offence punishable under Section 12 of the P.C. Act and sentenced to suffer Rigorous Imprisonment for one year and pay fine of Rs.5,000/-. He has also acquitted for the offence under Sections 7, 13(1)(d) read with 13(2) of the P.C. Act.

5. The brief facts of the prosecution case are as under:-

(i) On 7th February 2001 at about 06:30 p.m., four persons in civil dress including accused No.1 visited the complainant's house and made inquiry whether her brother-in-law Mohd. Nabi was in the house. The accused No.1 disclosed his identity as Police Inspector.

(ii) The accused No.1 told complainant Roksana Banu to give amount of

Rs. 1 lakh to release Mohd. Nabi Qureshi. She shown her inability to pay it. She was told to visit Vashi Railway Police Station on 8th February 2001.

(iii) On 8th February 2001, the complainant Ruksana Banu went and met accused No.1. He again demanded Rs. 1 lakh. In the negotiations the bribe amount was reduced to Rs.25,000/-. The complainant was told to bring the amount on 10th February 2001.

(iv) The complainant was not willing to give the bribe amount. She approached ACB. Complaint was lodged. Crime No.8 of 2001 was registered under Section 7 of the Prevention of Corruption Act.

(v) Investigation was conducted by Police Inspector Mausamkar. The complainant arranged an amount of Rs.25,000/-. Panchas were summoned. Raid was arranged. Pre-trap panchnama was recorded. On 10th February 2001, raiding party proceeded towards Vashi Railway Police Station.

(vi) Panch witnesses and the complainant entered inside the police station. They approached accused. At the same time, the complainant in Crime No.7 of 2001 was also present at the police station along with pancha. Accused demanded money and instructed to hand over the amount to accused No.2.

(vii) The complainant instructed to hand over the amount to accused

No.2. It was accepted by him. The raiding party barged into police station and apprehended the accused.

(viii) The complainant in C.R. No. 7 of 2001 hand over the amount. It was accepted by accused No.2 on instructions of accused No.1. Accused were apprehended. Investigation proceeded. Charge-sheet was filed.

6. Learned Advocate for accused No.1 submitted that he has been falsely implicated in this case. The complaint is false. The version of complainant is doubtful. It is contrary to the version of other witnesses. The appellant has been falsely implicated in this case as the complainant was apprehending that relative would be arrested in this case. There was no demand of bribe by the appellant. The evidence on record discloses that accused No.1 was not at the police station at the relevant time. The documentary evidence falsifies the version of complainant. The version of complainant is not corroborated by independent witnesses. The sanctioning authority was not competent to accord sanction. The sanction order reflects non-application of mind.

7. Learned Advocate for accused No.2 submitted that the accused No.2 has been made scapegoat in this case. There was no demand of bribe by him. Assuming that, he has accepted money, the amount was allegedly handed over to him. He had no reason to understand that it was bribe

money and for what purpose the money is handed over. He has no knowledge that the accused No.1 has demanded bribe amount. Sanction order suffers from non-application of mind.

8. Learned APP submitted that demand and acceptance is proved. Accused No.2 has abetted accused No.1 in commission of crime. Documentary evidence proved the charge against the accused. There was demand of bribe by accused No.1. Accused No.2 was present at the police station. Accused No.1 demanded bribe and instructed complainant to hand over the money to accused No.2. The amount was accepted without any protest which shows that he was acting in connivance with accused No.1. Thus, aided and abetted accused No.1 in committing crime. Prosecution has succeeded in establishing the demand and acceptance of bribe.

9. Learned Advocates for accused No.1 have relied upon the following decisions.

- (i) PA. Mohandas Vs. State of Kerala¹
- (ii) State Inspector of Police, Vishakhapatnam Vs. Surya Sankaram Karri²

10. PW-1 Roksana Banu (complainant) in her deposition has stated that, she was residing along with her mother-in-law and brother-in-law Mohd. Nabi Qureshi. She did not know person by name Munna and Firoz Khan.

¹ (2003) 9 SCC 504

² 2007 ALL MR (Cri) 555 (S.C.)

Accused No.1 was posted at Vashi Railway Police Station. He visited the house of complainant on 7th February 2001 alongwith other persons at 06:00 pm. He enquired about Mohd. Nabi Qureshi. Mohd. Nabi Qureshi was sleeping in the house. Accused No.1 took Nabi with him to police station. The complainant was directed by accused No.1 to contact him on the next date at 11:00 am. On 8th February 2001, she contacted accused No.1 at Vashi Railway Police Station. Accused No.1 demanded bribe of Rs.1 lakh and threatened that, if the amount is not given, Nabi Qureshi would be implicated in robbery case. The complainant expressed her inability to pay the amount and informed accused No.1 that, she would make arrangement of Rs.25,000/- on 10th February 2001. She left police chowki. On 10th February 2001, she visited ACB, Worli and contacted officer Mausamkar. Complaint was recorded. She was carrying cash of Rs.25,000/-. Arrangement was made for conducting raid. At about 08:00 p.m. to 09:00 p.m., she went to Vashi by police vehicle and reached near Vashi Railway Police Station. At about 10:00 p.m., she got down from the vehicle and alone went to police station. Accused No.1 was present at police chowki. He inquired with her if she had brought money. She replied in affirmative. The accused No.1 demanded the amount. She paid the bribe money to accused No.1. He accepted it. In the ACB office, she was instructed by officer Mausamkar to drop her money purse on the floor after making payment by way of signal. Accordingly, she came out of police chowki and dropped her

money purse on the floor. Police rushed to the chowki. ACB Officer took away accused No.1. Nothing took place in the police chowki. She returned home.

11. From the evidence of PW-1 it can be seen that according to her accused No.1 demanded bribe amount on 8th February 2001. She lodged the complaint to ACB on 10th February 2001. Raid was arranged on 10th February 2001. She went to Vashi Railway Police Station with police on 10th February 2001 and reached there at about 10:00 pm. She alone went to police chowki and met accused. The accused demanded money. She handed over the money. On giving signal, raiding party came to the spot and apprehended accused. She does not refer to presence of any other person along with her at the time of demand and acceptance of money by accused. She does not refer to presence of accused No.2. The amount was handed over to accused No.1. Presence of panch witnesses is not mentioned. The version of this witness run counter to evidence all the other witnesses.

12. Parallel investigation was conducted in Crime No.7 of 2001 wherein allegedly the complaint was lodged by one Firoz Khan alleging that accused No.1 herein had demanded the bribe of Rs.25,000/- from him for releasing Munna. Evidence of Munna in the parallel case referred to the fact that he was taken into custody by accused No.1 and brought to the house of Mohd.

Nabi Qureshi. The prosecution case in crime No.7 of 2001 which was subject matter of Special Case No. 34 of 2002 is that raids were effected on the same date. The complainant in that case was also present at the police station simultaneously demand was made by accused. Amount was handed over to accused No.2 on the instructions of accused No.1. All these facts disclosed in Special Case No. 34 of 2002 are completely absent in the evidence of PW-1. It is pertinent to note that the prosecution has accepted the version of PW-1 as deposed before the court although it was contrary to the evidence of other witnesses.

13. PW-2 Sunanda Muluk acted as panch witness. According to her, she was instructed to act as panch witness. She visited the office of ACB. She met Police Inspector Mausamkar. She was introduced to Ruksana Banu. She was complainant. Ruksana Banu produced amount of Rs. 25,000/-. Instructions were given by Police Inspector to raiding party. She was instructed to accompany complainant to Vashi Railway Police Station and watch transaction. She has referred to presence of Vaishali, who was instructed to act of panch and accompany another complainant Mr. Firoz Khan, who was also present at the office of ACB. She further stated that, Ruksana Banu had brought veils. PW-2 and Vaishali (panch witness in C.R. No. 7 of 2001) were directed to wear the veils. The complainant was directed to pay the amount on demand by accused. The complainant was

directed to give signal on making payment by dropping her money purse on the ground by her left hand. The complainant Firoz Khan was also instructed to move his left hand on his hair, on coming out of the police station as signal of payment of bribe money. All of them went to Vashi Railway Police Chowki. There were three to four persons in the cabin of accused No.1. They were Mr.Jagdhane and Mr.Bangare. They entered in the cabin of accused No.1. The accused No.1 inquired with Roksana Banu if she had brought money. He directed her to make payment of amount to accused No.2 by pointing finger towards him. Accused No.2 counted currency notes. Accused No.1 directed accused No.2 to keep the amount with him. The complainant Firoz Khan also handed over the money. After demand, Rs.5,000/- was accepted by Mr. Bangare. Raiding party barged into the chowki. Accused were apprehended.

14. The evidence of this witness is contrary to what is deposed by PW-1. The complainant (PW-1) has not referred to presence of PW-2 at Police chowki at the time of demand or acceptance of amount. According to PW-2, the bribe amount was handed over to accused No.2 whereas PW-1 has deposed that, the amount was handed over to accused No.1.

15. In the cross-examination PW-2 has stated that, she was not introduced to any police constable by referring to their buckle numbers. She was shown pre-trap panchnama Exh.24 and post trap panchnama Exh.22.

The buckle numbers of constables mentioned in it are written by Officer Mr. Mousamkar. Her signature was not obtained below the three signatures. She has nothing to show that, three signatures appearing on the last page of the post trap panchnama were obtained in her presence. There is no mention of PW-2, PW-1 and Vaishali Malshekar wearing veil in the panchnama. In the pre-trap panchnama Exh.24 and her statement recorded by police she stated that, when the demonstration was given, she was introduced to Firoz Khan as a complainant in another case against accused by ACB Officer Mr.More. However, this fact is not mentioned in the panchnama and in her statement. She had also stated in pre-trap panchnama and in her statement that, Firoz Khan produced Rs.5,000/- and he was instructed to give signal by moving his left hand on his hair on coming out of the police station. However, this fact is not reflected in her statement. In the post trap panchnama, it is not stated that PW-2 and PW-1 entered into the cabin of accused after PW-1 obtained his permission to come inside but the said fact is not mentioned in it.

16. PW-3 Mohd. Nabi Ahmad Nabi Qureshi had deposed in his deposition that, he knows Munna Dilawar Khan. On 7th February 2001, he came at his house. At about 06:30 p.m., four police persons in civil dress came to his house along with Munna Dilawar Khan. Police persons came from Vashi Railway Police Station. They were enquiring with him about robbery

committed on 1st February 2001 at Vashi Railway Police Station. In the same night at about 03:00 to 04:00 a.m., they were released from Vashi Railway Police Station. A.C.B., Mumbai Crime Unit recorded his statement on 16th February 2001. He was arrested on 30th March 2002 in C.R. No. 07 of 2001 of Vashi Railway Police Station under Section 379 of I.P.C. and released on bail on 12th April 2002. This is the same crime in which he was arrested after one year. Charge-sheet is filed against him and the same is pending. Before 7th February 2001, he was not knowing accused No.2. He had not gone to Vashil Railway Police Station after 7th February 2001.

17. From the factual aspects of the version of this witness it is apparent that he was knowing Munna Dilawar Khan. He was arrested in C.R. No. 7 of 2001 registered with Vashi Railway Police Station. Munna Khan and PW-3 were suspected to be involved in the same case. It is relevant to note that, the alleged bribe was demanded during the same period. Complaints were made by complainant in each case during the same period. Raid was arranged on the same day. Accused in both complaints were apprehended while accepting the bribe on the same day. This co-incident does not appear to be natural and speak volumes of doubt. It is also relevant to note that, the evidence of PW-2, PW-3 reveal that PW-3 was taken to Vashi Railway Police Station alongwith Nabi Mohd. Qureshi, on 7th February 2001 at 06:30 p.m., and in the same night about 03:00 to 04:00 a.m., they were

released from Vashi Railway Police Station. This belies the prosecution case that the suspects were detained at the police station for long time and accused No.1 demanded money to release them.

18. The accused are charged for committing offence under Sections 7, 12, 13(1)(d) read with 13(2) of the Prevention of Corruption Act. There is no charge under Section 343 of I.P.C. in this case. It is relevant to note that, the prosecution case in Special Case No.34 of 2002 is that Munna Khan and Mohd. Nabi Qureshi were both detained at Police Chowki. However, PW-3 in this case has stated that, they were released in the same night.

19. PW-4 Mr. Subhashchandra Malhotra was serving as Director General Of Police, Maharashtra State. Letter dated 4th September 2001 was submitted by ACB to him. He received case papers. He found that there was prima facie case against the accused to grant sanction. He accorded sanction. Office of Director General of Police sent sanction order to the office of ACB with covering letter. He received papers of investigation and draft sanction order. He produced diary Nos. 21 and 26. Except few changes in the draft sanction order, he approved draft sanction order. In the sanction order and draft sanction order place and timing 06:30 pm is not mentioned. Police Inspector of A Class and B Class are gazetted officers. Maharashtra State Government has issued G.R. dated 3rd April 2000. It was marked as Exh.34. From the evidence of this witness it is apparent that he

has mechanically granted sanction. He has no satisfied how he is competent to accord sanction.

20. PW-5 Mr.Govindsingh Jagdishsingh Pardeshi was serving as P.S.I. at Vashi Railway Police Station since May 2000. On 10th February 2001, he was on duty at Vashi Railway Police Station. According to him, two to three days prior to 10th February 2001 PI. Jadhav and Police staff brought Nabi Mohd. and Munna for investigation. There was no entry made in the station diary about bringing the said persons. In the cross examination, he stated that, the incident which had occurred are noted in the station diary. The incidents which are not occurred are not noted in station diary. The attention of the witness was drawn to station diary entry Nos. 17, 18 and 19 dated 6th February 2001. As per the station diary entry Nos. 17, 18 and 19 dated 6th February 2001 the accused No.1 was present in Vashi Railway Police Station from 10:15 am to 12:20 noon. The attention of the witness was drawn to station diary entry No.21 dated 7th February 2001. As per the said entry at 01:45 p.m. accused No.1 and others including the witness had gone to search the pages of Guru Granthsahib as mentioned in the entry serial No. 21. In the entry No. 26 dated 7th February 2001, there is reference of entry No.21. They all returned on the same day at 08:00 pm. On 8th February 2001 at 11:30 a.m., accused No.1 and others went to search aforesaid papers in three groups at Vashi to Vashi Creek. Accordingly,

the entry was made at Sr. No. 17 in the station diary dated 8th February 2001. All of them returned at 07:45 p.m. and accordingly entry was made at Sr. No. 26.

21. PW-6 Mr. Suresh Balkrishna Mosamkar is the Investigating Officer. He has provided details about investigation. He stated that he has not introduced to police constable by his name and buckle number to informant and panchas, who applied the anthracene powder to the currency notes. He has not noted in the pre-trap panchnama that the clothes and hands of panchas, informant and police party were observed under the UV rays. He has not mentioned in pre-trap panchnama Exh.24 that it was read over and explained to the panchas. He has not mentioned in detail in pre-trap panchnama Exh. 24 as to how demonstration of anthracene powder was shown to the panchas. Pre-trap panchnama used to be drawn after FIR. When he went inside the chamber, he saw that hands of accused Jadhav were held. He also saw that hands of accused No.2 Jagdhane were also held. He does not remember whether the hands of panchas were examined under UV rays. On perusal of panchnama, he say that the hands of oth the panchas were not examined under UV rays. Initially bribe money was seen in the hands of accused No.2. Thereafter, hands of accused No.2 were examined under the rays of UV lamp after removal of bribe money from his hand.

22. 18. The defence of the accused No.1 reflected in explanation under Section 313 of Cr.PC. reads as follows:-

“Q.104 :- Do you want to say anything else?

Ans.:- whatever stated by the complainant about demand and acceptance of money from time to time is false. It is false that, I brought complainant's brother-in-law in Vashi Rly. P.S. From the entries made in station diary Vashi Rly. P.S. it will disclose that evidence of complainant is false. Neither I called nor brought informant's brother-in-law at Vashi Rly. P.S. This will be cleared from entries made in station diary. Parallel investigation of C.R. No.7/2001 of Vashi Rly. P.S. u/sec.379, 34 of I.P.C. was given on through PI. Avhad and his staff under the supervision of ACP Shri Nagdavade. There was direct control of CP on said Unit. I was also making investigation of said crime. There were two names of accused in the said crime. Mr. Khambal was arrested on the spot of incident at the platform of Govandi Rly. Station, other accused Waghmare was absconding with the bag of Rs.One Lac. Waghmare was brought by Police Staff Vashi Rly. Station for investigation. In the said investigation Munna and Nabi were disclosed as offenders in the said crime. When Munna and Nabi realized that, they would be arrested by me then they lodged false complaint against me at ACB Office. Thus, I am falsely involved in the crime with the help of ACB Police. ACB Police, Panch and complainant made collusion in this case. D.G.P Malhotra Saheb is not Competent Authority to remove me from the service. Government of Maharashtra is Competent Authority to remove me from service. Sanction given by him is without perusal of papers. C.R. No.4/01 of Vashi Rly. Station u/sec.295-A, 427 I.P.C. was investigated by A.C.P Shri Anup Salunkhe as per the order of C.P., A.C.P. was doing investigation through me. Thus, I investigate on 5th and 8th February, under his supervision. Daljit Sing and others 15 were social workers.

23. The defence of the accused is of denial. The Station diary entry (Exh.29/2) mentioned that on 7th February 2001 at 13:30 hours in the afternoon, the accused upon information left Vashi Railway Police Station

along with PSI Shri. Pardesh (PW-5) and his staff to search some lost pages of the 'Holy Guru Granth Sahib' near Vashi Creek where some Sikh followers had gathered and returned in the evening at 20:00 hours vide entry No. 26. The accused thereby denies that he had visited the house of complainant at 06:00 p.m. on 7th February 2001. It is also case of the accused that in the absence of any such prior demand and appointment, the question of calling the complainant at Vashi Railway Police Station on 10th February 2001 at 19:50 hours does not arise.

24. The station diary entries referred to hereinabove creates doubt about the prosecution case spelt out the evidence from complainant that the appellant had visited his house on 7th February 2001 for making inquiry about Munna and there was demand of bribe amount.

25. PW-5 Mr. Pardeshi has stated that the incidents which are occurred are noted in the station diary. The incidents which are not occurred are not noted in the station diary. His attention was drawn to station diary entry Nos. 17, 18 and 19 dated 6th February 2001. As per the station diary entry Nos. 17, 18 and 19 dated 6th February 2001 the accused No.1 was present in Vashi Railway Police Station during the period of 10:15 am to 12:20 noon. The attention of witness is drawn to station diary entry No.21 dated 7th February 2001. He admitted that as per the said entry at about 01:45 pm the witness, accused No.1 and five constables were gone to search the

pages of Guru Granth Sahib as mentioned in the entry No.26 dated 7th February 2001 and there is a reference of entry No.21. The witness also admitted that they all returned on the same day at 08:00 p.m.. On 8th February 2001, the witness, accused No.1 and other staff had gone to search the aforesaid papers in three groups to the area in between Vashi to Vashi Creek and entry in that regard is taken at serial No. 17 in station diary dated 8th February 2001. This admission and documentary evidence speaks volumes of doubt about the version of complainant.

26. Sanction accorded by PW-4 Mr.Subhashchandra Malhotra was challenged by defence on the ground that it was granted mechanically without perusing the papers of investigation and application of mind. PW-4 has stated that he received papers of investigation and draft sanction order alongwith letter Exh.32, diary No.21, diary No.26 were filed. PW-4 admitted that except few changes in the draft sanction order, he approved draft sanction order. Apparently, the sanctioning authority has not considered the station diary entry No.21 (Exh.29/2) and station diary entry No.26 (Exh.29/3) of Vashi Railway Police Station. The said entry shows that on 7th February 2001 at about 13:30 hours the accused had upon information, left the Vashi Railway Police Station along with staff to search of lost pages of the Holy Guru Granth Sahib. They returned in the evening at 20:00 hours vide entry No.26. PW-4 has admitted that in the sanction

order and draft sanction order, the place and timing 06:00 pm in respect of allegations are not mentioned though it is mentioned in the FIR. PW-4 has deposed that along with letter Exh.32 he received complaint, panchnama, statement of accused, supplementary statement of informant, statement of PW-5 and statement of panch witness. Apparently, PW-4 has not perused the FIR otherwise he would have mentioned in the sanction order (Exh.34) that 'for releasing him' and may not have mentioned in the sanction order in the matter of releasing him. Except for a few changes PW-4 has approved draft sanction order and accorded sanction. Both the documents are identical. Apparently, the sanctioning authority had adopted the draft sanction order.

27. Case of the prosecution suffers from serious doubt. The version of panch witness indicate that, the money was handed over to accused No.2 and the demand was made by accused No.1 whereas according to complainant, the amount was demanded and accepted by accused No.1. The version of complainant is absolutely contradictory to prosecution case. The accused No.2 is not involved in demand. He had alleged accepted money. Surprisingly in both cases, the amount was allegedly accepted by accused No.2. The case is apparently concocted. Sanction order reflects non application of mind. Complainant has given completely different dimension to the case.

28. The prosecution has failed to establish the charges beyond reasonable doubt. Considering the nature of infirmity in the evidence, the accused are entitled for benefit of doubt and hence, conviction is required to be set aside.

ORDER

- (i) Criminal Appeal Nos. 472 of 2007 and 460 of 2007 are allowed.
- (ii) The impugned Judgment and order dated 17th April 2007 passed by Special Judge (under the Prevention of Corruption Act) and Additional Sessions Judge for Greater Bombay in Special Case No. 42 of 2002 is set aside and appellants are acquitted of all the charges.
- (iii) Bail bond stands cancelled.
- (iv) Criminal Appeals stand disposed off.
- (v) Interim Application stands disposed off.

(PRAKASH D. NAIK, J.)