Narendra Champaklal Trivedi vs State Of Gujarat on 29 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2263, 2012 (7) SCC 80, 2012 AIR SCW 3185, AIR 2012 SC (CRIMINAL) 1006, 2012 (4) AIR JHAR R 524, 2012 (5) SCALE 683, 2012 ALL MR(CRI) 2426, (2012) 115 ALLINDCAS 34 (SC), 2012 CRILR(SC MAH GUJ) 572, 2013 (1) SCC (CRI) 963, (2013) 1 GUJ LR 1, 2012 (115) ALLINDCAS 34, (2012) 4 MH LJ (CRI) 434, (2012) 3 CRILR(RAJ) 572, (2012) 3 ALLCRIR 3029, (2012) 3 CHANDCRIC 23, (2012) 3 RECCRIR 974, (2012) 2 UC 1249, (2012) 2 DLT(CRL) 846, (2012) 2 GUJ LH 643, (2012) 3 ALLCRILR 480, (2012) 3 CURCRIR 14, (2012) 3 MAD LJ(CRI) 809, (2012) 52 OCR 576, (2012) 5 SCALE 683, (2012) 78 ALLCRIC 160, (2012) 3 CRIMES 24, 2012 (2) ALD(CRL) 389, 2012 (3) KLT SN 81 (SC), 2012 (4) KCCR SN 309 (KAR)

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Bench: Dipak Misra, B. S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 97 OF 2012

NARENDRA CHAMPAKLAL TRIVEDI …..Appellant

Versus

STATE OF GUJARAT ….Respondent

WITH

CRIMINAL APPEAL NO. 98 OF 2012

HARJIBHAI DEVJIBHAI CHAUHAN … Appellant

Versus

STATE OF GUJARAT ….Respondent

j u d g m e n t

Dipak Misra, J.

The present appeals are directed against the judgment of conviction and order of sentence dated 14.10.2011 passed by the learned Single Judge of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 31 of 1999 whereby the appellate court has confirmed the judgment and order of conviction and sentence dated 1st of December, 1998 passed by the learned Additional Special Judge, Bhavnagar in Special Case No. 6 of 1994, wherein the learned Additional Special Judge had convicted the appellants for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for brevity `the Act') and sentenced them to undergo rigorous imprisonment of six months with fine of Rs.5,000/- each, in default of payment of fine, to suffer simple imprisonment for a period of one month and further convicted them under Section 13(2) of the Act and sentenced them to undergo rigorous imprisonment for a period of one year with a fine of Rs.5,000/- each, in default, to suffer simple imprisonment for a period of one month with the stipulation that both the sentences would be concurrent.

2. The broad essential facts of the prosecution case are that the complainant, Gajendra Jagatsinh Jadeja, was residing in Plot No. 1 in Virbhadranagar Society. As in the City Survey Office record, the name of his grandfather stood recorded in respect of the premises in question, the complainant in order to obtain the property card and the sketch of the same, went to the office of the City Survey Office, Bhavnagar on 11th March, 1994, to submit an application for the aforesaid purpose and he was asked by Mr. Jagani, Clerk in the said office to come on 15th of March, 1994. On the said date, the complainant at about 1.30 p.m. went to the City Survey Office and gave the application to Mr. Jagani, who asked him to hand over the application to Narendra Champaklal Trivedi, the appellant in Criminal Appeal No. 97 of 2012, sitting in the opposite room who told him that it would take a week's time to prepare the said copies. The complainant made a request to Shri Jagani to expedite the matter as he had to go to meet his father with the copies and Mr. Jagani replied that it would cost him Rs.50/- to get the copies immediately. As the complainant had no money at that time he was asked by Jagani to meet Trivedi and Harjibhai Devjibhai Chauhan, the appellant in Criminal Appeal No. 98/2012 who told him that the copies would be given to him on payment and he could receive the copies between 4.30 to 4.50 p.m. As the appellant had no intention to make the payment, he approached the office of the Anti Corruption Bureau which was situate on the ground floor of his premises and gave a complaint to the Police Inspector. The concerned inspector sought assistance of two panch witnesses who were made to understand the case and thereafter experiment of U.V. Lamp was carried out with the help of anthrecene powder. Thereafter, the complainant produced the currency notes and necessary instructions were given to the complainant as well as to the witnesses. A preliminary part of the panchnama was drawn and signatures of the panchas were taken and thereafter, the complainant, the panchas and the members of the raiding party proceeded to the City Survey Office.

3. As the narration of the prosecution case proceeds, Jagani asked the complainant to meet said Chauhan and pay the money. Being instructed, they went to the room of said Chauhan and he was directed to pay Rs. 7.10 paise as fees to said Trivedi and obtain the property card and sketch. Thereafter, said Chauhan demanded money from the complaint as decided and on being asked whom to hand over the amount, Chauhan said to give it to Trivedi and Trivedi was asked to accept the amount. Thereafter, the complainant took out the money from his left pocket of the shirt and handed over to Trivedi which was accepted by Trivedi by his right hand. He counted the money by

both hands and put the same in the left side pocket of his shirt. As pre-decided, the signal was given to the raiding party which rushed to the place of the incident. Thereafter, the experiment of U.V. Lamp was carried out on the fingers of both the hands and palms of Trivedi and pocket also and thereon light blue fluorescent marks were found. Panch witness No. 1 took out the currency notes from Trivedi. There were two ten rupee notes and one five rupee note. On those currency notes, light blue fluorescent marks were found with the numbers mentioned on the first part of the panchnama. On being asked about the rest of the money, Trivedi had said that he had given it to Chauhan. Experiment of U.V. Lamp was made on the hands and pockets of Trivedi and Chauhan and light blue fluorescent marks of anthrecene powder was found. The currency notes were tallied with the numbers mentioned on the first part of the panchnama. From both the accused-appellants, currency notes were recovered, marks of anthrecene powder were found and the second part of the panchnama was prepared. The Investigating Officer carried out further investigation, recorded the panchnama and after obtaining requisite sanction, he laid the chargesheet before the Competent Court on 25th of August 1994.

4. The learned trial Judge framed charges in respect of the offences that have been mentioned hereinbefore. The appellants pleaded not guilty and sought to be tried.

5. In order to bring home the charges levelled against the appellants, the prosecution examined number of witnesses and produced documentary evidence in support of the case.

6. The accused-appellants in their statements under Section 313 of the Code of Criminal Procedure disputed the charges that they had demanded the amount towards illegal gratification but did not want to adduce any evidence in their defence.

7. The learned trial Judge, appreciating the oral as well as the documentary evidence and taking into consideration the submissions advanced by the parties, found the appellants guilty and convicted them as has been stated hereinabove.

8. The appellants preferred a singular appeal before the High Court. It was contended before the High Court that the learned trial Judge had failed to take into consideration the plea of the defence and the inadequacy of the material brought on record from which it would be graphically clear that the prosecution had miserably failed to prove its case that there was demand of bribe and acceptance thereof and hence, the ingredients of Sections 7 and 13 of the Act had not been established. It was argued that neither the FIR nor the testimony of the complainant remotely establish that there was a demand for bribe and once the said core fact was not proven, the charges levelled against them were bound to collapse like a pack of cards. It was urged that as the office of the Anti Corruption Bureau had been leased out by the complainant, he was able to rope the accused-appellants in a bogus trap and falsely implicate them. It was further contended that the complainant and Panch witness No. 1 had stated in the cross-examination that Trivedi had not made any demand of Rs.50/- from the complainant and the recovery of the trapped amount had also not been proven inasmuch as the panchas are not independent witnesses and their evidence did not merit any acceptance. It was proponed that the learned trial Judge had failed to consider the fact that Jagani who was the main culprit was not booked under law and, therefore, the prosecution had

deliberately severed the link to rope in the appellants and hence, it was a malafide prosecution. It was also submitted that there were other witnesses in the room but the prosecution chose to examine only the interested witnesses and in essence, the judgment of conviction suffered from perversity of approach and deserved to be axed.

9. The learned counsel for the State urged before the High Court that the emphasis laid on Jagani not being arrayed as an accused was totally inconsequential as he had never made any demand from the complainant. He referred to various documents on record and the testimony of the witnesses that the charges levelled against the accused persons had been proven to the hilt and there was nothing on record which would remotely suggest that they had been falsely implicated. The relationship between the complainant and the ACB officer could not be taken into consideration to come to a conclusion that the complaint was false, malafide and the accused persons had been deliberately roped in. It was canvassed by him that the amount had been recovered from the pocket of Trivedi and the demand had been made by the accused Chauhan to handover the amount of illegal gratification to Trivedi. The offence was committed with the consent of both and the same had been established by the oral and documentary evidence. The learned counsel for the State gave immense emphasis on the version of the Panch witnesses, the scientific proof and the testimony of the trapping officer. The principle of presumption was pressed into service and the said contention was edificed by putting forth the stance that the cumulative effect of the evidence on record clearly satisfied the ingredients of Sections 7 and 13(2) read with Section 13(1)(d) of the Act to bring home the charges levelled against the accused persons.

10. The learned single Judge took note of the facts as regards the presence of the accused appellants in the room, the demand made by the appellant No. 2, Chauhan, in the presence of the Panch witness No. 1, the direction by Chauhan to hand it over to Trivedi which established the consent, the deposition of PW-2 about the involvement and complicity of the appellants in the crime, the absence of enmity between the complainant and the accused persons, the unreproachable aspect of the evidence of the witnesses who stood embedded in their stand, the acceptance and recovery that inspired total credence about the demand and acceptance, and the principle of presumption being attracted, all of which would go a long way to show that the prosecution had proven the case beyond reasonable doubt and further considered the inability of the accused-appellants to rebut the presumption as envisaged under Section 20 of the Act, the unacceptability and farfetchedness of the theory of existence of obligation between the informant and the investigating officer to implicate the accused-appellants in the crime, the failure of the appellants to explain how the amount in question was found from their possession and how anthrecene powder was found on their hands and eventually opined that the cumulative aspect of all the facts and circumstances clearly establish the charges framed against the appellants. Being of this view, the High Court affirmed the judgment of conviction.

11. We have heard the learned counsel of both the parties at length and carefully perused the record.

12. At the outset, we may state that the recovery part has gone totally unchallenged. Though a feeble attempt was made before the High Court and also before us, yet a perusal of the evidence and the test carried out go a long way to show that the amount was recovered from the possession of the

accused-appellants. It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as a bribe. Thus, the only issue that remains to be addressed is whether there was demand of bribe and acceptance of the same. Be it noted, in the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery would not alone be a ground to convict the accused. This has been so stated in T. Subramanian v. The State of Tamil Nadu[1].

13. The demand and acceptance of the amount as illegal gratification is the sine qua non for constituting an offence under the Act. It is also settled in law that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than the motive or reward as stipulated under Section 7 of the Act. It is obligatory on the part of the court to consider the explanation offered by the accused under Section 20 of the Act and the consideration of the explanation has to be on the anvil of preponderance of probability. It is not to be proven beyond all reasonable doubt. It is necessary to state here that the prosecution is bound to establish that there was an illegal offer of bribe and acceptance thereof. The same has to be founded on facts. In this context, we may refer with profit to the decision in M. Narsinga Rao v. State of A.P.[2] wherein a three-Judge Bench referred to Section 20 of the Act and stated that the only condition for drawing the legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept the gratification. Thereafter, the Bench produced a passage from Madhukar Bhaskarrao Joshi v. State of Maharashtra[3] with approval. It reads as follows: -

> "The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

14. In Raj Rajendra Singh Seth v. State of Jharkhand & Anr.[4] the principle laid down in Madhukar Bhaskarrao Joshi (supra) was reiterated.

15. In State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede[5], it has been held that to arrive at the conclusion that there had been a demand of illegal gratification, it is the duty of the court to take into consideration the facts and circumstances brought on record in their entirety and for the said purpose, undisputedly, the presumptive evidence as laid down in Section 20 of the Act

must also be taken into consideration.

16. In C.M. Girish Babu v. C.B.I., Cochin, High Court of Kerala[6], after referring to the decisions in M.Narsinga Rao (supra) and Madhukar Bhaskarrao Joshi (supra), this Court has held thus: -

> "19. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification."

17. In the case at hand, the money was recovered from the pockets of the accused-appellants. A presumption under Section 20 of the Act becomes obligatory. It is a presumption of law and casts an obligation on the court to apply it in every case brought under Section 7 of the Act. The said presumption is a rebuttable one. In the present case, the explanation offered by the accused-appellants has not been accepted and rightly so. There is no evidence on the base of which it can be said that the presumption has been rebutted.

18. The learned counsel for the appellant has submitted with immense force that admittedly there has been no demand or acceptance. To bolster the said aspect, he has drawn inspiration from the statement of the complainant in examination-in-chief. The said statement, in our considered opinion, is not to be read out of context. He has clarified as regards the demand and acceptance at various places in his examination and the cross- examination. The shadow witness has clearly stated that there was demand of bribe and giving of the same. Nothing has been brought on record to doubt the presence of the shadow witness. He had given the signal after which the trapping party arrived at the scene and did the needful. All the witnesses have supported the case of the prosecution. The currency notes were recovered from the possession of the appellants. In the lengthy cross- examination nothing has really been elicited to doubt their presence and veracity of the testimony. The appellants in their statement under Section 313 of the Code of Criminal Procedure have made an adroit effort to explain their stand but we have no hesitation in stating that they miserably failed to dislodge the presumption. PW-2 has categorically stated that the complainant took out Rs.50/- from his pocket and gave it to the accused appellant as directed. Thus analysed and understood, there remains no shadow of doubt that the accused-appellants had demanded the bribe and accepted the same to provide the survey report. Therefore, the conviction recorded by the learned trial Judge which has been affirmed by the learned single Judge of the High Court, does not warrant any interference.

19. The learned counsel for the appellants had, in the course of arguing the appeal, submitted that the appellants have suffered enough as they have lost their jobs and the amount is petty, the said aspects should be considered as mitigating factors for reduction of the sentence. Sympathy has also been sought to be drawn on the foundation that the occurrence had taken place almost 18 years back and the amount is paltry. On a perusal of Section 7(1) of the Act, it is perceptible that when an offence is proved under the said section, the public servant shall be punished with imprisonment

which shall not be less than six months but which may extend to five years and shall also be liable to fine. Section 13(2) of the Act postulates that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine. As is demonstrable from the impugned judgment, the learned trial court has imposed the minimum sentence and the High Court has affirmed the same.

20. The submission of the learned counsel for the appellants, if we correctly understand, in essence, is that power under Article 142 of the Constitution should be invoked. In this context, we may refer with profit to the decision of this Court in Vishweshwaraiah Iron and Steel Ltd. V. Abdul Gani and Ors.[7] wherein it has been held that the constitutional powers under Article 142 of the Constitution cannot, in any way, be controlled by any statutory provision but at the same time, these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in any statute dealing expressly with the subject. It was also made clear in the said decision that this Court cannot altogether ignore the substantive provisions of a statute.

21. In Keshabhai Malabhai Vankar v. State of Gujarat[8], it has been held as follows: -

> "6. It is next contended that this Court in exercise of power under Article 142 of the Constitution has plenary power to reduce the sentence. We are afraid that we cannot ignore the statutory object and reduce the minimum sentence prescribed under the Act. Undoubtedly under Article 142 the Supreme Court has the power untrammelled by any statutory limits but when penal offences have been prescribed for violation of statutory regulations for production, equitable supply and distribution of essential commodities at fair prices, it was done in the social interest which this Court would keep in mind while exercising power under Article 142 and respect the legislative policy to impose minimum sentence. Amendment to the Act was made to stamp out the statutory violations with impunity. Thus we find that it is not a fit case warranting interference. The appeal is accordingly dismissed."

22. In Laxmidas Morarji (Dead) by LRS. v. Behrose Darab Madan[9], it has been ruled thus: -

> "Article 142 being in the nature of a residuary power based on equitable principles, the Courts have thought it advisable to leave the powers under the article undefined. The power under Article 142 of the Constitution is a constitutional power and hence, not restricted by statutory enactments. Though the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. This means that acting under Article 142, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case."

23. In view of the aforesaid pronouncement of law, where the minimum sentence is provided, we think it would not be at all appropriate to exercise jurisdiction under Article 142 of the Constitution of India to reduce the sentence on the ground of the so-called mitigating factors as that would tantamount to supplanting statutory mandate and further it would amount to ignoring the substantive statutory provision that prescribes minimum sentence for a criminal act relating to demand and acceptance of bribe. The amount may be small but to curb and repress this kind of proclivity the legislature has prescribed the minimum sentence. It should be paramountly borne in mind that corruption at any level does not deserve either sympathy or leniency. In fact, reduction of the sentence would be adding a premium. The law does not so countenance and, rightly so, because corruption corrodes the spine of a nation and in the ultimate eventuality makes the economy sterile.

24. The appeals, being sans substratum, stand dismissed.

.....J. [Dr. B. S. Chauhan] .....J. [Dipak Misra] New Delhi;

May 29, 2012

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[1] AIR 2006 SC 836
[2] (2001) 1 SCC 691
[3] (2000) 8 SCC 571
[4] AIR 2008 SC 3217
[5] (2009) 15 SCC 200
[6] AIR 2009 SC 2022
[7] AIR 1998 SC 1895
[8] 1995 Supp (3) SCC 704
[9] (2009) 10 SCC 425