

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 273 of 2005****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE S.V. PINTO****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

VIPINBHAI JOHNBHAI TAILOR(since deceased)
Versus
STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI(1077) for the Appellant(s) No. 1
MS. JIRGA JHAVERI, APP for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 19/04/2024
ORAL JUDGMENT

- 1]** This appeal has been filed by the appellant under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction dated 20.01.2005 passed by the learned Special Judge, Fast Track Court No. 7, Surat,

(herein after referred to as 'the learned Trial Court') in Special (ACB) Case No. 43 of 1995, whereby, the learned trial Court has convicted the appellant for the offenses punishable under Sections 7, 13(1)(d), 1,2,3 & 13 (2) of the Prevention of Corruption Act, 1988.

1.1] During the pendency of appeal, the appellant expired on 09.01.2011 and his legal heirs preferred an application for setting aside the order of abatement and permitting them to be brought on record and pursue the criminal appeal and the same has been allowed by way of an order dated 21.01.2018. The deceased-appellant is hereinafter referred to as 'the accused' as the stood in the original case, for the sake of convenience, clarity and brevity.

2] The brief facts that emerge from the record of the case are as under:

2.1] That the accused was working as an Unarmed Police Head Constable in the L.I.B. Office, Surat (Rural) and was a public servant and the complainant Shabbir Mohammed Limbada resident of Nani Naroli, Taluka: Mangrod, District:

Surat had approached the accused as the Visa of one Mohammad Dawood Bhagat was to expire and the application for extension of the visa was given by the complainant Shabbir Mohammed Limbada. That the Visa of Mohammed Dawood Bhagat was to expire on 07.04.1995 and the complainant had met the accused on 24.04.1995 at 04:00 pm and at that time the accused demanded illegal gratification of Rs.500/- . That the complainant did not want to pay the amount of illegal gratification and hence he went to the ACB police Station, Surat and filed a complaint under Section 7, 13 (1)(d) 1,2,3 and 13(2) of the Prevention of Corruption Act, 1988 which was registered at C.R.No. 4 of 1995 on 26.04.1995.

2.2] That the Investigating Officer called the independent panch witnesses and the entire experiment of anthracene powder and ultraviolet lamp was carried out and explained to the panch witnesses and the complainant and the trap was laid. That on 26.04.1995, the complainant and the shadow witness went to the office of the accused where the accused demanded the amount of Rs.500/- as illegal gratification and accepted the same at 13:45 hours and the predetermined signal was given by

the complainant and the member of the raiding party came and the accused was caught red handed with the tainted currency notes. That the Investigating Officer recorded the statement of the connected witnesses, drew the necessary panchnama and filed the charge sheet before the Sessions Court, Surat, which was registered at Special (ACB) Case No. 43 of 1995.

2.3] That, the accused was duly served with the summons and the accused appeared before the learned trial Court and after the procedure of Section 207 of the Code of Criminal Procedure, 1973, the learned trial Court framed a charge at Exh; 6 against the accused and the statement of the accused was recorded at Exh: 7, wherein the accused denied all the allegations made in the charge and the evidence of the prosecution was taken on record.

2.4] The prosecution has filed the following oral as well as documentary evidence in support of their case.

ORAL EVIDENCE

Sr. No.	Name	Prosecution Witness No.	Exh:
1	Sabbirbhai Mohammed Limbada,	1	10
2	Satishbhai Meghabhai Nayak,	2	14

3	Sureshbhai Gangarama Badgujar	3	57
4	Jayantibhai Icchubhai Patel	4	61

DOCUMENTARY EVIDENCE

Sr. No.	Particulars	Exh:
1	Complaint	11
2	Panchnama	16
3	Passport copy of Mohammed Dawood Bhagat	64
4	Certificate produced for extension of Visa of Mohammed Dawood Bhagat	65
5	AIDS Certificate of Mohammed Dawood Bhagat	66
6	Chalan of Visa Fees	67, 68
7	Request letter of Under Secretary, Gujarat Government for extension of Visa of Mohammed Dawood Bhagat	69, 70
8	Sanction letter	71
9	Service Book	72
10	Transfer order	73
11	White paper laced with anthracene powder	74
12	Currency notes	75
13	Order of D.C.B. Surat dated 06.04.1995	83
14	Registration Report	84

2.5] After the evidence of the prosecution was recorded, the learned Additional Public Prosecutor filed the closing pursis at Exh: 85 and the further statement of the accused under

Section 313 of the Criminal Procedure Code, 1973 was recorded, wherein, the accused has stated that he has not accepted any amount of illegal gratification and the Visa of Mohammed Dawood Bhagat was already extended on 06.04.1995. That as the Visa was already extended before 07.04.1995, the allegation of the complainant about the demand on 24.04.1995 is not true and it is clear case of planting of the tainted currency notes by the complainant in the drawer of the table of the accused as the prosecution has proved that the tainted currency notes were recovered from the drawer of the table of the accused.

2.6] After the arguments of learned Additional Public Prosecutor and learned the learned advocate for the accused were heard, by the impugned judgment and order dated 20.01.2005, the learned trial Court was pleased to convict the accused and sentence the accused to simple imprisonment for two years and fine of Rs.2,000/- and in default simple imprisonment for three months for the offence punishable under Section 7 of the the Prevention of Corruption Act, 1988 and to simple imprisonment of three years and fine of Rs.3,000/- and in

default simple imprisonment for four and half months for the offence punishable under Sections 13(1)(d) read with Section 13(2) of the the Prevention of Corruption Act, 1988. The learned trial Court was further pleased to order both the sentence to run concurrently.

3] Being aggrieved and dissatisfied with the impugned judgment and order of conviction dated 20.01.2005, the appellant-accused has filed the present appeal mainly stating that the appellant was working in the office of the L.I.B. Surat at the relevant time but the impugned judgment and order is illegal, improper, unjust and without considering the material on record. That the prosecution has failed to prove the main ingredient of demand, acceptance and recovery and in the absence of the ingredients being proved benefit must be given to the accused. That there is no evidence as to the demand of illegal gratification and even the recovery is doubtful. As per the case of the prosecution, the recovery of the tainted currency notes was made from the drawer of the table of the accused and that is not sufficient to conclude that the accused had in fact accepted the amount of illegal gratification. That the

prosecution has to prove the case beyond reasonable doubts and in the evidence of the prosecution, it has come on record that at the time of the trap, there were other employees working in the same room but no witness, who was present at the time of the trap, has been examined by the prosecution. That the learned trial Court has presumed that as the tainted currency notes were recovered from the drawer of the table of the accused, the accused had demanded and accepted the tainted currency notes but when there is no evidence of demand and acceptance, which are the basic ingredients on which the case of the prosecution rests presumption cannot be invoked and the burden of proving the case squarely rest on the prosecution. That the explanation tendered by the accused is plausible and the existence of the fact that the accused had demanded and accepted the amount of illegal gratification is totally negated. That when the prosecution has failed to establish the case against the accused by cogent and convincing evidence, the accused cannot be convicted and it is clearly made out from the record that the complainant had planted the tainted currency notes in the drawer of the table of the accused. That, in fact, it is specifically

on record that when the appellant along with the other personnel from the ACB had gone to the control room, the currency notes were planted in the drawer of the table of the accused. That the prosecution has failed to prove this aspect and it is on record that the complainant was in fact doing the work of extension of Visa for other persons and there was a dispute between the appellant and the complainant and merely with a view to take revenge, the complainant has involved the appellant by planting the currency notes in the drawer of his table but the learned trial Court has failed to consider this aspect. That in fact, the learned trial Court, in the judgment, has recorded a reason that the complainant and the panch witnesses have deposed contrary to each other but this contradiction is not considered and there is also relevant material to prove that the panch witnesses were merely asked to sign the panchnama mechanically and the panchnama was not dictated by the panch witnesses. That the conviction of the appellant is not sustainable and the most important aspect is that the Investigation Officer is the same person, who had recorded the complaint, laid the trap and done the entire investigation and hence the credibility of

the investigation is doubtful. It is settled principles of law that the complainant cannot be the Investigating Officer and the learned trial Court has not considered this aspect in true perspective and hence the appeal must be allowed and the impugned judgment and order of conviction is required to be quashed and set aside and the accused must be acquitted from all the offences.

- 4]** Heard learned advocate Mr. Shakeel Qureshi for the appellant and learned Additional Public Prosecution Ms. Jirga Jhaveri for the respondent-State.
- 5]** Learned advocate Mr. Shakeel Qureshi for the appellant has submitted that as per the case of the prosecution the Visa of Mohammed Dawood Bhagat was to expire on 07.04.1995 and the complainant had gone to the office of the accused and met the accused on 24.04.1995 at 04:00 pm. and the demand was made by the accused on 24.04.1995 and the complainant had filed the complaint on 26.04.1995. As per the say of the complainant, when he had gone with the shadow witness to the office of the accused, there were other persons

working in the room and as per the case of the prosecution, the accused had demanded for the amount of Rs.500/-, and the complainant had given the five tainted currency notes of the denomination of Rs.100/- each to the accused and the accused had taken the tainted currency notes and placed them in the left side drawer of the table. There is evidence produced by the prosecution that after the predetermined signal was given, the accused and the panch witness were taken to the control room, which was near the L.I.B.Office and at that time, the drawer of the table of the accused was open and the panch No. 2 was asked to recover the tainted currency notes from the drawer of the table the accused. There is evidence on record to show that the drawer was open and at that time, there were no other persons in the L.I.B.Office and it is the defense of the accused that without his knowledge, the complainant had placed the tainted currency notes in the drawer of the table of the accused from where it was recovered. That in fact, there was no reason for the accused to demand for any illegal gratification as it was well within the knowledge of the complainant that the Visa of Mohammed Dawood Bhagat was already extended on

06.04.1995. That the complainant was doing the business of extension of Visa and had earlier met the accused on many occasions, which is forthcoming from the cross examination of the complainant and there was a dispute with the accused and merely with a view to take revenge, the complainant without the knowledge of the accused, placed the tainted currency notes in the drawer of the table of the accused. That there is no iota of evidence regarding the demand made by the accused in the entire evidence and even in the evidence of the panch witness, Satishbhai Nayak, there is no clear evidence of any demand made by the accused. That, it is also on record that the panch witness was an accused in a case under the Prevention of Corruption Act and he was suspended from his service and he was arrested and the case was pending against him. Moreover, the Investigating Officer Jayantibhai Patel was the officer, who had registered the complaint of the complainant and was the person, who was present at the time of the raid and has also investigated the offence and filed the charge sheet. That no independent witness have been examined though they were available and it is on record that other persons were present in

the office of the accused at the time of the raid. That it is on record that Lataben Bharatkumar Patel, Girishbhai Khusalbhai Parmar, Pratapbhai Rajaram Sinde and Chetankumar Parmanand Goswami were present and their statements were recorded but they have denied the alleged incident of bribe. That the lamp operator Sureshbhai Gangarama Badgujar has also stated that he has not heard any demand made by the accused and the complainant has merely concocted a false complaint and as there is no credible evidence against the accused, specially on the aspect of demand and recovery as it is the case of plantation of the tainted currency notes by the complainant, who had an axe to grind against the accused as there is evidence on record that the extension of the Visa of Mohammed Dawood Bhagat was already done on 06.04.1995 before the date when the complainant states that he had met the accused for the first time on 24.04.1995. That the impugned judgment and order of conviction is perverse and illegal and is required to be quashed and set aside and the accused must be acquitted for the said offence.

5.1] Learned advocate Mr. Shakeel Qureshi has relied on

the following judgments in support of his case.

1. *Bhagwan Singh Versus State of Rajasthan, reported in 1975 (0) AIJEL-SC 3241,*
2. *Gopal Lal Ghusulal Chhipa Versus State of Gujarat, reported in 1996(0) AIJEL-HC203755,*
3. *Hemtuji Ramaji Rana Versus State of Gujarat, reported in 2017 (0) AIJEL-HC-237510;*
4. *Mukhtar Singh Versus State of Punjab, reported in 2017 (0) AIJEL-SC-60504;*
5. *Neeraj Dutta vs State(Govt.Of N.C.T.Of Delhi), reported in 022 (0) Supreme (SC) 1248*

6] Learned Additional Public Prosecutor Ms. Jirga Jhaveri, has submitted that the learned trial Court has given proper reasons for convicting the accused and the learned trial Court has discussed all the evidence produced by the prosecution on record. That the prosecution has proved the aspect of demand, acceptance and the recovery and the prosecution has proved that at the time of the trap, the shadow witness was present and the accused had demanded for the amount of illegal gratification from the complainant and when

the complainant gave the amount of illegal gratification, which was given with the right hand of the complainant, taking the tainted currency notes from the left side shirt pocket, the accused had accepted the amount with his left hand and placed them in the drawer of his table. That the complainant had given the predetermined signal and the members of the raiding party rushed in and caught the accused red handed. That all the evidence is discussed in detail by the learned trial Court and when the prosecution has proved all three ingredients of demand, acceptance and recovery, the learned trial Court has rightly convicted the accused and hence the appeal of the appellant must be rejected.

7] Before the evidence of the prosecution is appreciated and dissected, it is essential to reiterate the cardinal principles of criminal jurisdiction as settled by the Honourable Apex Court in a catena of decision and the first cardinal principle is that the prosecution in a criminal trial is required to prove the case against the accused beyond reasonable doubts and the prosecution cannot benefit from the weaknesses of defense. The second cardinal principle is that in a criminal trial, the accused

is presumed to be innocent unless and until he is found guilty by the evidence produced by the prosecution beyond reasonable doubts and the third cardinal principles of law is that the onus of burden of proof never shifts from the prosecution.

8] Learned advocate for the appellant has relied on the judgment of Bhagwan Sinde (*supra*) wherein it has been held that when the evidence led by the prosecution threw considerable doubts on its case and the case was not free from reasonable doubts and the entire story of prosecution sounds unnatural, the accused cannot be convicted. The Hon'ble Supreme Court in paragraph 8 has observed as under:

8. It appears the trial Court and the High Court failed to notice and above circumstances, which throw considerable doubt on the prosecution case against the appellant. We are not at all satisfied that the evidence led on behalf of the prosecution excludes reasonable doubt in regard to the guilt of the appellant. Since the prosecution case against the appellant cannot be said to be free from reasonable doubt, we must acquit the appellant of the offence charged against him.

8.1] Learned advocate for the appellant has relied on Gopal Lal Ghusulal Chhipa (*supra*), wherein this Hon'ble Court has observed in paragraph 8 as under:-

8. My attention was drawn to the decision of the Supreme Court in the case of Bhagwansingh V/s. The State of Rajasthan - AIR 1976 S.C. 985 wherein it is held that if everything is done by the police officer, it would be an infirmity in the case which is bound to reflect on the credibility of the prosecution case. In that case the complaint was recorded by the Investigating Officer, raid was also carried out by the Investigating Officer, search and seizure were also made by him, and thereafter the investigation was also carried out by him and the charge-sheet was also filed by him before the court. In this case, Mr. Vyas, the PSI has also done every thing right from recording of the complaint till the charge-sheet was filed before the Court. When that is so, the credibility of the case of the prosecution is certainly doubtful and the prosecution case must fail on that count. Even if this tarnishing point is ignored and the evidence is considered, there is nothing which would lead me to hold that the prosecution has succeeded in establishing the charge levelled against the deceased-appellant"

8.2] Learned advocate for the appellant has also relied upon the decision of this Hon'ble Court in the case of Hemtuji Ramaji Rana (supra) wherein it has been observed in para 20 as under;

"20. One another disturbing feature comes out from the Record and Proceedings of the case is regarding the fact that the complainant - Police Inspector - PW 3 has assumed all roles right from the stage of recording the complaint, arranging trap as well as members of raiding party, carrying out investigation till filing of the charge sheet. This course of action goes against the basic tenets of criminal jurisprudence and fair investigation. The credibility of the case of the prosecution becomes

suspicious on this count only. In the facts of the present case, the status of the investigating officer could not be placed on any pedestal higher than of a complainant and the complainant himself cannot be the sole agency of investigation. There should be no occasion to suspect fair and impartial investigation. The said view is fortified by the decision of the Honourable Apex Court in the case of "Bhagwan Singh vs State of Rajasthan" reported in AIR 1976 SC 985, followed by this Court in the case of Kanubhai Kantibhai Patel vs State of Gujarat, reported in 1998 (1) GLH 924 as well as in the case of Gopal Lal Ghisulal Chhipa (supra). Therefore, in this case, the prosecution case suffers from the aforesaid basic infirmity which itself is sufficient to vitiate the whole investigation and accordingly the whole proceedings based on such investigation deserves to be quashed and set aside on this count only. Therefore, the prosecution has miserably failed to establish the demand and acceptance. So far as recovery is concerned, the same is made at the distant place from the place of trap as the incident took place during nocturnal hours and therefore, entire procedure gets vitiated."

8.3] Learned advocate for the appellant has also relied upon the decision of the Hon'ble Apex Court in the case of Mukhtar Singh (supra) wherein it has been observed in para 25 as under:

"25. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs.3,000/- which had been paid or of Rs.2,000/- as made on the day of trap operation is wholly inadequate to comply with the per-requisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs.3,000/- at the first instance is alleged to have

been paid i.e: Santosh Singh Lamberdar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs.3,000/- as well as the demand of Rs.2,000/- has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had inquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act."

8.4] Learned advocate for the appellant has relied upon the decision of the Hon'ble Apex Court in the case of **Neeraj Dutta (supra)**, wherein it has been observed in para 68 as under;—

"68. What emerges from the aforesaid discussion is summarized as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue

can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1) (d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public

servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d) (i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature."

9] In view of the above settled principles of law and on

minute dissection of the evidence produced by the prosecution on record of this case, it emerges on record that the prosecution has examined P.W. No: 1 the complainant Shabbir Mohammed Limbada at Exh: 10. The witness has fully supported the case of the prosecution and he has stated that the Visa of Mohammad Dawood Bhagat was to expire on 07.04.1995 and he had come to India from France for education and as his visa was expiring before his education could be completed, a necessity arose for extension of Visa and on 07.04.1995 he had gone to the L.I.B. office, which was in the office of the D.S.P. Surat (Rural). That he had met the accused and at that time, the accused had told him to get the AIDS certificate and had also demanded an amount of Rs.500/- as an illegal gratification. That he got the AIDS certificate and went to office of the accused on 24.04.1995 at around 04:00 pm and met the accused and showed him the amounts paid by chalan. That at that time once again, the accused had demanded for the amount of Rs.500/- and the complainant told the accused that he would come after two days as he did not have the amount with him. That, as the complainant did not want to pay the amount of illegal

gratification, he went to A.C.B. Police Station, Surat and filed the complaint on 26.04.1995. That, after his complaint was recorded, the panch witnesses were called and the complainant had deposed all the events that had unfolded thereafter. That the complainant and the shadow witness went to the office of the accused and at that time as per the say of the complainant, the accused had demanded for the amount of Rs.500/- as illegal gratification and the complainant had given the tainted currency notes, which were accepted by the accused. That the complainant gave the predetermined signal and the members of the raiding party including the ACB Inspector came and the members of the raiding party, panch witnesses and the accused had gone to the control room, which was near the L.I.B.Office. That the test of ultraviolet lamp was done and thereafter, the Investigating Officer instructed the panch No. 2 to get the tainted currency notes, which were placed on the white paper in the drawer of the table of the accused and the tainted currency notes were accordingly recovered from the table of the accused. During the cross examination, the complainant has stated that he did not know the accused earlier and at the ACB office, when

he was searched, he did not have the AIDS certificate of Mr. Bhagat . That the accused had asked for the AIDS certificate of Mr. Bhagat and he has not submitted any photograph of Mr. Bhagat. That he did not meet Mr. Bhagat from 07.04.1995 till the time of the trap and he does not know as to whether the visa of Mr. Bhagat was extended on 06.04.1995 and Mr. Bhagat had paid the amount of Rs.1550/- by Chalan on 10.04.1995. The witness has stated that earlier he had met the accused for extension of Visa of his two nephews and had met the accused before 07.04.1995 but he has stated false fact on oath that he had not met the accused before 07.04.1995. That when the accused had given him the form, he had told him that the Visa was temporarily extended and this fact was told to him on 24.04.1995 but when he went to the office of ACB, he did not tell the ACB Officer that the Visa of Mr. Bhagat was temporarily extended for a period of one year. That at the time of the raid, there were other employee in the office of the accused and before the raid, he did not have the AIDS certificate with him. That he had met the accused four times for the work of Gangat Bilal Isakh but he has falsely stated during the cross

examination that he does not know Gangat Bilal Isakh.

9.1] The prosecution has examined P.W.No. 2 Satishbhai Moghabhai Nayak, at Exh;14 and this witness is the shadow witness, who had accompanied the complainant at the time of the trap. The witness has fully supported the case of the prosecution and has narrated all the events that had occurred right from the time when he was called to the ACB office along with the other panch witness Navneet Gajjar and the experiment of anthracene Powder and ultraviolet lamp was conducted in their presence and the instructions that were given to the panch witness as also to the complainant and that he had accompanied the complainant to the offiece of the accused. The witness has further stated that the accused had demanded for the AIDS certificate from the complainant and the complainant had taken the certificate from his pant pocket and given it to the accused and at the time the accused demanded the amount of illegal gratification and asked the complainant if he had brought the money as decided in the earlier conversation. That the complainant had given the tainted currency notes and the accused had taken the same and put it in

his drawer and after the predetermined signal was given, the officers of the ACB had rushed in and at that time it was 01:45 hours. During the cross examination, the witness has stated that there were about five employees in the office of the accused including one lady employee and four gents employees and they were working on their tables. That they had gone to the control room and to go into the control room from the office of the accused, they had to go through the DSP office and thereafter, the waiting room. That there were other employees working in the control room and he cannot say as to how long they have waited in the control room. That he does not know as to whether any files were seized by the Investigating Officer from the accused and after they left the A.C.B. office, till they reached the office of the accused, no person had given any document to the complainant. That when the complainant was searched, the AIDS certificate was not found and there was no conversation between the complainant and the Police Inspector about the AIDS certificate. That he knows how an A.C.B. case is filed, how the person is arrest and one anti-corruption case is registered against him and he was arrested and the case is pending. That

he was suspended because of the ACB case is registered against him and was thereafter reinstated. That, during the trap, he found that the complaint was regarding the work of Mohammad Dawood Bhagat and when the complainant was searched at the ACB office, no documents relating to the case of Mohammed Dawood Bhagat were found. That when he had seen the complaint, the passport, application for visa, copy of Chalan of amounts paid and the receipts were not with the complainant. That when he saw the table of the accused, the accused was doing his work and a number of files were on the table and he does not know from which file the documents of Mohammed Dawood Bhagat was recovered by Police Inspector Mr. Patel. That immediately after they reached the table of the accused, within five minutes, the complainant had gone to give the predetermined signal and Shri Patel, the panch No. 2 and around 10 persons came. That thereafter the procedure was undertaken by Mr. Patel and the members of the raiding party, the panch witness, the complainant and the accused went into the control room and at that time nobody from the raiding party was at the table of the accused. That the procedure of

ultraviolet lamp took about two to three minutes in the control room and the accused was present but his hands were not checked in the ultraviolet lamp. That, while they were in the control room, there was no member of the raiding party at the table of the accused and when they went to the control room, the muddamal currency notes were not recovered and taken with them. That the drawer in which the muddamal currency notes were kept, was not locked and it was open and no test of ultraviolet lamp was carried out on the drawer, the table or the handle of the drawer of the table. That when the panch No. 2 was sent to recover the currency notes from the drawer of the table of the accused, the accused was not sent along with the panch No. 2.

9.2] The prosecution has examined PW No.3 Sureshbhai Gangarama Badgujar at Exh; 57 and this witness is the lamp operator and he has fully supported the case of the prosecution. During the examination in chief, the witness has narrated the entire events that unfolded and during the cross examination, he has stated that he does not know as to where the hands of the accused were, when they reached the table of the accused.

That, at that time, there were other employees, who were working in the office of the accused and they were for about half an hour at the table of the accused and thereafter they all went to the control room. That the first test of ultraviolet lamp was done in the control room and while they were for about half an hour at the table of the accused, no test of ultraviolet lamp was done on the table of the accused. That other employees were working in the control room and after the test of ultraviolet lamp was done on the members of the raiding party, the panch No. 2 was instructed to get the tainted currency notes from the drawer of the table of the accused.

9.3] The prosecution has examined the PW No. 4 Jayantibhai Icchubhai Patel at 61 and this witness is the Police Inspector, A.C.B. Police Station, Surat, who has recorded the complaint of the complainant, has done the entire procedure for arrangement of the trap and has investigated the entire offence and has filed the charge sheet against the accused. The witness has fully supported the case of the prosecution and has narrated in the examination in chief, the entire events that had taken place as per the case of the prosecution. During the cross

examination, the witness has stated that he had recorded the statement of Mohammad Dawood Bhagat, during investigation and the Visa of Mohammad Dawood Bhagat had expired on 07.04.1995 and the complaint was lodged on 26.04.1995. That when the complainant had filed the complaint, he had not given the copy of the passport of Mohammad Dawood Bhagat and the AIDS certificate was given on 11.04.1995. That the chalans bear the signature of PSI, L.I.B. Surat Rural but he has not recorded the statement of the PSI L.I.B. Surat Rural. That at the time of the raid, surrounding the table of the accused were the tables of the other employees and he had recorded the statement of typist Jayeshkumar Jagdishkumar Seth, whose table was near table of the accused. That he had also recorded the statements of Lataben Bharatkumar Patel, Girishbhai Khusalbhai Parmar, Pratapbhai Rajaram Sinde and Chetankumar Parmanand Goswami and they have not supported the case of the prosecution and hence they have not been shown as witnesses in the chargesheet. That all the witnesses in the statements have denied that any such incident had taken place in their presence. That, on the day of the trap, when he had recovered

the documents of Mohammad Dawood Bhagat, from the file, he had got the copy of the extension of the Visa of Mohammad Dawood Bhagat and the Visa was extended from 06.04.1995 to 06.04.1996 and the AIDS certificate of Mr. Bhagat was also found from the file. That, he had not given the receipt of the documents that were seized to the accused. That, at the time of the trap, the lamp operator was not in a position to listen to the conversation between the complainant and the accused and when the predetermined signal was given and he went in the office of the accused, they waited at the table of the accused for about 15 to 20 minutes and at that time the accused was seated at the table. That no test of ultraviolet lamp was done at the table of the accused and thereafter they went to the control room and after waiting for 15-20 minutes in the control room, they came back to the table of the accused but at that time, they did not do the test of ultraviolet lamp on the table of the accused. That, during the panchnama of the second part, no test of the ultraviolet lamp was done on the table of the accused and the key of the drawer of the table of the accused was not seized. That, in the panchnama, the colour of the florescent marks is

not mentioned.

10] On reappreciation of the entire evidence of the prosecution, it has come on record that as per the say of the complainant, he had gone to the office of the accused on 07.04.1995 for the extension of the Visa of Mohammad Dawood Bhagat and at that time, the accused had demanded the illegal gratification of Rs.500/- . That thereafter the accused had once again made the demand of illegal gratification on 24.04.1995 when the complainant had once again gone to the office of the accused. The complainant has also stated that he has not met Mohammad Dawood Bhagat from 07.04.1995 till the day of the trap i.e. 26.04.1995 and it is on record that the temporary extension of the Visa of Mohammad Dawood Bhagat was already done on 06.04.1995 and the visa of Mohammad Dawood Bhagat was extended from 06.04.1995 to 06.04.1996. The evidence of the complainant is highly doubtful and untrustworthy as the complainant has initially stated that he had not met the accused before and he did not know the accused and has also stated that he does not know Gangat Bilal Isakh but thereafter during the cross examination, it has come on record that the complainant

had met the accused for the work of Gangat Bilal Isakh on a number of occasion and he knew the accused very well as he had also met the accused for the Visa extension of both his nephews. Moreover, there is a major contradiction in the evidence of the complainant about the AIDS certificate and in the panchnama as per the case of the prosecution, the accused had demanded the AIDS certificate from the complainant and the complainant was to give the AIDS certificate to the accused on the day of the trap. That in the panchnama and in the deposition of the complainant as well as the shadow witness, there is no evidence that when the complainant was searched prior to the trap, the AIDS certificate was with the complainant and there is also evidence that after leaving from the ACB office, the complainant and the panch witness did not meet any one and there was no who could give the AIDS certificate to the complainant to hand it over to the accused. The complainant has deposed that when he went to the office of the accused, and met the accused, the accused had asked for the AIDS certificate and he had taken it from his pocket and given the same to the accused but there is no evidence that the complainant had the

AIDS certificate with him at the time of the trap.

11] As per the case of the prosecution, after the predetermined signal was given, the Trap Laying Officer and the members of the raiding party went to the table of the accused and the accused was seated at his table and the Trap Laying Officer was at the table of the accused for about 15-20 minutes. That thereafter, the Trap Laying Officer, member of the raiding party, the panch witnesses and the accused went to the control room and the test of ultraviolet lamp was done in the control room. There is ample evidence on record to prove that the drawer of the table of the accused was open and there was no member of the raiding party present at the table of the accused and all the members of the raiding party were in the control room. As per the case of the prosecution to go from the office of the accused to the control room, one has to pass through the DSP office and the waiting area and every one was in the control room for about 15-20 minutes where the test of ultraviolet lamp was done on the hands of the members of the raiding party. That the panch witness No. 2 was sent with specific instructions by the Trap Laying Officer to bring the

currency notes which were placed on the white sheet of the paper in the drawer of the table of the accused but there is also evidence to the effect that the place from where the Trap Laying Officer was seated, the contents of the drawer of the accused could not be seen. Moreover, even through the Trap Laying Officer was seated at the table of the accused for about 15-20 minutes, there is no explanation as to why the ultraviolet lamp test was not done on the drawer or the table or the handle of the drawer of the table of the accused from where the tainted currency notes were recovered as per the case of the prosecution. Moreover, there is no explanation as to why even though the Trap Laying Officer was seated at the table of the accused for about 15-20 minutes, no recovery of the tainted currency notes were done by him at that time and after the entire member of the raiding party, the accused and the panch witnesses went into the control room, which was situated beyond the DSP and waiting area, the panch No. 2 was sent to recover the tainted currency notes.

12] In the entire evidence, there is evidence to show that there were other employees who were working in the office of

the accused and in the control room and as per the evidence of the Investigating Officer, the statement of Lataben Bharatkumar Patel, Girishbhai Khusalbhai Parmar, Pratapbhai Rajaram Sinde and Chetankumar Parmanand Goswami were recorded and they all were employees of the L.I.B. office but they have not supported the case of the prosecution during their statements being recorded by the Investigating Officer and hence they have not been named as witnesses in the chargesheet. That it has also come on record that all the witnesses have denied that any such incident had taken place in their presence and moreover, it has also come on record that, on the day of the trap, the documents regarding the files of Mohammad Dawood Bhagat were seized by the Investigating Officer and the order of extension of Visa of Mohammad Dawood Bhagat from 06.04.1995 to 06.04.1996 was recovered by the Investigating Officer. This cast a huge doubt on the case of the prosecution as the Visa of Mohammad Dawood Bhagat was already extended on 06.04.1995 for a period of one year i.e. from 06.04.1995 to 06.04.1996 and the fact would be within the knowledge of Mohammad Dawood Bhagat and the complainant

has stated that he has not met Mohammad Dawood Bhagat from 07.04.1996 till the day of the trap. The entire situation of extension of Visa of Mohammad Dawood Bhagat seems to be concocted and the prosecution has not examined Mohammad Dawood Bhagat before the learned trial Court. It appears that there was no reason for the accused to demand for any amount of illegal gratification as the Visa of Mohammad Dawood Bhagat was already extended before 07.04.1996 and it has come on record that the complainant did not produce the copy of the passport of Mohammad Dawood Bhagat at the time of the filing of the complaint. That if the Trap Laying Officer had demanded for the passport of Mohammad Dawood Bhagat before filing of the FIR or before registering of the complaint and had recorded the statement of Mohammad Dawood Bhagat, it would come on record that the Visa of Mohammad Dawood Bhagat is extended and it would have been found out that the story of demand of illegal gratification by the accused is concocted by the complainant.

13] In the entire evidence on record, there is evidence that PW No. 4 Jayantibhai Patel was the ACB Officer before

whom the complainant had filed the complaint and he is the Police Inspector who has arranged the trap and has carried out the entire investigation and filed the charge sheet before the Sessions Court, Surat. The actions of the investigating Officer who was himself the officer before whom the complaint has been filed and the officer who has arranged for the trap and the Investigating Officer is against basic tenets of the criminal jurisprudence and it cannot be said that a fair investigation would have been carried out. The credibility of the case of the prosecution and the evidence produced by the prosecution becomes suspicious on this count only and as laid by the Hon'ble Apex Court in the case Bhagwan Singh (*supra*) and relied upon by the learned advocate for the accused and also the cases of Gopal Lal Ghusulal Chhipa (*supra*), and Hemtuji Ramaji Rana (*supra*) of this Court. This fact is sufficient to vitiate the investigation carried out by the Investigating Officer and conviction cannot be recorded on this count only.

14] As discussed above and on minute dissection of the entire evidence, there is no reliable evidence produced by the prosecution to prove the demand and acceptance by the

accused and the prosecution has miserably failed to establish the demand, which is a sine-qua-non for the accused to be convicted under the PC Act. That the learned trial Court has not appreciated that there is no evidence that the Visa of Mohammad Dawood Bhagat required an extension and the complainant did not meet Mohammad Dawood Bhagat from 07.04.1995 till the day of the trap and there is evidence that the Visa of Mohammad Dawood Bhagat was already extended for a period of one year from 06.04.1995 to 06.04.1996. There is also evidence that when the complainant has stated that he had to go with the AIDS certificate to meet the accused at the time of the trap and at the time of the trap the accused had demanded for the AIDS certificate but in the evidence of the prosecution at the time of the panchnama, when the complainant was searched no such AIDS certificate of Mohammad Dawood Bhagat was found from the custody of the complainant and there is evidence of the Investigating Officer that the AIDS certificate was recovered from the file of Mohammad Dawood Bhagat and not from the table of the accused and hence there was no evidence to convict the accused. On perusal of the entire evidence on

record, it can safely be stated that there is no admissible evidence against the accused and the prosecution has miserably failed to prove the case against the accused beyond reasonable doubts and unless the evidence is cogent and reliable, no conviction can be recorded.

15] As discussed above, the evidence of the complainant himself is untrustworthy and contradictory and far from convincing and in the given facts and circumstances of the case, in the considered opinion of the Court, the conviction of appellant could not have been invoked. There are major contradiction in the evidence of the prosecution and the possibility that the complainant had planted the tainted currency notes in the open drawer of the table of the accused as he had an axe to grind cannot be ruled out. There is no iota of evidence of demand, acceptance and recovery of the illegal gratification and the impugned judgment and order of conviction is perverse and illegal. Consequently, the appeal succeeds and is allowed.

16] The judgment and order dated 20.01.2005 passed by the learned Special Judge, Fast Track Court No. 7, Surat, in

Special (ACB) Case No. 43 of 1995, whereby, the learned trial Court has convicted the appellant-accused for the offenses punishable under Sections 7, 13(1)(d), 1,2,3 and 13 (2) of the Prevention of Corruption Act, 1988 is hereby quashed and set aside and the accused is acquitted from all the offence. Fine to be refunded after due verification.

17] Record and proceedings be sent back to the concerned Trial Court forthwith.

Sd/-
(S. V. PINTO,J)

VVM