

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 231 of 2006****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

JAYDEVSINH DILAWARSINH ZALA & ANR.**Versus
STATE OF GUJARAT****Appearance:**

DHARMESH D NANAVATY(2396) for the Appellant(s) No. 2

MR BY MANKAD(440) 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 : 06/05/2024
ORAL JUDGMENT**

1. This appeal has been filed by the appellants under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction dated 21.01.2006 passed by the learned Special Judge & Additional Sessions Judge,

Amreli (herein after referred to as 'the learned trial Court') in Special (ACB) Case No. 45 of 1998, whereby, the learned trial Court has convicted the appellants for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C.Act). The appellants are hereinafter referred to as 'the accused' as they stood in the rank and file 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 No. 1 was working as a Deputy Engineer in the Gujarat Electricity Board at Dhari, District: Amreli in the year 1997 and was a public servant. That Nathabhai Nanjibhai- the father of the complainant Girishbhai Nathabhai Nanjibhai residing at Kodi Pa Sheri No.1, Dhari, at Amreli had given an application for electricity connection in Ajanta Hair Art situated opposite Dhari S.T. Depot and had paid the application fee of Rs.25/- . That the complainant

Girishbhai Nathabhai met the accused No. 1 and requested for the electricity connection at the earliest and at that time the accused No. 1 demanded an amount of illegal gratification of Rs.2,000/- That the complainant did not want to pay the amount of illegal gratification and hence the complainant went to the ACB Police Station, Amreli and filed the complaint against the accused No.1 under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, which was registered as C.R.No. 5 of 1998 on 19/09/1997. That the Trap Laying Officer called the panch witnesses and after the demonstration of anthracene powder and ultraviolet lamp was carried out and the characteristics of anthracene powder were explained to the complainant and the panch witnesses, the complainant gave two currency notes of the denomination of Rs. 500/- each and ten currency notes of the denomination of Rs.100/- each to the Trap Laying Officer and all the currency notes were smeared with anthracene powder and placed in the left side shirt pocket of the complainant. That as per the trap arrangements, the complainant and the shadow witness

went to the office of the accused and the other members of the raiding party followed and the complainant and shadow witness met the accused and at that time the accused told the complainant that he would not accept the amount. That shadow witness and the complainant came out from the chamber of the accused and the accused no. 1 followed them and told the complainant to give the amount to the accused No.2 at his shop and the complainant and the shadow witness went to the shop of the accused No.2 and gave the amount to the accused No.2 , who accepted it and put it in his drawer. That the complainant gave the predetermined signal and the members of the raiding party rushed and caught both the accused red-handed. The Investigating Officer recorded the statements of the connected witnesses, drew the necessary panchnamas and after the order of sanction for prosecution was received, a charge sheet under Sections 7, 12, 13(a)(d) and 13(2) of the PC Act against both the accused was filed before the Sessions Court, Amreli, which was registered as Special ACB Case No. 45 of 1998.

2.2] The accused were duly served with the summons and the accused appeared before the learned trial Court and after the due procedure under Section 207 of the Code of Criminal Procedure, 1973 was followed, a charge at Exh: 5 was framed against the accused and the statements of the accused were recorded at Exh: 6 and 7 respectively. The accused denied all contents of the charge and the evidence of the prosecution was taken on record.

2.3] The prosecution has examined five witnesses and produced eight documentary evidences in support of their case and after the learned Additional Public Prosecutor filed the closing pursis at Exh: 33, the further statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded. After the arguments of the learned Additional Public Prosecutor and the learned advocate for the accused was heard, the learned trial Court was pleased to find both the accused guilty for the said offences and sentenced the accused No.1 to rigorous imprisonment of one year and fine of Rs.2,000/- and in default

simple imprisonment for four months for the offence punishable under Sections 7 of the PC Act and to rigorous imprisonment of two and half years and fine of Rs.4,000/- and in default simple imprisonment for eight months for the offence punishable under Sections 13(1)(d) and 13(2) of the PC Act. The learned trial Court was further pleased to order that both the sentences of the accused No.1 to run concurrently. The learned trial Court sentenced the accused No. 2 to rigorous imprisonment of one year and fine of Rs.2,000/- and in default simple imprisonment for four months for the offence punishable under Section 7 read with Section 12 of the P.C. Act and acquitted the accused No. 2 from the other offences.

- 3.** Being aggrieved and dissatisfied with the impugned judgment and order of conviction, the appellants have filed the present appeal mainly stating that the judgment and order of conviction is illegal, erroneous and unwarranted on the facts and circumstances of the case and not tenable in the eye of law. That the demand as envisaged in the PC Act is not

proved and as per the provisions of law, demand should be for gratification other than legal remuneration. In the instance case, it is the case of the prosecution that the appellant No.1 demanded an amount of Rs.2,000/- towards expenses for getting electricity connection and in the complaint, the complainant has admitted that he had to fill the quotation form and pay an amount of Rs.1890/- towards expenditure for getting electricity connection. That it cannot be said that the amount was demanded for gratification other than legal remuneration and the learned trial Court has lost sight of all these facts and has erroneously convicted the appellants. That the complainant has specifically submitted that the complainant has stated in his evidence that the appellant No.1 did not demand the amount as a bribe but had demanded the amount for expenses and in the cross examination, he has admitted that he was advised by one Pravinbhai Vadodariya to file the complaint in the ACB. That there is no reason for the complainant to file the complaint and in fact when the complainant and the shadow witness went to meet the

appellant No. 1, the appellant No.1 had refused to take the amount. In the cross examination, the complainant has specifically stated that the appellant No.1 had refused to accept the amount even though the complainant had offered to pay the amount. This proves that the demand was not towards any bribe amount but was for getting the electricity connection. Moreover, it is also clear on record that when the complainant and the panch witness came out from the chamber of the accused No.1, they had reached the shop of the accused No.2 and at that time the conversation was about the quotation and the accused No.1 had told the complainant to pay the amount to the accused No. 2 so that the work of the electricity connection would not be delayed and the accused No.2 will pay the amount of quotation as one of the relatives of the complainant had expired and the complainant had to go out for few days. That the panch witness has also stated that the amount was demanded towards expenses for electricity connection and the demand of illegal gratification is not proved in the evidence of the prosecution. That the

impugned judgment and order of conviction passed by the learned trial Court is erroneous, illegal and unwarranted on the facts and circumstances of the case and hence the same is required to be quashed and set aside and both the accused must be acquitted from all the offences.

4. Heard learned advocate Mr. B.Y.Mankad for the appellants and learned Additional Public Prosecutor Ms. Jirga Jhaveri for the respondent-State. Perused the impugned judgment and order of conviction and re-appreciated the entire evidence on record of the case.
5. Learned advocate Mr. B.Y.Mankad has taken this Court through the entire evidence of the prosecution and has submitted that there is no iota of evidence in the entire evidence of the prosecution that any demand for illegal gratification was made by the accused No.1. That it is on record that the complainant had filed an application for obtaining the electricity connection for his shop and the expenditure for the electricity connection had to paid, which

was to the tune of about Rs.2,000/- . That the expenses of electricity connection from the beginning was about Rs.2,000/- and the complainant as also panch witness have clearly stated that the accused No. 1 did not demand for any amount of illegal gratification but had stated that Rs. 2,000/- was to be paid as charges towards electricity connection. That, it is quite possible that the complainant has misunderstood the direction given to him by the accused No. 1 that the expenditure would be Rs.2,000/- and it is also on record that one Pravinbhai Vadodariya had instigated the complainant to lodge the complaint against the accused No.1. That the accused No.1 had an ample opportunity to accept the amount of illegal gratification if the same were in fact demanded by him and in the entire evidence of the prosecution, there is no prior demand and even no demand at the time of the trap. As per the say of the complainant, the complainant and the panch witness went into the chamber of the accused no. 1 and both the witnesses have in clear terms stated that the accused No. 1 did not make any demand for

illegal gratification from the complainant and did not show any inclination to accept the amount. Even though the complainant had made efforts to pass the amount of money to him. That the amount of expenses was to be deposited in the G.E.B. office and was not to be given to the accused No.1 and during the course of cross examination it has come on record that the accused No.1 followed the complainant and the panch witness because his jeep was parked near the shop of the accused No.2. That the conversation between the accused no.1 and the complainant was that some relative of the complainant had expired and merely to help the complainant and with an intention that his electric connection would not be delayed, the accused No.1 had told the complainant to give the amount to the accused No.2 as he would be given the quotation and would pay the amount of charges for the electric connection on behalf of the complainant. There is no iota of evidence that the accused No.1 had demanded for any amount of illegal gratification and no amount was accepted by the accused No.1 and the

accused No.1 has put a probable defense but the learned trial Court has not considered the same and has passed an illegal and erroneous judgment and order of conviction, which must be quashed and set aside. Learned advocate for the appellants has urged this Court to allow the appeal of the appellants and acquit both appellants from all offences.

- 6.** Learned Additional Public Prosecutor Ms. Jirga Jhaveri for the respondent – State has opposed the present appeal and has submitted that the learned Trial Court has appreciated all the evidence in proper perspective and has rightly convicted the accused and the impugned judgment and order does not suffer from any infirmities and the learned Trial Court has rightly convicted the accused and hence, the present appeal may be dismissed.
- 7.** Before appreciating the evidence produced by the prosecution on record before the learned Trial Court, it is necessary to reiterate the cardinal principles of jurisprudence as settled by the Apex Court in a catena of decision and the first cardinal

principle is that the prosecution is required to prove their case beyond reasonable doubts and the prosecution cannot take any benefit of the weakness of the defence. The second cardinal principle is that in a criminal trial, the accused is presumed to be innocent until he is proved guilty by the evidence adduced by the prosecution on record beyond reasonable doubts and the third cardinal principle is that the onus of burden never shifts from the prosecution.

8. As per the settled principles of law in conviction appeals, when the appellate Court finds that the findings of fact was based on a wholesome erroneous approach and the very basis of reasoning was not in the right perspective and the intrinsic merit of the evidence of the witness was not considered and the trial was perversely disposed of permitting manifest errors and glaring infirmities the Appellate Court can interfere and to exercise the powers in a conviction appeal a finding on merits after considering and meticulously dissecting the evidence on record is imperative. As far as a conviction under the P.C. Act is concerned, it is settled by the Apex Court

that the prosecution has to prove the case beyond reasonable doubts and proof of demand of illegal gratification is a sine qua non for an offence under the P.C. Act. That only if the demand is proved with cogent and convincing evidence, the prosecution would benefit by the presumption under Section 20 of the P.C. Act and the conviction would be sustained.

9. On re-appreciating the evidence produced by the prosecution before the learned trial Court, the prosecution has examined prosecution witness No.1 Girishbhai Nathabhai Sadiya at Exh:12. The witness is the complainant and he has stated that he had his Ajanta Hair Art Shop situated opposite Dhari S.T.Depot and he needed an electricity connection from the G.E.B. for the shop. That after he had given the application he met the accused No.1 and told him that he wanted the electricity connection at the earliest and the accused No.1 had told him that he would have to bear expenses of Rs.2000/-.
- That on 18/09/1997, he met the accused No.1 and he told the accused No. 1 that he did not have the amount but he would give the amount on the next day and the accused No.1 told

him that he would be in the office from 09:00 am to 05:00 pm. That he did not want to pay the amount of illegal gratification and he directly went to the ACB Police Station on 19/09/1997 at 09:00 am and met Parmar Saheb and filed the complaint against the accused. That the panch witnesses were called and he gave two currency notes of the denomination of Rs.500/- each and ten currency notes of the denomination of Rs.100/-each to Parmar Saheb and the demonstration of anthracene powder and ultraviolet powder was done and the currency notes smeared with anthracene powder were placed in his left shirt pocket. That as per the arrangements of the trap, the complainant and the shadow witness went into office of the accused No.1 and the complainant told the accused that he had brought the amount and the accused No. 1 asked him whether he had brought the receipt but the complainant did not have the receipt and hence the accused told him to give the amount after two days. That, the complainant told the accused No.1 to collect the amount from his shop when he would pass by as his cousin had expired but the accused No.

1 flatly refused to collect the amount from his shop and hence the complainant and the panch witness came out the chamber of the accused no. 1 and the accused No.1 followed them and told the complainant to give the amount to Himmatbhai Haribhai Siddhpura –accused No.2. That the complainant and the panch witness went to the (shop) of Himmatbhai and the complainant gave the amount to Himmatbhai who took it and put it in his drawer. The complainant gave the predetermined signal and the members of the raiding party came and caught both the accused red-handed.

During the cross examination, the complainant has stated that he had met the accused No. 1 for the first time when he made application and he had paid the amount of Rs.25/- in G.E.B on 16/09/1997. That he did not meet the accused on 15/09/1997 but had met him on 16/09/1997 and at that time he had told the accused no. 1 that he wanted the electricity connection for the shop and the accused No.1 had told him that he would have to incur the expenditure of Rs.2,000/-. That he is aware that he has to fill a form for the

connection and get a quotation and produce it in the GEB office and a test report would be filed by the Junior Engineer of the GEB. As per the quotation form, he had to pay an amount of Rs.1980.00/- for the electric connection only and would get the electric connection after the amount was paid. That the accused did not demand for the amount of illegal gratification but had stated for the amount of expenditure and the complainant had thought that the accused No.1 had demanded for the amount of illegal gratification. The witness has admitted that when he thought that the accused No.1 was demanding the amount of illegal gratification, he had told the same to Pravinbhai Vadodariya, who used to come to his shop for shaving and Pravinbhai Vadodariya had told to go to ACB Police Station and file the complaint.

During the cross examination, the complainant has categorically stated that the accused no. 1 did not demand for any amount of illegal gratification. The witness has also admitted that the official jeep of the accused No.1 was parked near the cabin of the accused No. 2 and at that time, the

accused No. 1 told him to pay the amount of Rs.2,000/- to the accused No.2 as the quotation would be paid by the accused No. 2 in the GEB office. The complainant has also admitted that when he and the shadow witness went into the office of the accused no. 1, they were alone and if the accused No.1 wanted to accept the amount of illegal gratification, he would have accepted it in the office. That he had told the accused No.1 that his cousin had expired and he would have to go out of town for 15 days. That even in the cross examination by the trial court, the complainant has categorically stated that the accused no. 1 had demanded the amount of expenditure and not as illegal gratification.

9.1] The prosecution has examined prosecution witness No. 2 Yusufbhai Bahadurbhai Chauhan at Exh: 15. The witness is the panch witness, who accompanied the complainant on the day of the trap and the witness has narrated all events that had unfolded on 19/09/1997 when he reached office of the ACB at 10:45 hrs with the other panch

witness Kanjibhai Hathibhai Dethaliya. The witness has fully supported the case of the prosecution and has narrated in detail about the demonstration of the anthracene powder and ultraviolet lamp and had thereafter gone as a shadow witness with the complainant to the GEB office. The witness has stated that when they went into the chamber of the accused No.1, the accused No.1 asked the complainant as to whether he had brought the receipt but the complainant had stated that he did not bring the receipt and thereafter the complainant told him that he brought the amount and asked should whether he pay the amount but the accused no.1 said to pay after one or two days. That the complainant told the accused No.1 that a death had occurred in his family and he had to go out of town and at that time the accused No. 1 told the complainant to go and pay the amount after his return. That thereafter the complainant told the accused no.1 to come his shop and collect the payment and they left the office and when they reached near the gate of the compound, the accused No. 1 shouted and halted the complainant and they went towards

Mahesh Engineering Works and had a conversation and thereafter the complainant took the currency notes from his shirt pocket and gave it to the accused No. 2, i.e. the owner of Mahesh Engineering Works. That the predetermined signal was given and the members of the raiding party came and both the accused were caught red-handed.

During the cross examination by the learned advocate for the accused, the witness has stated that the accused No. 1 had demanded for the amount as expenditure. The witness has also stated that the panchnama was being dictated by Mr. Parmar and the writer was writing the panchnama and on the day of the trap, he had met the accused No. 1 in the chamber and they sat for 5 to 7 minutes in the chamber of the accused No.1. That during this time, the accused No. 1 did not demand for the amount of illegal gratification. That in the conversation between the complainant and the accused No. 1 at the gate of the compound, the name of the accused No. 2 and as the witness is a government employee, he is aware that if he does not depose as per the panchnama, action for misconduct can

be taken against him.

9.2] The prosecution has examined prosecution witness No. 3 Prithvibhai Rumalbhai Parmar at Exh: 18. This witness is the Trap Laying Officer, who has fully supported the case of the prosecution and has narrated on oath all the events in detail that had occurred right from time that the complainant came to the office and the complaint was taken down and thereafter the panch witnesses were called and the demonstration of the anthracene powder and ultraviolet was done in their presence. The witness has stated that the necessary instructions were given to the complainant and the panch witnesses and the entire procedure for the trap was laid and has narrated each and every detail till the trap was successful.

During the cross examination by the learned advocate for the accused, the witness has stated that the signatures of the panch witnesses are not taken below the primary panchnama and in the panchnama, it is stated that no amount

was demanded and when the panch witness and the complainant went in the office of the accused No. 1, the accused No. 1 did not tell the complainant that the amount was to be paid to the accused No. 2. That there is no clarity as to why the amount was accepted by the accused No. 2.

9.3] The prosecution has examined prosecution witness No. 4 Vikramsinh Jivatsinh Puvar. The witness has stated that he had taken over the investigation of the offence from Police Inspector, Mr.P.R.Parmar and had recorded the statements of the connected witnesses and had made the necessary correspondence for the order of sanction for prosecution. That after the order of sanction for prosecution was received, the charge sheet was filed before the Sessions Court.

During the cross examination by the learned advocate for the accused, the witness has stated that, he is not aware as to whether the amount, as per the quotation, has to be paid or not and whether the connection is given or not and he does not know as to whether any amount for the connection was

deposited by the complainant or his father in the GEB.

9.4] The prosecution has examined prosecution witness No. 5 Surendrabhai Bhogilal Parikh at Exh: 30. The witness is the competent authority, who has given the order of sanction for prosecution of the accused No.1 and same is produced at Exh; 31. During the cross examination, the witness has admitted that on perusal of the documents that were submitted by the ACB, it appeared that there was no transaction with the accused No. 1. That with the papers for the order of sanction for prosecution, he had received the draft order and the accused No. 1 was reinstated in service by his predecessor.

10. On reappreciation of the entire evidence of the prosecution, it is on record that the complainant had filed an application for getting an electricity connection in his shop, which is situated opposite the bus depot and had paid an amount of Rs.25/- and at that time, the amount of expenditure for the connection was to be paid. The complainant has categorically stated that the demand of Rs.2000/- was for the amount of expenditure

towards the electric connection and it was not a demand for illegal gratification but the complainant had mistakenly thought that the amount was towards illegal gratification. There is evidence on record that on the day of the trap, the complainant and the shadow witness had gone into the chamber of the accused No. 1 and at that time the complainant had offered the amount but the accused no. 1 did not accept the amount and if the accused No. 1 wanted to take the amount of illegal gratification, he would have accepted the same in his chamber. It is also on record that the complainant had stated that his cousin brother had expired and he had to go out of town for 15 days and as he wanted the electricity connection at the earliest, he was not ready to wait for 15 days. The panch witness has also not heard any conversation that had taken place between the complainant and the accused No.1 outside the compound of the GEB and there is no iota of evidence regarding prior demand or demand by the accused No.1 on the day of the trap. That the evidence of the panch witness does not corroborate the case of the

prosecution that the demand of illegal gratification was made by the accused No.1 and the panch witness has not heard any demand for illegal gratification being made by the accused No.

1. From the entire evidence, it appears that the demand was made for the expenditure of Rs.1980.00/- that was to be incurred for the electric connection and the quotation was to be made and the amount was to be paid towards that quotation. There is no evidence that the accused No.1 took the complainant and the panch witness to the shop of the accused No.2 and had told the complainant to pay amount to the accused No. 2 but there is evidence to the fact that the jeep of the accused No. 1 was parked near the shop of the accused No. 2 and after the complainant and the panch witness left the office of the accused No.1, the accused No. 1 was walking towards his vehicle, which was parked near the shop of the accused No.2 and at that time, the complainant and the accused No. 2 had a conversation and the defense of the accused No. 1 that accused No.1 told the complainant to pay the amount of Rs.2,000/- to the accused No. 2, who would

deposit the amount of the quotation is probablized. That, the accused No. 1 had full opportunity to accept the amount of illegal gratification in his chamber and even outside thereafter but in the evidence of the complainant, it is categorically mentioned that the accused No. 1 had stated that he would not take the amount and he would not come his shop to take the amount.

11. It appears that the learned trial Court has misread the evidence and when the demand of illegal gratification is not proved beyond reasonable doubts by cogent and convincing evidence and when the complainant and the panch witness have clearly stated that the amount was demanded as expenditure and not towards any amount of illegal gratification, the learned trial Court is not justified in convicting the accused. The evidence that has emerged is that the tainted currency notes were recovered from the drawer of Mahesh Engineering Works i.e. the shop of the accused No. 2 and it is settled law that mere recovery of the tainted currency notes would not entail a presumption under Section 20 of the

PC Act if the demand is not proved. As discussed above, the proof of demand of illegal gratification is a sine-qua-non to bring home the charge against the accused under the PC Act and the demand must be proved beyond reasonable doubts by the prosecution in the first instance. That only if the demand is proved beyond reasonable doubts, the presumption under Section 20 of the PC Act would be available to the prosecution and if the entire evidence of the prosecution is perused, there is no iota of evidence that any demand for illegal gratification has been made by the accused No. 1. That only when the foundational facts have been proved by relevant oral and documentary evidence, presumption of fact with regard to the demand and acceptance of illegal gratification can be made by the learned trial Court and in the entire evidence of the prosecution, the demand is missing and there is nothing on record to show that the accused No.1 had demanded for any of the amount of illegal gratification. There is no evidence to support the conviction and the learned trial Court has failed to appreciate the entire evidence in proper

perspective and the conviction of the accused on this set of evidence cannot be invoked. The entire evidence of the prosecution is far from convincing and the impugned judgment and order of conviction require interference and consequently the appeal succeeds and is allowed.

12. The impugned judgment and the order passed by the learned Special Judge & Additional Sessions Judge, Amreli in Special (ACB) Case No. 45 of 1998 on 21.01.2006 is hereby quashed and set aside and both the accused are acquitted from all the charges against them. Bail bonds stand canceled. Fine to be refunded to both the accused after due verification.
13. Record and proceedings be sent back to the concerned Trial Court forthwith.

VVM

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