IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1592 of 2003
With
R/CRIMINAL APPEAL NO. 1593 of 2003

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE S.V. PINTO Sd/-

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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

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MUNNO ALIAS MAHESHBHAI
Versus
STATE OF GUJARAT

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Appearance:
MR KB ANANDJIWALA(134) for the Appellant(s) No. 1
MS JIRGA JHAVERI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE S.V. PINTO**

Date : 19/04/2024

COMMON ORAL JUDGMENT

1. Both these criminal appeals arise out of the impugned judgment and the order passed by the learned Special Judge and Sessions Judge, Amreli in Special Case No. 6 of

2000 on 29.11.2003 and therefore, both these appeals are being decided by this common judgment.

2. Both the Criminal Appeals have been filed by the appellants – original accused under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment and order of conviction in Special Case No.6 of 2000 passed by the learned Special Judge and Sessions Judge, Amreli (hereinafter referred to as 'the learned Trial Court') on 29.11.2003, whereby, the learned Trial Court has convicted the appellants for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) and 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the P.C.Act'). The appellants are hereinafter referred to as 'the accused' in the rank and file as they stood in the original case, for the sake of convenience, clarity and brevity.

3. The relevant facts leading to filing the present conviction appeals are as under:

3.1. That the accused No.1 Yunushbhai Habibbhai Taili was a Class-III officer in the office of the Deputy Collector, Stamp Duty Valuation, Bahumali Bhavan, Amreli and was a public servant. The accused No.2 Munno @ Maheshbhai Maganbhai Tank was a private person and a friend of the accused No.1. That complainant Jagubhai Merambhai Boricha had purchased a house in the name of his wife Ramjuben Jagubhai Boricha and the sale deed was executed and was sent for stamp valuation to the accused No.1 and a notice under Section 32(a)(1) of the Mumbai Stamp Act was given to the wife of the complainant. That the complainant had met the accused No.1 and had given the reply of the notice but the accused No.1 had demanded an amount of Rs.1000/- as illegal gratification and as the complainant did not want to give the amount of illegal gratification, the complainant went to the ACB Police Station, Amreli and

filed the complaint under Section 7, 12, 13(1)(d) and 13(2) of the P.C.Act, which was registered as C.R.No.6 of 1999 on 19.12.1999. That the panch witnesses were called and the characteristic of anthracene powder and the ultraviolet lamp was explained and the demonstration was carried out in the presence of the panch witnesses and the complainant and the trap was arranged on 18.02.1999. That the complainant and the panch witness went to the office of Deputy Collector, Stamp Duty Valuation, Bahumali Bhavan, Amreli and the accused No.1 demanded an amount of Rs.1000/- as illegal gratification, which was accepted by the accused No.2 and the accused No.2 took scooter bearing registration No.GJ-14–A-6534 and fled away on the scooter. That both the accused in connivance with each other had committed the offence and the accused No.1 was arrested on the same day and the accused No.2 was arrested on the next day. That the Investigating Officer recorded the statements of the connected witnesses and drew the

necessary panchnama and after receiving the order of sanction for prosecution, a charge sheet came to be filed before the learned Sessions Court, Amreli, which was registered as Special Case No.6 of 2000.

3.2. The accused were duly served with the summons and the accused appeared before the learned Trial Court and after due procedure under Section 207 of the Code of Criminal Procedure was followed, a charge was framed against the accused at Exh.5 and the statements of the accused were recorded at Exhs. 6 and 7 respectively, wherein, the accused denied all the contents of the charge and the oral as well as the documentary evidence of the prosecution were taken on record. That the closing pursis was filed by the learned APP at Exh.31, further statements of the accused under Section 313 of the Code were recorded, wherein, the accused No.1 has stated that a false case has been filed against him and he did not want to examine any witnesses, whereas, the accused No.2 has stated that as per the instructions of the accused

No.1, an amount of Rs.1000/- was to be given to Pareshbhai Acharya and he had taken the amount and was going to give the amount to Pareshbhai Acharya and at that time, the police personnel ran behind him and demanded the amount and he thought that the amount was fake currency and hence, he ran away but, on the next day, he read the news in the daily newspaper and he himself came to the police station with the currency notes. That the accused No.2 stepped intot he witness box and deposed at Exh.33. That the arguments of the learned APP and the learned advocate for the accused were heard and the learned Trial Court, by impugned judgment and the order, convicted the accused No.1 and sentenced the accused No.1 to rigorous imprisonment of one year and fine of Rs.10000/- and in default, simple imprisonment of 3 months for the offence punishable under Section 7 of the P.C.Act, rigorous imprisonment of 3 years and fine of Rs.10000/- and in default, simple imprisonment of 6 months for the offence punishable

under Section 13(1)(d) read with Section 13(2) of the P.C.Act. The accused No.2 was sentenced to rigorous imprisonment of 1 year and fine of Rs.10000/- and in default, simple imprisonment of 1 month for the offence punishable under Section 12 of the P.C.Act and rigorous imprisonment of 1 year and fine of Rs.10000 and in default, simple imprisonment of 1 month for the offence punishable under Sections 7, 13(1)(d) and 13(2) of the P.C.Act and under Section 120(B) of the IPC. The learned Trial Court was further pleased to order that all the sentences of both the accused were to run concurrently.

3.3 Being aggrieved and dissatisfied with the impugned judgment and the order passed by the learned Trial Court, the accused No.1 has filed Criminal Appeal No.1592 of 2003 and the accused No.2 has filed Criminal Appeal No.1593 of 2003 mainly stating that the impugned judgment and the order passed by the learned Trial Court is against the evidence on record and the evidence has not been properly appreciated by the

learned Trial Court and the learned Trial Court has arrived at an erroneous conclusion by holding the accused guilty for the offences. That the impugned judgment and the order of conviction is erroneous, illegal and unwarranted on the facts and circumstances of the case and the charge under Section 120(B) of the IPC is illegal. That Section 12 of the P.C.Act is with regard to the punishment of abetment in the offence but the learned Trial Court has framed the charge under Section 120(B) of the IPC which is bad in law and hence, the impugned judgment and the order of conviction under Section 120(B) of the IPC is illegal. That in a case under the P.C.Act, the prosecution has to establish the initial demand and agreement to accept the money as illegal gratification and the demand and the acceptance must be proved beyond reasonable doubts and the Investigating Officer has to ensure that there was no outstanding amount was to be paid by the complainant. That, in fact, the complainant has been served with a demand notice

for an amount of Rs.9030/- as the sale deed was executed for a lesser amount and the accused No.1 had told the complainant that he had to file the reply and to prepare the reply through Pareshbhai Acharya. That there was no demand, whatsoever, on the first instance when the complainant met the accused and also on the second instance, when the complainant had come to meet the accused No.1 and had given the reply to the notice. That in fact, the reply to the notice was prepared by Pareshbhai Acharya and the amount was to be given as a charge for preparation of the reply to the notice to Pareshbhai Acharya and the accused No.2 was to give the amount to Pareshbhai Acharya for the documents that he had prepared. That there was no reasons for the accused No.1 to demand any amount of illegal gratification and if the entire evidence is perused, there is no evidence that the accused No.1 or the accused No.2 had demanded any amount of illegal gratification. The complainant had clearly stated that he had met the accused No.2 on that

day only but the learned Trial Court has falsely believed that there was a conspiracy between the accused Nos. 1 and 2. The complainant has admitted that the accused No.2 had left to go to the residence of Pareshbhai Acharya but two police personnel ran behind him shouting and he got frightened apprehending that the currency notes were fake currency notes and hence, he ran away. That there is no recovery, whatsoever, of any tainted currency notes from the possession of the accused No.1 or the accused No.2 and in the evidence of the complainant, there is only inference that an amount of Rs.1000/- might be demanded as illegal gratification and hence, the case was filed. That proof of demand which is sine qua non for conviction under the P.C.Act is not produced on record and the entire evidence does not prove the demand and acceptance of illegal gratification by the accused No.1 or the recovery from the accused No.2 and there is no cogent, reliable and trustworthy evidence produced by the prosecution. That the

depositions of the complainant and the panch witnesses are untrustworthy and non-reliable and the learned Trial Court has presumed and inferred against the accused as the accused have not rebutted certain facts. That the Trap Laying Officer has not registered the complaint immediately and the time gap was utilized for creating the panchnama and deposition of the Trap Laying Officer Mr. Vijaykumar Tulajaram Navle is not reliable but the learned Trial Court has relied upon the evidence of the Trap Laying Officer. That the panch witness is not an eye witness to the incident and he has categorically admitted that he has neither heard any conversations between the complainant and the accused No.2 nor has seen the exchange of the currency notes between them. That there is no iota of evidence produced by the prosecution to prove the charge against the accused and the learned Trial Court has erroneously misread the evidence and convicted the accused and hence, the impugned judgment and the order must be set aside and both the

accused must be acquitted for all the offences.

4. Heard learned advocate Mr. Vishal Anandjiwala for the accused No.1 in Criminal Appeal No.1592 of 2003 and learned advocate Mr. Pravin Gondaliya for the accused No.2 in Criminal Appeal No.1593 of 2003 respectively and learned APP Ms. Jirga Jhaveri for the respondent – State.

5. Learned advocates Mr.Vishal Anandjiwala and Mr.Pravin Gondaliya for the respective appellants have taken this Court through the entire evidence produced by the prosecution and have submitted that the charge under Section 120(B) of the IPC is illegal and erroneous and the learned Trial Court could not frame the charge under Section 120(B) of the IPC when Section 12 of the P.C.Act is invoked. That the learned Trial Court has merely drawn inference, which is not permissible in Criminal Law. In the evidence of the complainant, it is not clear as to whether the demand towards the illegal

gratification or towards legal remuneration to be given to Pareshbhai Acharya, who had prepared the reply to the notice. The complainant had clearly stated that he had assumed that the demand was towards the illegal gratification and in the entire evidence of the complainant, initial demand is not established. That the complainant was a panch witness in a ACB trap in the year 1995 and he has clearly stated that he does not remember as to whether the accused No.1 told him about the settlement of accounts with Pareshbhai Acharya. That the complainant has not spoken the truth and he has stated that he had gone to ACB office for the first time but immediately he has stated that he was called at the ACB Police Station, Amreli to be a panch witness. Even as far as the demand before acceptance is concerned, the evidence of the panch witness could not be recorded before the learned Trial Court as the panch witness has expired and the complainant has in the cross-examination denied that the accused No.1 has asked him

to give the amount to the accused No.2. As far as recovery of the tainted currency notes is concerned, the accused No.2 has stated that he was to give the amount to Pareshbhai Acharya and he had left on his scooter but the police personnel chased him and he got frightened and ran away. That he went to Babra apprehending that the currency notes might be fake currency notes. That the evidence of the complainant is not corroborated by any independent witnesses and both the accused have categorically stated that the amount was to be given to Pareshbhai Acharya and the amount was not towards any illegal gratification. That the learned Trial Court has completely ignored the fact that only substantive evidence is admissible and hearsay evidence is not admissible and the facts disclose that the evidence is not corroborated by any independent witnesses and not even by the evidence of PW-2 Mr. Natwarlal Mohanlal Visani. That the learned Trial Court has committed a serious error in not believing that the evidence of the Trap

Laying Officer, is hearsay evidence and also the evidence of a person, who is highly interested in success of the trap. That even if the evidence of the Trap Laying Officer is perused, the complaint was written down on 18.02.1999 but the same was registered on the next day i.e. 19.02.1999 and there is no explanation as to why the complaint was registered on 19.02.1999, even though, the accused No.1 was arrested on 18.02.1999. That the learned Trial Court has completely misread the evidence and the impugned judgment and the order must be quashed and set aside and the accused must be acquitted for the said offences.

6. Learned advocates for the appellants have relied upon the following citations:

[i] Jagtar Singh Vs. State of Punjab reported in 2023 LiveLaw (SC) 232.

[v] N. Vijaykumar Vs. State of Tamil Nadu reported in AIR 2021 SC 766.

6.1. The Apex Court, in the case of **Jagtar Singh (Supra)**,

relied upon by the learned advocates for the appellants, has observed in Para Nos-6 to 10, as under:

> **"6.** The argument raised by the learned counsel for the appellant, relying upon the Constitution Bench judgment of this Court in Neeraj Dutta v. State (Govt. of NCT of Delhi) (2022) SCC Online SC 1724, is that the demand and recovery both must be proved to sustain conviction under the Act. In the case in hand, at the most, it can be said that recovery has been proved though that is also seriously doubtful. There is no evidence of demand of illegal gratification. He further submitted that the appellant was merely working as cleaner in the office, and he was not having any authority either to prepare or deliver the death certificates. Admittedly, he was assigned the duty to prepare the death certificates on 20.10.2003 and in the case in hand the death certificate had been prepared on 17.10.2003.
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> **7.** On the other hand, learned counsel for the State submitted that the fact that the phenolphthalein coated currency notes with same serial numbers were recovered from the appellant in the presence of independent witnesses, inference can be drawn that there was demand and that is why he accepted the illegal gratification, hence, the conviction of the appellant deserves to be upheld.
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> **8.** Heard learned counsel for the parties and perused the material on record.
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> **9.** The conclusions of the Constitution Bench judgment referred above, have been summarized in paragraph 74, which read thus:
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> > **"74.** What emerges from the aforesaid discussion is summarised as under.
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> > **(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 of complaint 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 presumption 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 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.

(emphasis added)

10. The referred question was answered in paragraph 76 of the aforesaid judgment, which reads thus:

"76. Accordingly, the question referred for consideration of this Constitution Bench is answered as under:

In the absence of evidence of the complainant (direct/primary, oral/ documentary evidence), it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution."

6.2 The Apex Court, in the case of **N. Vijaykumar (Supra)**, relied upon by the learned advocates for the appellants has observed in Para-12, as under:

"12. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in the case of C.M. Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779: (AIR 2009 SC

2022) and in the case of B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55: (2014 AIR SCW 2080). In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond rea- sonable doubt that accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well-settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal re- corded by the trial court. The relevant para- graphs 7, 8 and 9 of the judgment in the case of B. Jayaraj (supra) read as under:

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration -reference may be made to the decision in C.M. Sharma v. State of A.P. (2010) 15 SCC 1: (2013) 2 SCC (Cri) 89]: (AIR 2011 SC 608) and C.M. Girish Babu v. CBI [(2009) 3 SCC 779: (2009) 2 SCC (Cri) 1]: (AIR 2009 SC 2022 2009 AIR SCW 1693).

8. In the present base, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other wit- ness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same

was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial - complaint (Ext. P11) before LW 9, and there - is no other evidence to prove that the accused had made any demand, the evidence - of PW 1 and the contents of Ext. P11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal mean or abuse of position as a public servant obtain any valuable thing or pecuniary ac vantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act concerned, such presumption can only be i respect of the offence under Section 7 an not the offences under Sections 13(1)(d)(and (ii) of the Act. In any event, it is only o proof of acceptance of illegal gratification that presumption can be drawn under Section 2 of the Act that such gratification was receive for doing or forbearing to do any official ac Proof of acceptance of illegal gratification can follow only if there is proof of demand As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can b drawn are wholly absent."

7. Learned APP 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 as the tainted currency notes were recovered from the possession of the accused No.2. That 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 appeals may be dismissed.

8. 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.

9. 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 the 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 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.

10. To bring home the charge against the accused, the prosecution has examined PW-1 Jagubhai Merambhai at Exh.12 and this witness has stated that he had purchased a house in the name of his wife Ramjuben from Jyotiben Prakashbhai in the year 1997 for Rs.50,000/-. That on 05.09.1999, he got a notice stating that the valuation was less and had to pay an amount of Rs.9030/-. That he went to the office of the Deputy Collector, Stamp Duty Valuation, Bahumali Bhavan, Amreli and met the accused No.1 and the accused No.1 told him to go to the place where he had got the sale deed drafted to write the reply and hence, he had met Pareshbhai Acharya, who gave him the reply and the complainant gave the reply to the accused No.1. That the accused No.1 had told the

complainant that no money had to be paid but, if necessary, he could bring Rs.1000/-. That after 2 - 4 days, he went to the office of Deputy Collector, Stamp Duty Valuation and told the accused No.1 that he had brought the amount and the accused No.1 told him to give it to the accused No.2. That the accused No.2 had demanded the amount and accordingly, he gave the amount to the accused No.2. That he had filed a complaint with ACB Police as he had felt that the amount of illegal gratification was demanded and the accused No.2 was going down the stairs on foot and had started the scooter and took the scooter and fled away. That they returned to the office of ACB and the ACB Officer had brought the accused No.1 and the accused No.2 had gone to Babra. That they looked for the accused No.2 at his house and on the next day, the accused No.2 came and the tainted currency notes were found from the border of the Taluka Panchayat at the fencing and the currency notes were wrapped in the daily newspaper “Divya Bhaskar” and

put in the ground. During the cross-examination by the learned advocate for the accused, the complainant had stated that when he went for the first time with the notice to meet the accused No.1, the accused No.1 told him that he would not have to pay any amount but, would have to give a reply to the notice. That he had told the accused No.1 to prepare the draft of the reply of the notice but, the accused No.1 told him to meet Pareshbhai Acharya. That he has stated that he did not know Pareshbhai Acharya and he had asked the accused No.1 as to whether he would have to give Pareshbhai Acharya some amount and he went to meet Pareshbhai Acharya, who prepared the draft of reply to the notice. That he knew the accused No.2 before the incident and he, PW-1 Jagubhai Merambhai and Munno @ Maheshbhai Maganbhai Tank - the accused No.2 came down the stairs one after the other. That the accused No.2 demanded the amount and put it in his shirt's pocket and started the scooter and went away. That Pareshbhai Acharya is a

resident of Amreli and in the year 1997, he had got the sale deed of the house in the name of his wife drafted by Pareshbhai Acharya and he had given the fees to Pareshbhai Acharya. That he could not say as to whether Rs.1000/- was demanded for Pareshbhai Acharya. That the accused No.2 had suddenly met him on the date of the trap.

11. The prosecution has examined PW-2 Natwarlal Mohanlal Visani at Exh.16 and the witness is the panch witness, who had gone to the ACB Office along with senior clerk Mr.S.B.Jethwa. The panch witness has narrated all the events that had occurred when they went to the ACB Office and the demonstration of anthracene powder and the ultraviolet lamp was done and thereafter, the currency notes were smeared with anthracene power and placed in the left side pocket of the complainant. That the witness was instructed to stay with the Trap Laying Officer and the other panch witness was instructed to come with the complainant. That after the pre-

determined was given, they all went to the accused No.2, who was on his scooter but, the accused No.2 fled away. That they went to the office of the accused No.1 and took the accused No.1 to look for the accused No.2 but, they did not find the accused No.2 and they returned to the ACB office. That the scooter bearing registration No.GJ-14-A-6534 was found near the house of Parsottambhai Tank and they went to Babra Police Station and to the place, where the scooter was lying. That the scooter was seized by the ACB Officer and thereafter, on the next day, on 19.02.1999, once again, he was called to the ACB Office where the ACB Officer had told him that the accused No.2 had presented himself. That the shirt of the accused No.2 was seized from his house and the tainted currency notes were recovered from near the fencing of the Taluka Panchayat, Babra. During cross-examination by the learned advocate for the accused, the witness has stated that the complainant had narrated what had occurred on the instructions of the Police Inspector and

the currency notes were hid in a hole and the currency notes were wrapped in a newspaper. That when they had conducted the experiment on the hole in the mud, traces of anthracene powder were found and he had not heard the conversation between the complainant and the accused No.2 and has not seen the exchange that has taken place. That the place where the currency notes were recovered is a public place.

12. The prosecution has examined PW-3 Vijaykumar Tuljaram Navle at Exh.22. This witness is the Trap Laying Officer, who has recorded the complaint and has arranged for the trap and has fully supported the case of the prosecution and has chronologically narrated all the events that had taken place and the procedure that was undertaken by him. During cross-examination, the witness has stated that the complaint was recorded at 3:00am on 18.02.1999 and he was present in the ACB Office on 18.02.1999 at 16:00 hours. That the accused No.1 was arrested till 16:00 hours and the offence was declared

at 16:00 hours but, was not registered. That on 19.02.1999, the accused No.2 had presented himself before the ACB Police Station and in the panchnama produced at Exh.18, it is not mentioned that the accused No.2 was searched. That when the accused No.2 had presented himself before the ACB Police Station, he was asked as to why he had fled away and the reason given by the accused No.2 was satisfactorily.

13. The prosecution has examined PW-4 Arvindbhai Dhanjibhai Pasholiya at Exh.31. This witness is the Investigating Officer, who has stated that after receiving the sanction for prosecution, he had recorded the statements of the connected witnesses and has filed the charge sheet before the learned Trial Court.

14. In the further statements of the accused, both the accused have denied all the evidence and the accused No.2 has stepped into the witness box and has deposed on oath at Exh.33. The accused No.2 had stated that he knows the

complainant since he was working as a Peace Worker in Babra and in the office of the Deputy Collector, Stamp Duty Valuation, he knew the accused No.1. That on 18.02.1999, when he had gone to the office of the Deputy Collector, Stamp Duty Valuation, the complainant was seated there and had brought the reply to the notice. That the reply was given to the accused No.1 and the accused No.1 had told him that he would not have to pay any amount. That the reply to the notice was prepared by Pareshbhai Acharya and the amount was to be paid to Pareshbhai Acharya and the conversation regarding the same was between the accused No.1 and the complainant. The complainant had asked the accused No.1 as to whether he had to give any amount to Pareshbhai Acharya and the accused No.1 had stated that he had to give remuneration to Pareshbhai Acharya for preparing the reply to the notice and the complainant had brought the amount of Rs.1000/- and the accused No.1 had told the complainant to give the amount to the

Accused No.2 and he would give to Pareshbhai Acharya. That the complainant had given the amount of Rs.1000/- to the accused No.2 and he and the complainant came down the stairs as the accused No.2 had to give the amount to Pareshbhai Acharcya, he took the scooter of the accused No.1 and went towards the house of Pareshbhai Acharya and at that time, the police personnel ran behind the accused No.2 shouting to give back the money and he felt that the currency notes were fake currency notes and hence, the accused No.2 fled away on the scooter and went to Babra. That he kept the scooter at his uncle's place and stayed one night at Babra and on the next day, he read the news in the newspaper and he came back to the ACB office, Amreli and had surrendered himself and gave the currency notes to PW-3 Mr. Vijaykumar Navle, the Investigating Officer. That the shirt, which he had worn, was also seized by Mr. Vijyakumar Navle. That he had not placed any notes in the hole. That no traces of anthracene powder were

found on his hands. During cross-examination by the learned APP, the accused No.2 has stated that Pareshbhai Acharya was a stamp Vendor and the reply to the notice was of 1 to 2 pages. That he does not know the rate of fees of the stamp Vendor and he knew the complainant. That he does not know about the transaction between the complainant and Pareshbhai Acharya and does not know what amount was paid by the complainant to Pareshbhai Acharya at the time of the sale deed.

15. In the entire evidence produced by the prosecution, a clear demand by the accused No.1 from the complainant has not come on record and in the evidence of the complainant, it is not clear as to whether the accused no.1 had demanded any amount of illegal gratification from the complainant. Moreover, the complainant in his deposition before the learned Trial Court has specifically stated that there was no demand and on the day of the trap, when he went to meet the appellant, the accused No.2 had invited the complainant for lunch and while

they were going down the stairs, the accused No.2 demanded the amount and the complainant gave it the accused No.2, which was accepted by the accused No.2 with his right hand. The complainant, in his deposition, has categorically stated that he had presumed that there was a demand and hence, the factum of demand, which is sine qua non for a conviction under the P.C.Act as per the judgment of the Apex Court in a catena of decisions is not proved from the deposition of the complainant. That in fact, as per the case of the prosecution, the demand was made by the accused No.1 to reduce the amount of stamp duty but, if the deposition of the complainant is perused, the complainant has specifically admitted that when he met the accused No.1 for the first time, the accused No.1 had told the complainant that he will not be required to pay any further stamp duty and he was required to give a reply to the notice. That if the case of the prosecution is believed that the accused No.1 wanted the amount of illegal gratification from the complainant

at the first instance itself, the accused No.1 would not have told the complainant that he would not have to pay any further stamp duty. The credibility of the complainant is also doubtful as the complainant has admitted that earlier he was called as a panch witness by the ACB Police Station, Amreli and he was well aware of the entire procedure that was done by the ACB Police Station in a trap case. That the complainant has initially denied about the same and thereafter, on being cross-examined on this issue, he has admitted to the same. Moreover, as far as the aspect of conspiracy is concerned, there is no iota of evidence that the accused No.1 and accused No.2 had entered into a conspiracy to take the amount of illegal gratification from the complainant. If the entire evidence of the prosecution is minutely perused, there are a number of contradictions in the depositions of the panch witness and the complainant and the panch witness states that the tainted currency notes were folded and put in the pocket of the

complainant whereas the complainant has stated that the currency notes were covered and put into the pocket. Moreover, there is no iota of evidence that there is a panch witness, who has heard any conversation between the complainant and the accused No.2 and the panch witness has not seen the exchange of the currency notes taking place.

15.1. As far as the evidence of the prosecution regarding the Trap Laying Officer is concerned, the Trap Laying Officer has not filed the complaint immediately and there is evidence on record that the trap was arranged by PW-3 Vijaykumar Tuljaram Navle on 18.02.1999 at around 2:00pm and thereafter, the accused No.2 took his scooter and fled away. That the Trap Laying Officer went to the office of the accused No.1 and introduced himself and the members of the raiding party and tried to go after the accused No.2 but, they could not catch the accused No.2 and they brought the accused No.1 to the ACB office. Thereafter, they got information that the scooter on

which the accused No.2 fled away was on the Babra Nivda Road near the house of Parsottambhai Tank and they went and seized the scooter, which was registered as GJ-14-A-6534 and thereafter, they came to the ACB Police Station on 19.02.1999 and registered the offence at 3:00 hours. That the accused No.2 thereafter himdrlg surrendered before the ACB police station at 3:00 hours on 19.02.1999. That there is no explanation whatsoever regarding the delay in registering the complaint by PW-3 Vijaykumar Tuljaram Navle and it appears that the Trap Laying Officer was a highly interested witness and the time gap from the time when the complainant gave the pre-determined signal and the time that the complaint was registered is not explained. Moreover, even the aspect of recovery of the tainted currency notes is highly doubtful as if as per the case of the prosecution, if the accused No.2 had surrendered himself before the ACB Police Station and had made a phone call to that effect, he would have come with the tainted currency notes and

there was no reason to dig a hole and bury the tainted currency notes to be recovered by the Investigating Officer during the recovery panchnama. In the entire evidence, the prosecution has miserably failed to prove the factum of demand by the accused No.1 and to prove the acceptance by the accused No.2 beyond reasonable doubts. The recovery of the tainted currency notes is not found from the possession of the accused No.2 and there is no cogent, reliable and trustworthy evidence led by the prosecution to prove the case against the accused beyond reasonable doubts. There is evidence on record to the effect that Pareshbhai Acharcya had, in fact, drafted the reply to the notice for the complainant and if the accused No.1 had demanded the amount of illegal gratification, he would have taken the amount of illegal gratification and kept with him but, it appears that the amount was for Pareshbhai Acharya and hence the explanation of the accused is plausible. It is settled principle of law that if the prosecution has failed to prove the factum of demand

and lead cogent, reliable and trustworthy evidence, the benefit of doubt must go to the accused and the entire evidence must be appreciated minutely. The depositions of the panch witness and the Trap Laying Officer are also doubtful and when the recovery is not made from the possession of the accused himself but from some hole, it cannot be said that the recovery is proved by the prosecution beyond reasonable doubts.

16. As per the judgment relied upon by the learned advocate for the appellants that the demand and recovery must be proved beyond reasonable doubt to sustain the conviction under the P.C.Act, when the recovery is seriously doubtful and there was absolute no evidence of demand of illegal gratification, the conviction under the P.C.Act cannot be sustained. As per the judgment of the Apex Court in the case of **N. Vijaykumar (Supra)** relied upon by the learned advocate for the appellants, the demand of illegal gratification is a sine qua non to constitute the offence under the P.C.Act and mere

recovery of currency notes cannot constitute the offence under Section 7 of the P.C.Act unless it is proved beyond reasonable doubt that the accused has voluntarily accepted the amount knowing it to be a bribe. In the present case, there is no evidence to that effect and the prosecution has miserably failed to bring home the charge against the accused and the prosecution has miserably to prove the prior demand beyond reasonable doubt. The complainant himself has stated that he thought that the demand of illegal gratification is being made by the accused No.1 and the complainant himself was not sure as to whether the demand of illegal gratification was, in fact, made by the accused No.1. That there is no reliable evidence to support the conviction and the learned and the learned Trial Court has failed to appreciate the entire evidence of the prosecution in proper perspective and has given a wrong conclusion and has convicted both the accused. The entire evidence of the prosecution is contrary and far from convincing

and requires interference and consequently the appeals succeed and are allowed.

17. The impugned judgment and the order passed by the learned Special Judge and Sessions Judge, Amreli in Special Case No. 6 of 2000 on 29.11.2003 is hereby quashed and set aside and both the accused are acquitted from all the charges against them. Bail bonds stand cancelled. Fine to be refunded to the accused after due verification.

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

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

F.S.KAZI....