Reserved On : 15/06/2026
Pronounced On : 31/08/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1162 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIMAL K. VYAS sd/-

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Approved for Reporting	Yes	No
	Yes	

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DAYASHANKAR BHULAN TRIPATHI & ORS.
Versus
STATE OF GUJARAT

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Appearance:
MR ROHAN MAJMUDAR, LD. ADVOCATE FOR MR NK MAJMUDAR(430) for the Appellant(s) No. 1,2
DELETED for the Appellant(s) No. 1.1
MR AM BHATASARA(5846) for the Appellant(s) No. 1,2
MR BHARGAV PANDYA, LD. ADDITIONAL PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE VIMAL K. VYAS**

CAV JUDGMENT

1. The present appeal has been preferred under Section 374 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') by the appellants-convicts (original accused) against the judgment and order of conviction and sentence dated 27.05.2005 passed by the learned Special Judge, Fast Track Court No.1, Patan, in Special (ACB) Case No.6 of 2002 (Old Special ACB Case No.10 of 1999).

2. By the aforesaid judgment and order of conviction and sentence, the trial Court held the present appellants-original accused guilty for the commission of the offences punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and consequently, sentenced them to undergo rigorous imprisonment for 2 years along with the fine of Rs.1,000/-, and in default of payment of fine, to undergo further simple imprisonment for 1 month.

Facts of the case, in brief, are as follows :

3. The brief facts of the prosecution case are that the original complainant, namely, Bhanuprasad Dhirajlal Oza, a resident of Patan, lodged a complaint on 13.01.1999 before the Police Inspector, Anti-Corruption Bureau (ACB), Mehsana. The complainant stated that he resides in Patan and earns his livelihood by operating an auto-rickshaw bearing registration No. GJ-2U-2146. He has stated that he has also employed one Kaniya Mal, who drives the said auto-rickshaw.

4. On 08.01.1999, while the complainant's auto-rickshaw was plying on the road from Pipla Gate to Bus Stand within Patan city, it met with an accident involving a cyclist. In connection with the said incident, an offence was registered

at Patan City Police Station. At the relevant point of time, one Jamadar Pandit (the present appellant- accused No.1 - Dayashankar Bhulan Tripathi) was investigating the case.

5. On 09.01.1999, the complainant was informed by the appellant No.1- Dayashankar Bhulan Tripathi, Assistant Sub-Inspector (ASI), Patan City Police Station, to produce the Driver and the ownership documents of the auto-rickshaw.

6. On 11.01.1999, the appellant No.1 informed the complainant that the auto-rickshaw would be seized and its owner would be arrested in connection with the said incident. Upon the complainant's making inquiry as to whether the seizure and arrest could be avoided, the appellant No.1 demanded an illegal gratification of Rs.1,500/- for not arresting him and not seizing his auto-rickshaw, and after negotiations, it was reduced to Rs.900/-. The complainant paid Rs.800/- on the same day at around 2:00 p.m. and informed him that the remaining amount of Rs.100/- would be paid subsequently.

7. On 12.01.1999, the appellant-accused No.1 Jamadar Pandit, accompanied by a police personnel, came to the residence of the complainant and demanded the remaining amount of bribe of Rs.100/-. Thereafter, he instructed the complainant to meet him at Pipla Gate Police Station on

13.01.1999 between 4:00 p.m. and 7:45 p.m. with the remaining amount of bribe of Rs.100/- and the documents pertaining to the auto-rickshaw. As the complainant was unwilling to pay the remaining amount of bribe, he approached the Anti-Corruption Bureau (ACB), Mehsana, and lodged a complaint on 13.01.1999, and on the strength of the complaint, a trap was laid, and the accused were caught red-handed accepting the amount of bribe. The raiding party, thereafter, recovered the currency notes smeared with anthracene powder from the possession of the accused.

8. Upon completion of the investigation, sanction to prosecute the accused persons was obtained from the competent authority, and thereafter, charge-sheet was filed against both the accused persons for the commission of the offences punishable under Sections 7, 12, 13(1)(d), and 13(2) of the Prevention of Corruption Act, 1988. The trial Court, after complying with the provisions of Section 207 of the Cr.P.C., framed the Charge *vide* Exh.9 against the accused persons. The Charge was read over and explained to the accused, who abjured their guilt and pleaded not guilty and claimed to be tried.

9. To bring home the charge, the prosecution had examined 06 witnesses and adduced 19 documentary evidence in support of their case, which are as follow :

PW NO.	WITNESSES NAME	EXHIBIT
1.	Bhanuprasad Dhirajlal Oza (original complainant)	15
2.	Babubhai Somabhai Prajapati (Panch witness)	19
3.	Bharatsinh Mangalsinh Jadeja (Police Officer who received the complaint)	27
4	Jayantilal Ramjibhai Solanki (ASI)	32
5	Kachrabhai Dalabhai Parmar (Investigating Officer)	36
6	Devabhai Chhatrabhai Bhabhor (Investigating Officer)	48

DOCUMENTARY EVIDENCE		
SR. NO.	**DESCRIPTION OF THE DOCUMENT**	**EXHIBIT**
1	Complaint given by Bhanuprasad Dhirajlal Oza	16
2	Trap Panchnama	20
3	Seizure Memo regarding a copy of Patrol Book seized from accused No.1	21
4	Seizure Memo relating to the articles recovered from accused No.2	22
5	Slips on the mudamal	23 to 26
6	List of panchas received for trap	28
7	A copy of the relevant register	33
8	True copy of the case diary of C.R. No.4/99 in Patan city	34
9	Relevant extract of the arrest register of Patan City Police Station	37
10	True copy of the complaint against the original complainant's rickshaw driver	38
11	Relevant extract of station diary of C.R.No.4/99 in Patan City Police Station	39

12	True copy of job duty distribution of accused No.1	40
13	True copy of job duty distribution of accused No.2	41
14	True copy of the plan/map showing the replacement/ arrangement relating to Pipla Gate Police Station	42
15	True copy of appointment letter of accused No.1	43
16	True copy of service book of accused No.1	44
17	True copy of appointment letter of accused No.2	45
18	True copy of service book of accused No.2	46
19	Xerox copy of sanctioned order for prosecution of the accused.	47

10. Upon completion of the recording of the evidence, the trial Court explained the incriminating circumstances appearing in evidence against the accused. The accused, in their further statements recorded under Section 313 of the Cr.P.C., denied all the allegations levelled against them by the prosecution of accepting the bribe. Thereafter, they pleaded innocence and stated that they have been falsely implicated in the alleged offences.

11. On completion of the trial, after appreciating the entire evidence, the trial Court, *vide* judgment and order dated 27.05.2005, convicted the present appellants for the commission of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

12. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the present appellants (i.e. the original accused) have preferred the captioned Criminal Appeal before this Court, which came to be admitted by a Coordinate Bench of this Court (Coram : J.R.Vora, J.) *vide* order dated 14.06.2005.

Submissions on behalf of the Appellants-Accused :

13. Learned advocate Mr.Rohan Majmudar for Mr.N.K.Majmudar, learned advocate appearing for the appellants, in the course of his detailed submissions, raised the following principal contentions, which may be summarized as under:

(i) There is no material on record to substantiate the alleged initial demand.

(ii) The material on record clearly suggests that there is no cogent and credible evidence on record to substantiate the prosecution's case that the accused No.1 had, on 11.01.1999 at around 11:00 a.m., initially demanded an illegal gratification of Rs.1,500/- from the complainant as consideration for not arresting him and for not seizing his auto-rickshaw, and that, after negotiations, he agreed to accept

Rs.900/-, pursuant to which, he accepted a sum of Rs.800/- from the complainant at around 2:00 p.m. on the same day. Furthermore, there is absolutely no evidence on record to substantiate the allegation that on the next day, i.e. on 12.01.1999, the accused had visited the complainant's residence and demanded the remaining amount of bribe of Rs.100/-. It is submitted that the prosecution has failed to adduce any cogent and reliable evidence in support of the said allegations.

(iii) The complainant, Bhanuprasad Dhirajlal Oza (PW-1), in his deposition at Exh-15, has narrated the facts, which are wholly inconsistent with the prosecution's case. He deposed that, on the day of the trap, when he and the shadow witness reached at the police outpost, the gate of the outpost was closed. After sometime, a police constable arrived at the outpost, and approximately 15 minutes thereafter, one Head Constable came to the outpost. However, he categorically stated that this Head Constable was not the person, who had demanded the bribe amount. The complainant has further deposed that he had handed over the auto-rickshaw documents to the said Head Constable, and thereafter, put the tainted currency notes into the pocket of another police personnel who was standing nearby. He also unequivocally stated in

his evidence that the Head Constable to whom he had earlier paid a sum of Rs.800/- was not present at the spot. Thus, the conduct of the complainant, as reflected in his own testimony, is wholly inconsistent with the prosecution's case and gives rise to serious doubt regarding the veracity and credibility of the entire case.

(iv) A conjoint reading of the testimonies of the complainant- Bhanuprasad Dhirajlal Oza (PW-1), the shadow witness- Babubhai Somabhai Prajapati (PW-2), along with the original complaint (at Exh-16) and the panchnama (at Exh-20), it clearly reveals that the complainant had produced the relevant documents of his auto-rickshaw before the Head Constable present at the police outpost. The evidence further reveals that when the complainant tendered the currency notes to the Head Constable, he expressly declined to receive them. Thereupon, the complainant, on his own volition, put the said currency notes into the pocket of the accused No.2. These circumstances unequivocally established that neither of the accused person had demanded the alleged illegal gratification nor voluntarily accepted the same. Thus, the essential ingredients of demand and acceptance, which are *sine qua non* for constituting an offence under the Prevention of Corruption Act, remain wholly unproved.

(v) There are significant inconsistencies between the version deposed by the complainant- Bhanuprasad Dhirajlal Oza (PW-1), in his evidence at Exh-15 and the version narrated in the original complaint at Exh-16.

(vi) Admittedly, there is no material on record to substantiate the allegation of initial demand of illegal gratification. Furthermore, the evidence of the prosecution witnesses with regard to the alleged demand on the date of the trap is mutually inconsistent and contradictory. The version of the alleged demand, as reflected in the panchnama, also materially differs from the oral testimony of the prosecution witnesses, thereby rendering the prosecution case highly doubtful.

(vii) The evidence clearly indicates that the core witnesses of the prosecution have concealed and suppressed the material facts concerning the events that took place on the day of the trap. Moreover, the testimonies of all the witnesses regarding the entire trap proceedings are mutually inconsistent, conflicting and contradictory. Such inconsistencies and contradictions cast a serious doubt on the veracity of the case of the prosecution.

(viii) The evidence of the complainant- Bhanuprasad Dhirajlal Oza (PW-1) and the shadow witness- Babubhai Somabhai Prajapati (PW-2), clearly proves that, on the day of the trap, neither of the accused persons demanded the alleged illegal gratification nor accepted any amount in pursuance thereof. The trial Court, however, has completely overlooked this vital evidence and proceeded to convict both the accused solely on the basis of the recitals contained in the panchnama (Exh-20) and the oral testimony of the Trap Laying Officer, Bharatsinh Mangalsinh Jadeja (PW-3), thereby committing a grave error of law and appreciation of the evidence.

(ix) The trial court, while appreciating the evidence, has laid much emphasis on the provisions of Section 20 of the Prevention of Corruption Act, which raises presumption once it is established that the accused accepted the amount. However, for the purpose of arriving at the conclusion whether the accused accepted the amount of illegal gratification or not, the totality of the evidence led by the prosecution at the trial is required to be appreciated. It is settled legal position that in absence of any proof of demand, the legal presumption under Section 20 of the Prevention of Corruption Act would not arise since the proof of demand and its subsequent acceptance is a *sine qua*

non for the offence punishable under Sections 7, 13(1)(d), 13(2) of the Prevention of Corruption Act. Therefore, only on the basis of acceptance of the amount without there being any proof of demand, the accused cannot be held guilty of the offences under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. It is submitted that the trial Court, while appreciating the evidence in this regard, has completely lost sight of the aforesaid settled legal position. It is further submitted that except the bare averments in the complaint, no evidence has been led by the prosecution to prove the essential elements of the offence, more particularly, the proof of demand of illegal gratification and its subsequent acceptance, beyond reasonable doubt.

14. Thus, it is submitted that considering the entire evidence on record, it clearly establishes that the prosecution has failed to prove the essential elements of the offence, i.e. demand, acceptance and recovery, beyond reasonable doubt, and in absence of proof of demand and its acceptance, the trial Court has committed a serious error in raising a presumption under Section 20 of the Act. In such circumstances, learned advocate Mr.Majmudar has implored the Court to allow the appeal preferred by the

appellants-convicts, set-aside the impugned judgment and direct the acquittal of the appellants-convicts from the charges levelled against them.

Submissions on behalf of the respondent- State:

15. Vehemently opposing the appeal filed by the appellants-convicts and the submissions canvassed by learned advocate Mr.Rohan Majmudar for Mr.N.K.Majmudar, learned advocate appearing for the appellants-convicts, learned APP Mr.Bhargav Pandya appearing for the respondent- State has submitted that the trial Court has convicted the appellants-accused for the offences punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, and consequently, sentenced them to undergo rigorous imprisonment for 2 years along with the fine of Rs.1000/-. Learned APP Mr.Pandya has submitted that the prosecution has proved all the three essential elements of the offence, i.e. demand, acceptance and recovery, beyond reasonable doubt, through the cogent and convincing evidence of the core witnesses, i.e., the complainant- Bhanuprasad Dhirajlal Oza (PW-1), the shadow witness- Babubhai Somabhai Prajapati (PW-2), and the trapping officer- Bharatsinh Mangalsinh Jadeja (PW-3).

16. Learned APP Mr.Bhargav Pandya, while referring to the

evidence of the core witnesses, i.e., the complainant- Bhanuprasad Dhirajlal Oza (PW-1), the shadow witness- Babubhai Somabhai Prajapati (PW-2), and the trapping officer- Bharatsinh Mangalsinh Jadeja (PW-3), has submitted that the evidence of the complainant- Bhanuprasad Dhirajlal Oza (PW-1) and the shadow witness- Babubhai Somabhai Prajapati (PW-2), who had accompanied the complainant at the time of the trap, are clear, cogent and convincing. It is submitted that the evidence of both these witnesses have remained unshaken and the same are in corroboration with the evidence of the Trapping Officer, Bharatsinh Mangalsinh Jadeja (PW-3), Police Inspector, who laid the trap. It is submitted that the evidence of all these witnesses are in corroboration with the allegations made by the complainant- Bhanuprasad Dhirajlal Oza (PW-1) in his complaint at Exh-16.

17. Learned Additional Public Prosecutor Mr.Bhargav Pandya has further submitted that if the evidence of the witnesses be read in juxtaposition with the documentary evidence on record, there remains no doubt about the case of the prosecution and, therefore, no error could be said to have been committed by the trial Court while appreciating the evidence and arriving at the conclusion of the guilt of the appellants-accused. He has, therefore, urged that the conviction and sentence recorded by the trial Court do not call for any interference by this Court and the criminal

appeal preferred by the appellants-convicts challenging their conviction and sentence, may be dismissed.

Findings and Analysis:

18. Before adverting to the facts and circumstances of the case, it would be apt to reiterate the fundamental principle of criminal jurisprudence as affirmed by the highest court that, in criminal trial it is for the prosecution to bring home the guilt of the accused since the burden of proving the guilt beyond reasonable doubt always rests upon the prosecution. It is also settled that the prosecution has to stand on its own legs and cannot take advantage or undue advantage of the defence put forth by the accused. The Supreme Court, in the case of ***Rabindra Kumar Dey vs. State of Orissa***, **AIR 1977 SC 170**, reiterated three cardinal principles, namely, (i) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt, and it cannot derive any benefit from weakness or falsity of the defence version while proving its case; (ii) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and (iii) that the onus of the prosecution never shifts. Thus, it is well-settled that in a criminal trial, the guilt of the accused must be proved beyond reasonable doubt in order to convict him.

19. The Supreme Court, in the case of ***State of Uttar Pradesh vs. Krishna Gopal***, reported in **(1988) 4 SCC 302**, has held that the person has, no doubt, profound rights not to be convicted of an offence, which is not established by the evidential standard of proof beyond reasonable doubt.

20. Bearing in mind the aforesaid legal position, this Court has considered the submissions canvassed by the respective parties and carefully perused the materials produced on record. It is well-settled that for establishing the commission of an offence under Section 7 of the Prevention of Corruption Act, the proof of demand of illegal gratification and the subsequent acceptance is *sine qua non.* Moreover, the presumption under Section 20 of the Prevention of Corruption Act can be invoked only on proof of facts in issue, namely, the demand of illegal gratification by the accused and the acceptance thereof. The Constitutional Bench of the Supreme Court in the case of ***Neeraj Dutta vs. State (Government of NCT of Delhi)***, reported in (2023) 4 SCC 731 has, in paragraph-68 of the judgment, held 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 of 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."

21. Thus, it is held by the Supreme Court that in order to bring home the charge, the prosecution has to prove beyond reasonable doubt the "**demand of illegal gratification**" and the "**subsequent acceptance**" either by direct or by circumstantial evidence.

22. The cases of corruption largely depends on the testimonies of three crucial witnesses; (i) the complainant,

(ii) the shadow witness, and (iii) the trapping officer. These witnesses play a decisive role in determining the fate of the accused. As such, the testimonies of the complainant-Bhanuprasad Dhirajlal Oza (PW-1), the shadow witness-Babubhai Somabhai Prajapati (PW-2), and the trapping officer- Bharatsinh Mangalsinh Jadeja (PW-3), must be examined with great care and caution. It is expected that their statements should be consistent, credible and of sterling quality. If there are significant contradictions in their evidence on material aspects, such discrepancies cannot be overlooked. In such circumstances where the evidence allows for two possible interpretations, the one which is in favour of the accused, must be considered. This is because the law firmly upholds the principle that "no innocent persons should be wrongfully punished".

23. Keeping in mind the aforesaid legal position of law and also keeping in mind the ratio of the above-mentioned judgments, the evidence led by the prosecution, in the instant case, is to be analyzed to find out, whether the prosecution has proved the fact that the accused-convicts demanded and accepted the amount of illegal gratification from the complainant.

24. This Court has given anxious consideration to the evidence on record. The scrutiny of the evidence reveals multiple inconsistencies with the case of the prosecution. As

per the original complaint at Exh-16 and the charge at Exh-9, it is the case of the prosecution that the complainant-Bhanuprasad Dhirajlal Oza was the owner of the auto-rickshaw bearing registration No. GJ-2U-2146, which was being plied on hire through its Driver- Kaniya Mal. While the said Driver was driving the auto-rickshaw, an accident involving a cyclist occurred, leading to the registration of an offence at the Patan Police Station. The investigation of the said offence was being carried out by the appellant- accused No.1.

25. The prosecution alleges that on 11.01.1999, the appellant-accused No.1 had demanded an amount of Rs.1,500/- from the complainant as illegal gratification for not arresting him in connection with the said offence and for not seizing the auto-rickshaw. It is the case of the prosecution that, upon negotiation, the amount of illegal gratification was reduced to Rs.900/-. Pursuant thereto, the complainant allegedly paid Rs.800/- to the appellant-accused No.1, who was then serving as a police Jamadar (Head Constable) at around 2:00 p.m. on the same day, assuring him that the remaining amount of Rs.100/- would be paid subsequently.

26. According to the prosecution, on the next date, i.e., on 12.01.1999, a police personnel visited the residence of the complainant and demanded payment of the remaining

amount of Rs.100/. The complainant was also asked to produce the documents pertaining to the auto-rickshaw. The complainant informed the said police personnel that he would produce the documents along with the remaining amount on the next day. Thereafter, the appellant No.1 directed the complainant to meet him between 4:00 p.m. to 5:00 p.m. on 13.01.1999, carrying the balance amount of Rs.100/- along with the documents relating to the auto-rickshaw. Therefore, the complainant reported the matter to the ACB, Mehsana, on 13.01.1999, prompting a trap. It is alleged that during the trap, the appellants-accused were caught red-handed accepting the amount of bribe.

27. It is an undisputed fact that there is no direct evidence of the initial demand made by the appellants-convicts. Albeit, the complainant has made specific allegation in this regard in the complaint at Exh-16 and has deposed in his evidence at Exh-15 that despite having paid a sum of Rs.800/- as a bribe, the police personnel visited his residence and demanded the remaining bribe amount of Rs.100/- along with the documents pertaining to his auto-rickshaw.

28. It is noteworthy that normally such initial demand of illegal gratification is not made publicly or in presence of any third person; therefore, there might not be a direct evidence regarding the same. In such circumstances, if

during the trap, the appellants-accused had asked for the same demand and accepted it, then that can prove the *factum* of the initial demand made by the appellants-accused. Therefore, the evidence of these core witnesses, i.e., the complainant- Bhanuprasad Dhirajlal Oza (PW-1), the shadow witness- Babubhai Somabhai Prajapati (PW-2), and the trapping officer- Bharatsinh Mangalsinh Jadeja (PW-3), are required to be examined carefully. It is needless to say that the evidence of these core witnesses must reflect consistent version and must be mutually coherent, reliable and trustworthy.

29. So far as the elements of demand of the illegal gratification and the subsequent acceptance are concerned, the evidence of the prosecution is inconsistent and contradictory. The testimonies of all the three core witnesses, i.e., the complainant, the shadow witness, and the trapping officer are mutually inconsistent, which raises suspicion towards the version of the prosecution.

30. As narrated hereinabove, the version of the prosecution is that the accused No.1 had initially demanded an illegal gratification of Rs.1,500/- from the complainant and, after negotiation, he agreed to accept Rs.900/-. It is alleged that the accused No.1 accepted Rs.800/- towards the said illegal gratification on the same day and, during the trap proceedings, he demanded the remaining amount of

bribe of Rs.100/-. When the complainant tendered the same, the accused No.1 instructed him to hand it over to the accused No.2. Accordingly, the complainant handed over the tainted currency notes to the accused No.2, who accepted the same.

31. If the evidence of the complainant- Bhanuprasad Dhirajlal Oza (PW-1), is scrutinized in this context, it emerges that, he, in his deposition at Exh-15, has put forth a version, which is wholly inconsistent with the prosecution's case. He has deposed that when he, along with the shadow witness, reached the police outpost, the gate of the outpost was closed. After about 15 to 20 minutes, one police constable arrived at the outpost, and approximately 15 minutes thereafter, the Jamadar of the said outpost also came there. However, according to the complainant, the said Jamadar was not the person, who had earlier demanded and accepted the illegal gratification from him.

32. Thereafter, he along with the shadow witness entered into the police outpost and handed over the documents pertaining to his auto-rickshaw to the Jamadar present over there. He has categorically stated that the person, who had earlier demanded the bribe of Rs.900/- and accepted the amount of Rs.800/- as illegal gratification, was not present at the police outpost at that time. Despite this, he himself

consequently, put the tainted currency notes into the pocket of another police personnel, who was present there, and thereafter came out of the police outpost, and passed the prearranged signal to the members of the raiding party. He has further unequivocally deposed that the appellant-accused No.2 did not accept the tainted currency notes at the instance of the appellant- accused No.1. Even during his cross-examination by the defence, he admitted that the appellant-accused No.1 had neither demanded any amount from him nor had he paid any such amount to him.

33. Upon careful reading of the aforesaid testimony of the complainant, it clearly indicates that, despite there being no demand of illegal gratification by anyone, he himself, on his own, put the tainted currency notes in the pocket of another police personnel (accused No.2) standing nearby and thereafter, passed the prearranged signal to the members of the raiding party. It clearly emerges from the evidence that the complainant himself has not supported the version of the prosecution and has turned hostile.

34. In this context, if we look at the evidence of the shadow witness, Babubhai Somabhai Prajapati (PW-2), he, in his evidence at Exh-19, has stated that after he and the complainant (PW-1) entered into the police outpost, Jamadar Pandit demanded the documents pertaining to the complainant's auto-rickshaw. Accordingly, the complainant

produced and handed over the said documents. Thereafter, when the complainant took out the tainted currency notes from his pocket and tendered the same to the Jamadar Pandit, he refused to accept the amount and instead, instructed him to hand over the same to the police personnel sitting beside him. The said police personnel thereafter accepted the tainted currency notes and kept it in his pocket, whereupon the complainant came outside of the police outpost and passed the prearranged signal to the members of the raiding party.

35. At this juncture, it is significant to note that no such fact has been stated by the complainant- Bhanuprasad Dhirajlal Oza (PW-1) in his evidence at Exh-15. Furthermore, on a careful scrutiny of the evidence of the shadow witness, it clearly emerges that even during the trap proceedings, none of the accused persons had made any demand for the alleged illegal gratification. Thus, on conjoint reading of the evidence of the complainant (PW-1) and the shadow witness (PW-2), material discrepancies, inconsistencies, and contradictions reveal in their respective versions, particularly with regard to the essential elements of demand and acceptance of the alleged bribe amount.

36. Now, in this context, if we examine the panchnama at Exh-20, the entire sequence of the events has been described in a completely different manner. It reflects from

the panchnama that upon the appellant-accused No.1 demanding the remaining amount of bribe of Rs.100/-, the complainant tendered the tainted currency notes, whereupon the appellant-accused No.1 instructed him to hand over the same to the police personnel sitting beside him. However, as discussed hereinabove, neither the complainant nor the shadow witness had deposed any such facts in their respective testimonies. Thus, the version recorded in the panchnama with regard to the demand of the bribe amount does not find corroboration from the evidence of the aforesaid two star witnesses.

37. Now, in the same context, if we examine the evidence of the Police Inspector - Bharatsinh Mangalsinh Jadeja (PW-3), who laid the trap, he, in his testimony at Exh.27, has affirmed and reiterated the very same fact, as narrated in details in the panchnama at Exh-20.

38. A careful evaluation of the foregoing evidence clearly establishes that the evidence of the complainant - Bhanuprasad Dhirajlal Oza (PW-1), the shadow witness- Babubhai Somabhai Prajapati (PW-2) and the trapping officer- Bharatsinh Jadeja (PW-3) regarding demand and acceptance of the alleged bribe amount is not consistent with each other. Furthermore, the sequence of events as recorded in the panchnama at Exh.20 are entirely different from the facts stated by all these witnesses.

39. As noted earlier, in such case where the fate of the accused depends only on the testimonies of the complainant, the shadow witness and the trapping officer, it is essential that their evidence should be consistent, reliable and of sterling quality. Therefore, the inconsistencies and contradictions in the testimonies of these witnesses cannot be overlooked.

40. For the foregoing discussion, it clearly established that the evidence of the core witnesses is inconsistent and contradictory with each other as well as with the case of the prosecution.

41. The Supreme Court, in the case of ***Mallappa vs. State Of Karnataka***, reported in (2024) 3 SCC 544, has held thus :-

> *"26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The two-views theory has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action...."*

42. In view of the aforesaid as well as considering the discrepancies in the evidence of all three core witnesses regarding the acceptance of illegal gratification, when two views are possible, certainly the one in favour of innocence of the accused, must be considered.

43. Thus, on examination of the entire evidence, this Court is of the considered opinion that the prosecution has failed to establish beyond reasonable doubt, the essential elements of demand of bribe and acceptance of illegal gratification. The law in this regard is well settled that for an offence to be constituted under the Prevention of Corruption Act, the 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. A mere recovery of the tainted currency notes is not sufficient to convict the accused if the core evidence in the case is unreliable, unless there is a proof that the money was voluntarily accepted as a bribe.

44. Since the prosecution has failed in establishing the foundational fact by leading cogent and convincing evidence regarding the aspects of demand and its subsequent acceptance, the question of presumption under Section 20 of the Prevention of Corruption Act does not arise in the

present case.

45. In view of the aforesaid discussion and re-appreciation of the entire evidence on record, this Court is of the considered opinion that the prosecution has not proved the case beyond reasonable doubt by leading cogent and convincing evidence and the trial court has not appreciated the entire evidence in its true perspective. Further, when the essential elements of demand and its subsequent acceptance, i.e. the fact in issue, has not been proved beyond reasonable doubt, mere recovery of the tainted currency notes cannot constitute the offence punishable under Section 7 of the Prevention of Corruption Act since it is not proved beyond reasonable doubt that the accused had voluntarily accepted the amount knowing it to be the illegal gratification. Therefore, the appellant-accused cannot be held guilty by taking aid of the presumption under Section 20 of the Prevention of Corruption Act, more particularly, when the basis and the foundation of the prosecution case, i.e. the demand and its acceptance, has not been proved.

46. Keeping in mind the cardinal principles of the criminal jurisprudence as stated herein above and considering the evidence on record, this Court is of the considered opinion that in the instant case, it cannot be said that the prosecution has proved the case beyond reasonable doubt by leading cogent and convincing evidence and, therefore,

the benefit of doubt goes in favour of the appellants-accused. Thus, it appears that the trial court has made an error while convicting the present appellants-accused for the alleged offence and, therefore, interference by this Court is warranted.

47. In the result, the appeal preferred by the appellants-convicts succeed, and the same is hereby allowed. The impugned judgment and order of conviction and sentence dated 27.05.2005 passed by the learned Special Judge, Fast Track Court No.1, Patan, in Special (ACB) Case No.6 of 2002 (Old Special ACB Case No.10 of 1999), is hereby quashed and set-aside. The appellants-accused are set free from all the charges.

48. Bail bonds stand cancelled. The amount of fine, if any, paid shall be refunded to the appellants-accused. Records and proceedings be returned to the trial court forthwith.

sd/-

(VIMAL K. VYAS, J)

DIPTI PATEL

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: DIPTIBEN PIYUSH PATEL(HC00191), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 31/08/2026 15:34:45