

(2012) 03 GUJ CK 0102
In the Gujarat High Court
Case No : Criminal Appeal No. 847 of 2002

Bhikhabhai Ambalal Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20, 7

Citation : (2012) 03 GUJ CK 0102

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : H.M. Prachchhak, for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Z.K. Saiyed

1. By way of present appeal, filed u/s 374(2) of the Code of Criminal Procedure, 1973, the appellant has challenged the judgment and order of conviction dated 30.9.2002 passed by the learned Special Judge, Ahmedabad, in Special Case No. 2 of 1997. The said case was registered against the appellant-original accused for the offences punishable under Sections 7 and 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act. The appellant is sentenced to undergo R.I. for six months and a fine of Rs.1,000/-, in default, S.I. for one month for the offence punishable u/s 7 of the Prevention of Corruption Act. He is also sentenced to undergo R.I. for one year and a fine of Rs.2,000/-, in default, S.I. for two months for the offence punishable under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

2. According to the prosecution case, the accused was working as a Senior Supervisor / Bill Clerk for the salary and loans with Ahmedabad Municipal Corporation. At a relevant time, complainant, Shri Bhaverji Goduji was working as a permanent labourer in the Main-hole Department (Engineering Department)

of Sabarmati ward of Ahmedabad Municipal Corporation.

3. It is the say of the complainant that amount towards salary and loan used to be paid by the accused. The office is situated near Three Gates, Ahmedabad. He wanted to have advance/loan from his P.F.Account in respect to marriage of his daughter, Kailash which was to take place in near future. Therefore, on 1.6.1969, he submitted application form to the accused. In turn, the accused suggested that signatures of the officer and witnesses were necessary on the form of loan. On 4.6.1996, he approached the accused and inquired as to when he would get amount of loan. He was replied by the accused that he would get it after a week or 15 days. After 10 days he went to him to inquire. At that time, the accused told him that his loan was not sanctioned and if he wanted to sanction the loan at the earliest he had to pay remuneration (Mahantanu). Therefore, complainant asked the accused as to how much should be paid to him and the accused replied that he had to pay Rs.500/-. Thereafter now and again he went to accused, but he was informed that his loan was not sanctioned.

4. On 4.7.1996, he met the accused and inquired as regards his loan. At that time, he was informed by the accused that his loan of Rs.12,000/-was sanctioned and he may collect the same on 9.7.1996. As this loan was sanctioned, as per their previous talk, the complainant had to come with Rs.500/-. As such no amount was to be paid in order to take loan and advance from the fund. Thus the accused demanded illegal gratification of Rs.500/-from the complainant.

5. The complainant was however not ready and willing to pay illegal gratification of rs.500/-to the accused. Therefore, he went to the office of Anti Corruption Bureau, Ahmedabad on 9.7.1996. The Police Inspector recorded the complaint of the complainant and arranged for two independent witnesses. The complainant supplied Rs.500/-required for the trap money and then demonstration of anthracene powder and ultraviolet lamp was carried out in presence of panchas. The complainant, Panch No. 1, Panch No. 2 and other members of raiding party were duly instructed by Police Inspector and the first part of panchnama was prepared at A.C.B. Office.

6. Thereafter the complainant and Panch No. 1went to the office of accused situated near Khamasa Cross Road. After entering the office, they went insides the room at table No. 3 where they approached the accused who was available there. At a relevant time, complainant asked the accused that how he was etc., then accused took out bulk of pay slips and out of that one pay slip was given to the complainant. He also put his signature on revenue stamp in the register supplied by the accused. The amount/salary paid was Rs.2,140/-cash. The same was placed in his pant. Thereafter the accused took out another register and obtained his signature on the revenue stamp in the loan register. He was also paid Rs.12,000/-towards the loan amount. Thereafter the complainant asked the accused as to what was to be given. The accused replied that give according to talk. Thereafter, there was little haggling on the part of the complainant. Then complainant took out tainted currency notes of Rs.500/-from the left pocket of

his shirt with his right hand and placed before the accused which in turn was accepted by him with his right hand and counted the same with his two hands and, thereafter, placed the same in the left upper pocket of his bushirt. It was about 15-25 hours. Then as per the instructions of the trapping officer signal was given by the complainant by yawning and stretching his arms. Shri H.A.Pathan, Panch No. 2 and other members of raiding party went there. The Police Inspector introduced himself to the accused and told him not to move. There the Police Inspector collected information from Panch No. 1 as to what was happened. Say of Panch No. 1 was also supported by the complainant. The physical search was carried out by the trapping officer. The currency notes of Rs.500/-were recovered from the left upper pocket of bushirt of the accused and its numbers were tallied with that noted in the panchnama. Marks of anthracene powder could be seen on fingers, thumb, tips and palms on both hands of the accused and also on pocket of his bushirt. The sanction was obtained, statement of the witnesses were recorded by the trapping officer and then before the learned Special Judge charge-sheet was filed.

7. On the basis of above allegations, charge was framed, readover and explained to the accused for the offence punishable u/s 7 and Section 13(2) of the P.C.Act The accused pleaded not guilty to the charge and claimed to be tried.

8. Thereafter, prosecution has examined four witnesses. The prosecution has produced documents and real evidence/muddamal. The accused has also produced five documents.

9. After prosecution evidence was over, further statement u/s 313 of Criminal Procedure Code was recorded of the accused. The accused had also submitted written explanation.

10. In short defence of the accused is that of denial. In explanation he has explained that he had not accepted any bribe from the complainant on 9.7.1996 nor made any demand on that day or even on 4.7.1996. As the complainant was not entitled to have a loan from his P.F. his case was treated as a special case. It was sanctioned on 5.7.1996 for loan of Rs.12,000/-. The amount of salary as well as amount of loan were paid to him by the accused on 9.7.1996. He did not take/deduct any amount from the aforesaid money nor demanded anything. Forcefully currency notes of Rs.500/-were attempted to give him and it was not accepted by the accused. Therefore, he made an attempt to place the same in his pocket, but he did not get any success The complainant was not happy with the accused as he was under the impression that the house rent of Rs.250/-p.m. was deducted illegally by the accused from his salary. He had a feeling that for such loss, accused was accountable and in the result complaint filed by the complainant and trap was carried out and present applicant is falsely implicated.

11. Heard Mr.H.M.Prachchhak, learned advocate for the applicant - accused. He has read judgment passed by the learned Special Judge and contended that the judgment is based on surmises and conjecture and there is no evidence on

record to establish the essential ingredients of the offences. He has contended that there are four stages i.e. (1) initial demand (2) second demand to be made in the presence of the panch (3) acceptance and (4) recovery, in the corruption cases which are required to be proved through evidence of the complainant and there should be corroboration to all the four stages from independent and reliable evidence. There is no evidence of initial demanded dated 4.7.1996. Second demand on the day of incident is also not proved as there is inconsistency between the evidence of complainant and acceptance is also not proved. He has read oral evidence of the P.W. No. 1 Ex.9 and contended that prosecution has failed to prove his case beyond reasonable doubt. He has read contents of complaint Ex.21 and contended that contradiction is made by the complainant in his oral version and from his oral version demand is not established beyond reasonable doubt. He has also read cross-examination of this witness and contended that it is admitted by the complainant that no demand is made by the present appellant so question regarding acceptance or recovery of muddamal from possession of the appellant does not arise. This Court has considered in so many judgments that when demand is not proved then question regarding acceptance of illegal bribe cannot be considered and accused cannot be convicted. Even from cross-examination of P.W. No. 1 it is established beyond reasonable doubt that present appellant has never made any attempt for bribe and trap amount is also not accepted by him. He has contended that from the defence version of the complainant it is established beyond reasonable doubt that trap amount is thrustured forcefully into the pocket of the present appellant and in the result enthracene powder was found from both the hands of the present appellant.

12. He has read oral version of the P.W. No. 2 and contended that this is not independent witness and his evidence creates some doubt. Even from the contents of cross-examination of P.W. No. 2 charge is not proved. He has read defence version of the present appellant and contended that at the time of visit to the present appellant by the complainant there was no demand made by the present appellant so prosecution has no right to say that the muddamal trap amount is recovered from the pocket of the present appellant in a result of demand by the present appellant. He has contended that Mr.Pathan, Trapping Officer is bias and trap is not carried out properly. Both the panch witnesses are selected by the trapping officer - Police Inspector. Looking to the location of the office both the panchas are interested witnesses and only due to fear of the further action which can be taken by the department they have fully supported version of the prosecution case. When the prosecution has not proved demand then question of acceptance cannot arise. The judgment and order passed by the learned Judge is required to be quashed and set aside. Lastly he has contended that present appellant is a retired person aged about 66 years and he is suffering from kidney disease. He is not keeping good health. Thus, the said sentence may be reduced and fine amount can be enhanced.

13. He has also relied upon a decision in the case of Banarsi Dass Vs. State of

Haryana, and contended that in absence of proof of demand, the prosecution has failed to prove its case beyond reasonable doubt and the judgment of the trial Court be quashed and set aside and the appellant is required to acquitted from the charges alleged against him.

14. As against this, Mr. Jani, learned APP appearing for the respondent - State has supported the judgment passed by the learned Special Judge. He has contended that the learned Judge has not committed any error in holding the appellant guilty of the charges levelled against him. He has contended that looking to the evidence of complainant, Panch witness and the Trapping Officer, the demand, recovery and acceptance by the accused is proved and, therefore, no interference is called for by this Court. He has contended that the learned Judge has considered each and every aspect of the matter and has passed absolutely just and proper judgment. Mr. Jani has also contended that the presumption is required to be drawn against the accused u/s 20 of the P.C. Act. He has contended that from oral version of the complainant Ex.9 at para-2 it is stated by the complainant that when he approached present appellant on 4.7.1996 he agreed and he conveyed to the complainant come on 9.7.1996 and obtain loan amount. The present appellant demanded Rs.500/-and told if he fails then more time will be taken. Thereafter complainant has filed complaint Ex.21. He has also contended that the trap amount is recovered from the pocket of the accused. Mark of anthracene powder could be seen on fingers, thumb, tips and palms on both hands of the accused and also on pocket of his bushirt.

15. Mr.Jani has contended that the complainant was given loan amount of Rs.12,000/-by the present appellant and thereafter complainant asked to the accused what remuneration has to be paid, the present appellant - accused told him "to give whatever he likes". The question in demand is covered within the meaning of illegal gratification and/or remuneration in the form of bribe. The judgment relied by learned advocate for the appellant in that case demand was not proved and in result the judgment and order of the learned Judge was quashed and set aside. Therefore also, the impugned judgment and order of conviction and sentence passed by the learned Judge requires to be confirmed.

16. I haveheard the learned counsel for the respective parties and perused the papers produced before me. I have also considered the submissions advanced by the learned counsel for the rival parties. I have gone through the impugned judgment and order passed by the learned Judge and oral as well as documentary evidence produced on the record. I have read the oral evidence of the prosecution witness-complainant and also perused the charge framed against the appellant. It is pertinent to note that in corruption cases four things are required to be appreciated, viz. (I) initial demand, (ii) second demand to be made in presence of Panch, (iii) voluntary acceptance and (iv) recovery of amount.

17. I have perused the oral evidence of the complainant. It appears from the oral version of the complainant that demand made by the present appellant is prima-

facie established and in the result, trap amount of Rs.500/-is accepted by the present appellant by way of illegal gratification in the form of bribe. The demand, acceptance and mark of anthracene powder could be seen on the fingers, thumb tips and palms on both the hands of the accused and also on the pocket of his shirt. It also appears that the present appellant had told the complainant that he can give whatever he likes. From the above statement of the present appellant - accused, the word "demand" is covered by the statement of the present appellant.

18. It appears from the oral evidence of P.W. No. 1-complainant that demand and acceptance are proved beyond reasonable doubt. It also appears that the appellant was present in the room and in presence of P.W. No. 2, the appellant had demanded the money from the complainant and told the complainant "to give whatever he liked". It also appears from the oral version of the P.W. No. 2 - Panch that the appellant accepted the bribe amount of Rs. 500/-, counted the notes and the same were put in his pocket of shirt by himself. This witness, namely, P.W. No. 2 is an independent witness and a public servant. This witness has supported the case of the prosecution and deposed that in his presence, the appellant had made the demand. The P.W. No. 2 is not having any enmity with the appellant. He is not biased and has no interest to implicate or involve the appellant in a false case. The evidence of P.W. No. 2 suggests that this witness has not made any mistake in narrating the entire episode in his deposition, which inspires confidence of the Court about his credibility and reliability. I have no hesitation to say that when substance of the depositions appears to be same so far as demand is concerned, I am in total agreement with the judgment and order passed by the learned Special Judge. The prosecution has proved its case beyond reasonable doubt so far as demand, acceptance and recovery is concerned. The appellant has demanded money from the complainant in the form of illegal gratification. Thus, ingredients of Section 7 of the Act are proved beyond reasonable doubt.

19. I have further perused the papers from which it is evident that the currency notes in question were recovered from the possession of the appellant. It also appears from the papers that light blue fluorescent marks of anthracene powder were found on the hands of appellant and on his shirt's pocket. Therefore, presumption u/s 20 of the Act is required to be drawn against the appellant. It is the duty of the appellant to rebut the said presumption. In this connection, I have perused further statement of the appellant recorded u/s 313 of the Code of Criminal Procedure as well as the statement of the appellant recorded by the trapping officer. In his further statement, the appellant has tried to explain his defence version by stating that he had not made the demand of money, but the complainant had tried to thrash the money in his pocket of the shirt. On comparison of both the above statements, it appears that the appellant has never disclosed that the complainant tried to thrash the amount forcibly, but as per the statement of the trapping officer, the present appellant accused stated that the complainant could give whatever he liked. Thus, the appellant has failed

to establish the defence version beyond reasonable doubt. The appellant has also failed to explain as to how the amount in question was found in his possession and as to how light blue fluorescent marks of anthracene powder were found on his hands and outside shirt's pocket. The appellant has failed to rebut the said presumption by leading probable defence. Thus, when demand and acceptance are proved and when the appellant has failed to rebut the presumption u/s 20 of the Prevention of Corruption Act, 1988, I am of the opinion that the prosecution has proved its case beyond reasonable doubt. I have also perused the oral evidence of Trapping Officer. It is true that he is a police officer, but the defence has not produced any evidence to suggest that the Trapping Officer is biased or that he has committed any illegality. Trapping Officer is an independent witness and he may not have any ill-intention to involve the appellant falsely in such case. He has supported the case of the prosecution. The defence has failed to prove the probable defence. I have not found anything to accept the defence version of the appellant. I am, therefore, of the firm opinion that the learned Special Judge has passed the judgment and order after appreciating all the aspects of the matter and has not committed any error in doing so.

20. A public servant is expected to serve or to perform his/her duties with utmost honesty and devotion. In the instant case, the appellant, who is a public servant, had demanded the bribe amount of Rs.500/-and accepted the same from the complainant. This conduct of the appellant shows that the appellant is guilty of criminal misconduct.

21. As per above observation, I find that demand of illegal gratification made by the appellant-accused is proved beyond reasonable doubt through the oral evidence of complainant and panch witness as well as through documentary evidence produced on record. Presence of anthracene powder is also found on the hands and on the shirt's pocket of the appellant and the appellant has failed to explain as to how the amount in question is found from his possession and as to how anthracene powder is found on his hands. As per the provision of Section 20 of the Prevention of Corruption Act, 1988, presumption is required to be drawn against the present appellant and when the appellant has failed to rebut the said presumption, defence version cannot be considered, which is tried to be established by the learned counsel for the appellant.

22. Hence, in view of the foregoing reasons, present appeal is dismissed. The judgment and order of conviction and sentence dated 30.9.2002 passed by the learned Special Judge, Ahmedabad, in Special Case No. 2 of 1997, is hereby confirmed. The appellant is on bail. His bail bond shall stand cancelled. The appellant-accused is, therefore, directed to surrender himself before the Jail Authority within a period of four weeks from today to undergo remaining sentence, if any, failing which the Court concerned is directed to issue Non-bailable warrant against the appellant-accused to effect his arrest. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.