

(2015) 03 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 2372 of 2005

Chimanbhai Rugnathbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374

Evidence Act, 1872 — Section 8

Prevention of Corruption Act, 1988 — Section 11, 12, 13, 13(1)(d), 13(2)

Citation : (2015) 2 GLR 1488

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

Bench : Single Bench

Advocate : R.J. Goswami, for the Appellant; H.K. Soni, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The present appellant has preferred this appeal under Section 374 of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 28.10.2005 passed by the learned Special Judge, (ACB), Fast Track Court No. 4, Ahmedabad (Rural), Navrangpura, in Special ACB Case No. 2 of 2001, whereby, the learned Judge has convicted the appellant under Sections 7, 13(1)(d) 1-2-3 r/w 13(2) of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2000/-, in default, to suffer two months rigorous imprisonment for the offence punishable under Section 7 of the Act and also sentenced the appellant to undergo rigorous imprisonment for three years and to pay fine of Rs. 3000/-, in default, to suffer three months rigorous imprisonment for the offence punishable under Section 13(2) of the Act. All the sentences shall run concurrently.

2. The brief case of prosecution is such that the appellant-accused was serving as Talati-Cum-Mantri at Girmath Pirana Gram Panchayat. As per the case of the

prosecution, the complainant had purchased land bearing Block No. 264, Survey No. 526, admeasuring 1 Acre 24 Gunthas by registered sale deed and therefore, said land was required to be entered into the name of original complainant in the revenue records. For that purpose, the complainant made an application along with index to enter his name in respect of the said land purchased by him. As per the case of the prosecution, for entering the name of the complainant in the revenue records, the accused demanded Rs. 7000/- and out of the said amount, Rs. 4000/- was to be paid before the work done and remaining Rs. 3000/- was to be paid after the entering the name of the complainant in the record. As the complainant did not want to give said bribe to the appellant, he approached the ACB office for filing complaint against the appellant. The ACB P.I. Mr. Mysorewala registered the complaint and he called panchas namely Dinehbhai Mangabhai Makwana and Harshadkumar Girdharlal Sharma at Kamod Chokdi. Said P.I. introduced the complainant and one Jayantilal Manilal to the said two panchas. Thereafter, first part of panchnama was drawn and the numbers of bribe amount of Rs. 4000/- (Rs. 500/- x 8) were noted down. The said P.I. also completed all formalities for arranging trap and panchnama was prepared between 13:45 to 14:45 hrs. on 28.6.2000 and made the signatures of the panchas and also of the said P.I. Said P.I. explained the experiment of the ultra violet lamp by applying anthracene powder on the said currency notes of bribe to the complainant and panchas. Thereafter, the members of raiding party, two panchas as well as complainant were proceedings through the government vehicle being jeep to the office of the appellant. As per the instruction, the complainant and panch No. 1 entered the office of the panchayat, where the accused, one auditor and Ex-Talati were there and at that time, audit work was going on in the Panchayat office. The complainant took the seat near the accused and panch No. 1 sat on the table behind the complainant. Meanwhile, the accused appellant showed the person namely Jayantilal, who was coming with the complainant and asked as to why this person came with you. Therefore, said Jayantilal went outside the office. Thereafter, the appellant stood from his chair and the appellant along with complainant started to proceed to the gate of the office and at that time, the appellant showed the panch No. 1 and therefore, he asked the complainant about the said panch No. 1 and in reply, the complainant told him that said panch No. 1 is nephew of the complainant. Thereafter, the complainant uttered words "brought?" and the appellant said words "give". Therefore, the complainant from his right hand gave said smeared currency notes to the appellant, which was accepted through the left hand by the appellant and put the same in left side pent pocket and the appellant returned to his office. Then, the complainant made pre-arranged signal and therefore, the members of the raiding party rushed to the spot. Thereafter, the ACB officers took the appellant in other room of the office, where the experiment of ultra violet lamp was carried out and on the tips and fingers of left hand of the appellant, the marks of anthracene powder were found. Even on the left side pocket of the pent put on by the appellant, the marks of anthracene powder were found. Thereafter, recovery was made and the numbers of currency notes were compared with the first part of

panchnama and seizer memo was prepared for the same and second part of the panchnama was prepared.

3. Thereafter, the F.I.R. was lodged. Statements of the complainant were recorded and also further investigation was being carried out. After obtaining the sanction from the appropriate authority, the charge-sheet was filed against the accused. Thereafter, the charge was framed against the appellant by the learned Special Judge.

4. In order to bring the home the charge levelled against the appellant-accused, the prosecution has examined the following witnesses

1. Premjibhai Arjanbhai Patel Complainant Ex. 15
2. Dineshbhai Mangabhai Makwana (Panch) Ex. 31
3. Jayantibhai Manilal Thakor, Witness Ex. 34
4. Pasabhai Manabhai Parmar, Panch Ex. 35
5. Shri Kerman Khurshid Mysorewala, (I.O.) Exh. 36
6. Devangkumar Pratapbhai Desai, witness Exh. 42
7. Shankarbhai Khatubhai Parmar, witness Exh. 44

5. The prosecution has also produced following documentary evidence before the trial Court.

1. complaint at Exh. 23
2. Application of complainant Exh. 24
3. Panchnama Exh. 32
4. Seizure memo Exh. 33
5. Order of TDO, Daskroi Exh. 45
6. Resume report of appellant Exh. 46
7. Sanction Exh. 43
8. Copy of Index Exh. 47

6. Thereafter, after examining the witnesses, further statement of the appellant-accused under sec. 313 of Code of Criminal Procedure was recorded in which the appellant accused has denied the case of the prosecution. The appellant also stated that he demanded the amount of property tax only, which was due since long and he did not raise any demand for illegal gratification. He also stated that the trust namely Imamsa Bava Roja Trust, administered by one Karsanbhai (trustee) and the property tax of more than Rs. 2 Lacs was due of the said Trust, since 2000 and therefore, he made demand repeatedly for payment of said tax amount. Said Karsanbhai also told the appellant that some of the amount out of

total tax, was to be sent on the day of audit of the Panchayat. The appellant further stated that the complainant Premjibhai is brother of said Karsanbhai and therefore, the appellant accepted the amount from the said Premjibhai believing the amount as tax amount. The appellant-accused has pleaded not guilty and claimed to be tried.

7. After considering the oral as well as documentary evidence and after hearing the parties, learned Judge vide impugned judgment and order dated 28.10.2005 held the appellant-accused guilty to the charge levelled against him and convicted and sentenced the appellant accused, as stated above.

8. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence, the present appellant has preferred this appeal.

9. Learned advocate Mr. Goswami appearing for the appellant has read the charge Exhibit 11 and argued that the learned Judge has observed in charge that there was demand towards illegal gratification for doing the work of the complainant, but, in fact, the appellant repeatedly demanded about dues amount of the tax, from the complainant, not the amount of illegal gratification from the complainant. Learned advocate submitted that there was outstanding property tax of more than about Rs. 2 Lacs in respect of the properties of Pirana Trust for the year 2000 and the brother of the complainant namely Karsanbhai, who was trustee of the said trust. Said Karsanbhai sent the complainant to pay some amount of tax towards the outstanding tax of the properties of the trust and therefore, at the behest of said Karsanbhai, the complainant gave Rs. 4000/- as property tax to the appellant and same was accepted by the appellant. He further submitted that the said amount was not of any demand of bribe or illegal gratification, but the same was for legal amount dues towards the property tax of the said trust. He also submitted that the complainant being the brother of said Karsanbhai, the appellant was extending help to Karsanbhai in the activities of the said trust. He further submitted that on 26.6.2000, the audit work was going on and at that time, the complainant went to office of the appellant along with ACB team and gave Rs. 4000/- to the appellant, but due to audit work, which was going on, the appellant had not issued receipt at that time for the said amount. He further submitted that the appellant told the complainant that he would issue the receipt later on, after completing the work of audit. He read the oral evidence of the complainant as P.W. 1 Premjibhai at Exhibit 15 and submitted that looking to the contents of this evidence, nothing is reflected about the demand for bribe. He also submitted that when the complainant, panchas and members of raiding party reached the office of the appellant, where the audit work was going on and then the appellant uttered word "brought?" and in reply, the complaint told "bring" (I did bring) and thereafter, the complainant took out the said amount from the pocket with the help of right hand and gave the same to the appellant, which in turn the appellant accepted with left hand and put the same in left hand side pocket of pent. Learned advocate submitted that looking to the conversion as stated above, the demand of bribe is not

reflected anywhere because such demand was only for outstanding dues of the property tax of the trust. Learned advocate further submitted that on acceptance of the amount by the appellant, the complainant made pre-arranged signal, therefore, members of raiding party rushed to the spot. He also submitted that looking to the evidence of this witness P.W. 1, it is not clearly proved that such demand on the part of the appellant was for illegal gratification or bribe and on the wording as stated above, it cannot be said that the appellant made demand of bribe from the complainant. He also submitted that even the contents of the panchnama, does not reflect about the demand towards illegal gratification. He also submitted that the looking to the evidence of P.W. 2 Dineshbhai Mangabhai Makwana Exhibit 31, it appears that the complainant uttered the words "brought" and then appellant told "give". It also appears from the evidence of this witness that the complainant told the appellant that the complainant brought the amount of tax for the trust, but this witness only heard the word "brought". It is also reflected that at that time, the audit work was going on in the Panchayat office and therefore, the appellant told to issue receipt later on, to the complainant. He also submitted that as per the evidence of P.W. 3, Jayantibhai Manilal Thakore recorded at Exhibit 34, it appears that the appellant demanded Rs. 7000/- for making entry and that amount of Rs. 7000/- was given by trustee Karsanbhai to the complainant. But from the evidence of this witness, the demand is not proved on the part of the appellant. This witness also stated that he was neighbour of the complainant. This witness was also working in the trust of said Karsanbhai and the complainant is brother of said Karsanbhai. Even this witness admitted that there was huge outstanding towards the tax of the trust and therefore, some amount was required to be deposited in the month of June and thereafter, the entry was to be made by the appellant in records. This witness also admitted that the complainant is an illiterate person and therefore, as per the instruction of said Karsanbhai, this witness had to remain present with the complainant and give the complaint before the ACB against the appellant. This witness also admitted that due to the assessment of properties of one Athiya Trust, there was some problem of said Karsanbhai with the appellant. This witness also admitted that the complainant told the appellant to accept the money, which was sent by Karsanbhai. At that time, the appellant told him that now, the audit work was going on and therefore, receipt would be issued later on. This witness also admitted that after trap and after completing all the formalities, this witness, complainant and ACB staff members went to the office of Pirana office and the complainant told said Karsanbhai that as per your instruction, the trap was over and work was finished. Learned advocate submitted that looking to the contents as stated in the evidence of this witness, the demand of bribe is not proved or established as per the provisions of law and it also appears that the trap was solely arranged with a view to wrongly implicate the appellant in the offence. He therefore, submitted that the evidence of this witness creates doubt and it is not clearly lead the involvement of the appellant in the commission of the offence. Learned advocate therefore, submitted that the evidence of this witness is proved that the complaint is filed with mala fide

intention to wrongly implicate the appellant in the office with a view to settle some score by the said Karsanbhai with the appellant. Learned advocate read the evidence of P.W. 35 - Pasabhai Manabhai Parmar at Exhibit 35 and submitted that this witness is retired Talati-Cum-Mantri and in the year 1994-95, he was Talati at Pirana Gram Panchayat. This witness was there at the time, when the audit work was going on at the Panchayat office i.e. in June, 2000. This witness also stated in his evidence that at about 3:00 hrs. at noon, some three persons came there and some conversation took place between them and the appellant and thereafter, they along with appellant went outside the office as per the instructions of those three persons and thereafter, sometime, the appellant came inside the office. Immediately, thereafter, some persons from outside rushed to the office and they were introduced themselves as ACB officers. Thereafter, the experiment of ultra violet lamp was carried out on the appellant. This witness also stated that there are so many properties of the Pirana Trust in the revenue limits of Pirana village and therefore, there is more revenue income. This witness also admitted that while explaining before the ACB officer, the appellant stated that the amount was of property tax of Pirana trust and as the audit work was going on at that time, the appellant told to issue receipt later on. This witness also admitted that after completing the procedure of raid, the complainant, raiding party members, panchas went to the office of Pirana trust and met the said Karsanbhai. Learned advocate therefore, submitted that even from the evidence of this witness, it is not established that the appellant demanded the money towards bribe other than legal remuneration. Learned advocate drew the attention to the oral evidence of P.W. 5 Kerman Mysorewala at Exhibit 36, who was P.I. of the ACB and this witness admitted that when they reached at Kamod village, he did not know about the driver of the jeep at that time. Even he had no knowledge about the board on the jeep about Imamsa Bava Pirana Trust. This witness also stated in the evidence about the experiment of ultra violet lamp and stains of anthracene powder on the appellant. But the main ingredient of demand is not established from the evidence of this witness. Learned advocate also read the evidence of P.W. 6 Devangkumar Pratapbhai Desai recorded at Exhibit 42, who was sanctioning authority. He also read the evidence of P.W. 7 Shankarbhai Khatubhai Parmar, Exhibit 44, Investigating Officer and this witness stated that at the time of trap, the audit work was going on at the Pirana Panchayat office and at that time, Ex-Talati and auditor were present in the office. This witness also stated that there is no explanation about the words "brought" uttered by the complainant and also uttered by the appellant. Therefore, as per the submission of the learned advocate, the demand on the part of the appellant is not established. Learned advocate submitted that the conduct of the Trapping Officer is also doubtful and malice and just to secure the goal of his trapping case, false trap was carried out and the appellant was wrongly booked by him in this case. Learned advocate further submitted that when the demand is not proved beyond reasonable doubt, the impugned judgment and order of conviction and sentence requires to be quashed and set aside. From the complaint Ex. 23, it appears that the said complaint was filed

due to the instigation of Karsanbhai, who was trustee of trust. He has read the statement recorded under Section 313 of the Code of Criminal Procedure, wherein the appellant stated such fact that he demanded outstanding dues of property tax of the Pirana Trust since 2000, but the learned Special Judge has not considered the same in true spirit, while passing the judgment and order of conviction and sentence. He has read the impugned judgment and order and submitted that the learned Judge has not considered the defence. Learned advocate submitted that main ingredients of demand as per the provisions of Act is not established by the prosecution and therefore, alleged offence cannot be said to be proved against the appellant by the prosecution. He lastly prayed to allow the appeal by quashing and setting aside the impugned judgment and order of conviction and sentence.

10. As against this learned APP Mr. H.S. Soni, submitted that criminal misconduct of the appellant is proved by the prosecution evidence. He read contents of the complaint and contended that appellant made demand of illegal gratification though he was a public servant, but when prosecution has proved its case by cogent evidence, there is no question of disbelieving the same. He has further submitted that the offence under provisions of Sections 7 and 13 of the Prevention of Corruption Act is proved beyond reasonable doubt through oral version of the witnesses and documents. He has further submitted that as per the evidence of the witnesses, especially the complainant and panch No. 1, demand was made by appellant for illegal gratification and in result of that demand, when complainant came to the office of the appellant, it was accepted by appellant and that conduct of the appellant is required to be considered that there was understanding and agreement and, therefore, bribe amount was accepted by him.

11. Learned APP has submitted that the learned Special Judge has rightly believed the evidence of the complainant regarding demand raised by the appellant and he gave bribe amount to the appellant accused. He has submitted that there is ample direct and indirect evidence to connect the appellant-accused with the crime. The learned Special Judge has properly appreciated the evidence of the complainant as well as oral evidence of panchas. From the oral evidence of the complainant and the panchas, the demand and acceptance of the bribe is proved beyond reasonable doubt.

12. Learned APP has read complaint Ex. 23 and submitted that looking to the contents of the complaint, demand and acceptance of illegal gratification is proved beyond reasonable doubt. He submitted that there is nothing on record to show that complainant or his brother Karsanbhai had any enmity with the present appellant. He has read Section 8 of the Evidence Act and contended that the act of the present appellant is voluntary. He has contended that the panchas has, in clear terms, stated what transpired between accused and complainant and how the money changed the hands in his presence. He further submitted that when such currency notes were taken out from the pocket of accused, under

ultra violet lamp, the stains of the anthracene powder on the currency notes as well as hands of the appellant accused were found. Learned APP submitted that from fingers and tips of left hand of the present appellant-accused, anthracene powder was found and the appellant failed to explain the same in his statement recorded under Section 313 of the Code as to how the anthracene powder was found on his hand. He has submitted that from the contents of the documents produced on record and from the cross-examination of the complainant, the appellant has not proved that demand was not made by him and amount was not accepted by him. Looking to the contents of panchnama, the same is proved beyond reasonable doubt through oral evidence. He read oral version of the panch witness and submitted that from the oral version of this witness, demand made by the present appellant is very well proved beyond reasonable doubt. Learned APP also submitted that looking to the facts of the case, presumption under Section 20 of the Act is required to be drawn against the present appellant-accused. He therefore, submitted that the learned Special Judge has rightly convicted the appellant after properly appreciating the evidence on record and therefore, no interference is required to be called for by this Court. He lastly submitted that the appeal is required to be dismissed.

13. 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 prosecution witness complainant and also perused the charge framed against the appellant. From the perusal of the oral evidence of complainant PW -1, it appears that the complainant wanted to make entry in the records for the land and therefore, he met the appellant. It also appears that the brother of the complainant namely Karsanbhai was trustee of the Pirana Trust and there was property tax was due of the said trust since long and the amount of said tax was more than Rs. 2 Lacs. The appellant therefore, told the complainant to pay the said tax and then the entry was to be made. Therefore, it appears that the appellant was performing his duty sincerely and therefore, he demanded such tax amount which was due since long from the trust because from the evidence of the complainant, it does not transpire that the appellant demanded the amount of illegal gratification and only on the uttering of the words "brought", it cannot be said that the appellant demanded bribe amount for doing his legal work. As per the evidence of P.W. 2 - Dineshbhai, it appears that he had not heard the conversation took place between the appellant and complainant at the time of trap in the Panchayat office. This witness as stated in his evidence, heard, the words uttered "brought" and on the basis of such words, it cannot be said that the appellant committed alleged offence. Looking to the facts and record of the case, it is undisputed fact that there was outstanding dues towards property tax of the trust since long and the complainant is brother of the trustee and therefore, it is believable that the appellant demanded the money was for the due tax and not for illegal demand. Looking to the evidence of P.W. 3 Jayantibhai Manilal Thakor, who was with the complainant at the time of raid. No doubt, he did not hear anything regarding

conversation between the complainant and appellant at the time of trap, but he stated in his evidence that he is neighbour of the complainant and he was doing activities of the trust, wherein the brother of the complainant Karsanbhai was trustee. He also stated that said Karsanbhai instructed to him to remain present with the complainant while approaching the ACB office as the complainant is an illiterate person and also the office of the appellant. It also appears that there was huge outstanding dues towards tax of the trust and therefore, appellant told the complainant to deposit some amount in June and therefore, he would make the entry in records. This witness also stated that said Karsanbhai instructed the complainant to lodge the complaint against the appellant and wrongly implicate him in the offence of the Act. It is surprising to note that this witness stated in his evidence that after completing the procedure of trap and all formalities, the complainant, this witness and ACB staff reached at the office of trust to meet the said Karsanbhai and the complainant told the said Karsanbhai that as per your instruction, the trap was arranged and work was over. Therefore, it is clearly established that the trap was arranged at the behest of Karsanbhai with a view to wrongly implicate the appellant in the alleged offence to settle score, as the some dispute arose in past while process of assessment of the properties of Athiya Trust. Therefore, from the evidence of this witness also, nothing is established about the demand against the appellant. Looking to the evidence of P.W. 4 Pasabhai Manabhai Parmar at Exhibit 35, it appears that this witness stated similar fact as stated by the P.W. 3. But the main aspect of demand on the part of the appellant is not established. I have perused the oral evidence of P.W. 5 Kerman Mysorewala at Exhibit 36, but, this witness has not averred anything about the demand on the part of the appellant. I have also perused the oral evidence of P.W. 6. From the evidence of P.W. 7 Shankarbhai Parmar at Exhibit 44, it appears that on the day of trap, the audit work was going on there and the Ex-Talati and auditor along with the appellant were present in the office of Panchayat. From the evidence of this witness, it only transpires that that words uttered only "brought" and for the same, there was no explanation from the appellant or the complainant made before any of the members of raiding party. So, looking to the overall evidence, it is established fact that the property tax was due long from the Pirana Trust and that amount was of more than Rs. 2 Lacs. Secondly, the appellant made repeatedly demand for paying tax amount and he also told the complainant to make some payment in June. Thirdly, there was no demand on the part of the appellant was established from the evidence of the witness examined by the prosecution. Fourthly, the trap arranged by the ACB officer, was at the instance of trustee namely Karsanbhai with a view to wrongly implicate the appellant in the offence with a view to settle the score. Looking to the documentary evidence like complaint, panchnama, application made by the complainant, index of the land etc., it appears that the complainant wanted to make entry in the land, but there was due of the tax of the Pirana trust and therefore, the appellant repeatedly demanded of the tax amount.

14. I have also perused the statement of the present appellant recorded under

Section 313 of Code of Criminal Procedure. It appears from the said statement that the appellant made demand of the tax and nothing else, but his version made in the statement was not considered properly by the learned Special Judge, while passing the impugned judgment and order of conviction and sentence. Therefore, it can also be said that there was no any intention or motive on the part of the appellant for demand of bribe.

15. In view of the demand on the part of the appellant is not proved as per the provisions of Act and it is therefore, necessary to peruse the provisions of Section 7 and 13 of the Prevention of Corruption Act, as the appellant being public servant:

"Section 7:

Public Servant taking gratification other than legal remuneration in respect of an official act:

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2 or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine."

16. From the aforesaid provisions of Section 7 of the Act, here in the present case, the appellant has not committed the offence covered under the said provision. Here the motive, agreement or any attempt to obtain anything on the part of the appellant is not established. Simply, the appellant repeatedly demanded the tax amount, which is part of his official duty and same is clear from the evidence of other witnesses and therefore, the offence as alleged under Section 7 of the Act cannot be said to be established against the appellant.

17. Now, the provisions of Section 13 of the Act is required to be taken into consideration. Same is quoted as under:

"Section 13. - (1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain

for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

18. The issue regarding Public servant abusing his position for obtaining pecuniary advantage is concerned, it can be considered from the oral evidence of witnesses. It appears from the words uttered by the appellant, viz. Brought?, it clearly transpires that the said words were not uttered by the appellant with dishonest mind and looking to his conduct, it clearly appears that he has used his official capacity. The gist of the offence under this clause is that a public officer abusing his position as public servant obtains for himself or for any other person any pecuniary advantage, he can be said to committed offence of criminal misconduct. "Abuse" means misuse, i.e. using his position for something for which it is not intended. The element for dishonesty is implicit in the word of abuse. In other words, mere misuse without dishonest intention is not abuse. In the present case, when honesty is established beyond reasonable doubt and honest mind is already established, then it can be said that present appellant has not misused his position and not demanded the bribe. Expression "burden of proof" has two defined meanings, (i) legal burden - burden establishing the guilt and (ii) circumstantial burden. In criminal trial, burden of proving guilt against the accused lies upon the prosecution and that burden never shifts. Notwithstanding the general rule, burden of proof is exclusively upon the prosecution but in case of certain offences, the same is shifted on the accused. The burden upon the accused in such cases is however not too onerous as compared to the burden of proof which lies on the prosecution.

19. In light of above position, the provisions of the Section 20 is required to be considered which reads as under:

"20. Presumption where public servant accepts gratification other than legal remuneration-

(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of subsection (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in subsection (1) and (2), the court may decline to draw the presumption referred to in either of the said subsections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

20. Learned advocate Mr. Goswami relied upon the decision in the case of Banarasi Das Vs. State of Haryana reported (2010) 4 Supreme Court Cases (Cri.) 864, wherein the Hon''ble Supreme Court has observed that the offence should be proved against accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of chain of events is established pointing towards guilt of the accused. He also submitted that the accused cannot be found guilty on basis of inference and in this present case, a clear demand is not established on the part of the accused. Therefore, the question of the acceptance cannot arise and in turn, the judgment and order of the conviction and sentence is required to be quashed and set aside by allowing this Appeal.

21. I have also perused decision of the Apex Court in the case of M. Narsinga Rao Vs. State of Andhra Pradesh, wherein a three Judge Bench referred to Section 20 of the Act and stated that the only condition for drawing the legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. The only requirement is that it must be proved that the accused has accepted or agreed to

accept the gratification. Thereafter, the Apex Court reproduced a passage from the decision in the case of Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, with approval. It reads as follows:

"The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it." 22. In the case of State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, it has been held that to arrive at the conclusion that there had been a demand of illegal gratification, it is the duty of the court to take into consideration the facts and circumstances brought on record in their entirety and for the said purpose, undisputedly, the presumptive evidence as laid down in Section 20 of the Act must also be taken into consideration.

23. In the case of C.M. Girish Babu v. C.B.I., Cochin, High Court of Kerala, after referring to the decisions in M. Narsinga Rao (supra) and Madhukar Bhaskarrao Joshi (supra), this Court has held thus:

"It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification." 24. In the case on hand, the money was admittedly recovered from the possession of the accused appellant and therefore a presumption under Section 20 of the Act can be drawn against the appellant. It is a presumption of law and it casts an obligation on the court to apply it in every case brought under Section 7 of the Act. The said presumption is a rebuttable one. In the present case, the explanation offered by the accused appellant has not been accepted by the learned Special Judge, but the same was corroborative in nature by documentary and oral evidence examined by the prosecution. Therefore, it must be required to be accepted before imposing sentence upon the appellant.

25. I have also scrutinized the evidence of P.W. 3, Jayantibhai Manilal Thakore at Exhibit 34, wherein he stated as under

"It is true that the accused told Premjibhai and me that "as the demanded

amount of properties of Pirana Trust is due and as it is month of June, it is desirable that you deposit some money. I will surely supply your copy within two days after making entry". Therefore, Karshankaka told me that Premjibhai is illiterate and he has not seen anything. Therefore, go with this money in the vehicle of trust to the ACB office and register a complaint. It is true that at the time of the incident, the Talati levied tax on the properties of Aathiya Trust and the trust had discord with the Talati for assessment of this properties. Karshankaka asked us to go with the money and get the Talati nabbed. At that time Babubhai Bhikhabhai was the driver of the jeep and he was driving the jeep of Pirana Trust.

Thereafter, Premjibhai, Panch No. 1 and I went to the office of accused Talati and at that time the accused stated on seeing me that "why have you brought this person". Therefore, I came out of his office and stood outside. This complainant Premjibhai and Panch No. 1 went into the office of the accused and they came out with the accused Talati. At that time, Premjibhai stated that Karsanbhai has sent the demanded amount, so take it. Talati stated that "audit is going on at present, therefore, I will prepare receipt tomorrow. Come and collect the receipt tomorrow".

26. I have minutely perused the statement recorded under Section 313 of the appellant, wherein he stated as under:

"In fact, there was dues of property tax of more than Rs. 2 Lacs from Pirana Imamsa Bava Roja Trust, Karsankaka, (Trustee). Therefore, the appellant repeatedly demanded for recovery and Karsanbhai inform him to send some amount on the day of audit. Premjibhai being the brother of him (Karsanbhai), came with the amount of tax and therefore, the appellant accepted". 27. I have further carefully examined the additional statement recorded under Section 313, of the appellant, at Exhibit 49, which is as under:

"It is respectfully submitted by me, the accused to the Learned Court that-

- 1) A false case has been filed against me by holding enmity.
- 2) On 26/6/2000, in the evening, the complainant had come at Girmatha with the witness Jayantibhai Manilal Thakore and had produced index-copy of document and I said that,

"I shall make entry after seeing the record and after verifying the fact as to when a change was made in restricted tenure and after checking findings etc. and completing audit which is there on 27/6/2000 and 28/6/2000, for two days."

I said so and the application was kept in the office of Girmatha Gram Panchayat only, and on that day, I had immediately come for the arrangement of Pirana Audit. After meeting the officer Karshankaka, it was requested to him to pay some amount of recovery and he had said that on 28/6/2000, he shall send the money of revenue and tax-assessment through Premjibhai.

3) We had audit on 27/6/2000 and 28/6/2000 and the auditor Ishwarbhai Muljibhai and Pashabhai Manabhai, former talati were both present. The complainant Premjibhai who is the head of Pirana Trust and real brother of Karshankaka and Jayantibhai, both of them came in our office and called me outside and said that Rs. 4,000/- of the property-tax of the trust of Imamshah Bava and other money of revenue have been sent so that the work of recovery can be showed in the audit. Hence, I accepted the money believing that it was of tax and I said that come and collect the receipt after the audit is complete in the evening. After saying so, I came inside and immediately the persons of A.C.B. arrived and did not allow me to do any procedure. Thereafter, the procedure of trap was completed and I was asked for explanation in presence of the auditor and the former talati Pashabhai, two panchas, the complainant and witness Jayantibhai and all. Hence, I dictated the fact of taking the money as the recovery of the due amount of tax as it was the month of June and the Trapping Officer recorded the statement accordingly. This means that I have not received any money of bribe.

4) The complainant states of the execution of the document of land, he states that this is the land which he had purchased in 1993 and at that time, a provisional document was executed and in the year of 2000, the registered document was executed on 6/3/2000 and that on 27/3/2000, the copy of its index had been received. Actually, in the year of 1993, the said land was of the nature of "restricted tenure" and in the year of 1998, it was converted into that of "old tenure" and there were many encumbrances on it, which means that the question regarding sale in 1993 does not arise. The certified copy is hence attached herewith. Hence, the Prosecution has not proved the fact in any way that an agreement might have been made in the year of 1993 or that a provisional document might have been executed. This is also a very significant fact, as the complainant shows the said land to be in his possession since 1993 but the fact regarding this is not mentioned even in the extract of 7/12.

5) In the said case, the complainant does not state in the cross-examination the fact of having complained regarding the murder of his son Devram and of giving the name of Vaghri, but this is also a significant fact. The certified copy of the same has been attached herewith vide a separate list. Its Sessions Case No. was 132/2000, the copy of this has also been attached in this case.

Similarly, question has been asked in the cross-examination about the fact that he is leading a retired life and offers his service in Pirana Trust and the certified copy of the Criminal Case No. 1169/98 has also been attached in this regard also. Hence, even at the age of 79, the complainant has given a deposition which appears to be misleading.

6) Similarly, the complainant states the fact that from Pirana, he had gone to the office of A.C.B. By hiring a jeep, whereas the Witness No. 7 - the Investigating Officer states clearly in para-11 and 15 of his cross-examination, Exh. 44 that "the complainant had come by the jeep of Pirana Trust." This fact also shows that

the complainant is a "Court-bird".

7) I have not demanded any bribe from the complainant and have not accepted any such money in terms of bribe. The money accepted by me has been accepted as the due amount of tax, revenue etc. of Pirana Trust and no opportunity has been given to me to issue a receipt. It is requested to consider this fact also.

8) In this case, jeep No. GJ 9B 36 of Pirana Trust has been used. It has been dictated that at that time, its driver was Babubhai Bhikhabhai Thakor, Age - 30 years, Occupation - private service, Residing at - Pirana Mandir. The Investigating Officer has recorded his statement on 30/6/2000 wherein it has been stated that "I have been serving in Pirana Temple for three years and I am driving the jeep bearing registration No. GJ 9B 36." The Prosecution has not examined this witness, though he is a significant one. In this way, the Prosecution has deliberately disallowed the true fact to come over the record of the Learned Court. If this witness had been examined, the fact of hiring a jeep by the complainant would have been proved to be false. Hence, it is also a notable significant fact that though this witness is an important witness, he has not been examined by the Prosecution. It is requested to consider the same.

9) In the said case, the Prosecution has also not examined the auditor Ishwarbhai Rajput deliberately. As he was present at the time of the incident and he was a government-employee, the true fact has not been allowed to come out by not examining this witness.

10) I had made heavy assessment of the buildings of the witness Jayantibhai Manilal who was living in Aathiya Trust which was quite similar to Pirana Trust and the trust and the witness Jayantibhai were displeased with me. With this reason and gathering some other reasons, a false case has been filed against me and I have been wrongfully implicated in the said case.

Thus, taking in account the fact stated by me, the accused in my further statement, I had previously issued notices in respect of recovery of the due amount of tax from the trust of the present complainant and as I was frequently making requests with pressure to pay the money of the same, the complainant and other important persons of the trust did not like this and if the accounts of the trust are produced and if they have to pay the due amount of tax as demanded, there was possibility of the exposure of fraud, with this situation, I had discord with the complainant and the trust, and on account of this, the present case has been wrongfully filed against me by fabricating it with planning in order to get me removed and the complaint has been made against me in A.C.B. wrongfully that I demanded bribe. In reality, many cases have been filed inter se amongst the trustees of Pirana Trust.

Thus, it is requested to consider all the facts stated by me in the aforesaid further statement and to accept my further statement. I am innocent and therefore I urge to acquit me. My children and my family are dependent on me

for maintenance. As I, the accused discharged my duty faithfully, the complainant wanted to retaliate for it and he has wrongfully trapped me for the sake of his purposeful benefit. Therefore, it is prayed to acquit me."

28. Looking to the above statement recorded by the trial Court and looking to the corroboration of the documents in favour of the appellant, produced on record, it is clearly established that the money, demanded by the appellant, was for the tax and not for the bribe or illegal gratification.

29. I have minutely perused the judgment and order of conviction and sentence passed by the learned Special Judge and learned Judge has committed grave error in holding the appellant guilty of the offence as alleged and wrongly imposed the sentence upon the appellant. Learned Special Judge has totally failed to appreciate properly the evidence on record and without considering the defence version, passed impugned judgment and order. Therefore, the impugned judgment and order is required to be quashed and set aside and appeal is required to be allowed.

30. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence dated 28.10.2005 passed by the learned Special Judge, (ACB), Fast Track Court No. 4, Ahmedabad (Rural) Navrangpura, in Special Case No. 2 of 2001 is hereby quashed and set aside. The appellant-accused is hereby acquitted from all the charges levelled against him. Fine if paid, be refunded to the appellant. The appellant-accused is on bail, his bail bonds stands discharged. R and P to be sent back to the trial court forthwith.