

(2024) 12 GUJ CK 0051
In the Gujarat High Court
Case No : Criminal Appeal No. 1196 of 2006

Pravinbhai Bavabhai Patel Versus

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-12-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 207, 313, 374
Prevention of Corruption Act, 1988 — Section 7, 12, 13(1)(d), 13(2), 20
Gujarat Land Revenue Code, 1879 — Section 135D

Citation : (2024) 12 GUJ CK 0051

Hon'ble Judges : Vimal K. Vyas, J

Bench : Single Bench

Advocate : K B Anandjiwala, Sr. Advocate, Shruti Pathak

Final Decision : Dismissed

Judgement

Vimal K. Vyas, J

1. The present appeal has been preferred under Section 374 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') at the instance of the appellant-convict (i.e. the original accused no.1) and is directed against the judgment and order of conviction and sentence dated 30.06.2006 passed by the learned Special Judge and Presiding Officer, 15th Fast Track Court, Vadodara, in Special (ACB) Case No.1 of 2002.

2. By the aforesaid judgment and order of conviction and sentence, the trial court held the present appellant-accused no.1 guilty and convicted him for the offences punishable under Sections 7, 12, 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 (for short, the 'Corruption Act'). Consequently, the trial court sentenced the appellant-accused to undergo rigorous imprisonment for two years with a fine of Rs.3,000=00 and in default of payment of fine, further to undergo simple imprisonment for two months.

The prosecution version, in a nut-shell, is as follows :

3. The case of the prosecution in a nutshell is as under :

3.1 That on 05.06.2000, the complainant (PW-1) Ramanbhai Vajesinh Patanvadia had entered into an agreement with one Mangalbhai Motibhai Vanand for purchase of an agricultural land bearing Block No.252 of Revenue Survey Nos.240 and 241 admeasuring 2-Acres-6-Gunthas of village Vadsala in the name of his wife Smt. Manjulaben Patanvadia and paid Rs.50,000=00 as earnest money against the sale consideration of Rs.1,15,000=00 of the said agricultural land.

3.2 That since the land was of new tenure, the land owner Mangalbhai Motibhai Vanand had submitted an application before the Mamlatdar, Vadodara (Rural), for conversion of the said land from new tenure to old tenure.

3.3 That since the complainant had purchased the said land, he had contacted the present appellant-accused no.1, who was the Talati-cum-Mantri of village Vadsala at the relevant point of time, for the process of conversion of the said land from new tenure to old tenure. It is alleged that the appellant-accused no.1 had demanded Rs.11,250=00 as bribe for the said purpose and the complainant had paid the said amount as well as agreed to pay the remaining amount of Rs.11,500=00 for further proceedings after the order is passed converting the land from new tenure to old tenure.

3.4 That on 17.02.2001/03.03.2001, the Mamlatdar, Vadodara (Rural), had passed the order converting the said land from new tenure to old tenure. It is alleged that prior to 13-14 days of filing of the complaint, the appellant had informed the complainant that the Mamlatdar, Vadodara (Rural), has passed the necessary order converting the land from new tenure to old tenure and demanded for the remaining amount of Rs.11,500=00 for making the necessary entry of the said order in the revenue records.

3.5 That on 21.03.2001 (i.e. two days prior to the filing of the complaint), the appellant-accused had come to the residence of the complainant and informed him that he has started the further proceedings of posting the entry of the order of the Mamlatdar in the revenue records and again demanded Rs.11,500=00. Therefore, the complainant had asked him for some time and told him to come to his residence on 23.03.2001 in the afternoon with the copy of the changed entry and to collect the money. At that time the complainant had also requested him to give some discount, therefore, the appellant-accused had told him to pay atleast Rs.10,000=00.

3.6 That since the complainant was not willing to pay the bribe, he had approached the Police Inspector, ACB, Vadodara, on 22.03.2001, and on the strength of the complaint, the ACB laid a trap, and in furtherance to the same, they applied anthracene powder on 20 currency notes each of Rs.500 denomination, to be used in the trap.

3.7 That on 23.03.2001 at about 5:45 in the evening the appellant-accused no.1

and the accused no.2 were caught red-handed accepting the bribe money in presence of the panchas at the residence of the complainant and the currency notes smeared with anthracene powder were recovered from the pocket of the pant of the accused no.2. Thereafter, the process of ultraviolet rays was carried out and the notes and the hands of the accused nos.1 and 2 as well as the hands of the complainant and the shadow witness (PW-2) were checked and the description of the currency notes was noted down in the panchnama. The seizure memo of the muddamal notes was prepared and the pant of the accused no.2 was recovered.

4. An offence in this regard came to be registered vide Crime Register No.2 of 2001 against the accused persons with the ACB Police Station, Vadodara, for the offences punishable under Sections 7, 12, 13(1)(d), 13(2) of the Prevention of Corruption Act.

5. The investigation was commenced and during the investigation, the statements of the witnesses conversant with the incident were recorded and documentary evidence were collected. On completion of the investigation, charge-sheet came to be filed in the Special Court, which was registered as Special (ACB) Case No.1 of 2002 and thereafter it was transferred to the court of learned Special Judge and Presiding Officer, Fast Track Court No.15, Vadodara. The trial court, after following due procedure as prescribed under Section 207 of the Cr.P.C., framed the Charge vide Exh.16, whereupon the accused abjured his guilt pleading innocent and claimed to be tried.

6. To bring home the charge, the prosecution examined four witnesses in support of their case, which are as follow :

WITNESSES

No.

NAME

EXHIBIT

1.

Ramanbhai Vajesinh Patanvadia - Complainant

23

2.

Manubhai Ambalal Vasava – Shadow Witness PW-2

54

3.

Indravadan Balkrishna Vyas – P.I., ACB, Vadodara

Dolatsinh Bhagvantsinh Raolji – Investigating Officer

7. The prosecution also adduced documentary evidence in the form of complaint, agreement to sell, revenue record of the land, copy of the order of the Mamlatdar, Vadodara (Rural) converting the land, panchnama, seizure memo, sanction, etc.

8. On completion of the recording of the evidence, the trial court explained the incriminating circumstances appearing against the accused. The accused, in the further statement recorded under Section 313 of the Cr.P.C., denied the incriminating circumstances put to him and further stated that he is innocent and is falsely implicated in the alleged offence.

9. On completion of the trial, the trial court, vide judgment and order dated 30.06.2006, convicted the appellant-accused for the offences punishable under Sections 7, 12, 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988, and consequently, sentenced him to undergo rigorous imprisonment for two years with a fine of Rs.3,000=00 and in default of payment of fine, further to undergo simple imprisonment for two months

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence passed by the trial court, the present appellant (i.e. the original accused) has preferred the captioned Criminal Appeal before this Court.

SUBMISSIONS ON BEHALF OF THE APPELLANT-ACCUSED :

11. Mr.K.B.Anandjiwala, learned senior advocate appearing for the appellant-accused, while taking this Court through the evidence adduced by the prosecution as well as the impugned judgment, has submitted that the entire case of the prosecution is false and fabricated. It is submitted that no convincing evidence has been led by the prosecution to prove beyond reasonable doubt the essential ingredients of the offence, i.e. initial demand, demand, acceptance and recovery. Mr.Anandjiwala, while referring to the evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia, has submitted that the complainant, in his evidence, has specifically stated that he had entered into an agreement to purchase an agricultural land of the ownership of Mangalbhai Motibhai and since the land was of new tenure, the said Mangalbhai Motibhai had applied before the Mamlatdar, Vadodara (Rural), for conversion of the said land from new tenure to old tenure. In this context, he had contacted the present appellant who was the Talati-cum-Mantri of village Vadsala though he had no authority over the land as on the date of the complaint. It is alleged that at that time the appellant-accused had demanded Rs.11,500=00 as bribe for the process of conversion of the land and the same was paid by the complainant at his residence before two and a half

months of filing of the complaint. It is submitted in this regard that there is no evidence on record to prove this fact since the complainant has not stated that on which date and in whose presence the demand was made. It is submitted that even there is no evidence on record regarding the payment of the said amount.

12. Learned senior advocate Mr.Anandjiwala has further submitted that it is the say of the complainant that the appellant had also told him that he has to pay another amount of Rs.11,500=00 for completion of the further proceedings after the order of conversion is passed by the Mamlatdar. Learned senior advocate, while referring to the evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia along with the original complaint (Exh.25) and the order of the Mamlatdar, Vadodara (Rural) (Exh.27), has submitted that the Mamlatdar had passed the order of conversion of the land from new tenure to old tenure on 17.02.2001/03.03.2001 and had sent a copy of the order to the erstwhile owner of the land, i.e. Mangalbai Motibhai Vanand. He has submitted that it is the case of the prosecution that 15 days prior to the lodgment of the complaint, the appellant-accused had demanded Rs.11,500=00 for posting the entry of the order of the Mamlatdar into the revenue records. It is submitted that the complaint has been filed on 22.03.2001 and as per the say of the complainant, two-three days prior to the filing of the complaint, the appellant had again demanded Rs.10,000=00 as a bribe.

13. Learned senior advocate Mr.Anandjiwala, while referring to the notice under Section 135D of the Gujarat Land Revenue Code (Exh.45) and the entry no.2118 mutated in the record of rights (Exh.46), vehemently and fervently contended that it reveals from these documentary evidence that after passing of the order by the Mamlatdar, Vadodara (Rural) dated 17.02.2001/03.03.2001, converting the land from new tenure to old tenure, the appellant-accused had immediately started the

further proceedings of posting the entry regarding the said order in the revenue records and after the service of the notice under Section 135D of the Gujarat Land Revenue Code, the necessary entry in this regard was made on 07.03.2001. It is, therefore, submitted that after the posting of the entry in the revenue records on 07.03.2001, there remains no dispute with the appellant-accused. It is submitted that from the aforesaid evidence, it clearly establishes that as soon as the appellant-accused received the copy of the order of the Mamlatdar, Vadodara (Rural), he had immediately made the entry in the record of rights without making any demand. It is submitted that when the entry had already been made in the record of rights, there was no occasion for the appellant-accused to meet the complainant and make a demand prior to two-three days of filing of the complaint, i.e. on 22.03.2001. Thus, he has submitted that the reason which has been ascribed for payment seems to be false and fabricated.

14. Learned senior advocate Mr.Anandjiwala has submitted that the complainant had reason to entrap the appellant into the false case. In this regard,

Mr.Anandjiwala, while referring to the evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia and the evidence of the (PW-3) Indravadan Balkrishna Vyas, Police Inspector who laid the trap, along with the documentary evidence at Exhibits 37 to 41, has submitted that the complainant, in his cross-examination, has clearly elicited that at the time of filing of the complaint, inspite of having a house in the Nijanand Society, he was residing in a hutment opposite to the said society. He has also elicited that the land in which the hutment was constructed was belonging to the panchayat and it was given to the housing board for constructing houses for the members of the weaker sections of the society. The complainant has specifically elicited that the housing board had not allotted any plot of land to him and he made the encroachment over the panchayat land and that he was having no legal rights over the same. While pointing out to the notices at Exhibits 37 to 41, it is submitted that since the complainant had made encroachment over the panchayat land, the appellant being a Talati-cum-Mantri had issued various notices to the complainant to remove the illegal construction made over the panchayat land and to vacate and handover the peaceful possession thereof to the panchayat. It appears from the evidence that the complainant had refused to accept the notices and, therefore, the same were affixed on the door of the illegally constructed hutment of the complainant.

15. Learned senior advocate Mr.Anandjiwala has further submitted that keeping a grudge over the same, the complainant had falsely implicated the appellant-accused in a false case by inviting him to his residence for tea. Learned senior advocate, in this regard, has submitted that the complainant, in his deposition at Exh.23, has elicited that he was having formal relations with the appellant.

16. Regarding the presence of the appellant-accused at the house of the complainant on a day of trap, learned senior advocate Mr.Anandjiwala has submitted that it is elicited from the cross-examination of the complainant that the complainant had formal relationship with both the accused and they often used to invite each other for tea. Therefore, the presence of the appellant-accused at the house of the complainant is quite natural.

17. Learned senior advocate Mr.Anandjiwala has submitted that it clearly reveals from the evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia as well as the evidence of the (PW-3) Indravadan Balkrishna Vyas, Police Inspector who laid the trap, that the complainant had lodged the complaint against the present appellant-accused on 22.03.2001, inter alia, alleging that inspite of the order passed by the Mamlatdar, Vadodara (Rural), converting the land from new tenure to old tenure, the appellant-accused, who was working as the Talati-cum-Mantri, had asked for the bribe from the complainant for posting the entry into the revenue record. It is submitted that considering the revenue record at Exhibits 44 to 47, it clearly establish that the entries regarding the conversion of the land were already posted in the revenue record on 07.03.2001, i.e. fifteen days prior to the lodgment of the complaint, therefore, there was no reason or

occasion for the appellant-accused to ask for the bribe. It is submitted that the prosecution has purposefully not examined the erstwhile owner of the land.

18. While referring to the evidence of the shadow witness (PW-2) Manubhai Ambalal Vasava, learned senior advocate Mr.Anandjiwala has further submitted that the credibility of the truthfulness of the evidence of this witness is seriously doubted since his evidence regarding the acceptance is quite different from that of the complainant. Further, it is submitted that he, in his cross-examination, has elicited that he was working in the Vadodara Municipal Corporation and used to frequently visit the courts for the Corporation matters, therefore, he was well versed with the court proceedings. It is also submitted that the evidence of this witness clearly suggests that the panchas were not the author of the panchnama and the same was not even read and verified by them, therefore, the panchnama could not be used for the purpose of corroboration.

19. Learned senior advocate Mr.Anandjiwala has further submitted that the complainant (PW-1) Ramanbhai Vajesinh Patanvadia and the shadow witness (PW-2) Manubhai Ambalal Vasava both, in their evidence, have similarly deposed that after the acceptance of the bribe amount in his right hand, the appellant-accused had handed over it to the accused no.2 who, after counting the same, kept it in the left side pocket of his pant, and after the recovery of the said amount, when it was put to examine under the ultraviolet lamp, light yellowish fluorescent marks were seen on the right hand of the appellant-accused as well as on both the hands and the left pocket of the pant of the accused no.2. It is submitted in this regard that both the aforesaid witnesses have similarly deposed that when the presence of the anthracene powder was examined using the ultraviolet lamp, marks of fluorescent yellow colour and not fluorescent blue colour were noticed. It is submitted that in case of use of anthracene powder, when its presence is checked in ultraviolet lamp, it would show fluorescent blue colour and not fluorescent yellow colour. Therefore, so far as the acceptance and recovery of currency notes is concerned, the evidence led by the prosecution do not confirm that the currency notes smeared with the anthracene powder were, in fact, present as alleged by the complainant and the panch-witness. According to Mr.Anandjiwala, this raises serious doubt against the story of the prosecution. In support of his contention, Mr.Anandjiwala has placed reliance on the decision of this High Court in the case of Ajitsinh Devusinh Masani vs. State of Gujarat [Criminal Appeal No.910 of 2003, decided on 15.07.2016].

20. Learned senior advocate Mr.Anandjiwala has also referred to the evidence of the (PW-3) Indravadan Balkrishna Vyas, Police Inspector who laid the trap, and submitted that it reveals from the evidence of this witness that at the time of filing of the complaint, the complainant had suppressed the material fact that the order of conversion of the land was already passed and even the entry in this regard was also posted in the revenue record. The complainant has also suppressed the fact regarding the issuance of the notices by the appellant-accused for removal of the illegal encroachment over the panchayat land made

by him. It is submitted that due to the suppression of the material facts, the Police Inspector, ACB, could not do complete justice to the case. It is submitted that considering the nature of the work of the appellant-accused and the efforts put by the appellant in removing the illegal encroachment made over the panchayat land, there are all chances of falsely implicating him in the alleged offence due to vengeance.

21. Regarding the acceptance of the bribe and the recovery of the currency notes smeared with anthracene powder, learned senior advocate Mr.Anandjiwala has submitted that the appellant-accused had not accepted any amount and the same had been recovered from the accused no.2, and incidentally, the appellant might have touched the notes. It is submitted that even otherwise, mere acceptance or recovery of currency notes is not enough to constitute the offence, and to arrive at the conclusion whether the accused accepted the bribe or not, the totality of facts and circumstances as well as the evidence led by the prosecution is to be considered.

22. Lastly, Mr.Anandjiwala has submitted that the prosecution has not proved the case against the appellant-accused beyond reasonable doubt and the appellant has rebutted the presumption of Section 20 of the Prevention of Corruption Act. In this regard, Mr.Anandjiwala has implored the court to allow the appeal, set-aside the impugned judgment and direct the acquittal of the appellant (i.e. the original accused no.1) from the charges levelled against him.

SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE :

23. Per contra, learned APP Ms.Shruti Pathak appearing for the respondent-State has vehemently opposed the submissions advanced on behalf of the appellant-accused and has submitted that the conviction and sentence imposed by the trial court do not call for any interference by this Court as the trial court, after appreciating the evidence; both, oral as well as documentary, has precisely convicted the appellant-accused for the charges levelled against him. Learned APP has submitted that the prosecution has proved all the three essential elements of the offence, i.e. demand, acceptance and recovery, through convincing evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia, as well as the evidence of the shadow witness (PW-2) Manubhai Ambalal Vasava and (PW-3) Indravadan Balkrishna Vyas, Police Inspector who laid the trap.

24. While referring to the evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia along with the original complaint Exh.25 and other allied documents, learned APP Ms.Pathak has submitted that the complainant, in his complaint dated 22.03.2001, had specifically contended that he had entered into an agreement to purchase agricultural land from one Mangalbhai Motibhai Vanand and since the land was of new tenure, the said Mangalbhai Motibhai Vanand had applied before the Mamlatdar, Vadodara (Rural), for converting the said land from new tenure to old tenure and since the complainant was to purchase the land, he had approached the appellant-accused being the Talati-

cum-Mantri of village Vadsala for necessary procedure. At that time, the appellant-accused had informed the complainant that Rs.25,000=00 would be required to be paid to the higher officer and further informed that after a discount of Rs.2-3 thousand, the amount would come to Rs.22,000=00. It is submitted that initially the complainant had paid Rs.10,000=00 and also paid the amount of Rs.1,250=00 towards the premium. It is further submitted that the complainant had also contended in the complaint that after the order of conversion of the land was passed by the Mamlatdar on 17.02.2001/03.03.2001 converting the land from new tenure to old tenure, the complainant had approached the appellant-accused, and at that time, the appellant, after informing him that the order of conversion of the land has been passed, demanded for the remaining amount of Rs.11,500=00 for posting the necessary entry into the revenue record. Learned APP has submitted that the complainant had specifically contended in the complaint that the appellant-accused had made repeated demands for the remaining amount, which was, after some negotiations, agreed for Rs.10,000=00. It is submitted that the complainant had clearly mentioned in the complaint that just two days prior to the lodgment of the complaint, the appellant-accused had come to his house and informed him that he has initiated the further proceedings of posting the entry of the order of the Mamlatdar into the revenue record and again demanded Rs.10,000=00 for providing the copies of the changed entry in the revenue record, which makes it clear that the appellant-accused had not conveyed the complainant that the entry regarding the order of the Mamlatdar, Vadodara (Rural), was already posted in the revenue record on 07.03.2001. It is submitted that there is no evidence on record which suggests that either the erstwhile owner or the complainant was informed by the appellant-accused regarding the entry made in the revenue record on 07.03.2001 of the order of the Mamlatdar converting the land from new tenure to old tenure. Learned APP has vehemently submitted that it clearly establishes from the aforesaid that the appellant-accused had not conveyed the erstwhile owner or the complainant regarding the posting of the entry in the revenue record on 07.03.2001, and under the guise of initiating the further proceedings of posting the entry of the order of the Mamlatdar and to provide a copy thereof, he had demanded a bribe of Rs.10,000=00. Therefore, the submission made by the appellant-accused that, since the entry was already made in the revenue record prior to 15 days of the lodgment of the complaint there was no occasion or reason for the appellant-accused to demand for the bribe, seems to be misconceived.

25. It is submitted that the demand of Rs.10,000=00 was made particularly to provide the certified copy of the changed entry into the revenue record. It is submitted that it transpires from the impugned judgment that even the trial court has taken into consideration these particular facts while convicting the accused.

26. Learned APP Ms.Pathak has vociferously submitted that the demand of Rs.10,000=00 was not made particularly for posting the entry in the revenue

record, but the same was made for further proceedings, after the order of conversion of land was passed by the Mamlatdar, i.e. to make entry in the revenue record and to provide the certified copy of the changed entry. Learned APP Ms.Pathak, in this regard, has referred to the charge framed by the trial court against the appellant-accused at Exh.16 and submitted that the trial court also, while framing the charge, was mindful about the aforesaid fact and, therefore, it framed the specific charge against the appellant-accused that after the order of conversion of the land was passed by the Mamlatdar, the appellant-accused had demanded Rs.10,000=00 for further proceedings. It is submitted that it transpires from the impugned judgment that the trial court has also taken into consideration these particular facts while convicting the appellant-accused for the charges levelled against him. Learned APP Ms.Pathak, while referring to the evidence of the shadow witness (PW-2) Manubhai Ambalal Vasava along with the evidence of (PW-3) Indravadan Balkrishna Vyas, Police Inspector who laid the trap, has submitted that the evidence of the shadow witness, who had accompanied the complainant at the time of the trap, is clear, cogent and convincing. He was also the party to the demand and acceptance. It is submitted that his evidence has remained unshaken and the same is duly corroborated by the evidence of (PW-3) Indravadan Balkrishna Vyas, Police Inspector who laid the trap. It is submitted that the evidence of the shadow witness (PW-2) Manubhai Ambalal Vasava and the evidence of the Police Inspector (PW-3) Indravadan Balkrishna Vyas are in corroboration with the evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia. It is submitted that if the evidence of the aforesaid three witnesses be read in juxtaposition, there remains no doubt about the case of the prosecution and, therefore, according to the learned APP Ms.Pathak, no fault can be said to have been committed by the trial court while appreciating their evidence and arriving at the conclusion. Thus, it is urged that the conviction and sentence recorded by the trial court do not warrant any interference by this Court and the appeal may be dismissed.

ANALYSIS AND FINDINGS :

27. 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 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 Niraj 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 summarised 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 in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.”

28. Thus, it is held by the Supreme Court that in order to bring home the charge, the prosecution has to prove the demand of illegal gratification and the subsequent acceptance either by direct or by circumstantial evidence. Keeping in mind the ratio of the above mentioned judgment, the evidence led by the prosecution in the instant case is to be analyzed so as to find out, whether the prosecution has proved the fact that the appellant-accused demanded and accepted the bribe from the complainant.

29. As per the charge at Exh.16, it is the case of the prosecution that the appellant-accused had demanded Rs.10,000=00 for further proceedings after the order converting the land from new tenure to old tenure is passed by the Mamlatdar, Vadodara (Rural). Therefore, on 22.03.2001, the complainant had approached the ACB, and on 23.03.2001, during the trap laid by the ACB, the appellant-accused, in presence of the shadow witness (PW-2) Manubhai Ambalal Vasava, demanded bribe of Rs.10,000=00 and caught red-handed accepting the same in connivance with the accused no.2, thereby committed the offence under Sections 7 and 12 of the Prevention of Corruption Act.

30. It is evident from record that the first allegation of demand is reflected from the complaint (Exh.25) lodged by the complainant (PW-1) Ramanbhai Vajesinh Patanvadia before the Police Inspector, ACB, Vadodara, on 22.03.2001, alleging inter alia that being an agriculturist he entered into an agreement with one Mangalbhai Motibhai Vanand towards purchase of an agricultural land bearing Block No.252 of Revenue Survey Nos.240 and 241 admeasuring 2-Acres-6-Gunthas in the name of his wife Smt. Manjulaben Patanvadia and paid Rs.50,000=00 as earnest money against the sale consideration of Rs.1,15,000=00. According to the complainant, since the land was of new tenure, the land owner Mangalbhai Motibhai Vanand submitted an application before the Mamlatdar for conversion of the said land from new tenure to old

tenure, and since he had purchased the land, he contacted the Talati-cum-Mantri of village Vadsala, i.e. the present appellant-accused, for the process of converting the said land from new tenure to old tenure. It is alleged that at that time the appellant had demanded Rs.11,250=00 and also told the complainant that after the order of conversion of land is passed by the Mamlatdar, the complainant would be required to pay another Rs.11,500=00 for further proceedings. It is the say of the complainant that he had paid Rs.11,250=00 at that time and also agreed to pay the remaining amount of Rs.11,500=00 after the order is passed converting the land from new tenure to old tenure.

31. It is contended in the complaint (Exh.25) that on 17.02.2001/03.03.2001, the Mamlatdar, Vadodara (Rural), had passed the order converting the said land from new tenure to old tenure. It is alleged that thereafter the present appellant-accused had informed the complainant regarding passing of the order converting the land from new tenure to old tenure and told the complainant to give him the remaining amount of Rs.11,500=00 so that he can initiate further proceedings for making entry in the revenue record regarding the order of Mamlatdar. The complainant, at that time, asked for some time to arrange for the funds. It is further alleged in the complaint that the appellant-accused had made repeated demands for the remaining amount, and when the complainant had requested for some discount, the appellant told him to pay atleast Rs.10,000=00. It is the say of the complainant that one day prior to the filing of the complaint, the appellant-accused had again come to the residence of the complainant and informed him that he has started the further proceedings and thereafter asked the complainant to give him the remaining amount of Rs.10,000=00 as agreed upon. In response to which, the complainant asked him to come to his residence in the afternoon on 23.03.2001 with the copy of the changed entry and to collect the money. Since the complainant was not willing to pay the amount of bribe, he had approached the ACB, Vadodara, and filed a complaint on 22.03.2001. At the time of filing of the complaint, the complainant had also produced the xerox copy of the order dated 17.02.2001/ 03.03.2001 passed by the Mamlatdar, Vadodara (Rural), converting the land from new tenure to old tenure as well as the xerox copies of the agreement to purchase the said land and the revenue record 7/12 of the said land.

32. In this regard, the evidence of (PW-3) Indravadan Balkrishna Vyas, Police Inspector who laid the trap, is required to be looked into. He, in his evidence at Exh.58, corroborated the fact that on 22.03.2001 the complainant had approached him and filed a complaint as narrated herein above and also produced the xerox copies of the order of the Mamlatdar converting the land from new tenure to old tenure, the agreement to purchase the said land and the revenue record 7/12 of the said land. It appears from his evidence that on the basis of the aforesaid complaint, i.e. on 22.03.2001, he sent a letter to the Deputy Municipal Commissioner to provide and allot two Government officers to discharge their duties as shadow witness. It also appears from his evidence that on the next day, i.e. on 23.03.2001, he organized a pre-trap proceedings.

33. In view of the aforesaid allegations regarding the factum of demand, the evidence led by the prosecution, both oral as well documentary, and the arguments advanced by the defence are required to be considered.

34. The complainant (PW-1) Ramanbhai Vajesinh Patanvadia, in his evidence at Exh.23, stood by his version and deposed the same facts as has been narrated in the complaint at Exh.25. In support thereof, he has stated that when he approached the appellant-accused for the process of conversion of the land from new tenure to old tenure, at that time, the appellant had told him that Rs.25,000=00 would be required to be paid to the higher authority for the said work and after discount of rupees two to three thousand, the amount would come to Rs.22,000=00. Therefore, he had given Rs.10,000=00 to the appellant and also paid Rs.1,250=00 separately towards the premium amount. He had also deposed that after the order was passed by the Mamlatdar, Vadodara (Rural) of converting the land from new tenure to old tenure, the appellant had made repeated demands for the remaining amount of Rs.10,000=00 for further proceedings.

35. One of the arguments advanced by Mr.Anandjiwala is that the land was in the name of the erstwhile owner Mangalbhai Motibhai, and admittedly, he had submitted the application before the Mamlatdar for converting the said land from new tenure to old tenure. Mr.Anandjiwala has submitted that therefore the complainant had no reason or occasion or even authority as on the date of the complaint to contact the appellant-accused for the process of conversion of land and there is no evidence regarding the part payment made by him.

36. To consider the aforesaid submission made by the learned senior advocate Mr.Anandjiwala, the documentary evidence produced by the prosecution needs to be examined. It appears from the revenue record 7/12 produced at Exh.24 that the agricultural land bearing Block No.252 of Revenue Survey Nos.240 and 241 admeasuring 2-Acres-6-Gunthas of village Vadsala was in the name and in occupation of Mangalbhai Motibhai and others. The agreement to purchase the said land is produced at Exh.26. It appears that the said document was executed on 05.06.2000 between Smt. Manjulaben Patanvadia (i.e. the wife of the complainant) and Mangalbhai Motibhai and others. It clearly appears from this document that the land was of new tenure and the owners had agreed to execute the sale deed in favour of the purchaser after converting it from new tenure to old tenure.

37. It also appears from the agreement to sell (Exh.26) that there was a specific clause to the effect that all the expenditure towards the registration of the sale-deed, stamp duty as well as the expenditure for conversion of the land from new tenure to old tenure shall be borne by the purchaser. Therefore, the original owner Mangalbhai Motibhai had submitted an application before the Mamlatdar, Vadodara (Rural), for converting the land from new tenure to old tenure and since there was a specific condition in the agreement that the purchaser has to bare the expenditure of converting the land from new tenure to old tenure, the

complainant had contacted the appellant-accused, who at the relevant point of time, was serving as Talati-cum-Mantri of village Vadsala. Therefore, the submission made by the learned senior advocate Mr.Anandjiwala that the complainant had no reason or even the authority to contact the appellant-accused for the process of converting the land from new tenure to old tenure would be of no avail to him.

38. It is an undisputed fact that there is no direct evidence of the initial demand and the part-payment of Rs.11,250=00, albeit the complainant has made specific allegation in this regard in the complaint (Exh.25) and has also deposed in his evidence that at the time of initial demand, he had paid Rs.10,000=00 as the bribe amount and Rs.1,250=00 towards the premium amount. The prosecution has produced the order dated 17.02.2001/ 03.03.2001 passed by the Mamlatdar, Vadodara (Rural), converting the land from new tenure to old tenure (Exh.27). It is the say of the complainant that prior to fifteen days of the lodgment of the complaint, the appellant-accused had informed the complainant that the Mamlatdar, Vadodara (Rural), has passed the necessary order of converting the land from new tenure to old tenure and demanded for the remaining amount of Rs.11,500=00 for making the necessary entry of the said order in the revenue records. It is further the say of the complainant that two days prior to the lodgment of the complaint, the appellant-accused had come to the residence of the complainant and again demanded Rs.10,000=00 stating that he will provide the necessary copies of the changed entry since he has started the further proceedings of posting the entry of the order of the Mamlatdar in the revenue records. It is noteworthy that normally such initial demands of illegal gratification are 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 appellant-accused asked for the same demand and accepted it, then that can prove the factum of initial demand made by the appellant-accused. Therefore, the evidence regarding the demand and acceptance during the trap is a crucial piece of evidence. Hence, in the instant case, the evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia and the shadow witness (PW-2) Manubhai Ambalal Vasava as well as the evidence of the (PW-3) Indravadan Balkrishna Vyas, Police Inspector, ACB, Vadodara, are required to be examined carefully.

39. The complainant (PW-1) Ramanbhai Vajesinh Patanvadia, in his evidence at Exh.23, has specifically deposed that at the time of lodgment of the complaint, he had also annexed the necessary documentary evidence, and after considering the same, the Police Inspector, ACB, Vadodara (PW-3) Indravadan Balkrishna Vyas conducted pre-trap proceedings. Thereafter, two shadow witnesses were called and in their presence the complainant narrated the details of his complaint and they were demonstrated the process of anthracene powder and its effect by using the ultraviolet lamp. Thereafter, anthracene powder was applied on twenty currency notes each of the denomination of Rs.500=00 and the same were put in the left pocket of his shirt after folding it. He has stated further that he was

specifically instructed not to touch the notes until the occasion arises of paying the bribe. Thereafter, he and the shadow witness no.1 sat in his house, whereas the Police Inspector (PW-3) Indravadan Balkrishna Vyas along with other personnel and the shadow witness no.2 hid themselves in the byre/cowshed, which was located beside the house. The complainant further deposed that at around 5:45 in the evening, the appellant-accused along with Lalitbhai (i.e. the original accused no.2 who has been acquitted by the trial court) had come to his residence, and after some formal talks about the purchase of the land, when he asked for the copies of the entry made in the revenue record, the appellant-accused demanded for the remaining amount saying that he has to manage everything, therefore, he told the appellant-accused not to delay it further and proceed with the work. Thereafter, he gave the tainted notes to the appellant-accused and the appellant-accused accepted the same with his right hand and handed it over to Lalitbhai (i.e. the original accused no.2). The appellant-accused, while instructing Lalitbhai to count the notes, said that now-a-days the ACB officers are very vigilant and active in their operations. The accused no.2 Lalitbhai, after counting the notes, put the same into the left pocket of his pant and told the appellant that the same consists of Rs.10,000=00. Thereafter, the complainant transmitted the prearranged trap signal, and after following the same, all the members of the raiding party arrived at the spot and both the accused were caught red-handed with the bribe amount of Rs.10,000=00. On examination of the said currency notes under the ultraviolet lamp, light yellowish fluorescent marks were seen on the currency notes as well as on the hands of both the accused and also on the left pocket of the pant of the accused no.2. Thereafter, the numbers on the currency notes were verified and noted down in the panchnama. The complainant identified the currency notes and the seized pant of the accused no.2.

40. It clearly transpires from the aforesaid evidence that even during the trap, the appellant-accused had again demanded a bribe for providing the copies of the changed entry in the revenue record and even accepted the same in presence of the shadow witness, which clearly establishes the factum of demand in corroboration with the allegations against the appellant-accused regarding the initial demand.

41. In the cross-examination, the complainant had elicited that he is in occupation of the panchayat land, which is given by the panchayat to the Housing Board and the Housing Board has not allotted it to him. However, he denied of receiving any notice from the appellant-accused for the removal of his illegal encroachment over the land. The defence has produced the copies of the notices at Exh.37 to Exh.41, which suggest that the notices regarding the removal of the encroachment were affixed on the door of the house of the complainant since it were refused. He has also elicited that he was having a formal relationship with both the accused and they often used to invite each other for tea. He denied that by keeping a grudge regarding the issuance of the aforesaid notices he had falsely implicated the appellant-accused. The

complainant, thereafter, further elicited that the appellant-accused had, on 07.03.2001, issued a public notice (Exh.45) under Section 135D of the Land Revenue Code, inviting objections, if any, from the interested persons within thirty days from the date of the notice, i.e. from 07.03.2001 to 07.04.2001, and made an initial entry in this regard in the revenue record on 07.03.2001 (Exh.46), meaning thereby, that till the notice period of 30 days is over, this entry cannot be finalized and, therefore, in the remarks column of Exh.46, a specific endorsement "pending for verification by the reviewing authority" was made, which suggests that it was not finalized and even certified by the superior/higher authority.

42. By placing heavy reliance on the documents referred to herein above, more particularly, Exh.37 to 41, 45 and 46, learned senior advocate Mr.Anandjiwala has submitted that since the appellant-accused had issued notices to the complainant for removal of the illegal encroachment made by him over the panchayat land, the complainant, keeping a grudge in his mind, had falsely implicated the appellant-accused in the alleged offence and since the entry regarding the order of the Mamlatdar converting the land was already posted in the revenue record, there was no occasion or cause for the appellant-accused to demand for the bribe and even there was no reason for the complainant to lodge the complaint after twenty days of posting the entry into the revenue record.

43. To consider the argument advanced by both the sides in this regard, the Court has examined the above referred documents carefully. It appears from the aforesaid documents that the notices which were said to have been issued by the appellant-accused to the complainant are dated 15.12.1999 (Exh.37) and 15.01.2000 (Exh.40), whereas the agreement to purchase the land was entered into on 05.06.2000 (Exh.26), meaning thereby, that at the time of issuance of the notices, the complainant had not even purchased the land from the erstwhile owner Mangalbai Motibhai. Hence, there was no question of falsely implicating the appellant-accused in the alleged offence. It cannot be believed that the complainant, keeping a grudge over issuance of the notices by the appellant-accused for removing the illegal encroachment made by the complainant on the panchayat land, which were obviously issued prior to six months of agreement to purchase the land, hatched a conspiracy to implicate the appellant-accused into the alleged offence by first purchasing a new tenure land and then approached the appellant-accused for converting it into an old tenure land and thereafter offered him bribe for the further proceedings of posting an entry in this regard into the revenue record.

44. It also appears from the documents referred to herein above that on the basis of the order of the Mamlatdar, Vadodara (Rural), dated 17.02.2001/03.03.2001 converting the land from new tenure to old tenure, the appellant-accused had, on 07.03.2001, issued a public notice (Exh.45) under Section 135D of the Land Revenue Code, inviting objections, if any, from the interested persons within thirty days from the date of the notice, i.e. from

07.03.2001 to 07.04.2001, and made an initial entry in this regard in the revenue record on 07.03.2001 (Exh.46), meaning thereby, that till the notice period of 30 days is over, this entry cannot be finalized and, therefore, in the remarks column of Exh.46, a specific endorsement "pending for verification by the reviewing authority" was made, which suggests that it was not finalized and even certified by the higher authority. Thus, it clearly appears from the above document (Exh.46) that at the time of filing of the complaint, the further proceedings of posting the final entry into the revenue record regarding the order of the Mamlatdar, Vadodara (Rural), converting the land from new tenure to old tenure, was not completed. Therefore, the argument advanced by learned senior advocate Mr.Anandjiwala that since the entry regarding the order of the Mamlatdar was already made in the revenue record on 07.03.2001 there was no occasion or cause for the appellant-accused to ask for the bribe for the said purpose and there was no reason for the complainant to file a complaint after twenty days, i.e. on 22.03.2001, would be of no avail to him.

45. It is pertinent to note here that the notices under Section 135D of the Land Revenue Code (Exh.45) was issued on 07.03.2001 and the initial entry in this regard (Exh.46) was also made on the same day, i.e. fifteen days prior to the filing of the complaint. It is noteworthy that the complainant has specifically contended in the complaint, which is filed on 22.03.2001, that before 13-14 days from the date of filing the complaint, the complainant had met the appellant-accused since the Mamlatdar had passed the order, and at the time also, the appellant-accused, after informing him about passing of the order of the Mamlatdar, told him to give the remaining amount of Rs.11,500=00 so that he can initiate the further proceedings of posting the entry into the revenue record, which also corroborates the version of the complainant.

46. As mentioned earlier regarding the factum of demand of bribe and the acceptance thereof, the evidence of the shadow witness as well as the evidence of the officer who laid the trap is a crucial piece of evidence. The prosecution has, in the instant case, examined the shadow witness (PW-2) Manubhai Ambalal Vasava at Exh.54. He, in his evidence, has deposed that on 22.03.2001 he along with the shadow witness no.2 were called by the Police Inspector (PW-3) Indravadan Balkrishna Vyas at the ACB office and were instructed to come again at 10:30 a.m. on the next date, i.e. on 23.03.2001. On the next day at 10:30 a.m., when they reached at the ACB office, the complainant Ramanbhai was present in the office and the Police Inspector (PW-3) Indravadan Balkrishna Vyas introduced them to the complainant, who narrated the details of the complaint to them in brief and thereafter the original complaint (Exh.25) was shown to them and were instructed to put their signatures on it. That the complainant had tendered 20 currency notes each of the denomination of Rs.500 amounting to Rs.10,000=00 and the number of each notes was noted down in the first part of the panchnama and after demonstrating the process of anthracene powder and its effect under the ultraviolet lamp, the currency notes were smeared with anthracene powder and the same were put in the left pocket of the shirt of the

complainant and he was specifically instructed not to touch the notes until the occasion arises of paying the bribe. The shadow witness has further deposed that the Police Inspector (PW-3) Indravadan Balkrishna Vyas had instructed him to accompany the complainant and to observe and listen whatever has been interacted between the complainant and the appellant-accused. Thereafter, the first part of the panchnama was drawn and both of them had put their signatures on it. He has deposed further that at 13:55 hours they left the ACB office to reach at the residence of the complainant and he and the complainant both went into the house of the complainant, whereas, the Police Inspector Indravadan Balkrishna Vyas and other personnel along with the shadow witness no.2 hid themselves in the byre/cowshed, which was located beside the house. The shadow witness further deposed that at around 17:45 hours, the appellant-accused and the accused no.2 Lalitbhai had come to the residence of the complainant, where they were welcomed by the complainant and, at that time, the appellant-accused had told the complainant that, "I had earlier come to meet you at 12:00 noon, but you were not at home", and after some formal talks, the complainant requested the appellant-accused to give some discount, to which, the appellant replied that he also have to give money to the higher authority and he is getting 2-3 thousand only and thereafter told the complainant that, "I have asked for only a meager amount from you since you are a farmer. If you were a builder, I would have got 40-50 thousand". The shadow witness has further deposed that thereafter the appellant-accused looked towards him and asked the complainant as to who he is ? In reply, the complainant said that he is my 'vevai/samdhi' (fathers-in-law, i.e. fathers of two people who are married to each other) and he has managed the fund of Rs.10,000=00. In response to which, the appellant-accused stated further that, "'vevai', you have to arrange for some more funds so that the sale-deed of your 'vevai' may also be executed", and while saying so, he asked the complainant to give him Rs.10,000=00 and get the copies of the changed entry from his residence. Thereafter, the complainant took out the tainted currency notes from his pocket and gave it to the appellant-accused, who accepted it with his right hand and then handed it over to Lalitbhai (i.e. the accused no.2) and while instructing him to count the notes, he said that now-a-days the ACB officers are very vigilant and active in their operations. The accused no.2 Lalitbhai, after counting the notes, put the same into the left pocket of his pant and informed the appellant-accused that the same consists of Rs.10,000=00. Thereafter, the complainant transmitted the prearranged trap signal and following the same, the members of the raiding party arrived at the spot and both the accused were caught red-handed with the bribe money. Thereafter, the doors and windows of the room were closed and the hands of all the members of the raiding party except both the accused were examined under the ultraviolet lamp and no fluorescent marks were seen on the hands of each of the members of the raiding party. However, on examination under the ultraviolet lamp, light yellowish fluorescent marks were seen on all the fingers and on the right thumb of the appellant-accused and on both the hands as well as left pocket of the pant of the accused no.2 Lalitbhai. Thereafter, the notes were

recovered through the shadow witness no.2, and on examination under the ultraviolet lamp, light yellowish fluorescent marks were seen on both the hands of the shadow witness no.2 and also on the currency notes. Thereafter, the numbers of the notes were tallied with the numbers of the notes mentioned in the first part of the panchnama and they were found to be the same. Thereafter, the tainted notes and the pant of the accused no.2 were seized and the seizure memo in this regard was drawn. Thereafter, the second part of the panchnama was drawn and both the shadow witnesses as well as the Police Inspector, ACB, had put their signatures on it.

47. This witness is subjected to extensive cross-examination, however, nothing fruitful has come out from his evidence which can falsify or shaken his version except the fact that he had worked for six years in the Vadodara Municipal Corporation and used to frequently visit the courts for the Corporation matters and, therefore, he is well versed with the court proceedings. He has denied the suggestion put by the defence counsel that the complainant had forcibly taken the appellant-accused and the accused no.2 Lalitbhai into his house, and though the appellant-accused was refusing, the complainant had forcibly handed over the currency notes to the accused no.2 Lalitbhai and asked him to request the appellant to complete his work. The evidence of this witness is in corroboration with the seizure memo (Exh.56) and the panchnama (Exh.57).

48. Regarding the credibility and the truthfulness of the evidence of this witness, it is argued that the same is seriously doubted since his evidence regarding acceptance is quite different to that of the complainant. Further, it is elicited from his cross-examination that since he was attending the courts for the Corporation matters, he was well versed with the court proceedings.

49. Considering the submission made by Mr.Anandjiwala, this Court has carefully examined the evidence of this witness and the evidence of the complainant, and upon careful examination of the evidence of both the aforesaid witnesses, no material contradictions surface so far as the aspect of acceptance and recovery is concerned. The only indisputable aspect is that the shadow witness has narrated each and every minute details regarding the interaction/communication between the complainant and the appellant-accused, whereas the complainant, in his evidence, has not stated about each and every dialogues in details, but has stated the same facts regarding the demand and acceptance and even the recovery. Both of them have similarly deposed that after some formal talks, when the complainant had asked for the copies of the entry made in the revenue record, the appellant-accused demanded for the remaining amount of Rs.10,000=00 and thereafter the complainant gave him the tainted notes and the appellant-accused accepted the same with his right hand and handed it over to the accused no.2 Lalitbhai, and while instructing Lalitbhai to count the notes, the appellant-accused said that now-a-days the ACB officers are very vigilant and active in their operations. The accused no.2 Lalitbhai, after counting the notes, put the same into the left pocket of his pant and told the appellant that the same

consists of Rs.10,000=00. Thereafter, the complainant transmitted the prearranged trap signal, and after following the same, all the members of the raiding party arrived at the spot and both the accused were caught red-handed with the bribe amount of Rs.10,000=00. On examination under the ultraviolet lamp, light yellowish fluorescent marks were seen on the currency notes as well as on the right hand of the appellant-accused and on both the hands as well as the left pocket of the pant of the accused no.2. Both these witnesses have also deposed similarly that the number of the notes recovered from the accused no.1 were verified and it was found to be the same as noted down in the first part of the panchnama. Thus, on the material aspect, there is no major contradiction in the evidence of both the witnesses. It is also noteworthy that all the elements, viz. demand, acceptance and recovery, which had been minutely narrated by the shadow witnesses clearly reflect from the seizure memo (Exh.56) and the panchnama (Exh.57). Therefore, it cannot be said that the shadow witness has, in his evidence, made some addition, alteration or changes or that he has stated contradictory facts. It is true that he, in his cross-examination, has elicited that he is aware about the court proceedings, but only on that reason his evidence cannot be brushed aside, which otherwise is found to be trustworthy. It is also noteworthy that nothing is on record which suggests that the shadow witnesses have any relationship with the complainant or they have any animosity with the appellant-accused.

50. It is submitted by Mr.Anandjiwala that the complainant Ramanbhai Vajesinh Patanvadia and the shadow witness Manubhai Ambalal Vasava both, in their respective evidence, have similarly deposed that after accepting the bribe amount in his right hand, the appellant-accused had handed it over to the accused no.2 Lalitbhai, who, after counting the same, kept it in the left pocket of his pant and after recovery of the same, when it was examined under the ultraviolet lamp, light yellowish fluorescent marks were seen on the right hand of the appellant-accused and on both the hands as well as left pocket of the pant of the accused no.2. Mr.Anandjiwala, in this regard, has submitted that in case of use of anthracene powder, when its presence is checked under the ultraviolet lamp, it would reflect bluish fluorescent colour and not yellowish fluorescent colour. Therefore, so far as the aspect of acceptance and recovery of the currency notes is concerned, the evidence do not confirm that the currency notes were smeared with anthracene powder as deposed by the complainant and the shadow witnesses. It is submitted that this raises serious doubt about the story of the prosecution. Reliance has been placed in this regard on the decision of this High Court in the case of Ajitsinh Devusinh Masani (supra).

51. The various studies of the anthracene powder disclose that pure anthracene would show blue fluorescence but impure anthracene would show yellow to green fluorescence due to the presence of tetracene, naphthacene, etc. It's advantage is that it can be clearly perceived under the ultraviolet light, which proves the direct contact of the suspect with the smeared currency notes. In the instant case, the complainant – Ramanbhai Vajesinh Patanvadia, the shadow witness -

Manubhai Ambalal Vasava and the Police Inspector, ACB, Indravadan Balkrishna Vyas, all have, in their respective evidence, similarly deposed that the appellant-accused, after accepting the bribe money with his right hand, handed it over the same to the accused no.2 Lalitbhai and instructed him to count it, who, after counting the same, put it in the left pocket of his pant and told the appellant that the same consists of Rs.10,000=00. Thereafter, the complainant transmitted the prearranged trap signal, and after following the same, all the members of the raiding party arrived at the spot and both the accused were caught red-handed with the bribe amount of Rs.10,000=00. On examination of the said amount under the ultraviolet lamp, light yellowish fluorescent marks were seen on the currency notes as well as on the hands of both the accused and also on the pockets of the pant of the accused no.2. Thus, it clearly establishes the contact of both the accused with the tainted currency notes.

52. Considering the aforesaid, there remains no doubt about the use of anthracene powder since, as noted earlier, the marks of fluorescence depends on the purity of the anthracene powder.

53. So far as the judgment of this Court in the case of Ajitsinh Devusinh Masani (supra) is concerned, it is noteworthy that in that case the benefit of doubt was extended to the accused not only on the ground of colour of anthracene powder, but it was extended on all other counts, viz. [1] improper test, [2] improper sanction procedure, and [3] territorial jurisdiction, by specifically observing that though the ACB, Vadodara, had no jurisdiction to lay the trap in Kheda district, the entire proceedings were carried out by the ACB, Vadodara, and even the complainant himself had investigated the offence and filed the charge-sheet. Considering the entire judgment, it becomes clear that the facts and the issues involved in that case were quite different from the case on hand. Therefore, it cannot be of any help to the present appellant-accused.

54. The prosecution has also examined (PW-3) Police Inspector, ACB, Indravadan Balkrishna Vyas at Exh.58, who laid the trap. He has also stated the same facts as stated by the complainant and the shadow witness in their respective evidence. His evidence is completely in corroboration with the evidence of the complainant (PW-1) Ramanbhai Vajesinh Patanvadia and the shadow witness (PW-2) Manubhai Ambalal Vasava. Thus, the evidence of the PW-1, PW-2 and PW-3 clearly demonstrated the elements of demand, acceptance and even the recovery of the bribe money for initiating the further proceedings of posting the entry of the order of the Mamlatdar, Vadodara (Rural), converting the land from new tenure to old tenure and to provide copy thereof to the complainant. This witness is also subjected to extensive cross-examination, however, nothing fruitful has come out from his evidence which can falsify or shaken his version. It only comes out from the cross-examination of this witness that the order converting the land from new tenure to old tenure was passed by the Mamlatdar, Vadodara (Rural) on 17.02.2001 and the same was despatched to the erstwhile owner Mangalbhai Motibhai on 03.03.2001. Thus, the erstwhile owner

Mangalbhai Motibhai, the complainant and the appellant-accused were having knowledge of passing of such order. This witness shown his agreement with the suggestion made by the defence counsel during the cross-examination that on the basis of the order of the Mamlatdar, Vadodara (Rural), converting the land from new tenure to old tenure, if the entry in the revenue record is made, then the complainant would have no reason or occasion to file the complaint. He has also elicited that he has not investigated the facts regarding the illegal encroachment made by the complainant.

55. Mr. Anandjiwala, in this regard, has submitted that due to suppression of material facts regarding the issuance of the notices by the appellant-accused to the complainant for removal of illegal encroachment and also regarding the fact that the entry of the order of the Mamlatdar, Vadodara (Rural), was already posted in the revenue record on 07.03.2001, the Police Inspector, ACB, could not do complete justice to the case.

56. As discussed earlier, the complainant, in his complaint (Exh.25), has clearly come with a case that after the order converting the land from new tenure to old tenure was passed by the Mamlatdar, Vadodara (Rural), he contacted the appellant-accused and at that time the appellant-accused had informed him that the order converting the land from new tenure to old tenure has been passed and had demanded the remaining amount of Rs.11,500=00 for further proceedings of posting the necessary entry into the revenue record and even two days prior to the lodgment of the complaint, the appellant-accused had come to the house of the complainant and had informed him that he has initiated the further proceedings of posting the entry in the revenue record and again demanded Rs.10,000=00 for providing the copies of the changed entry in the revenue record.

57. As discussed earlier by this Court, it is on record that after the order of converting the land from new tenure to old tenure was passed by the Mamlatdar, Vadodara (Rural) on 17.02.2001/ 03.03.2001, the appellant-accused had issued a public notice under Section 135D of the Land Revenue Code, calling for the objections, if any, from the interested persons, within 30 days from the date of the notice and had also made an initial entry in this regard in the revenue record on the same day, which obviously cannot be finalized until the notice period of 30 days is over and, therefore, it was kept pending for verification and certification by the higher authority. Therefore, it can be said that the entry made on 07.03.2001 was not the final entry and it was yet to be verified and certified by the higher authority after the notice period of 30 days is over. This fact clearly corroborates the version of the complainant that the appellant-accused had informed him that he has initiated the further proceedings of posting the entry in the revenue record and demanded Rs.10,000=00 for posting the entry and to provide the copies of the same. Therefore, it cannot be said that the complainant has suppressed the fact that the entry of the order of the Mamlatdar, Vadodara (Rural) was already made in the revenue record.

58. So far as the notices issued by the appellant-accused to the complainant for removal of the illegal encroachment on the panchayat land is concerned, as mentioned earlier, the same were issued on 15.02.1999 (Exh.37) and 15.01.2000 (Exh.40). At that time, the complainant had not even purchased the land from Mangalbai Motibhai. It is established that the complainant had, on 05.06.2000, entered into an agreement with Mangalbai Motibhai to purchase the land (Exh.26). Therefore, there was no question of falsely implicating the appellant-accused by suppressing the fact regarding the issuance of the notices. Hence, the argument advanced by learned senior advocate Mr.Anandjiwala would be of no avail.

59. The prosecution has examined (PW-4) Investigating Officer Dolatsinh Bhagvantsinh Raolji at Exh.67, who provided the details about the investigation. The sanction for the prosecution is produced at Exh.60. No dispute has been raised before this Court by the appellant's side regarding the same.

60. Thus, from the aforesaid materials, it clearly appears that the complainant (PW-1) Ramanbhai Vajesinh Patanvadia, the shadow witness (PW-2) Manubhai Ambalal Vasava and the Police Inspector (PW-3) Indravadan Balkrishna Vyas who laid the trap, all have supported the case of the prosecution in its entirety with regard to the aspects of demand, acceptance and recovery of the bribe amount.

61. In view of the aforesaid analysis, this Court is of the considered opinion that by appreciating the evidence; both, ocular as well as documentary, the trial court has rightly held the appellant-accused guilty for the offences punishable under Sections 7, 12, 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988, and sentenced him for the same.

62. Considering the evidence in its entirety, it cannot be said that the appellant-accused has rebutted the presumption raised by the trial court under Section 20 of the Prevention of Corruption Act. In the instant case, all the essential elements of the offence, i.e. demand, acceptance and recovery of the bribe amount, have been proved by the prosecution and the explanation offered by the appellant-accused is not sufficient to rebut the presumption raised by the trial court under Section 20 of the Act.

CONCLUSION :

63. In view of the aforesaid discussion as well as considering the gravity of the offence and upon threadbare examination of the entire evidence, this Court finds that the trial court has committed no perversity or illegality in convicting the appellant-accused. Hence, there is no reason to interfere with the impugned judgment and order of conviction and sentence dated 30.06.2006 passed by the trial court.

64. It would be apposite to make a reference of the growing menace of corruption in the country in the recent years.

65. In Subramanian Swamy vs. Manmohan Singh, reported in (2012) 3 SCC 64,

the Supreme Court observed thus :

"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it."

66. In the case of *Rajesh Chandulal Shah vs. State of Gujarat* (Criminal Misc. Application No.9278 of 2018, decided on 12.06.2018), this Court has observed as under :

"16. In *Manoj Narula v. Union of India* (2014)9 SCC 1, the Supreme Court held that corruption erodes the fundamental tenets of the rule of law and quoted with approval its judgment in *Niranjan Hemchandra Sashittal & Anr. v. State of Maharashtra* (2013) 4 SCC 642, it was held as under :-

"16.....'26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance.'

18. In *K.C.Sareen v. C.B.I., Chandigarh* (2001)6 SCC 584, the Supreme Court observed thus:-

"12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity....""

67. In the case of *The State of Gujarat vs. Mansukhbhai Kanjibhai Shah*, reported in AIR 2020 SC 2203, the Supreme Court has held as under :

"Corruption is the malignant manifestation of a malady menacing the morality of men. There is a common perception that corruption in India has spread to all corners of public life and is currently choking the constitutional aspirations enshrined in the Preamble. In this context, this case revolves around requiring this Court to facilitate making India corruption free."

68. On the facts and in the circumstances of the case, the present appeal, being devoid of any merits, deserves to be and is hereby dismissed. The impugned judgment and order of conviction and sentence dated 30.06.2006 passed by the learned Special Judge and Presiding Officer, 15th Fast Track Court, Vadodara, in Special (ACB) Case No.1 of 2002, is hereby confirmed. Bail bonds, if any, stands cancelled. Records and proceedings be sent back to the trial Court forthwith.

69. After the pronouncement of the judgment, learned senior advocate Mr.Anandjiwala prays for twelve weeks' time on behalf of the appellant to surrender so as to enable him to approach the Supreme Court.

70. Learned APP strongly opposes the same.

71. The request made by learned senior advocate Mr.Anandjiwala for the appellant appears to be reasonable and is acceded to. The appellant-accused is granted eight weeks' time from today to surrender.