

(2015) 01 GUJ CK 0046
In the Gujarat High Court

Case No : Criminal Appeal Nos. 1343, 1344 and 1380 of 1999

Sirajbhai Rasulabhai Vora

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 8
Gujarat Municipalities Act, 1963 — Section 73
Penal Code, 1860 (IPC) — Section 107, 108, 120(B), 161, 21
Prevention of Corruption Act, 1988 — Section 11, 12, 13, 13(1)(d), 14

Citation : (2015) 01 GUJ CK 0046

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

Bench : Single Bench

Advocate : Mitesh Amin, K.B. Anandjiwala, for the Appellant; H.S. Soni, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—As these Criminal Appeals are arising out of judgment and order dated 30.11.1999 passed by the learned Additional Sessions Judge, Nadiad, in Special Case No. 15 of 1996, present Appeals are heard together and disposed of by this common judgment.

2. The appellants - original accused Nos. 1 and 2 were put on trial for the commission of the offences under Sections 7, 12, 13(1)(d) of the Prevention of Corruption Act, 1988. By way of impugned judgment and order of conviction and sentence, the learned Judge convicted and sentenced the appellants to suffer rigorous imprisonment for 6 months and to pay fine of Rs. 2000/-, i/d, to further undergo simple imprisonment for 1 month, for the offence punishable under Section 7 of the Prevention of Corruption Act. For the offence punishable under Section 13(1)(d) of the Act, the appellants were ordered to suffer rigorous imprisonment for one year and to pay fine amount of Rs. 2000/-, i/d, to further undergo simple imprisonment for one month. Learned Additional Judge has not

separately awarded the sentence for the offence punishable under Section 12 of the Act and has also ordered to run all the sentences concurrently.

3. The broad essential facts of the prosecution are that the appellant - accused No. 1 was performing his duties as Talati-Cum-Mantri and appellant - accused No. 2 was working as Peon at Bechri Grampanchayat, Bechri village, Ta. Anand, Dist. Anand. As per the case of the prosecution, the complainant namely Hasmukhbhai Maganbhai Chauhan, who was studying at Bhavans College, Dakor, belonging to Bhoi Caste and therefore, for getting the benefit of reservation, he gave an application in the office of Mamlatdar at Anand, for obtaining the certificate of Other Backward Class (O.B.C.) on 6.2.1996. On 7.2.1996, the office of the Mamlatdar, affixed the stamp on the back portion of the application and by addressing the letter to the accused No. 1 - Talati, intimated the complainant to obtain said O.B.C. certificate from the accused No. 1. Thereafter, the complainant went to the office of accused No. 1 at Bechri Grampanchayat, where the accused No. 1 verified the papers and filled the details in form of panchkyaas and demanded Rs. 120/- from the complainant. On asking by the complainant, the accused told that your work cannot done free of cost and the accused No. 1 clarified that out of Rs. 120/-, Rs. 100/- was for the accused No. 1 and remaining Rs. 20/- was for the accused No. 2, who was peon at the said office of Grampanchayat. The complainant told the accused that he was studying and therefore, he was not having money and he would give the said amount later on and therefore, the complainant returned back the application along with copy of ration card. As per the case of the prosecution, on 14.2.1996, the complainant met the accused No. 1 and the accused No. 1 told him to come with income certificate of his father along with sum of Rs. 120/-. As the complainant was not willing to give such amount for illegal gratification to the accused, the complainant approached the ACB Office, at Nadiad, on 19.2.1996. After following necessary formalities and after taking complaint of the complainant, the ACB officer called the panchas from the office of the Assistant Inspector of Electric Department and the said panchas were explained about the anthracene powder and experiment of ultra violet lamp and other procedure. The ACB officer also explained the complainant as to how and when give the amount to the accused. Thereafter, preliminary panchnama was prepared at ACB office and then the members of raiding party, complainant along with panchas proceeded to the Bechri Grampanchayat. After reaching at the office of Bechri Grampanchayat, the complainant and panch No. 1 went inside the office, where both the accused were present. The complainant handed over the papers to the accused No. 1 and after perusing the papers, the accused No. 1 told the complainant to call his father. Upon being asked, the complainant produced School Leaving Certificate. After verification, the accused No. 1 made endorsement on the backside of the application and instructed the complainant to give Rs. 120/- to accused No. 2. Out of the said amount of Rs. 120/-, Rs. 20/- was to be given to the accused No. 2 and therefore, the complainant gave Rs. 20/- to the accused No. 2 and then the complainant gave pre-arranged signal to the members of raiding party and

therefore, they rushed to the spot and on carrying out search, Rs. 20/- was recovered from the accused No. 2. There were stains of anthracene powder found on the pocket, shirt and hand of the accused No. 2 during the experiment of ultra violet lamp. The shirt of the accused No. 2 was seized and seizure memo was prepared and panchnama was drawn. Thereafter, the complaint was registered against the accused persons for the offences punishable under Sections 7, 12 and 13(1)(d) of the Prevention of Corruption Act, The Investigating Officer carried out further investigation, recorded the panchnama and obtained requisite sanction.

4. After investigation, the Investigating Agency submitted the charge-sheet. In order to bring home the charge, prosecution had examined the witnesses and got exhibited the documents like complaint at Exhibit 14, sanction at Exhibit 25, panchnama at Exhibit 18, Resolution for sanction to prosecute against the accused No. 2 at Exhibit 30. The witnesses examined by the prosecution viz. P.W. 1 Hasmukhbhai Maganbhai Chauhan at Exhibit 13, P.W. 2 Mukeshkumar Dhirajlal Mehta, at Exhibit 24, P.W. 3 Jitendrabhai Prabhudas Dhobi at Exhibit 26, P.W. 4 Ilaben Vinubhai Patel at Exhibit 29, P.W. 5 Punjabhai Shambhuji Dabhi at Exhibit 33, P.W. 6 Nalinkumar Somabhai Joshi at Exhibit 40. The appellants were put on trial, where he denied the charge and claimed to be tried.

5. The accused - appellants in their statement under Section 313 of the Code of Criminal Procedure disputed the charges about demand of amount towards illegal gratification but wanted to adduce evidence in their defence.

6. The trial Court on appreciation of the evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubts. While doing so it considered the defence version and rejected the same. Accordingly, the appellants were convicted and sentenced as above, by the trial court.

7. Learned advocate Mr. K.B. Anandjiwala appearing on behalf of the appellant accused No. 1 has submitted that the judgment and order is bad in law and against weight of evidence. Even charge and examination of the accused are not in conformity with the provisions of the Code. He further submitted that in the corruption cases, there are four stages i.e. (i) Initial Demand (ii) Second demand in presence of panch (iii) Acceptance and (iv) Recovery, which are required to be proved through the evidence of the complainant and such should be corroborated by independent evidence. He also submitted that in the bribery case, the demand is the most vital part of the prosecution and in this case, demand is not proved through any independent evidence by the prosecution. Neither the panch No. 1 nor any other member of the raiding party has seen the alleged incident of giving and taking of the bribe amount. Learned advocate further submitted that from the charge framed against the accused No. 1 and through the evidence of complainant and panch No. 1 the prosecution could not prove the case as per the provisions of Section 7 of the Act. He further submitted the evidence of prosecution is without any corroborative and therefore, it cannot be said that the prosecution has proved the case against the accused. He further submitted that

the prosecution has examined the complainant, panch witness, appointing authority, Sarpanch of village and trapping officer. He further submitted that concocted story is stated by the complainant in his evidence and the trapping officer has carried out bogus trap against the accused No. 1. He has read the complaint of the complainant as well as his oral evidence and submitted that as per the say of the complainant, the accused No. 1 has made demand of Rs. 120/- for his official work and in second part of panchnama, it is stated that only Rs. 20/- was given by the complainant to the accused No. 2. He further submitted that as per the case of the prosecution, the original demand was made by the accused No. 1 of Rs. 120/- and only Rs. 20/- was given to the accused No. 2, therefore, it is not at all believable case of the prosecution in absence of any cogent evidence. He also submitted that it cannot be said that the demand is proved by the prosecution by any cogent evidence. He further submitted that the prosecution could not lead any oral and documentary evidence as per the charge and wrong and false explanation was given by the complainant that when the accused No. 1 told him to give money to the accused No. 2, he understood that only Rs. 20/- was to be given to the accused No. 2. He, therefore, submitted that the complainant has not come with clean hands and his the explanation shows that complainant himself explained on his own and it can not be said that the accused No. 1 demanded the amount towards illegal gratification from the complainant. He further submitted that the accused No. 1 submitted written statement in connection with statement recorded under Section 313 of the Code of Criminal Procedure and that written statement is not accepted or exhibited by the learned Judge. He further submitted that from the evidence of panch witness No. 1, it is clear that in his presence also, no demand was made by the accused No. 1 and that amount of trap was accepted by the accused No. 2. He further submitted that the learned Judge has framed charge under Sections 12 of the Prevention of Corruption Act as well as Section 120(B) of the Indian Penal Code. He submitted that for the offence under Section 120(B), the main ingredients of agreement is required to be established, but the prosecution could not prove the same against the accused No. 1. Learned advocate further read the provisions of Section 12 of the Prevention of Corruption Act and submitted that the evidence of panch witness as well as the complainant are the star witnesses of the prosecution and from their evidence also, main ingredients of Section 12 of the Prevention of Corruption Act. Since Section 12 of the Act does not provide the definition of "abetment" and "abettor", learned advocate referred the provisions of Sections 107 and 108 of the Indian Penal Code and submitted that the prosecution could not prove the ingredients of abetment. He further submitted that as per the provisions of Section 107 and 108 of the Indian Penal Code, when the charge which is framed against the appellant accused for the offence under Section 12 of the Prevention of Corruption Act, it is the duty of the prosecution to prove the case against the accused beyond reasonable doubt and establish that for abetting in the offence, the accused No. 2 obtained Rs. 20/- towards illegal gratification. He further submitted that as per the say of the complainant, the first demand was made but in support of the allegations of demand, no

corroborative piece of evidence is produced on record by the complainant. He further submitted that the accused No. 1 did not accept any amount of bribe from the complainant and only told him to pay Rs. 20/- to the accused No. 2. In light of evidence of the witnesses examined by the prosecution, the involvement of both the accused is not proved and the demand as alleged is not proved as per the provisions of the Act. Even the misconduct on the part of the accused is not proved as per the evidence of the prosecution. He further submitted that since sanction is not properly granted to prosecute the case against the accused, same is also invalid.

8. Learned advocate Mr. Anandjiwala in support of his submissions, relied upon the case of Hari Dev Sharma v. State (Delhi Administration) reported in 1976 Supreme Court 1489 and submitted that in cited case, the trial Court convicted the accused and the High Court also confirmed the same, but the Hon"ble Supreme Court allowed the Appeal by setting aside the order of conviction and sentence on the ground of suspicion against the appellant. He further relied on other decision in the case of Subash Parbat Sonvane Vs. State of Gujarat, and submitted that in the case as referred, demand is not proved and therefore, accused was acquitted. He, therefore, submitted that in the case on hand, the demand on the part of the accused No. 1 was not proved properly as per the provisions of the Act and there is no question of recovery as the recovery of Rs. 20/- was made from the accused No. 2. Therefore, he submitted that in view of the aforesaid submissions and ratio laid down in the cases referred above, present appellant - accused No. 1 is required to be acquitted of the charges as levelled against him. He lastly, prayed to allow the appeal by quashing and setting aside the impugned judgment and order of conviction and sentence passed by the learned Judge.

9. Learned advocate Mr. Amin appearing for the appellant - accused No. 2 submitted that the demand was not made by the accused No. 2 and there is no any direct evidence against the accused No. 2 so far as demand is concerned, therefore, the accused No. 2 is required to be acquitted of the charges. He read the panchnama and complaint and submitted that from the contents of both these documentary evidence, the prosecution could not prove the case against the accused No. 2. He also read the evidence of the complainant and panch witness and submitted that from the evidence of these witnesses, demand on the part of the accused No. 2 is not established. He further submitted that as per the case of the prosecution, the demand of Rs. 120/- was made, but only Rs. 20/- was given to the accused No. 2 and therefore, the case of the prosecution is not at all believable. He further submitted that the accused No. 2 has never demanded any bribe amount. He submitted that the complainant himself trusted the amount of Rs. 20/- in the pocket of the accused No. 2. He read the cross-examination of the panch witness and the complainant and submitted that in absence of demand on the part of the accused No. 2, the order of conviction of the accused No. 2 is required to be quashed and set aside. He also submitted that there was no agreement and understanding between both the accused for

taking bribe amount from the complainant. He also submitted that the ingredients of Section 107 and 108 as well as 120(B) of the Indian Penal Code are not proved against the accused No. 2. He also submitted that there is no name of the accused No. 2 in the FIR. He also submitted that abetment on the part the accused No. 2 is also not proved by the prosecution. He submitted that as per the case of the prosecution, the accused No. 1 demanded Rs. 120/- towards illegal gratification, then recovery of the same amount could have been made from the accused No. 2, but from the accused No. 2, the recovery of only Rs. 20/- was made. He also submitted that the accused No. 2 is not public servant and therefore, sanction is not required to prosecute against him. He further submitted that remuneration of the accused No. 2 was not paid through the Government budget/grant and sanction was not given by the office of the DDO for the accused No. 2. He also submitted that the learned Sessions Judge observed in the impugned judgment and order that the accused No. 2 is not public servant and even then the accused No. 2 is convicted and therefore, learned Judge has committed grave error in convicting the accused No. 2 for the alleged offence. Against the accused No. 2, criminal conspiracy is not established by the prosecution. He therefore, prayed to allow appeal by quashing and setting aside the impugned judgment and order of conviction and sentence.

10. Learned advocates Mr. Anandjiwala and Mr. Amin appearing on behalf of the accused Nos. 1 and 2 respectively submitted that Criminal Appeal No. 1380 of 1999 filed by the State for enhancement is required to be dismissed because looking to the date of trap, complaint, date of judgment and also period of final hearing of these Appeals, long time has elapsed and considering the submissions recorded herein before, enhancement appeal filed by the State is not required to be entertained.

11. Learned APP Mr. Soni appearing for the State supported the impugned judgment and order of conviction and sentence passed by the learned Judge. He submitted that looking to the documentary and oral evidence on record, the prosecution has proved the case against the accused. He submitted that from the complaint itself, it is proved that the accused made demands from the complainant from time to time and therefore, first, second and third demand are proved by corroborative piece of evidence because same is proved by the witnesses examined before the trial Court. He further submitted that the accused made demand of Rs. 120/- towards illegal gratification from the complainant in presence of panch No. 1. He also submitted that as per the instruction of the accused No. 1, the complainant during the course of trap, handed over the amount of Rs. 20/- (out of Rs. 120/-) to the accused No. 2, who was peon in the office of Bechri Grampanchayat and at that time, the accused No. 2 did not refuse to take that amount of Rs. 20/- and accepted the same without any hesitation, therefore, both the accused committed alleged offence. He submitted that though recovery of Rs. 20/- was made from the accused No. 2, no explanation was given by accused No. 2 for said amount of Rs. 20/-. He read the provisions of Section 20 of the Act and submitted that both the accused have

never explained their defence for the presumption, in their statement recorded under Section 313 of the Code of Criminal Procedure. He also submitted that as per the provisions of Section 12, the abetment on the part of the accused No. 2 is established because the accused No. 2 has not opposed while complainant was giving him the amount of bribe. Learned APP submitted that looking to the overall evidence produced on record, it is established that prosecution has proved its case against the accused for the alleged offence. He further submitted that learned Judge imposed lesser sentence upon the accused, and therefore, maximum sentence as per the provisions of law is required to be imposed upon the accused. He prayed to allow the Criminal Appeal 1380 of 1999 and dismiss the Criminal Appeal Nos. 1343 of 1999 and 1344 of 1999.

12. I have examined the record and proceedings in context with the submissions made by the rival sides. It appears from the judgment that learned Sessions Judge has specifically made attempt to frame the charge in connection of the demand and acceptance. I have perused the oral as well as documentary evidence. I have also considered the arguments advanced by learned advocates appearing for both the sides.

13. The complainant lodged the complaint before the ACB Office against the accused persons, who were public servants; accused No. 1 was Talati-Cum-Mantri and accused No. 2 was peon at Bechri Grampanchayat office. Here the case is such that the complainant Hasmukhbhai Maganbhai Chauhan, who was studying at Bhavans College, Dakor as he belongs to Bhoi Caste, therefore, for getting the benefit of reservation, he approached the office of Mamlatdar at Anand, for obtaining the certificate of Other Backward Class (O.B.C.) on 6.2.1996. Thereafter, the complainant approached the accused No. 1 - Talati, with a view to obtain said O.B.C. certificate and at that time, the accused No. 1 verified the papers and filled up the details in form of panchkyas and demanded Rs. 120/- from the complainant. At that time, the accused No. 1 made first demand from the complainant and when the complainant denied the same, the accused told that your work cannot be done free of cost and the accused No. 1 clarified that out of Rs. 120/-, Rs. 100/- was for the accused No. 1 and remaining Rs. 20/- was for the accused No. 2, who was peon at the said office of Grampanchayat. The complainant clarified before the accused No. 1 that he was studying and therefore, he was not having money and he would give the said amount later on and therefore, the complainant returned back the application along with copy of ration card. As per the case of the prosecution, on 14.2.1996, the complainant met the accused No. 1 and the accused No. 1 told him to come with income certificate of his father along with amount of Rs. 120/-. At this stage, second demand was made by the accused from the complainant. Since the complainant did not want to give such amount for illegal gratification to the accused, the complainant approached the ACB Office, at Nadiad, on 19.2.1996. During the course of trap, the accused No. 1 demanded Rs. 120/- from the complainant and also instructed the complainant to give that amount to the accused No. 2. That is the stage of third demand made by the accused No. 1.

Same averments have been narrated by the complainant in his oral evidence as well as panch No. 1 Jitendrabhai Prabhudas Dhobi, who was serving as a clerk in Electric Department. So, the aspect of the demand is very well proved against the accused No. 1. Even from the cross-examination of both these witnesses, it appears that same is corroborating with the complaint, oral evidence and panchnama. Therefore, so far as the aspect of demand, there is no question that the accused had not made demand for illegal gratification from the complainant for doing official work and for that, he was getting remuneration from the Government.

14. Looking to the oral evidence of P.W. 6 Nalinkumar, who was ACB officer, who took the complaint of the complainant, he stating that all the procedure before arranging the trap was followed by him and his team and during the course of the experiment of ultra violet lamp, the stains of anthracene powder were found on the accused No. 2 i.e. on his palm, shirt, pocket, chest etc. He also stated that the currency notes utilized during the trap, were smeared with anthracene powder and as per the instruction of the accused No. 1, the accused No. 2 accepted the amount of bribe, however, the complainant understood his part of Rs. 20/-, and therefore, the complainant gave Rs. 20/- smeared with anthracene powder and same were found from the accused No. 2. Therefore, it is believable that the accused No. 2 accepted the amount upon the instruction of the accused No. 1 and thereby both the accused abetted to each other by taking money for doing official work. As per the provisions of under Section 20 of the P.C. Act, presumption is required to be drawn against the present appellant - accused. Section 20 of the P.C. Act 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 Sub-section (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 Sub-section (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."

15. As per the provisions of the aforesaid Section 20, on the ground of the presumption, it can be believed that the accused No. 1 would have made demand from the complainant. Looking to the chronology of events as stated in the complaint, it transpires that the accused did not do the official work without any money and therefore, he made demand from the complainant.

16. From the evidence of P.W. 2 Mukeshkumar Dhirajlal Mehta, examined at Exhibit 24, stated that sanction to prosecute against the accused No. 1 is just and proper and he is acquainted with the procedure as he had given 3 to 4 sanction in the past. He also stated that after studying the papers produced before him, he accorded sanction and therefore, the sanction can be said to be legal and just. Learned advocate appearing on behalf of accused No. 2 submitted that the accused No. 2 cannot be considered as a "public servant" and therefore, the conviction and sentence is required to be quashed and set aside qua accused No. 2. The accused No. 2 was working in Grampanchayat, which is working in the larger interest of public and same is constituted for the public work. Therefore, the accused No. 2, who was working on behalf of the said office, can be said to be public servant. For the purpose of ascertaining the status of the accused No. 2, the oral evidence of the P.W. 4 Ilaben Vinubhai Patel at Exhibit 29 is required to be considered. She stated in her evidence that she was Sarpanch of Bechri village and the constituted body of Panchayat has power to appoint the person in the office of Grampanchayat. She also stated that the power to collect tax is conferred by the Government on the Panchayat and out of the income of the funds, salary is to be made to the persons working under the control of Panchayat. She also stated that for prosecuting against the accused No. 2, ACB office addressed the letter seeking sanction against the accused No. 2 and therefore, on 24.10.1996, after full-fledged meeting, Resolution No. 7 was passed to prosecute against the accused No. 2 and she made her signature and affixed stamp on it and it was entered in the minutes of the Grampanchayat records. No doubt, she admitted that the Government has not given any grant, whereby the salary of such person can be made. Looking to the evidence of this witness, it is crystal clear that the accused No. 2 was working as peon in the office Grampanchayat and therefore, he was doing his work in public interest and for that, he was getting legal remuneration from the Panchayat funds which are collected by way of imposing tax upon the village people.

17. At this stage, the provisions of Sections 111 and 112 of the Gujarat Panchayat Act are required to be referred for the meaning of funds, which is used for the interest of public. Sections 111 and 112 read as under:

"Section 111 : Village Funds

- (1) There shall be in each village a fund to be called the village fund.
- (2) The following shall be paid into and form part of the fund, namely;
 - (a) the proceeds of any tax or fee imposed by or assigned to the panchayat under this Act;
 - (b) all sums ordered by a court to be paid as compensation;
 - (c) all other sums ordered by a court to be placed at the credit of village fund;
 - (d) the sale proceeds of all dust, dirt, dung, refuse or carcasses of animal except in so far as any person is entitled to the whole or a portion thereof;
 - (e) sums contributed to the fund by the State Government or the taluka panchayat or the district panchayat
 - (f) all sums received by way of loans from the State Government or Taluka Panchayat or the District Panchayat or out of the District Development fund or otherwise;
 - (g) all sums received by the panchayat by way of gift or contribution;
 - (h) the income or proceeds of any property vesting in the panchayat;
 - (i) the next proceeds (after deducting the expenses of assessment and collection) of the cess authorized by section 203;
 - (j) all sums realized by way of rent or penalty otherwise than as the amount of any fine in a criminal case;
 - (k) all sums realized as pound fees after deducting the expenses.

112. Application of fund:

- (1) All property vested in a panchayat under this Act and all funds received by it in accordance with the provisions of this Act, and all sums accruing to it under the provisions of any law for the time being in force shall be applied subject to the provisions and for the purposes of this Act and all such funds and sums shall be kept in such custody as may be prescribed.
 - (A) The village Panchayat shall obtain from the gram sabha a certificate of utilization of funds by that panchayat for the plans, programmes and projects referred to in sub-clause (i) of clause (b) of sub-section (3) of Section 4
- (2) Any surplus funds in the hands of panchayat which may not be required for current charges may be invested in such manner as may be prescribed.
- (3) In the case of any loan taken by a panchayat, the payment of the principal or installment thereof and the payment of interest thereon shall be a first charge on its fund."

18. Therefore in view of the above provisions of the Gujarat Panchayat Act,

1993, the funds and its utilization is clear and here the remuneration of the accused No. 2 is paid from the funds of village. Therefore, accused No. 2 can be said as public servant and Grampanchayat issued resolution for prosecution against him which is just and proper by considering him as a public servant.

19. The provisions of Gujarat Municipalities Act are required to be referred to for considering the aspect that who can be considered as public servant. For that Sections 73 and 482 of the Gujarat Municipalities Act is required to be quoted as under:

"73. Councillors, etc., to be deemed public servants:--

(1) Every municipal councillor, officer or servant and every lessee of the levy of any municipal tax, and every servant or other person employed by any such lessee shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

(2) The word "Government" in the definition of "legal remuneration" in section 161 of that Code shall, for purposes of sub-section (1) of this section, be deemed to include a municipality."

482. Councillors, etc. to be deemed to be public servants.--(1) The Commissioner and the Transport Manager and every councillor and every member of the Transport Committee who is not a councillor and every municipal officer or servant appointed under this Act, and every contractor or agent for the collection of any municipal tax and every servant or other person employed by any such contractor or agent shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(2) For the purposes of sub-section (1) the words "Government" in the definition of "legal remuneration" in section 161 of the Indian Penal Code (45 of 1860) shall be deemed to include the Corporation."

20. In view of the above detailed discussion, the submissions made by learned advocate Mr. Amin cannot be accepted. Considering the aforesaid provisions, the accused No. 2 is considered as "public servant". Now, the issue of recovery of the bribe amount from the accused No. 2 is concerned, stains of anthracene powder were found on the body of the accused No. 2 and shirt also. It is evident that as per the instruction of the accused No. 1, the accused No. 2 accepted the bribe amount of Rs. 20/- i.e. his part as per the say of the accused No. 1, from the complainant in the presence of panch No. 1 and therefore, the accused No. 2 also committed the offence under the Prevention of Corruption Act. No doubt, the demand on the part of the accused No. 2 is doubtful, but the demand aspect i.e. main ingredient for the offence is proved against the accused No. 1 and third demand made by him, and this is also corroborated by other documents.

21. In this case, the provisions of Section 7 of the Prevention of Corruption Act is required to be referred. Section 7 is quoted as under:

"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." 22. Here it is established that the accused No. 2 was a public servant, doing his work as a peon in the Grampanchayat office and as per the say of the complainant, the accused No. 1 demanded Rs. 120/- in first meeting with the complainant and the accused No. 1 told the complainant that out of Rs. 120/-, Rs. 20/- is a part of the accused No. 2. During the course of trap, the complainant gave Rs. 20/- to the accused No. 2 in the presence of panch No. 1 and same was recovered from the accused No. 2. Same amount was given by the complainant as per the instruction of the accused No. 2. So, if the provisions of Section 7 of the Act are to be applied, the act committed by the accused No. 2 falls within the purview of the Section 7. As per the provisions of Section 7, 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. Therefore, this Court is of the opinion that the accused No. 2 has committed the offence as alleged, as he obtained the money other than legal remuneration for doing official work.

23. In light of provisions under Section 8 of the Evidence Act, when the demand is proved from the oral evidence of panch, complainant and other witnesses as well as through documentary evidence, then the provisions of Section 8 of the Evidence would come into way because the conduct on the part accused is required to be considered. Here in this case, the agreement to obtain illegal gratification from the complainant, between the accused is established. So, as per the provisions of Section 8 of the Evidence Act, the alleged offence is established. Now as per the provisions of Section 107 and 108 of Indian Penal Code, the abetment in the commission of the offence is also proved. Both the accused abetted each other in the commission of the alleged offence and

conspiracy for doing illegal act especially with an intention to do offence is also established as per the provisions of Section 107 and 108 of the Indian Penal Code. Section 107 and 108 of the Indian Penal Code read as under:

"107. Abetment of thing - A person abets the doing of a thing, who--

First - Instigates any person to do that thing;

or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Section 108 : Abettor - A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."

24. In view of the above detailed discussion, it is established that the accused committed alleged offence and same is established as per the provisions of Section 8 of the Evidence Act, Sections 107 and 108 of the Indian Penal Code as well as Sections 7 and 20 of the Prevention of Corruption Act.

25. From the statements recorded under Section 313 of the Code of Criminal Procedure, it appears that the accused have not proved that the demand was not made and the amount was not accepted. They have not tried to explain the stains of anthracene powder found on the body and shirt of the accused No. 2. It is the duty of the appellants accused to rebut the presumption drawn under Section 20 of the Act against them. In this connection, this Court has referred the decision in the case of Balasubramanian v. State through Inspector of Police, reported in 2011 (1) GLR 739. Sufficient opportunity was given to the appellants to explain the evidence against them after the prosecution witnesses are examined and no explanation is given in further statement under Section 313 of the Code about the trap amount recovered from the possession of the present appellant - accused No. 2. This Court has also referred to the decisions in the case Jitendrakumar Jayantilal Dhruva Vs. State of Gujarat, and Gopalbhai Oghadbhai Parekh v. State of Gujarat reported in 2002 GLR 89, so far as presumption under Section 20 of the Prevention of Corruption Act, is concerned. 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. 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." 26. In view of the above legal position and facts and circumstances of the case, it appears that the accused being public servants and especially the accused No. 2 was found in the possession of currency note smeared with anthracene powder and therefore, it is sufficient to draw presumption against the accused under Section 20 of the Prevention of Corruption Act and the prosecution need not prove that money was paid to the public servant. Here as per the agreement between both the accused, the accused No. 2 accepted the amount of bribe of Rs. 20/- and as per the evidence produced on record, the accused No. 1 demanded bribe amount thrice from the complainant, who was student at that time, having no income with him, for doing official work, for which the accused was getting legal remuneration. Therefore, the demand on the part of the accused No. 1 and acceptance by the accused No. 2 as per the instruction of the accused No. 1 in the presence of the complainant as well as panch No. 1, can be said to be proved. The accused No. 2 had to accept Rs. 100/- on behalf of the accused No. 1 towards illegal gratification, but during the course of trap, the complainant gave only Rs. 20/- as part of the accused No. 2 in the presence of panch No. 2. Therefore, there is no reason to disbelieve the case of the prosecution against the accused persons.

27. Learned advocate Mr. Anandjiwala relied upon the case of Hari Dev Sharma (Supra), wherein the Hon'ble Supreme Court observed that the conviction passed by the trial Court could not affirmed. But the case is not helpful to the appellant because in that case, the circumstances against accused are highly suspicious. Here in the present case, it is crystal clear established that the accused No. 1 made demand and it is proved by the documentary evidence that the accused No. 1 made demand thrice from the complainant. The accused No. 2 only with view to abet in the commission of the offence, accepted Rs. 20/- towards illegal gratification. Therefore, it can be said that the accused committed offence under the Prevention of Corruption Act. Therefore, the learned Additional Sessions Judge has rightly convicted and sentenced the accused for the offence as alleged and no interference is required to be called for, as the reasons assigned by the learned Judge are just, proper and legal.

28. So far as Criminal Appeal No. 1380 of 1999 preferred by the State for

enhancement of the sentence, is concerned, it appears that long time has been passed after the judgment and order as well as from the date of trap and complaint and the accused was already dismissed from the service and also learned Sessions Judge has rightly imposed sentence and therefore, at this stage, if the Court is inclined to enhance the sentence, then it would become fruitless and therefore, appeal preferred by the State is not required to be entertained. Hence, the Appeal preferred by the State is hereby dismissed.

29. In view of the above observations, now, the Criminal Appeal Nos. 1343 of 199 and 1344 of 1999 as well as Criminal Appeal No. 1380 of 1999 are hereby dismissed. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Nadiad, in Special Case No. 15 of 1996 is hereby confirmed.

Appellants are on bail and in view of dismissal of appeal, their bail bonds are cancelled and they are directed to surrender before the Jail Authority within four weeks from the date of this order, failing which, the concerned Court shall issue nonbailable warrant against the appellants - accused to effect their arrest. R and P to be sent back to the trial Court, forthwith.