

(2017) 03 GUJ CK 0146
In the Gujarat High Court
Case No : 2662 of 2005

STATE OF GUJARAT

APPELLANT

Vs

DAHYABHAI KALIDAS PARMAR & ANR.

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 378](#) - Power to examine the accused - Appeal in case of acquittal

[Prevention of Corruption Act, 1988](#), [Section 13](#), [Section 7](#), [Section 12](#), [Section 13\(2\)](#), [Section 13\(1\)\(d\)](#), [Section 13\(1\)\(d\)\(i\)](#), [Section 13\(1\)\(d\)\(II\)](#) - Criminal misconduct by a public servant - Public servant taking gratification other than legal remuneration in respect of an official act - Punishment for abetment of offences defined In section 7 or 11 - Criminal misconduct by a public servant - Criminal misconduct by a public servant - Criminal misconduct by a public servant

Citation : (2017) 03 GUJ CK 0146

Hon'ble Judges : R.P.Dholaria

Bench : Single Bench

Advocate : MONALI BHATT, CB DASTOOR

Judgement

1. The State of Gujarat has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 20.9.2005 rendered by the learned Special Judge, Fast Track Court No.5, Surat, in Special (ACB) Case No.6 of 1993, whereby the learned Judge has acquitted the respondentsPage

accused for the offences punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. The short facts giving rise to the present appeal are that complainantThakorbbhai Karshanbbhai Patel at the relevant time was residing at village Mahuva, district Surat. On 29.11.1991, Police SubInspectorKhokhar,

Mahuva raided the house of the complainant under the Prohibition Act and at that time, the complainant was at Vadodara and he was shown as absconder. On 27.1.1992, Police Constable accused No.1 met with the complainant at S.T. Bus Stand and apprised him regarding the prohibition case lodged against him. Thereafter, accused No.1 Police Constable threatened the complainant to give them Rs.500/otherwise he would be booked behind the bar. The complainant told the accused that at present, he has nothing to give him to which, accused told the complainant that he would come back tomorrow for obtaining aforesaid demanded amount. As complainant was not willing to pay the bribe amount, he filed a complaint before Anti Corruption Bureau, Surat. Thereafter, a trap was arranged and ultimately, the accused were caught red handed. Thereafter, the seizure memo and other procedure in relation to the trap was carried out in presence of the panchas. Hence, a complaint came to be lodged against the respondents accused for the offences punishable under Sections 7, 12, 13(1)(d) read with Section

13(2) of the Prevention of Corruption Act, 1988.

3. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the chargesheet against the respondent accused. The charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

3.1 In order to bring home the guilt, the prosecution has examined several witnesses and also produced documentary evidences.

3.2 At the end of the trial, after recording the statement of the accused under Section 313 of the CrPC and hearing the arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

4. Being aggrieved by the same, the appellant State has preferred the aforesaid Criminal Appeal before this Court.

5. By way of preferring the present appeal, the appellant State has mainly contended that learned trial Court has failed to appreciate the evidence on record and wrongly recorded the order of acquittal. It is further contended that the

learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed, as such.

6. Ms. Monali Bhatt, learned APP for the State has argued that vital ingredient i.e. demand is clearly coming out from the complaint itself and at the time of raid also, the complainant delivered tainted currency notes and therefore, demand itself is required to be inferred as the tainted currency notes were recovered from the possession of the respondent accused and hence, finding recorded by learned trial Court is against the provisions of law and against the evidence available on record. She has further argued that as per the panch No.1 who

accompanied the complainant at the time of trap, the complaint handed over the tainted currency notes to accused No.2 at his shop. In that view of the matter, demand and acceptance itself are proved. Learned APP has further argued that this Criminal Appeal is required to be allowed and the impugned judgment and order passed by the learned Trial Court is required to be quashed and set aside.

7. Mr.C.B. Dastoor, learned advocate for the respondentsaccused has supported the judgment rendered by the learned trial Court and has taken this Court through the evidence of the witnesses as well as impugned judgment and

order and argued that there is no evidence to prove the involvement of the present accused in the crime in question. He has further argued that in the present case, the vital ingredients regarding demand, acceptance and recovery are required to be proved by the prosecution. He has further argued that in his deposition, the complainant has deposed that the accused No.1 never demanded any amount of illegal gratification from him and whatever amount of Rs.500/was given to accused No.2 was unpaid price of utensils which was earlier purchased by the complainant. He has further submitted that if the evidence of panch No.1 is appreciated in its proper perspective, then there appears no clear conversation regarding demand and acceptance between the complainant and accused No.2 and on the contrary complainant himself deposed that he gave money to accused No.2 towards price of utensils and not as illegal gratification. In that view of the matter, if it is believed to be true that the tainted currency notes recovered from the accused but it is not proved that the said amount was against illegal gratification. In that view of the matter, main vital ingredients of illegal gratification, namely demand, acceptance and recovery are itself missing in the present case and so far as the recovery of tainted currency notes are concerned, the notes which were recovered from the from the possession of the accused becomes meaningless. He has further argued that in the series of decisions wherein the Hon''ble Supreme Court has clearly

laid down that in absence of clear and cogent evidence of demand and acceptance, no conviction could be recorded as such. Therefore, the present Criminal Appeal is required to be dismissed and the impugned judgment and order passed by the learned trial Court is required to be confirmed.

8. This Court has heard Ms.Monali Bhatt, learned APP for the appellantState and Mr.C.B. Dastoor, learned advocate for the respondentsaccused.

9. At this juncture, it would be fruitful to refer to some decisions of Hon''ble Apex Court. In the case of A. Subair vs. State of Kerala reported in (2009) 6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and 13(1) (d) of the Act, the Hon''ble Apex Court ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

10. In the case of State of Kerala and another vs. C.P. Rao reported in (2011) 6 SCC 450, the Hon''ble Apex Court, reiterating its earlier dictum, vis?vis the same offences, held that mere recovery by itself, would not prove the charge

against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

11. In a recent enunciation by the Hon''ble Supreme Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined by the Hon''ble Apex Court in the case of B.Jayaraj vs. State of A.P. Rerpoted in AIR 2014 SC(Supp) 1837, in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentially and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1) (d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal

gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

12. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, the Hon''ble Apex Court in the case of Sujit Biswas vs. State of Assam, reported in (2013)12 SCC 406 had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

13. In the light of the aforesaid ratio laid down by the Hon''ble Supreme Court and taking into consideration the statutory provisions contained under the Prevention of Corruption Act, 1988, evidence of the present case is required to be appreciated as such.

14. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as

the evidence on record in the nature of paper book. As per the prosecution

version, complainantThakorbhai Karshanbhai Patel was residing at village Mahuva, district Surat. On 29.11.1991, Police SubInspectorKhokhar, Mahuva raided the house of the complainant under the Prohibition Act and at that time, the complainant was at Vadodara and he was shown as absconder. On 27.1.1992, Police Constableaccused No.1 met with complainant at S.T. Bus Stand and apprised him regarding the prohibition case lodged against him. Thereafter, accused No.1Police Constable threatened the complainant to give them Rs.500/ otherwise he would be booked behind the bar. The complainant told the accused that at present, he has nothing to give him to which, accused No.1 told the complainant that he would come back tomorrow for obtaining aforesaid demanded amount. As complainant was not willing to pay bribe amount, he filed a complaint before Anti Corruption Bureau, Surat. Thereafter, a trap was arranged and ultimately, the accused were caught red handed and whereby the accused committed offence punishable under 7, 12, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act.

15. P.W.No.1Karshanbhai Patelcomplainant has deposed that he was residing at village Mahuva, District Surat and he was an agricultural labour. He has further deposed that On 29.11.1991, Police SubInspectorKhokhar, Mahuva raided

his house under the Prohibition Act and at that time, he was at Vadodara. He has further deposed that police officials who carried out the raid abused his wife due to which, he got excited and approached the Anti Corruption Bureau at Surat and lodged a complaint against the police officials. He has further deposed that though he lodged the complaint before the ACB and signed it, but he did not know what was mentioned in the complaint. He has further deposed that at the day of trap, he along with panch and other police officials reached at the bus stand and at that time, utensils shop keeperBhavarsinh Purohitaccused No.2 asked him about his unpaid amount of utensils and thereafter, he handed over Rs.500/to accused No.2 and at that time, ACB personnel came there and caught hold of the accused red handed and tainted currency notes were recovered from the possession of the accused. Thereafter, detailed panchnama was carried out in the presence of accused and the said tainted currency notes were also seized. However, he was declared hostile and he did not support the case of the prosecution. In the crossexamination, he has admitted that the accused never demanded any illegal gratification from him and he was unaware as to what was mentioned in the complaint. He has further admitted that he had never told the ACB Officials that accused No.2 demanded illegal gratification from him.

16. PW2Navinbhai ChoraniPanch No.1 has deposed

that he was serving as Clerk in the Office of Collector at Valsad and he was requisitioned by the prosecution to act as panch in the trap prior to holding the raid. He has further deposed that he went to the ACB Office and thereafter he was introduced to the complainant and was given to understand detail information as to how the raid was going to be conducted and as to how the anthracene powder is to be applied and as to how the experiment of ultraviolet

lamp is to be carried out. He has further deposed that he was instructed to accompany complainant and to hear as to what conversation took place between them and rest of the members were directed to see the incident out side the place of trap. He has further deposed at the day of trap, he along with complainant and other members reached at S.T. Bus Stand Mahuva but accused No.1 was not there and they were awaiting for him. He has further deposed that after 3 to 4 hours, accused No.1 came there over his motorcycle and called the complainant and complainant told him that he has brought the said money as agreed earlier and thereafter accused No.1 directed him to hand over the said amount to accused No.2 in his shop to which, the complainant handed over the said tainted currency notes to accused No.2. Thereafter, as decided earlier, prearranged signal was given to the other members of the raiding party and the ACB personnel came there and caught hold of the accused respondents red handed. Thereafter, panchnama was carried out in the presence of accused respondents and the said tainted currency

notes were seized. However, in his cross examination, he has admitted that the test of the ultraviolet was found to be positive. He has admitted that when the complainant went towards the shop of accused No.2, he followed him and as the complainant reached there, he gave prearranged signal to the ACB Personnel and the ACB reached there and without interrogating them, the ACB arrested accused respondents.

17. PW3 Chandrasinh Jawaharsinh has deposed that he was carried out the test of of ultraviolet lamp and the test of ultraviolet lamp was found to be positive.

18. PW4 Rameshchandra Chimanlal has deposed that he was serving as Police Inspector at the office of ACB, Surat and he recorded the complaint of the complainant. He has further deposed that he arranged the trap and he appointed panch in the trap prior to holding the raid and gave detailed information as to how the raid was going to be conducted and as to how the anthrance powder is to be applied and as to how the experiment of ultraviolet lamp is to be carried out and thereafter carried out the investigation and filed the chargesheet.

19. In the backdrop of the aforesaid factual position and on overall analysis of the evidence on record, the prosecution has to prove three main vital ingredients of illegal

gratification, namely demand, acceptance and recovery of tainted currency notes. So far as the demand and acceptance of the illegal gratification is concerned, the complainant has declared hostile during the course of trial and he did not support the case of the prosecution. In that view of the matter, nothing reveals from the evidences of important witnesses i.e. complainant and panchas. Indisputably, PW1 complainant had disowned the entire recitals in the complaint at Exh:54, but the prosecution miserably failed to prove the entire contents of the Exh:54 regarding demand on the part of accused No.1.

20. In view of the aforesaid evidence, so far as the evidence of the complainant

is concerned, in the present case, the complainant himself has admitted in his cross-examination that accused No.1 never demanded any illegal gratification from him. He has also admitted that he gave Rs.500/to accused No.2 towards unpaid price of utensils which was earlier purchased by him. In that view of the matter, if it is believed to be true that the tainted currency notes were recovered from the accused but it is not proved that the said amount was towards illegal gratification. In that view of the matter, main vital ingredients of illegal gratification, namely demand, acceptance and recovery are itself missing in the present case and so far as the recovery of tainted currency notes are concerned, the notes which were recovered from the

possession of the accused is meaningless. So far as the evidence of panch No.1 who accompanied the complainant at the time of the trap is concerned, in his cross-examination, he has admitted that when they were reached at the place of trap, the accused No.1 was not there and they waited for him and when accused No.1 arrived there, complainant voluntarily went to accused No.1 and stated that he has brought the money to which, accused No.1 told the complainant to pay the same to accused No.2. In that view of the matter, there appears that no previous conversation between them in order to hand over the said amount.

21. On overall evaluation of the evidence on record, nothing concrete fact reveals from the mouth of the panch No.1 and complainant to connect the accused with the crime. On the contrary, evidence on record clearly indicates that the complainant took some utensils from the accused and the price of utensils still remained unpaid and also the crux of deposition of the complainant is emerging out that he handed over the aforesaid tainted currency notes towards unpaid price of utensils and not as a bribe.

22. In view of the aforesaid nature of evidence, when demand and acceptance are not proved which are vital ingredients so far as establishing the guilt of accepting illegal gratification is concerned and in consequence whereof,

recovery of tainted currency notes in the trap from the respondent accused becomes meaningless. In this view of the matter, finding recorded by learned trial Court is in consonance with the evidence available on record. Therefore, as stated above, in absence of any specific and clinching evidence to prove all such acts by the respondents accused, the acquittal recorded by learned trial Judge is sustainable.

23. In view of the aforesaid nature of the evidence, the prosecution miserably failed to prove anything against the accused and so far as the demand and acceptance are concerned, nothing reveals from the evidences on record and nothing reveals from the depositions of the complainant and panch that the accused demanded and accepted bribe. In view of that, the learned trial Court has rightly recorded the findings which calls for no interference.

24 It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the

reasons assigned by the Court below are found to be just and proper.

25. In the result, this appeal fails and accordingly, it is dismissed. Bail bond, if any, stands cancelled. R & P be sent back to the trial Court, forthwith. Fine any paid, be returned forthwith. No order as to costs.