

(2012) 12 GUJ CK 0059
In the Gujarat High Court
Case No : Criminal Appeal No. 435 of 1998

State of Gujarat

APPELLANT

Vs

Mustakbhai Kasambhai Shaikh

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 20, 7

Citation : (2012) 12 GUJ CK 0059

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Judgement

Honourable Ms. Justice Harsha Devani

1. This appeal is directed against the judgment and order dated 16th April 1998 passed by the learned Special Judge, Bhavnagar in Special (A.C.B.) Case No. 10 of 1993, whereby he has acquitted the respondent-accused of the charges under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "the Act"). The case of the prosecution is that on 18th August, 1992, the complainant Firojbhai Akbarbhai Unvala lodged a complaint before the A.C.B. Police Inspector to the effect that the complainant's father Akbarali Gulamali Unvala expired on 30th November, 1988. His father had five properties, namely, two shops and three open plots at Ghogha. Upon the death of his father, the complainant made four applications for transferring the said properties in the name of his brother, mother and himself. At the relevant time, he had given necessary measurement and sketch fee. The complainant had also given additional Rs. 800/- other than by way of legal remuneration to the respondent-maintenance surveyor (hereinafter referred to as "the accused"), which was taken in the presence of the complainant's elder brother. It is further the case of the complainant that the accused told him that this amount was not sufficient for the purpose of completing the work, whereupon, the complainant had asked him as to how much expenditure he would have to incur, to which the accused replied that for three plots Rs. 6000/- and for two shops Rs. 2000/-, in

all, he would have to spend Rs. 8,000/-. The complainant, therefore, said that at present he did not have such amount and that after the work is over, he would give whatever was to be given, whereupon, the accused transferred the two shops in the name of the complainant, his brothers, his mother and his sister and sent a communication to come and take the property card after paying late fee. Thereafter, the complainant had gone to Ghogha and obtained the property cards after paying late fee of Rs. 15/-. At that time, the accused had told the complainant that his work was over, what about the money, whereupon, the complainant had told him that the work of three plots was still remaining, to which, the accused had said that he would now have to first pay the amount, only thereafter, the remaining work would be done. The complainant requested him to complete the work, after which, he would do whatever he could and arrange for the amount. However, because of his weak financial condition, he could not arrange for the amount demanded by the accused. A period of three months passed by and without any written or oral intimation, the application for transfer of the remaining plots came to be disposed of as filed and the complainant came to be informed accordingly. Hence, the complainant personally went to Ghogha and met the accused who told him that he had sent a written intimation; however, the complainant had not come. Hence, he should inquire at home. Whereupon, the complainant had come home and inquired from his mother, who had given him a cover which contained a letter dated 3rd June, 1992 sent by the respondent wherein certain details were called for. Therefore, the complainant obtained the necessary documentary evidence and went to Ghogha and met the accused, who told him that he would have to pay Rs. 8,000/-, only thereafter, the work would be done. The complainant, therefore, requested him that presently he did not have the means to pay such amount, hence, as and when arrangement could be made, he would pay the amount. However, the complainant was not in a position to arrange for such sum and hence he did not go to Ghogha. On 8th August, 1992, the complainant met the accused outside the door of the multi-storey building at Bhavnagar, whereby the complainant asked him as to what had happened as regards the property cards. In response to which, the accused had told him that his work would be done but whether he had made provision for the money. The complainant, therefore, told him that he was not in a position to pay such a huge amount at a time and that he would pay the entire amount in installments, whereupon accused had said that he had no objection, but the work would be done only after the amount is received. The complainant had told him that he would pay the entire amount by way of installments of Rs. 1000/-. The accused had then told him that at present his camp was at Bhandariya and that from 17th to 24th August, he had a camp at Ghogha. Hence, the first installment of Rs. 1,000/- should be paid to him during the said period during office hours. That if he pays the amount in this manner, the work would be done. In this manner, the accused had demanded illegal gratification of Rs. 8,000/- and as the complainant had not given the same, his work was stopped halfway and he was told that it would be completed only after he paid the entire amount. However, since the complainant did not

want to pay any amount by way of illegal gratification, he had come to the A.C.B. Office and lodged the complaint requesting that the needful be done.

2. Pursuant to the lodging of the above complaint, the same came to be registered and a trap was arranged. The A.C.B. Inspector called two Panchas and introduced them to the complainant. At that time, A.C.B. Inspector Shri Bhatt, A.C.B. Inspector Shri M.J. Pancholi and A.C.B. Inspector Shri A.B. Kureshi and other staff members were present. The Panchas were acquainted with the facts of the case and the complaint was written down and the signatures of the Panchas were obtained. Thereafter, the complainant handed over Rs. 1,000/- in the form of ten currency notes of the denomination of Rs. 100/- to the A.C.B. Inspector. Then, Shri A.B. Kureshi took out the anthracene powder and ultraviolet lamp from the cupboard and carried out the ultraviolet lamp demonstration. The currency notes handed over by the complainant were stained with the anthracene powder and necessary procedure was followed. Thereafter, Shri A.B. Kureshi placed the anthracene tainted currency notes in the left pocket of the shirt of the complainant and told him that till the amount is demanded by the accused, he should not touch the notes or his pocket. The Panch No. 1 was instructed to remain with the complainant and to hear whatever exchange that took place between the complainant and the accused. Panch No. 2 was instructed to remain with the rest of the members of the raiding party. A preliminary Panchnama came to be drawn regarding the above facts and the signatures of the Panchas were obtained. Thereafter, the members of the raiding party went to Ghogha and stopped the jeep near the court building. After alighting from the jeep, all the members went walking towards the City Survey office and the accused No. 2 and other members of the raiding party positioned themselves outside the said office. The Panch No. 1 and the complainant went into the office on the first floor. When they entered, the accused was sitting at his table. At that time, his peon was also present there. The accused asked his peon to bring water for them. The complainant drank the water and then started talking with the accused. The accused inquired about the identity of the Panch who had accompanied the complainant, to which the complainant said that he was a relative. The complainant, thereafter, told the accused that he had brought Rs. 1000/- as per his say and took out the money from the left pocket of his shirt and handed over the same to the accused, who accepted the same with his right hand and put the same in the right pocket of his pant. They talked with each other for about five minutes thereafter and the complainant then sought leave of the accused who said it was alright and then accompanied the complainant outside. When they got down the stairs, the complainant gave the prearranged signal to the A.C.B. Officers and the staff members, who immediately rushed there and, inquired about the name and other details of the accused and then searched his pocket, whereupon the amount of Rs. 1000/- was found. Upon carrying out the ultraviolet lamp demonstration, the ten currency notes of the denomination of Rs. 100/- were found to be stained with anthracene powder. After the aforesaid procedure was followed, the Panchnama was completed and

the signatures of the Panchas were obtained and a complaint came to be lodged against the accused alleging commission of the offences punishable under sections 7, 13(1) (d) read with section 13(2) of the Prevention of Corruption Act.

3. During the course of trial, the prosecution had examined three witnesses and had produced various documentary evidences. The trial court, upon appreciation of the evidence on record, found that the case of the prosecution was not believable and that the prosecution had not established its case against the accused beyond reasonable doubt and acquitted him of the offences with which he was charged.

4. Mr. K.P. Raval, learned Additional Public Prosecutor took the court through the deposition of the witnesses as well as the documentary evidence on record. It was submitted that the prosecution had proved the initial demand, which was made outside the multi-storey building. The accused had demanded Rs. 8000/- from the complainant for transferring the properties in the name of the complainant, his brother and his mother. However, since the complainant was not in a position to pay the entire amount at one time, he had requested that he be permitted to pay the same by way of installments, pursuant to which the accused had asked him to come and pay the first installment at the time when the camp was held at Ghogha. Under the circumstances, the initial demand of installment of Rs. 1000/- was duly proved by the prosecution through the evidence of the complainant. It was submitted that the version of the complainant was not shaken by the prosecution even during the course of cross-examination. It was submitted that at the time of the raid, though no demand had been made by the accused, it is apparent that the accused had accepted Rs. 1000/- in connection with the earlier demand made by him from the complainant. That the acceptance of Rs. 1000/- by the accused at the time of the trap proceedings was duly proved through the testimony of the complainant, the Panch witness and the Investigating Officer. It was submitted that once acceptance and recovery is proved, there is a presumption that such amount was obtained other than by way of legal remuneration and it was for the accused to discharge the burden of such presumption. It was submitted that the accused had failed to discharge such burden and to explain as to why he had accepted Rs. 1000/- from the complainant and, as such, the trial court was not justified in acquitting him of the offences alleged.

5. It was submitted that the complainant throughout is consistent regarding the demand of Rs. 8000/- in his examination-in-chief, which has not been challenged in his cross-examination. It was submitted that the accused had agreed to accept Rs. 1000/- by way of installments and that the amount of Rs. 1000/- was paid towards what was agreed earlier. Thus the demand, acceptance and recovery have been duly proved by the accused and such evidence has remained unshaken and has been proved through the depositions of the witnesses. Under the circumstances, the judgment and order of acquittal deserves to be quashed and set aside and the respondent is required to be convicted of the alleged

offences.

6. Opposing the appeal, Mr. H.N. Joshi, learned counsel for the respondent drew the attention of the court to the discrepancies in the testimony of the complainant. It was submitted that the story of the complainant is improbable and unnatural. He is an interested witness, who keeps stating different things at different points of time. It was submitted that the prosecution is required to establish a prior demand, a demand at the time of the incident, acceptance and recovery. In the facts of the present case, the prosecution has failed to establish that any amount was demanded at the time of the incident. Under the circumstances, no presumption can be drawn against the accused under the provisions of the Act. It was submitted that from the facts brought out in the cross-examination of the complainant, it is apparent that he is not a reliable witness. The accused has put forth a defence, which has been proved on a preponderance of probability. Under the circumstances, when the defence has proved its version on a preponderance of probability, the learned Judge was justified in giving the accused, the benefit of doubt and acquitting him. In support of his submissions, the learned counsel placed reliance upon the decisions of the Supreme Court in the case of C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, and in the case of Punjabrao Vs. State of Maharashtra, , reference to which, shall be made at an appropriate stage.

7. A perusal of the record and proceedings of the case indicates that the prosecution had examined, in all, three witnesses. The complainant Firozbhai Akbarali has been examined at exhibit-10. He has deposed to the effect that his father had expired on 13th November, 1988. That his father owned three plots and two shops. After his death, the complainant had given applications for transfer of his father's property in the name of his mother, elder brother as well as in his name and the required transfer fee was paid at that time. The accused was working as a Maintenance Surveyor in the City Survey office. Out of the said properties, two shops had been transferred in the names of his mother and brother and property cards in respect thereof were received, for which purpose, he had given the accused Rs. 1000/- for each shop. In all, for two shops, he had given Rs. 2000/-. However, the plots were not transferred in their names. Hence, he inquired from the accused as to what had happened about the work regarding transfer of the plots. The accused told him that the Rs. 2000/- that he had paid was not sufficient and he would have to pay Rs. 8,000/- for transfer of the three plots. Whereupon, the complainant said that since his financial condition was not good, he would pay Rs. 8,000/- in installments of Rs. 1000/- and that after such amount is paid, the accused may give him the papers of the property cards. That about ten days prior to the lodging of the complaint, he had met the accused at the multi-storey building at Bhavnagar and had told him that he had a camp at Ghogha from 17th to 24th August and that he should come and pay him the amount during that period. On 18th August, 1992, in the morning between 9:30 a.m. to 10:00 a.m., he had gone to the A.C.B. Office and had lodged the complaint. When he went to the office, A.C.B. Inspector Shri Pancholi was

present. A.C.B. Inspector Shri Bhatt was also present. Apart from these two officers, Shri A.B. Kureshi, Ishakbhai Belim as well as the driver named Rajendrasinh were also present. At that time, the Panchas had come and the complaint was recorded. He had brought ten currency notes of the denomination of Rs. 100/- and had handed over the same to Shri Kureshi of the A.C.B. Staff. He has further deposed to the effect that Shri Kureshi had carried out the necessary procedure in respect of anthracene powder and ultraviolet lamp demonstration. He has further deposed that when the raiding party reached the City Survey office, he and the Panchas had gone inside, where the accused and his peon were present in the office. They had sat there and had taken water and were talking with each other. He had inquired about who the Panch was, whereupon he had said that he is a relative. The complainant had then told him that he had brought Rs. 1000/- as demanded by him and he taken out the amount and handed it over to the accused who had accepted the same with his right hand and put the same in the right pocket of his shirt. After five minutes, they took leave of the accused who came down with them and after coming down, they had given the prearranged signal and the other members of the raiding party had come.

8. The complainant has been subjected to an extensive and searching cross-examination. In his cross-examination, the complainant is not consistent with regard to the amount demanded by the accused, inasmuch as, while in the complaint and in his examination-in-chief, he has stated that he had given the accused Rs. 2000/- for obtaining the property cards in respect of the shops, in his cross-examination, he has initially reiterated the same version by stating that he did not remember when such amount was given. Thereafter, he has stated that the accused had demanded Rs. 2000/- from him after the property card was received. He had paid such amount to the accused at Ghogha. He had paid Rs. 2000/- at a time and not in installments. Till such time when he had paid Rs. 2000/-, there was no talk for payment of any other amount. However, he has, thereafter, changed his stand and said that the accused has, right from the beginning, demanded Rs. 8000/- from him, out of which, Rs. 2000/- had been paid and Rs. 6000/- remained outstanding. He has further stated that except for Rs. 2000/-, he had not paid any other amount till the date of the trap. In further cross-examination, he has stated that he had, in all, paid the accused Rs. 200/- on four occasions and had thus paid, in all, Rs. 800/- to him other than by way of legal remuneration. That prior to the incident, he had not given Rs. 2000/- to the accused but had paid Rs. 200/- on four occasions to the accused and had, in all, paid only Rs. 800/-. He has denied that he had given Rs. 1000/- each for obtaining the property cards of the two shops. In his cross examination he has further stated that in his complaint, he has stated that Rs. 8000/- was demanded from him and that he was to pay Rs. 8000/- in installments of Rs. 1000/-. That out of Rs. 8000/-, the first installment of Rs. 1000/- was taken at the time of the trap. It has also come out in the cross-examination of the said witness, that after the accused demanded Rs. 8000/-, on the same day, he had told him that he

would pay the same in installments of Rs. 1000/- and that after ten days, he had lodged the complaint. He has further stated that the accused had demanded Rs. 8000/- from him on four to five occasions. However, he did not remember exactly on which occasion, such amount had been demanded. He has further stated that prior thereto, he had not paid any amount to the accused in respect of Rs. 8000/-. In his cross examination he has stated that when the accused came for measuring of the plots, he has to give him some amount towards refreshments, which amount he was giving in the office by way of Rs. 200/- on each occasion. In all, measurements were carried out on four occasions and in all, he had paid Rs. 800/- to the accused. Before he obtained the property cards, he had paid the accused Rs. 800/- for the purpose of refreshments and after Rs. 800/- was paid to the accused, he had demanded Rs. 8000/- from him.

9. In the cross-examination of this witness, it has further been brought out that the accused was acquainted with the officers who had taken part in the raid and, more particularly, Shri Kureshi, who had conducted the ultraviolet lamp demonstration and had taken an active part in the trap proceedings. It has also been brought out that he was aware that the office of the A.C.B. is open at 8:30 a.m. in the morning. He had stated that when he goes to drop his son at school in the morning, at that time, the office is open. However, subsequently, he has corrected himself and stated that did not have a son or a daughter at the relevant time and that he used to go to drop his niece to the said school. In his cross-examination, it has further been revealed that his father expired in the year 1988. At that time, they had several properties in the Navapara area of Bhavnagar. Proceedings for transfer of the said properties in his and his brother's name were initiated after the death of his father. He knew Najuddin Abdulbhai since his childhood and that Najuddin's father resided in the police quarters. Najuddin has a cycle shop, which was situated opposite to the Navapara B-Division Police Station. He often used to visit the said shop, above which the accused used to reside. Hence, he was acquainted with the accused. The accused was his friend and had helped him in transferring the properties in his name. That he had good relations with the accused and they used to visit each other's houses.

10. The prosecution has also examined Shri Umeshbhai Talakchand Shah at exhibit-18. He has inter alia testified that after he was called to the A.C.B. Office and the complaint was registered and the ultraviolet lamp demonstration was conducted, they had left the said office to go to the City Survey office. Upon reaching there, they had met the Maintenance Surveyor and upon the complainant inquiring about the mutation entries in respect of his house, the Maintenance Surveyor had taken out the files in respect thereof and explained the same to the complainant. Thereafter, the complainant had asked the peon to bring him some water, after which he (the complainant) asked the maintenance surveyor whether he should give as per the prior talk, whereupon the accused said yes and the complainant took out the anthracene tainted notes and handed over the same to the accused, who put the same in his pocket. Thereafter, the

peon brought the water and after consuming the same, he and the complainant went down. The accused stayed in the office. Subsequently, after some time, the accused also came downstairs, whereupon the members of the police staff arrived and caught him (the accused). Thereafter, the accused had handed over the amount, which was given to him by the complainant. The A.C.B. Inspector had asked the accused the purpose for which he had taken the money, in response to which the accused had said that he had taken the same by way of loan. Thereafter, the numbers of the currency notes recovered from the accused were matched with the numbers of the currency notes recorded in the preliminary Panchnama and were found to tally. Thereafter, the ultraviolet lamp experiment was again carried out and the hands of the accused were found to be stained with anthracene. In his cross-examination, he has stated that when they went into the office, the peon was sitting there. Till the complainant requested for water, the accused did not assign any work to the peon which would require him to leave the office. When they approached the accused, after five to ten minutes, the complainant had requested for water and the peon was sent to fetch the same. When they approached the accused and the peon was sent to get the water, the accused had taken out the complainant's file and had explained to him as to why there was a delay in processing each file and had also pointed out the deficiencies in each case. The complainant was also explained as to how such deficiencies should be removed. As per the say of the Panch, the conduct of the accused with the complainant was cooperative like that of any Government servant. The accused had not even indirectly asked the complainant as to whether he had brought the money with him and had not made any mention in this regard. When the peon went to fetch the water, it was the complainant, who had said that he had brought the amount as per the say of the accused. Except for that, the complainant had not said anything and the accused had asked him to give the amount. He has further stated that the accused had not, in any manner, tried to conceal the aforesaid transaction. The accused had taken the money and had put the same in the pocket of his pant. In his cross-examination it has been further revealed that when the accused was showing the papers in the file to the complainant, he had said that it would take two to three months for the work to be completed. According to the said witness, if a stranger was listening the conversation between the accused and the complainant, it would not be possible for him to say as to whether the same towards illegal gratification or by way of a loan. He has further admitted that from the nature of the conversation between the accused and the complainant, as well as looking to the explanation given by the accused, it cannot be said that the explanation given by the accused that the amount was taken by way of a loan, is not acceptable. He has further stated that after the amount was given, they had sat there for about four to five minutes with the accused. The accused had also come downstairs with them, at which point of time, the A.C.B. Officers and the staff members had come. He has also stated that the files which were seized by the A.C.B. Officers were the files which the accused was showing to the complainant. He has further stated that in the A.C.B. Office, the complainant was instructed

that no amount should be given unless the same is demanded by the accused and the complainant was also told as to what he should talk with the accused. However, the complainant had not made any conversation in terms of the instructions. That, by the time the peon had come with the water, the amount had already been given.

11. The prosecution has also examined the Investigating Officer Shri Suryakantbhai Ambalalbhai Bhatt, whose deposition is more or less in line with that of the Panchnama of trap proceedings. In his cross-examination, it has been brought out that A.B. Kureshi came to the office after him. When A.B. Kureshi came to his office, he had a talk with the complainant and that he was not aware that the complainant and A.B. Kureshi were acquainted with each other. That if he had known that A.B. Kureshi and the complainant had known each other earlier and had relations, he would not have included him in the raiding party. Further cross-examination of this witness has revealed that the Investigating Officer, during the course of his investigation, has not inquired as to when and why A.B. Kureshi had come to Bhavnagar. A.B. Kureshi had come to his office only on the day of the incident and not prior thereto and that A.B. Kureshi's headquarter was at Rajkot. That he had requested A.B. Kureshi that if he was not otherwise busy, he should join them in the raid, which request he had accepted. At that time, A.B. Kureshi had not informed him that he was already acquainted with the complainant and that he had purchased a house from the complainant and that he was a neighbour and friend of the complainant. According to this witness, if any member of the staff is closely associated with the complainant, he does not include such member in the raiding party. That he had not asked the complainant whether he knew any of the members of the raiding party. That when he introduced the complainant to the raiding party, neither A.B. Kureshi nor any other members of the staff had informed him that they were already acquainted with the complainant or that they were close friends. It has further been brought out from his cross-examination that the files which the accused had produced were not tainted with anthracene powder. According to the Investigating Officer, if the accused had touched the files after the amount was accepted, anthracene powder marks would have been found on such files. Further cross-examination has revealed that during the course of his investigation, no material has been brought on record to show that the complainant was intentionally delaying the processing of the applications made by the complainant.

12. The accused has also examined himself as a defence witness. In his deposition, he has stated that the complainant had made five applications for transfer of properties in the name of his mother, his brother and himself. In respect of one application, the Deputy Collector had, in appeal, remanded the matter to his office and the said proceedings were still pending. Insofar as the other four applications are concerned, property cards in respect of two shops had already been given to the complainant. The remaining two properties were not in the name of his father and the same were also not measured. That inquiry was

required to be made u/s 37(2) of the Bombay Land Revenue Code in this regard. Upon the complainant paying the measurement fees, he had carried out the measurement and such measurement was carried out only once and both the plots were measured at a time. He has denied that the complainant had given him Rs. 200/- on four occasions. He has also stated that it had never happened that he had taken Rs. 2000/- from the complainant for giving him the property cards. He has also produced the receipt of the amount received towards the measurement of the plots. He has further deposed to the effect that some documents were required for making an inquiry in respect of both the plots of the complainant. Hence, the office had sent letters intimating the complainant to remove such defects. However, no reply was received in response to such letters and neither did the complainant nor any member of his family come to the office. Insofar as the case which was remanded to his office is concerned, he has deposed that all such cases were taken in turn in order of priority and that till the said date, the case of the complainant was not taken up. He has further stated that a few days prior to the date of the trap, he had met the complainant at the multi-storey building at Bhavnagar, at which point of time, he had told him that his mother was ill and that upon taking her to the doctor, he did not have the amount for a treatment. Hence, he had requested the complainant to give him Rs. 1000/- by way of a loan and that he had not demanded any amount by way of illegal gratification from the complainant. He has further stated that the complainant was his friend and, therefore, when he came to meet him at the office on the day of the trap, he has come downstairs so as to offer him some tea. The accused has been cross-examined by the prosecution, however, nothing substantial has been elicited from his cross-examination. In his cross-examination, he has stated that at the time when he requested for a loan from the complainant, his mother was undergoing treatment at the hands of Dr. Girishbhai Mehta as well as Dr. Durgeshbhai Dave.

13. In the backdrop of the evidence which has come on record, it is apparent that the complainant has been subjected to an extensive searching cross-examination, whereby various material discrepancies in his evidence have been brought out. In fact the very basis of the complaint appears to have been dislodged by the defence as the very version of the complainant that the accused had demanded Rs. 8,000/- from him does not appear to be reliable, inasmuch as, the complainant has deposed different things at different points of time during the course of his examination-in-chief and in the cross-examination. While at one point of time he says that initially he had paid Rs. 1000/- for each shop for the purpose of obtaining the property cards and that the accused had demanded Rs. 8000/-, at another point of time he says that right from the inception the accused had demanded Rs. 8000/- out of which Rs. 2000/- had been paid towards the property cards for two shops and that Rs. 6000/- remained to be paid. Thereafter, he again changes his version and says that prior to the trap proceedings, no amount out of the Rs. 8000/- which was demanded by the accused had been paid to him. He has also said that he had not paid Rs.

2000/- to the accused for obtaining his property cards in respect of the two shops. Thereafter, he once again changes his version and says that he had paid Rs. 200/- on four occasions for the purpose of measuring his land. Thus, the very genesis of the incident itself is doubtful inasmuch as it is not clear that as to on which occasion, the accused had demanded Rs. 8000/- from the complainant.

14. Moreover, the evidence of the witnesses reveals that the accused was a friend of the complainant. Under the circumstances, the defence version that the mother of the accused being ill, he needed money for her treatment and had therefore, requested the complainant to give him Rs. 1000/- by way of a loan for such purpose, is quite plausible.

15. Besides, the other evidence which has brought on record indicates that the A.C.B. Inspector Shri A.B. Kureshi was a friend of the complainant and that despite his being stationed at Navapara, he had come to Bhavnagar on the day of the trap and had accompanied the raiding party in the trap proceedings. Not only that, he had taken an active part in the entire proceedings which is evident from the Panchnama as well as from the testimonies of the witnesses which reveal that it was he, who conducted the ultraviolet lamp demonstration, etc. From the deposition of the Investigating Officer, it is apparent that normally, persons who are known to the complainant are not taken along on a raid carried out during the course of trap proceedings, whereas in the facts of the present case, despite the fact that the complainant was well acquainted with many of the members of the raiding party, such fact was not disclosed to the Investigating Officer and such members had accompanied the raiding party during the course of the trap proceedings.

16. Having regard to the overall evidence, which has come on record, it is apparent that the complainant has a wavering mind and keeps changing his stand from time to time. Having regard to the overall evidence which has come on record, the defence of the accused that he had accepted such amount by way of a loan, does not appear to be improbable. Moreover, from the depositions of the witnesses, it is apparent that during the course of the trap proceedings, there was no demand made by the accused for such sum. On the contrary, it was the complainant, who on his own had said that he had brought the amount as requested by the accused. Thus, from the depositions of the complainant as well as the Panchas, it is apparent that no demand for illegal gratification was made by the accused during the course of the trap proceedings. It may also be recalled that the Panch No. 1 in his cross-examination has stated that the accused had explained all the defects in the papers submitted by the complainant to him by taking out the relevant files and that the conduct of the accused with the complainant was cooperative like that of any Government servant. The accused had not even indirectly asked the complainant as to whether he had brought the money with him and had not made any mention in this regard. When the peon went to fetch the water, it was the complainant, who had said that he had brought the amount as per the say of the accused. When the accused was

showing the papers in the file to the complainant, he had said that it would take two to three months for the work to be completed. According to the Panch No. 1, if a stranger was listening the conversation between the accused and the complainant, it would not be possible for him to say as to whether the same was towards illegal gratification or by way of a loan and that from the nature of the conversation between the accused and the complainant, as well as looking to the explanation given by the accused, it cannot be said that the explanation given by the accused that the amount was taken by way of a loan, is not acceptable. Thus, the Panch No. 1 who was witness to the exchange between the complainant and the accused and would be the best person to observe the conduct of the parties, has expressed the opinion that having regard to the conduct of the accused at the time of the trap, it cannot be ruled out that the amount was taken by way of a loan.

17. In the aforesaid premises, viewed in the light of the overall evidence which has come on record, the version of the defence being a plausible one, the defence had duly rebutted the presumption against the accused. It was, therefore, for the prosecution to then prove its case beyond reasonable doubt against the accused. However, the prosecution has failed to do.

18. At this juncture, it may be germane to refer to the decision of the Supreme Court in the case of *C.M. Girish Babu v. C.B.I. Cochin* (supra), wherein the court has held that it is well settled that presumption to be drawn u/s 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the accused received the amount towards gratification. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made u/s 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt.

19. Applying the above principles to the facts of the present case, apart from the fact that the prosecution has, in the first place, not even established that the accused had demanded any amount by way of illegal gratification during the course of trap proceedings, the presumption if any, u/s 20 of the Act, has been successfully rebutted by the accused through cross-examination of the prosecution witnesses and the testimony of the accused. On a preponderance of probability, the defence version appears to be a probable one. The prosecution has failed in establishing the guilt of the accused beyond reasonable doubt that the accused received any illegal gratification.

20. The learned Special Judge, upon appreciation of the evidence on record, has given sufficient, cogent and convincing reasons for the purpose of holding that the prosecution has failed to prove its case against the accused beyond reasonable doubt and acquitting of the charges levelled against him and the prosecution has failed to persuade this court to take a different view. For the foregoing reasons, the appeal fails and is, accordingly, dismissed.