PRAKASHCHANDRA SHANKARBHAI PATEL Vs STATE OF GUJARAT

Court: GUJARAT HIGH COURT

Date of Decision: June 15, 2017

Acts Referred: Code of Criminal Procedure, 1973, Section 313 - Power to examine the accused
Indian Penal Code, 1860, Section 161 -
Prevention of Corruption Act 1988, - Section 19, Section 20, Section 7, Section 12, Section 13(2), Section 13(1)(d)

Hon'ble Judges: R.P.Dholaria

Bench: Single Bench

Advocate: ARSH R SHAIKH, RZ SHAIKH, KL PANDYA

Judgement

1. Both these appeals arise out of the same incident and involve common questions of law and facts and hence, they are being decided by this

common judgment.

2. Criminal Appeal No.550 of 1998 is preferred by the appellant - Prakashchandra Shankarbhai Patel - original accused No.1 and Criminal

Appeal No.618 of 1998 is preferred by Yasinkhan Rasulkhan Pathan - original accused No.2 against the judgment and order dated 12.6.1998

passed in Special (ACB) Case No.6 of 1994 by learned Special Judge, Nadiad whereby both the original accused were convicted for the offence

under sections 7, 13(1)(d), (i)(ii)(iii) read with section 13(2) and 12 of the Prevention of Corruption Act 1988 (""the Act"" for short) and section

161 of IPC and sentenced to undergo two years rigorous imprisonment and to pay fine of Rs.2000/-, in default, to undergo further three months

simple imprisonment for each of the offences and the sentences were ordered to run concurrently.

3. The short facts giving rise to the present appeal are that accused No.1 was serving as Maintenance Surveyor at Sarsa, Taluka Anand, whereas

accused No.2 was Peon in the said office. It is alleged that the complainant who was resident of Chaklasi met accused No.1 for getting transferred

the name from his father to his brother Maiyuddin. The complainant met accused No.1 along with his brother and tendered the application along

with requisite writing of family settlement. It is alleged that at that time, accused No.1 directed the complainant to talk with accused No.2 wherein

accused No.2 demanded illegal gratification of Rs.2000/- for changing the name. It is alleged that the said amount of illegal gratification was scaled

down to Rs.800/- and the complainant was directed to remain present along with demanded amount on 18.8.1993. As the complainant was not

willing to pay the said amount of bribe, he lodged the complaint. On 18.8.1993 accused No.1 was absent and, therefore, on 19.8.1993 trap was

laid and during the course of trap, accused No.2 was caught red handed along with tainted currency notes and, thereby, the accused committed

the offence, as alleged.

4. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the chargesheet against the accused. The charge

was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

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

5.1 At the end of the trial, after recording the statements of the accused under section 313 of the Criminal Procedure Code, 1973 and hearing the

arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

5.2 Being aggrieved by the same, the appellants ? original accused have preferred the aforesaid Criminal Appeals before this Court.

6. By way of preferring the present appeals, the appellants - original accused have mainly contended that learned trial Court has failed to

appreciate the evidence on record and wrongly recorded the order of conviction. It is further contended that 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 conviction is required to be reversed, as such.

7. Mr.R.Z.Shaikh, learned advocate for the appellants - original accused has taken this Court through the entire Record and Proceedings as well

as paper book and read over the evidence of the material witnesses and argued that the prosecution miserably failed to establish vital ingredients

i.e. demand, acceptance and recovery. He submitted that charge itself is defective as the accused are not charged for recovery made thereof from

the accused and on that count, the impugned judgment is required to be reversed as such. He submitted that there was no file pending before the

accused for anything on the day of demand of bribe and therefore, there was no question of demand. In support of his submission, Mr.Shaikh has

relied upon the decision of this Court in the case of State of Gujarat Vs Vijaychandra N.Pandit, reported in 2013 Cri.L.R. (Guj.) 325, more

particularly, paras 10 and 11. He submitted that sanctioning authorities who accorded sanction against the appellants were not competent to

accord such sanction and sanction accorded by them suffers from the vice of nonapplication of mind. He submitted that in one of the sanctions, the

sanctioning authority has narrated that there was point of determination which is not the fact revealing from the case and on that count also,

sanction itself becomes tainted. In support of his submission, Mr.Shaikh has relied upon the decision in the case of Nanjappa Vs State of

Karnataka, reported in AIR 2015 SC 3060. He submitted that the complainant was not competent to make any such complaint before the ACB

as he was not the applicant before accused No.1 for mutating the name in the property concerned. He submitted that since the documents as well

as seized articles like tainted currency notes as well as clothes were not sent for analysis by the FSL and therefore also, the impugned judgment of

conviction becomes vulnerable and not sustainable. In support of his submission, Mr.Shaikh has relied upon the decision of the Calcutta High

Court in the case of Kailash Chandra Pandey Vs State of West Bengal, reported in 2003 Cri.L.J. 4286, more particularly, paras 56 to 60. Paras

56 to 60 read as under.

56. Moreover, it has also come out from the evidence on record that at the time of alleged payment, one Joginder Singh, Manager of

the Singapore Airlines was present in the chamber of the appellant. Apart from the aforesaid two important aspects, some other

discrepancies have also been noted in the evidence, which are as follows:

1. No signature of the appellant was taken on the seizure list.

2. GC notes and the pant were not sent to the Forensic Laboratory for Chemical Examination. The pyjama allegedly

handed over to the appellant in place of the pant that was taken off has not been produced.

3. Money was allegedly received by the right hand of the appellant, kept in the left hand pocket, but hand wash was

taken of the right hand only.

4. The amount covered by the Impugned bills had already been releases prior to alleged tender of the money to the

appellant.

5. The envelope containing the alleged money had not been produced. And lastly it has come out that there was no

evidence with regard to the offer of personal search of the searching party by the appellant.

57. It is quite settled principles of law that the minor discrepancy and the contradiction in the testimony of the prosecution witnesses,

which do not affect the merit of the prosecution case that should be ignored. But, if those were of such grave nature as to demolish

the case of the prosecution leading to a conclusion that the prosecution had failed to prove by any cogent, reliable and trustworthy

evidence that no offence at all had been committed by the appellant, then appellant deserves to be acquitted from a case.

58. On a close scrutiny of the evidence and the materials of the instant case and looking into the discrepancies and contradictions as

has come out in the evidence on record, specially with regard to the presence of the person at the time of the alleged payment of

gratification and presence of another person such as Manager of Singapore Airlines in the chamber of the appellant at the relevant

time, it is rather difficult to accept that really there was such payment as alleged by the prosecution to the appellant.

59. Apart from the aforesaid fact in the absence of offer to have a personal body search of the searching party by the appellant, the

possibility of implanting the alleged money in the chamber of the appellant cannot at all be ruled out and the total chain effect of the

discrepancies and contradictions as has come out in this case has prompted me to come to a conclusion that prosecution has failed in

the instant case, to prove beyond reasonable shadow of doubt that in fact there was real offer and acceptance of the payment by way

of gratification and that being the position, upon sifting the entire materials, I am rather prompted to hold that the prosecution in the

instant case has not been able to bring home the guilt of the accused appellant for accepting gratification beyond all reasonable

shadow of doubt and as such the appellant, on the existing evidence and materials on record, is entitled to get the advantage of

benefit of doubt in this case.

60. Now, in view of the discrepancies noted above in the evidence adduced from the prosecution side and taking into consideration

the defence version as has been pushed forward by way of cross-examination of the prosecution witnesses and viewing the same

from the point of prepondence of probabilities, I am rather prompted to hold with certainly that in this case, prosecution has failed to

bring home the guilt of the accused appellant under Section 7 of the Prevention of Corruption Act, 1988 and this accused-appellant

is, therefore, entitled to get an order of acquittal from this case upon benefit of doubt. The trial Judge, therefore, was not justified in

awarding conviction and punishment to the accused-appellant.

He further submitted that though in the complaint, there appears demand as alleged, but at the time of trap, neither from the evidence of the

complainant -PW 1 nor from the evidence of the shadow panch - PW 2, it is being concretely revealed as to whether either of the accused had

made any express demand at the time of trap and therefore for want of making any express demand, though recovery might have been effected

from the person of accused No.2, it would render meaningless and therefore, vital ingredients i.e. demand, acceptance and recovery remain

unestablished as such. He submitted that learned trial Judge has not properly appreciated the evidence on record and wrongly recorded the finding

and convicted the appellants accused as such. Lastly, Mr.Shaikh submitted that the impugned judgment and order of conviction is required to be

quashed and set aside.

8. 1 Alternatively, Mr.Shaikh, learned advocate for the appellants ? accused has submitted that if this Court may come to the conclusion upholding

the conviction recorded by learned trial Court, in that event, this Court may consider the fact that the trap was laid for about 24 years back and

during the interregnum period, the accused have suffered a lot by way of facing departmental proceedings and that they are already superannuated

and suffering from various illness and taking into consideration all these aspects, the Court may reduce the sentence from two years to one year

which is the minimum sentence prescribed under the law.

9. On the other-hand, Mr.K.L.Pandya, learned APP has supported the judgment rendered by learned trial Court. He submitted that this is a fit

case wherein learned trial Court has considered voluminous evidence in its proper perspective and rightly convicted the accused which calls for no

interference. He further submitted that finding recorded by learned trial Court is based upon the concrete and clinching evidence. He submitted that

learned trial Court has recorded ample reasons based on the evidence on record for convicting the appellants accused and ingredients as regards

to demand, acceptance and recovery are proved in accordance with law and, therefore, this Court may dismiss the appeals filed by the accused.

He submitted that the evidence of the complainant as well as shadow panch is in consonance with each other their oral testimonies are getting

corroboration from the contemporaneous panchnama prepared and their statements which were recorded after the trap coupled with the

corroboration from the evidence of the members of the raiding party and, therefore, the prosecution has successfully established the vital

ingredients, i.e. demand, acceptance and recovery. He submitted that the accused were clearly charged for demand, acceptance and recovery

which is clearly spelling out from the charge itself. He submitted that PW 4 and PW 5, both were appointing and disciplinary authorities so far as

accused are concerned and they were competent to accord the sanction as envisaged under section 19 of the Act. He submitted that oral evidence

of PW 4 and PW 5 clearly indicates that after studying entire material, they have accorded sanction which is in accordance with law. He, therefore,

submitted that this Court may not interfere with the impugned judgment and order of conviction in view of the cogent and clinching evidence on

record.

10. This Court has heard Mr.R.Z.Shaikh, learned advocate for the appellants - original accused and Mr.Pandya, learned APP for the State.

11. 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.

12. As per the prosecution version, as stated above, accused No.1 was serving as Maintenance Surveyor at Sarsa, Taluka Anand, whereas

accused No.2 was Peon in the said office. It is alleged that the complainant who was resident of Chaklasi met accused No.1 for getting transferred

the name from his father to his brother Maiyuddin. The complainant met accused No.1 along with his brother and tendered the application along

with requisite writing of family settlement. It is alleged that at that time, accused No.1 directed the complainant to talk with accused No.2 wherein

accused No.2 demanded illegal gratification of Rs.2000/- for changing the name. It is alleged that the said amount of illegal gratification was scaled

down to Rs.800/- and the complainant was directed to remain present along with demanded amount on 18.8.1993. As the complainant was not

willing to pay the said amount of bribe, he lodged the complaint. On 18.8.1993 accused No.1 was absent and, therefore, on 19.8.1993 trap was

laid and during the course of trap, accused No.2 was caught red handed along with tainted currency notes and, thereby, the accused committed

the offence, as alleged.

13. PW 1 - Rahimuddin Zafarali Saiyad has been examined at Exh.18. The witness has deposed that trap was carried out on 19.8.1993 and that

he met the accused No.1 on 17.8.1993 in his office, at that time, his brother was also accompanied with him and they handed over the application

for mutating the name of his brother in place of his father. The witness has deposed that at that time, accused No.1 demanded Rs.2000/- as the

amount of illegal gratification, to which he shown inability to pay and therefore, after negotiation, the amount was scaled down to Rs.800/- and he

was directed to report on the following day i.e. on 18.8.1993. The witness has deposed that as he was not willing to pay the bribe, he lodged the

complaint before the Police Inspector, ACB, Nadiad and that his complaint was recorded and necessary formalities for requisitioning the panch as

well as holding the trap were carried out by the ACB officials. The witness has deposed that on 18.8.1993, though the complainant attempted, but

accused No.1 was absent and therefore, accused No.2 told him to report on the next day and therefore on 19.8.1993, he visited the office of

accused No.1 along with shadow panch No.1 wherein accused No.1 was found on his chair. The witness has deposed that at that time, the

complainant as well as panch were offered chair and thereafter tea was served to them. The witness has deposed that thereafter the complainant

asked regarding his work, at that time, accused No.1 asked to the witness that if he would pay the money as agreed, then his work would be

done, to which, the complainant stated that he would pay the amount, but when his work would be done and when accused No.1 would give the

papers. The witness has deposed that thereafter he told accused No.1 that though he agreed to pay Rs.900/- but he has brought only Rs.800/-, at

that time, accused No.2 told him to come out from the chamber of accused No.1 and demanded money, to which, the witness has stated that he is

not ready to hand over the money to accused No.2, but he would hand over the money to accused No.1 only. The witness has deposed that

thereafter he and accused No.2 again went into the chamber of accused No.1 wherein he again asked accused No.1 to accept the money, to

which accused No.1 directed the witness to hand over the money to accused No.2 and hence, he handed over the money to accused No.2 who

accepted the said amount and placed the same into pocket of his pant without counting. The witness has deposed that thereafter he gave

prearranged signal and hence other members of the raiding party arrived there, at that time, both the accused were found there and thereafter

search and seizure was carried out. The witness has deposed that tainted currency notes were found from the person of accused No.2 through

panch No.1. Thereafter, search and seizure report as well as second part of the panchnama was carried out. Very lengthy cross examination of this

witness was made by learned advocate for the accused which is running into 15 pages, but nothing worth has come out from his cross examination.

It is worth to note that in the said lengthy cross examination of the witness, the procedure for mutating the name is detailed, but the vital ingredients

i.e. demand, acceptance and recovery as has been deposed by the appellants remained to be unshaken.

14. PW 2 - Ganpatsinh Motisinh Parmar has been examined at Exh.24. The witness has deposed that he was serving as Clerk in the office of the

Taluka Panchayat at the relevant time, and he was requisitioned as shadow panch. The witness has deposed that he was accompanied with the

complainant at the time of trap. At the time of trap, when they reached to the office of the accused, at that time, they offered seat by gesture of

accused No.1 and water and tea were also served to them. The witness has deposed that thereafter the complainant initiated conversation asking

as to what has happened to his papers, at that time, accused No.1 demanded money as previously agreed and said that work would be done

thereafter. The witness has deposed that thereafter the complainant asked as to when he would come for collecting papers, at that time, accused

No.2 told him to come on Monday, but accused No.1 told that on Monday, there would be holiday and therefore, he was asked to come later on.

The witness has deposed that thereafter accused No.2 told the complainant to hand over the money to accused No.2 and hence, the complainant

took out money from the pocket of his shirt and handed over the same to accused No.2 and then accused No.2 came out from the chamber. The

witness has deposed that at that time, the complainant insisted for handing over the money to accused No.1 instead of accused No.2, but accused

No.1 told the complainant to hand over the money to accused No.2 and thereafter the complainant handed over the tainted currency notes to

accused No.2 who accepted the same without counting and placed the same in the pocket of his pant. The witness has deposed that thereafter the

complainant gave prearranged signal and hence the members of raiding party arrived there, search and seizure was carried out and the numbers of

tainted currency notes recovered from the hand of accused No.2 were tallied with the previous panchnama. The witness has deposed that test of

ultra violate lamp was found positive so far as the accused No.2 is concerned and that rest of the procedural aspect carried out in his presence is

also detailed. Very lengthy cross examination of this witness was carried out, however, vital ingredients as regards to demand, acceptance and

recovery have not been challenged during the course of cross examination of this witness and, therefore, the same remained unchallenged as such.

15. PW 3 - Anilbhai Narayan Trivedi has been examined at Exh.32. The witness has deposed that he was serving as Superintendent, Land

Records-cum-Consolidation Officer at the relevant time and that papers of accused No.1 were placed before him and after studying the papers

and perusing the note prepared by his subordinate staff, he accorded sanction. In the cross examination, nowhere the defence has challenged the

competency of this witness and also not challenged that he was not appointing and disciplinary authority. The sanction to prosecute accused No.1

is placed on record vide Exh.33.

16. PW 4 - Valsingbhai Gangjibhai Bhabhor has been examined at Exh.34. The witness has deposed that at the relevant time, he was serving as

Superintend, Land Records cum Consolidation Officer at Nadiad and that he was appointing and disciplinary authority of accused No.2. The

witness has deposed that all necessary papers were placed before him by his subordinate staff along with office note and after studying and

perusing the same, he accorded sanction to prosecute accused No.2. In the cross examination of this witness, the defence has not questioned as to

whether he was not competent authority for appointment as well as disciplinary action.

17. PW 5 - Kalsinh Vijabhai Baraiya has been examined at Exh.42. The witness has deposed that he was serving as Police Inspector, ACB,

Nadiad at the relevant time and that he recorded the complaint and thereafter he arranged for trap, carried out the trap. The witness has detailed as

to how, he carried out the trap and his deposition is in the nature of corroboration to the evidence of PW 1 and PW 2.

18. The accused have also examined DW 1 - Gopalbhai Kanchanlal Mehta at Exh.52. DW 2 - Chandubhai Ravjibhai Patel has been examined at

Exh.53. DW 2 has deposed that on the day of trap, he was present, at that time, two persons arrived in his office and thereafter the Peon offered

water and tea. The witness has deposed that thereafter one of them took out money and placed on the table and asked for the work, at that time,

the Peon who was passing nearby him and from behind, the money was placed into his pocket, but the money has fallen on the ground due to

scuffle and thereafter some other persons came there.

19. At this stage, it would be fruitful to make reference to the decision of the Honourable Apex Court in A.Subair Vs State of Kerala, (2009) 6

SCC 587 : (2009 AIR SCW 3994), while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act 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.

20. In State of Kerala and another Vs C.P.Rao (2011) 6 SCC 450 : (AIR 2012 SC (Supp) 393), the Honourable Apex Court reiterating its

earlier dictum, vis-a-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.

21. In a recent enunciation by the Honourable Apex Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been

underlined in B.Jayraj (AIR 2014 SC (Supp) 1837) (supra) 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) and (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 essentiality 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) and (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.

22. In the present case, this Court is required to scrutinize the evidence to ascertain whether there is proper, reliable and cogent evidence beyond

reasonable doubt to confirm the judgment and sentence awarded by learned trial Court. If there is no such evidence on record, in that event, the

conviction cannot be sustained as the onus lies on the prosecution to prove its case beyond reasonable doubt.

23. In the backdrop of the aforesaid factual as well as legal position, this Court has minutely gone through the impugned judgment and order as

well as the depositions of the witnesses in light of the rival submissions made by learned advocates for both the sides.

24. In corruption cases, as laid down in the series of judgments by the Honourable Apex Court as well as by this Court, three vital ingredients are

required to be established by the prosecution beyond reasonable doubt in order to prove the offence as alleged. In the present case, this Court has

gone through the evidence on record. So far as establishment of vital ingredients i.e. demand and acceptance are concerned, the evidence of both

the witnesses i.e. complainant and shadow witness is in conformity with each other and vital ingredients i.e. demand and acceptance are established

beyond reasonable doubt as the tainted currency notes were handed over to accused No.2 by the complainant on the day of trap in pursuance of

the demand raised by both the accused. In order to establish demand, recital emerging out from the complaint at Exh.22 clearly indicates that when

the complainant along with his brother met accused No.1, accused No.1 demanded initially Rs.2000/- and that the complainant was directed to

give the said amount to accused No.2. It can be seen that thereafter the complainant scaled down the said amount to Rs.900/- after consulting

both the accused and the said fact is clearly testified by the complainant in his deposition in detail. It is also pertinent to note that even at the time of

trap in view of previous agreement, accused No.1 asked the complainant as to whether he has brought money when the complainant asked

accused No.1 for his work of mutating the name and in response thereto, the complainant handed over the amount of illegal gratification to accused

No.2 as per the direction of accused No.1 and both the accused were found present at the time of trap. It is also not in dispute that during the

course of trap, tainted currency notes were also recovered from the hands of accused No.2 and the said evidence is clearly emerging out not only

from testimony of the complainant, but from the testimony of the shadow panch - PW 2 which is also getting due corroboration from

contemporaneous panchnama prepared at the time of trap at Exh.26 and therefore, so far as vital ingredients i.e. demand, acceptance and

recovery are concerned, the evidence of PW 1 and PW 2 are in conformity with each other and getting due corroboration from the

contemporaneous panchnama and evidence of other witness also. Learned trial Court while appreciating the evidence on record has elaborately

dealt with and recorded the finding so far as the aforesaid prime issues are concerned.

25. The contention raised by Mr.Shaikh, learned advocate for the appellants - accused that charge is defective which has caused prejudice to the

accused in making their defence. This Court has minutely gone through the charge and it clearly reveals that charge clearly mentions as to how

demand and predemand came to be raised and as to how the amount of illegal gratification came to be accepted by accused No.2 and as a result

of the trap, as to how the tainted currency notes came to be recovered and seized from the person of accused No.2 and therefore the aforesaid

contention has no merit and deserves to be rejected.

26. Another contention raised by Mr.Shaikh, learned advocate for the appellants - accused is with regard to the fact that there was no matter or

file pending before accused No.1 and therefore there was no question of demand for illegal gratification from the complainant is also not

acceptable for the simple reason that during the course of trap, material articles were seized which were even signed by the accused clearly

indicate that the complainant handed over the application for mutating the name of his brother in place of his father and along with the said

application, other documentary evidences were also seized which are at Exh.19 and 20. Even, the defence witness examined by the appellants -

accused has also testified that the matter was pending before accused No.1. Therefore, the reliance placed by learned advocate for the appellants

on the decision in the case of Vijaychandra N.Pandit (supra) is not applicable to the facts of the present case.

27. Yet another contention is also raised by learned advocate for the appellants - accused on the point of sanction that both PW 3 and PW 4 were

not competent to accord sanction is not acceptable for the simple reason that though learned advocate for the accused has carried out cross

examination of the witnesses, no such question was put to them that they were not appointing and disciplinary authorities for the accused. Similarly,

the contention as regards to sanction accorded by them also suffers from the vice of non-application of mind is also not acceptable for the reason

that this Court has gone through both the orders passed by the competent authorities which are at Exhs.33 and 35 as well as depositions of PW 3

and PW 4 wherein they have clearly deposed that they have perused and studied the material placed before them in the nature of chargesheet and

thereafter they have gone through the detailed note prepared by their subordinate staff and thereafter applying the mind, they have accorded the

sanction which clearly establishes that sanctions were accorded after due application of mind.

28. As stated above, this Court has minutely examined the evidence of the witnesses and the evidence of the witnesses has been read over in the

presence of learned advocates for the parties and on overall analysis of their evidence, it leaves no manner of doubt of constituting vital ingredients

as regards to demand, acceptance and recovery. The evidence of the complainant is getting corroboration from the evidence of the shadow panch

and that test of ultra violate lamp was also found positive so far as the person of the accused No.2 is concerned. Therefore, the evidence on

record is clearly establishing the demand, acceptance and recovery thereof. This Court has also gone through the decisions relied upon, as stated

above, by learned advocate for the appellants - accused. There appears no dispute with the ratio laid down in the decisions referred above, but in

view of the aforesaid nature of evidence, the same are not applicable to the facts of the present case.

29. In above view of the matter, this Court is of the considered opinion that learned trial court was completely justified in convicting the appellants

? original accused. This Court finds that the findings recorded by learned trial court are absolutely just and proper and in recording the said

findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and

the resultant order of conviction recorded by learned court below and hence finds no reasons to interfere with the same. However, this Court

deems it proper to reduce the sentence imposed upon the appellants - accused from two years to one year which is the minimum sentence

prescribed under the Act considering the submissions made by learned advocate for the appellants ? accused as well as the peculiar facts of the

present case that the trap was laid for about 24 years back and during the interregnum period, the accused have suffered a lot by way of facing

departmental proceedings and that they have superannuated by now.

30. In view of the above discussion, the following final order is passed. Criminal Appeal No.550 of 1998 and Criminal Appeal No.618 of 1998

filed by appellants accused are partly allowed. The impugned the judgment and order dated 12.6.1998 passed in Special (ACB) Case No.6 of

1994 by learned Special Judge, Nadiad is modified to the extent that instead of undergoing rigorous imprisonment for two years for the offence

under sections 7, 13(1)(d), (i)(ii)(iii) read with section 13(2) and 12 of the Prevention of Corruption Act 1988 and section 161 of IPC, the

appellants accused shall undergo the sentence of rigorous imprisonment for one year. Rest of the impugned judgment is not disturbed. The

appellants - accused are ordered to surrender to custody within a period of twelve weeks from today for undergoing the remainder sentence, if

they have not undergone so far, failing which the investigating agency shall be at liberty to take necessary action in accordance with law. The

impugned judgment and order stands modified accordingly. Bail bond, if any, stands cancelled. R & P be sent back to the trial Court, forthwith.