

**Reserved On : 08/07/2026****Pronounced On : 18/09/2026****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 1064 of 2004****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE VIMAL K. VYAS Sd/-**

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Approved for Reporting	Yes	No
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DAHYABHAI SABURBHAI PARMAR**Versus****STATE OF GUJARAT****Appearance:**

MR. HARSHADRAY A. DAVE, ADVOCATE WITH MR. HIRENKUMAR R
VARMA, ADVOCATE (8738) for the Appellant(s) No. 1

MR. BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE VIMAL K. VYAS**CAV JUDGMENT**

1. The present appeal has been preferred under Section 374 of the Code of Criminal Procedure, 1973, by the appellant-convict (i.e. the original accused), challenging the judgment and order of conviction and sentence dated 21.06.2004 passed by the learned Additional Sessions & Special Judge, Fast Track Court No.9, Gandhinagar, in Special Case No.6 of 2001.

2. By the aforesaid judgment and order of conviction and sentence, the learned Special Judge held the appellant-accused guilty and convicted for the commission of offences punishable under Sections 7, 13(1)(d)(i), (ii) and (iii) read with Section 13(2) of the Prevention of Corruption Act, 1988. Consequently, the learned Special Judge sentenced him to undergo imprisonment as under:-

Section under PC Act	Imprisonment	Fine (Amount)	In default of payment of fine
7	Rigorous Imprisonment for six months	5000	Simple Imprisonment for three months
13(2) r/w 13(1)(d), 1,2,3	Rigorous Imprisonment for two years	5000	Simple Imprisonment for six months

THE CASE OF THE PROSECUTION :

3. The case of the prosecution, in a nut-shell, is that the complainant (trapping officer) Shri Laxmansinh Parvatsinh Solanki, Police Inspector, A.C.B., Ahmedabad, had received a secret input from his informers that the officials of the Highway



Traffic Department and the R.T.O. Department are illegally demanding and accepting bribe of Rs.20=00 to Rs.300=00 as entry fee from the driver of the passenger vehicles plying on Ahmedabad-Gandhinagar Highway. The complainant (trapping officer) had, therefore, laid a trap on 20.07.2000, and in furtherance thereto, he, along with other members of the raiding team, as well as, two panch-witnesses, had arranged/engaged a private Jeep bearing registration No.GJ-2A-4785 along with its Driver, Bhikhaji Keshaji Thakor (a decoy witness). Thereafter, the said Driver (decoy witness) drove his Jeep towards Ahmedabad-Gandhinagar Highway, and when it reached at the Police Check Post near Indroda Circle, Gandhinagar, at that time, the appellant-convict Dahyabhai Saburbhai Parmar, Assistant Sub-Inspector (Buckle No.223), had intercepted the Jeep and asked the Driver (decoy witness) to pay a fine of Rs.250=00 for carrying excess passengers in the vehicle, and when he showed his inability to pay Rs.250=00, he was asked by the appellant-convict to pay whatever amount he has. Ultimately, the appellant-convict demanded Rs.50=00 as the bribe, and the Driver (decoy witness) handed over him a tainted currency note of Rs.50=00, which the appellant-convict accepted it. Thereafter, the members of the raiding team apprehended the



appellant-convict accepting the bribe. On examining the currency note recovered from the appellant-convict, it was found to be same which was noted down in the panchnama.

4. Ultimately, on 20.07.2000, the complainant (trapping officer) Shri Laxmansinh Parvatsinh Solanki, Police Inspector, A.C.B., Ahmedabad, had filed a complaint against the appellant-convict Dahyabhai Saburbhai Parmar, Assistant Sub-Inspector (Buckle No.223), Traffic Department, Gandhinagar, which came to be registered *vide* CR No.10 of 2000 before the A.C.B. Police Station, Ahmedabad (Rural) and Gandhinagar District, for the offences punishable under Sections 7, (13)(1)(d)(i), (ii), (iii) and 13(2) of the Prevention of Corruption Act, 1988.

5. Thereafter, the investigation commenced, and during the investigation, documentary evidence were collected, as well as, the statements of the witnesses conversant with the incident were recorded. On completion of the investigation, the appellant-convict was charge-sheeted for the alleged offences and was tried by the learned Additional Sessions & Special Judge, Gandhinagar. In order to prove the charge, the prosecution had examined several witnesses and adduced various documentary



evidence.

6. On 12.12.2003, the Charge was framed against the appellant-accused *vide* Exh.6 for the offences punishable under Sections 7, 13(1)(d)(i), (ii), (iii) and 13(2) of the Prevention of Corruption Act. The plea of the appellant-accused was recorded *vide* Exh.7 and the appellant-accused pleaded not guilty and abjured his guilt.

7. To bring home the charge, the prosecution had examined the witnesses and adduced documentary evidence as under :

NO.	WITNESSES NAME	EXHIBIT
1.	Bhikhaji Keshaji Thakor (Driver of the Jeep)	10
2.	Shaikh Mahmadyasin Abbasmiya (Panch Witness)	15
3.	Laxmansinh Parvatsinh Solanki (Complainant)	19
4.	Shravankumar Tanaji Desle (Investigating Officer)	21
5.	Narpartsinh Daulatsinh Jetavat (Investigating Officer)	24

DOCUMENTARY EVIDENCE		
SR. NO.	DESCRIPTION OF THE DOCUMENT	EXHIBIT
1	Driving License of Bhikhaji Keshaji (Jeep Driver)	11
2	Panchnama of the trap	16
3	Receipt given to the Accused	17



4	Copy of the Petrol Book regarding Accused duty	22
5	Copy of the Log Book of the Accused service	23
6	Original complaint	20

8. On completion of recording of the evidence, the trial court explained the incriminating circumstances appearing against the appellant-convict, and the appellant-convict, in his further statement recorded under Section 313 of the Code of Criminal Procedure, while denying the allegation of accepting the bribe levelled against him by the prosecution, has stated that he is innocent and has been falsely implicated in the alleged offence.

9. On completion of the trial, the trial court, *vide* judgment and order dated 21.06.2004, convicted the appellant-accused for the offences punishable under Sections 7, 13(1)(d)(i), (ii) and (iii) read with Section 13(2) of the Prevention of Corruption Act, and consequently, sentenced him to undergo rigorous imprisonment for two years along with the fine of Rs.10,000=00, and in making default of payment of fine, to undergo further simple imprisonment for six months.

10. Being aggrieved and dissatisfied with the aforesaid



judgment and order of conviction and sentence, the appellant-convict has preferred the captioned Criminal Appeal before this Court, which came to be admitted *vide* order dated 06.07.2004 passed by a Coordinate Bench of this Court (Coram : C.K.Buch, J.).

11. Heard learned advocate Mr.Harshadray Dave assisted by Mr.Hirenkumar R.Verma, learned advocate appearing for the appellant-convict and learned APP Mr.Bhargav Pandya, learned APP appearing for the respondent – State.

SUBMISSIONS ON BEHALF OF THE APPELLANT-CONVICT :

12. At the outset, learned advocate Mr.Harshadray Dave, appearing for the appellant (original accused), while taking this Court through the factual matrix of the case, has submitted that the trial court did not consider the entire evidence in its true perspective, which resulted into an erroneous conviction of the appellant under Sections 7, 13(1)(d)(i), (ii) and (iii) read with Section 13(2) of the Prevention of Corruption Act.



13. Learned advocate Mr.Dave has submitted that it is the case of the prosecution that the appellant-convict was demanding illegal gratification from the Driver of the Jeep (decoy witness) and he was apprehended by the raiding team while accepting the bribe amount from him. Learned advocate Mr.Dave, while taking this Court through the evidence adduced by the prosecution, as well as, the impugned judgment, has submitted that the entire case of the prosecution is frivolous and fabricated, and the trial court has erroneously convicted the present appellant for the alleged offence. It is submitted that the prosecution has not led any cogent and convincing evidence to prove beyond reasonable doubt the essential ingredients of the offence, more particularly, demand, acceptance and recovery.

14. Learned advocate Mr.Dave has submitted one of the most important and essential ingredients necessary for the offence under the Prevention of Corruption Act to be constituted is 'demand'. The demand has to be proved beyond reasonable doubt by leading cogent and convincing evidence. It is to be bear in mind that, whether the appellant-convict received the gratification as a motive or reward for performing or refraining from performing any official act or for showing any favour or



disfavour in the exercise of his official functions. In the instant case, the evidence is very deficient and highly improbable insofar as the ingredient of demand is concerned.

15. Learned advocate Mr.Dave, in the course of his detailed submissions, has raised the following principal contentions, which may be summarized as under :

(i) The material on record clearly suggests that there is no cogent and credible evidence on record to substantiate the prosecution's case that the appellant-convict had, on 20.07.2000, initially demanded an illegal gratification of Rs.250=00 from the complainant as consideration for not issuing the memo; however, after negotiations, the appellant-convict accepted a sum of Rs.50=00 from the complainant. It is submitted that the prosecution has failed to adduce any cogent and reliable evidence in support of the said allegation.

(ii) The complainant-trapping officer (PW-3) Laxmansinh Parvatsinh Solanki, in his deposition at Exh.19, has narrated the facts, which are wholly inconsistent with the



prosecution's case. The complainant-trapping officer has deposed that, on the day of the trap, when he, along with other members of the raiding team and the panch-witnesses reached at the Police Check Post near Indroda Circle, Gandhinagar, in the Jeep of the decoy witness (PW-1) Bhikhaji Keshaji Thakor, at that time, the appellant-convict intercepted the Jeep and asked the Driver of the Jeep (i.e. the decoy witness) to pay a fine of Rs.250=00 for carrying excess passengers in the vehicle, and when the Driver showed his inability to pay Rs.250=00, the appellant-convict told him to pay whatever amount he has to, and ultimately, the appellant-convict demanded Rs.50=00 as the bribe. The Driver (decoy witness), therefore, handed over a tainted currency note of Rs.50=00, which the appellant-convict accepted it with his left hand. It is submitted by the complainant-trapping officer that at about 12:00 noon, when the Driver-decoy witness (PW-1) Bhikhaji Keshaji Thakor gave the prearranged signal, he, along with other members of the raiding team, apprehended the appellant-convict accepting the bribe. However, it appears from the evidence of the panch-witnesses (PW-2) Shaikh Mahmadyasin Abbasmiya



that at the time of the raid, the complainant-trapping officer (PW-3) Laxmansinh Parvatsinh Solanki was travelling in a Maruti car and was not there in the Jeep, which was intercepted by the appellant-convict. Furthermore, it appears from the evidence of the panch-witness (PW-2) Shakih Mahmadyasin Abbasmiya that the Driver (decoy witness) was told by the appellant-convict to pay Rs.250=00 as fine for carrying excess passengers in the vehicle and had not demanded any other amount from the Driver (decoy witness). It also appears that the Driver (decoy witness), on his own, had tried to tender the currency note of Rs.50=00 to the appellant-convict, which the appellant-convict had only held the currency note by his hand and the same was then fell down to the ground. Thus, the conduct of the complainant-trapping officer, as reflected in his own testimony, is wholly inconsistent with the prosecution's case and gives rise to serious doubt regarding the veracity and credibility of the entire case.

(iii) It clearly reveals from the evidence of the panch-witness (PW-2) Shaikh Mahmadyasin Abbasmiya that when the appellant-convict had asked the Driver (decoy



witness) to pay a fine of Rs.250=00 for carrying excess passengers in the vehicle, the Driver (decoy witness) had shown his inability to pay the amount being a poor person, and at that time, the appellant-convict had not stated anything, whereas, the Driver (decoy witness), on his own, had tried to tender the currency note of Rs.50=00 to the appellant-convict, which the appellant-convict hold it by his hand and the same was then fell to the ground. These circumstances unequivocally established that the appellant-convict had not demanded the alleged illegal gratification nor voluntarily accepted the same. Thus, the essential ingredients of demand and acceptance, which are *sine qua non* for constituting an offence under the Prevention of Corruption Act, remain wholly unproved.

(iv) There are significant inconsistencies between the version narrated by the complainant-trapping officer (PW-3) Laxmansinh Parvatsinh Solanki, in his evidence at Exh-19 and the version narrated in the original complaint at Exh-20.

(v) Admittedly, there is no material on record to



substantiate the allegation of initial demand of illegal gratification. Furthermore, the evidence of the prosecution witnesses with regard to the alleged demand on the day of the trap is mutually inconsistent and contradictory. The version of the alleged demand, as reflected in the panchnama, also materially differs from the oral testimony of the prosecution witnesses, thereby rendering the prosecution case highly doubtful.

(vi) The evidence clearly indicates that the star witnesses of the prosecution's case have concealed and suppressed the material facts concerning the events that took place on the day of the trap. Moreover, the testimonies of all the witnesses regarding the entire trap proceedings are mutually inconsistent, conflicting and contradictory. Such inconsistencies and contradictions cast a serious doubt on the veracity of the case of the prosecution.

(vii) The evidence of the panch/shadow witness (PW-2) Shaikh Mahmadyasin Abbasmiya and the decoy witness (PW-1) Bhikhaji Keshaji Thakor clearly proves that, on the day of the trap, the appellant-convict had not demanded



any illegal gratification nor accepted any amount in pursuance thereof. The trial Court, however, has completely lost sight of this vital evidence and proceeded to convict the appellant-accused solely on the basis of the recital contained in the panchnama (Exh.16) and the oral testimony of the complainant-trapping officer (PW-3) Laxmansinh Parvatsinh Solanki, thereby committed an error of law and in appreciating the evidence.

(viii) The trial court, while appreciating the evidence, has laid much emphasis on the provisions of Section 20 of the Prevention of Corruption Act, which raises presumption once it is established that the accused accepted the amount. However, for the purpose of arriving at the conclusion whether the accused accepted the amount of illegal gratification or not, the totality of the evidence led by the prosecution at the trial is required to be appreciated. It is settled legal position of law that in the absence of any proof of demand, the legal presumption under Section 20 of the Prevention of Corruption Act would not arise, since the proof of demand and its subsequent acceptance is a *sine qua non* for the offence punishable under Sections 7,



13(1)(d), 13(2) of the Prevention of Corruption Act. Therefore, only on the basis of acceptance of the amount without there being any proof of demand, the accused cannot be held guilty of the offences under Sections 7, 12, 13(1)(d)(i), (ii) and (iii) read with Section 13(2) of the Prevention of Corruption Act. It is submitted that the trial Court, while appreciating the evidence in this regard, has completely lost sight of the aforesaid settled legal position. It is further submitted that except the bare averments in the complaint, no evidence has been led by the prosecution to prove the essential elements of the offence, more particularly, the proof of demand of illegal gratification and its subsequent acceptance, beyond reasonable doubt.

16. Thus, it is submitted that considering the entire evidence on record, it clearly establishes that the prosecution has failed to prove the essential elements of the offence, i.e. demand, acceptance and recovery, beyond reasonable doubt, and in absence of proof of demand and its subsequent acceptance, the trial court has committed a serious error in raising a presumption under Section 20 of the Act. In such



circumstances, learned advocate Mr.Dave has implored the Court to allow the appeal preferred by the appellant-convict, set-aside the impugned judgment and direct the acquittal of the appellant-convict from the charges levelled against him.

SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE :

17. Vehemently opposing the appeal filed by the appellant-convict and the submissions canvassed by learned advocate Mr.Harshadray Dave appearing for the appellant-convict, learned APP Mr.Bhargav Pandya appearing for the respondent-State has submitted that the trial Court has convicted the appellant-accused for the offences punishable under Sections 7, 13(1)(d)(i), (ii) and (iii) read with Section 13(2) of the Prevention of Corruption Act, 1988, and consequently, sentenced him to undergo rigorous imprisonment for two years along with the fine of Rs.10,000=00. Learned APP Mr.Pandya has submitted that the prosecution has proved all the three essential elements of the offence, i.e. demand, acceptance and recovery, beyond reasonable doubt, through the cogent and convincing evidence of the star witnesses, i.e., the trapping officer (PW-3) Laxmansinh



Parvatsinh Solanki and the panch/shadow witness (PW-2) Shaikh Mahmadyasin Abbasmiya.

18. Learned APP Mr.Pandya, while referring to the evidence of the star witnesses, i.e. the complainant-trapping officer (PW-3) Laxmansinh Parvatsinh Solanki and the panch/shadow witness (PW-2) Shaikh Mahmadyasin Abbasmiya, has submitted that their evidence are clear, cogent and convincing. It is submitted that the evidence of these witnesses have remained unshaken and the same are in corroboration with the allegations made in the complaint at Exh.20.

19. Learned APP Mr.Pandya has further submitted that if the evidence of the prosecution witnesses be read in juxtaposition with the documentary evidence on record, there remains no doubt about the case of the prosecution and, therefore, no error, much less an error of law, could be said to have been committed by the trial court while appreciating the evidence and arriving at the conclusion of the guilt of the appellant-convict. He has, therefore, urged that the conviction and sentence recorded by the trial court do not call for any interference by this Court and the criminal appeal preferred by the appellant-convict



challenging his conviction and sentence, may be dismissed.

FINDINGS AND ANALYSIS :

20. Before advertng to the facts and circumstances of the case, it would be apt to reiterate the fundamental principle of criminal jurisprudence as affirmed by the highest court that, in criminal trial, it is for the prosecution to bring home the guilt of the accused since the burden of proving the guilt beyond reasonable doubt always rests upon the prosecution. It is well-settled law that the prosecution must stand on its own strength and cannot take advantage of any weaknesses or deficiencies in the defense put forth by the accused.

21. The Supreme Court, in the case of ***Rabindra Kumar Dey vs. State of Orissa***, reported in *AIR 1977 SC 170*, has reiterated three cardinal principles; namely, (i) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt, and it cannot derive any benefit from the weakness or falsity of the defence version while proving its case, (ii) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty, and (iii) that the onus



of the prosecution never shifts. Thus, it is well-settled that in a criminal trial, the guilt of the accused must be proved beyond reasonable doubt in order to convict him.

22. The Supreme Court, in the case of ***State of Uttar Pradesh vs. Krishna Gopal***, reported in (1988) 4 SCC 302, has held that the person has, no doubt, profound rights not to be convicted of an offence, which is not established by the evidential standard of proof beyond reasonable doubt.

23. Bearing in mind the aforesaid legal position, this Court has considered the submissions canvassed by the respective parties and carefully perused the materials produced on record.

24. It is well-settled that for establishing the commission of an offence under Section 7 of the Prevention of Corruption Act, the proof of demand of illegal gratification and the subsequent acceptance is *sine qua non*. Moreover, the presumption under Section 20 of the Prevention of Corruption Act can be invoked only on proof of facts in issue, namely, the demand of illegal gratification by the accused and the acceptance thereof.



25. The Constitutional Bench of the Supreme Court in the case of **Neeraj Dutta vs. State (Government of NCT of Delhi)**, reported in (2023) 4 SCC 731 has, in paragraph-68 of the judgment, held as under :

“68. What emerges from the aforesaid discussion is summarized as under :

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and



receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1) (d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1) (d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the



prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d) (i) and (ii) of the Act.

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

26. Thus, it is held by the Supreme Court that in order to bring home the charge, the prosecution has to prove beyond reasonable doubt the “**demand of illegal gratification**” and the “**subsequent acceptance**” either by direct or by circumstantial evidence.



27. The cases of corruption largely depends on the testimonies of three crucial witnesses; (i) the complainant, (ii) the shadow witness, and (iii) the trapping officer. These witnesses play a decisive role in determining the fate of the accused. As such, the testimonies of these witnesses must be examined with great care and caution. It is expected that their statements should be consistent, credible and of sterling quality. If there are significant contradictions in their evidence on material aspects, such discrepancies cannot be overlooked. In such circumstances where the evidence allows for two possible interpretations, the one which is in favour of the accused, must be considered. This is because the law firmly upholds the principle that “*no innocent persons should be wrongfully punished*”.

28. Keeping in mind the aforesaid legal position of law and also keeping in mind the ratio laid down in the aforementioned judgments, the evidence led by the prosecution is required to be analyzed to find out, whether the prosecution has proved the fact that the accused had demanded and accepted the amount of illegal gratification.



29. This Court has given anxious consideration to the evidence on record. The scrutiny of the evidence reveals multiple inconsistencies in the prosecution's case. As per the original complaint at Exh.20 and the charge at Exh.6, it is the case of the prosecution that the complainant-trapping officer (PW-3) Laxmansinh Parvatsinh Solanki, Police Inspector, A.C.B., Ahmedabad, had received a secret input from his informers that the officials of the Highway Traffic Department and the R.T.O. Department are illegally demanding and accepting bribe of Rs.20=00 to Rs.300=00 as entry fee from the driver of the passenger vehicles plying on Ahmedabad-Gandhinagar Highway. The complainant-trapping officer had, therefore, laid a trap on 20.07.2000, and in furtherance thereto, he, along with other members of the raiding team and two panch-witnesses, arranged/engaged a private Jeep bearing registration No.GJ-2A-4785 along with its Driver, Bhikhaji Keshaji Thakor, who stood as a decoy witness. Thereafter, the Driver (decoy witness) drove his Jeep towards Ahmedabad-Gandhingar Highway, and when it reached at the Police Check Post near Indroda Circle, Gandhinagar, at that time, the appellant-convict Dahyabhai Saburbhai Parmar, Assistant Sub-Inspector (Buckle No.223) had



intercepted the Jeep and asked the Driver (decoy witness) to pay a fine of Rs.250=00 for carrying excess passengers in the vehicle, and when the Driver (decoy witness) showed his inability to pay Rs.250=00, he was asked by the appellant-convict to pay whatever amount he has. Ultimately, the appellant-convict had demanded Rs.50=00 as the bribe, and the Driver (decoy witness) handed over him a tainted currency note of Rs.50=00, which the appellant-convict accepted it. Thereafter, the members of the raiding team apprehended the appellant-convict accepting the bribe.

30. In this regard, if we consider the evidence of the Driver (decoy witness) Bhikhaji Keshaji Thakor (PW-1), he, in his evidence at Exh.10, has specifically deposed that at the time of the alleged incident, the present appellant-convict had asked him about the number of passengers in the Jeep, and in response to the same, he had stated that 17 passengers are there in his Jeep. Therefore, when the present appellant-convict was about to issue a memo of Rs.250=00 and took out the memo book, he attempted to forcefully tender a currency note Rs.50=00 to him as instructed; however, the appellant-convict refused to



accept it, and the note fell to the ground. Thereafter, the trapping officer and other members of the team immediately arrived at the spot and apprehended the appellant-convict. He has further stated that the appellant-convict had neither demanded nor accepted any amount of bribe from him. It is pertinent to note that the decoy witness has not supported the case of the prosecution and has turned hostile. Even during the cross-examination by the prosecution, the decoy witness has not supported the case of the prosecution and not admitted any particular facts of the prosecution's case. Considering the aforesaid, it clearly appears that this witness has not supported and completely denied the prosecution's case.

31. Since one of the star witnesses, i.e. the decoy witness, has not supported the prosecution's case, the evidence of the shadow/panch-witness is required to be carefully appreciated. The shadow/panch-witness (PW-2) Shaikh Mahmadyasin Abbasmiya, in his evidence at Exh.15, has stated the very same version as narrated by the decoy witness. In his examination-in-chief, he has stated that at the time of the alleged incident, the present appellant-convict had intercepted their Jeep near



Indroda Circle, therefore, he, along with the Driver of the Jeep, approached the appellant-convict, who asked them about the number of passengers boarded in the Jeep, and when the Driver Bhikhaji stated that 13 passengers are there in the Jeep, the appellant told him that a fine of Rs.250=00 will be charged. Thereafter, when the Driver shown his inability to pay the fine citing his pauperness, the appellant-convict was silent, therefore, the Driver Bhikhaji himself attempted to tender a currency note of Rs.50=00 to the appellant, which the appellant hold it by his hand and it was fell to the ground. Thereafter, the members of the raiding team arrived at the spot and apprehended the appellant-convict. In his cross-examination, this witness has specifically stated that the appellant-convict had not demanded any amount of bribe from the Driver of the Jeep. The prosecution has heavily relied upon the evidence of the shadow/panch witness but, it appears from his evidence that he has not supported the prosecution's case and has stated that there was no demand made by the appellant-convict. It is pertinent to note that he has not been declared hostile.

32. Now, in this context, if we examine the panchnama at



Exh.16, the entire sequence of the events has been described in a completely different manner. It reflects from the panchnama that upon the appellant-convict demanding the amount of bribe, the decoy witness had tendered the tainted currency note of Rs.50=00. However, as discussed herein above, neither the decoy witness nor the shadow witness have deposed any such facts in their respective testimonies. Thus, the version recorded in the panchnama with regard to the demand of bribe does not find corroboration from the evidence of the aforesaid two star witnesses.

33. Now, in the same context, if we examine the evidence of the complainant-trapping officer (PW-3) Laxmansinh Parvatsinh Golanki, who laid the trap, he, in his testimony at Exh.19, has affirmed and reiterated the very same fact, as narrated in details in the panchnama at Exh.16.

34. Thus, on conjoint reading of the evidence of the core witnesses, i.e. the trapping officer, the decoy witness and the shadow/panch witness, material discrepancies, inconsistencies and contradictions reveal in their respective evidence, more



particularly, with regard to the essential elements of demand and its subsequent acceptance. The testimonies of the core witnesses are mutually inconsistent, which raises suspicion towards the version of the prosecution's case.

35. A careful evaluation of the foregoing evidence clearly establishes that the evidence of the complainant-trapping officer (PW-3) Laxmansinh Parvatsinh Solanki, the decoy witness (PW-1) Bhikhaji Keshaji Thakor and the shadow/panch witness (PW-2) Shaikh Mahmadyasin Abbasmiya, regarding demand and acceptance of the alleged bribe is not consistent with each other. Furthermore, the sequence of events as recorded in the panchnama at Exh.16 are entirely different from the facts stated by all the panch-witnesses.

36. As noted earlier, in such cases where the fate of the accused depends only on the testimonies of the complainant, the shadow witness and the panch witness, it is essential that their evidence should be consistent, reliable and of sterling quality. Therefore, the inconsistencies and contradictions in the testimonies of these witnesses cannot be overlooked.



37. For the foregoing discussion, it clearly established that the evidence of the core witnesses is inconsistent and contradictory with each other as well as with the case of the prosecution.

38. In view of the aforesaid, as well as, considering the discrepancies in the evidence of the three core witnesses regarding the acceptance of illegal gratification, when two views are possible, certainly the one, which is in favour of the innocence of the accused, must be considered.

39. Thus, on examination of the entire evidence, this Court is of the considered opinion that the prosecution has failed to establish beyond reasonable doubt, the essential elements of demand of bribe and its subsequent acceptance. The law in this regard is well settled that for an offence to be constituted under the Prevention of Corruption Act, the proof of demand and acceptance of illegal gratification by a public servant, as a fact in issue by the prosecution, is a *sine qua non* in order to establish the guilt of the accused. A mere recovery of the tainted currency note is not sufficient to convict the accused if the core evidence



in the case is unreliable, unless there is a proof that the money was voluntarily accepted as a bribe.

40. Since the prosecution has failed in establishing the foundational fact by leading cogent and convincing evidence regarding the aspects of demand and its subsequent acceptance, the question of presumption under Section 20 of the Prevention of Corruption Act does not arise in the present case.

41. In view of the aforesaid discussion and re-appreciation of the entire evidence on record, this Court is of the considered opinion that the prosecution has not proved the case beyond reasonable doubt by leading cogent and convincing evidence, and the trial court has not appreciated the entire evidence in its true perspective. Further, when the essential elements of demand and its subsequent acceptance, i.e. the fact in issue, has not been proved beyond reasonable doubt, mere recovery of the tainted currency note cannot constitute the offence punishable under Section 7 of the Prevention of Corruption Act since it is not proved beyond reasonable doubt that the accused had voluntarily accepted the amount knowing it to be an illegal



gratification. Therefore, the appellant-accused cannot be held guilty by taking aid of the presumption under Section 20 of the Prevention of Corruption Act, more particularly, when the basis and the foundation of the prosecution's case, i.e. the demand and its acceptance, has not been proved.

42. Keeping in mind the cardinal principles of the criminal jurisprudence, as stated herein above, and considering the evidence on record, this Court is of the considered opinion that in the instant case, it cannot be said that the prosecution has proved the case beyond reasonable doubt by leading cogent and convincing evidence, therefore, the benefit of doubt goes in favour of the appellant-accused. Thus, it appears that the trial court has made an error while convicting the present appellant-accused for the alleged offence and, therefore, interference by this Court is warranted.

43. In the result, the appeal succeeds, and the same is hereby allowed. The impugned judgment and order of conviction and sentence dated 21.06.2004 passed by the learned Additional Sessions & Special Judge, Fast Track Court No.9, Gandhinagar,



in Special Case No.6 of 2001, is hereby quashed and set-aside.
The appellant-convict is hereby set free from all the charges.

44. Bail bond stands cancelled. The amount of fine, if any, paid by the appellant-convict shall be refunded to him. Records and proceedings be returned to the trial court forthwith.

M.A. SAIYED

(VIMAL K. VYAS, J)