

accused has miserably failed to dislodge the presumption u/s 20 of the Act. Therefore, the conviction recorded by the courts below does not warrant any interference. [Para 6, 8 and 9] [673-C; 675-H; 676-A-F] A

A. Subair vs. State of Kerala (2009) 6 SCC 587; State of Kerala and another vs. C.P. Rao 2011 (6) SCR 864 = (2011) 6 SCC 450 – held in applicable. B

Banarsi Dass vs. State of Haryana 2010 (4) SCR 383 = (2010) 4 SCC 450 and B.Jayaraj vs. State of A.P. 2014 (4) SCALE 81 – distinguished. C

Narendra Champaklal Trivedi vs. State of Gujarat 2012 (6) SCR 165 = (2012) 7 SCC 80 — cited.

1.2. As regards the sentence, the appellant is said to be 60 years old and suffering from heart disease, facial nerve palsy and speech disorder. In the circumstances, the imposition of minimum sentence prescribed for the offences would meet the ends of justice. Accordingly, the sentences of RI for one year u/s 7 and two years u/s 13(1)(d) read with s. 13(2) of the Act are set aside and instead the accused-appellant is sentenced to undergo RI for six months u/s 7 and one year u/s 13(1)(d) read with s. 13(2) of the Act. [Para 10-11] [676-F-G; 677-A-C] D E

Case Law Reference: F

(2009) 6 SCC 587	held inapplicable	para 4
2011 (6) SCR 864	held inapplicable	para 4
2010 (4) SCR 383	distinguished	para 4
2014 (4) SCALE 81	distinguished	para 4
2012 (6) SCR 165	cited	para 5

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1864 of 2011. H

A From the Judgment & Order dated 14.02.2011 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 292 of 1997.

B Aparna Bhat, Priyambada Mishra, Tanima Kishore for the Appellant.

Hemantika Wahi for the Respondent.

The Judgment of the Court was delivered by

C **C. NAGAPPAN, J.** 1. This appeal is preferred against the judgment dated 14.2.2011 passed by the learned single Judge of the High Court of Gujarat at Ahmedabad whereby it has confirmed the judgment of conviction and sentence dated 21.3.1997 passed by the learned Special Judge, Banaskandha at Palampur in Special Case No.215 of 1992, wherein the D Special Judge had convicted the appellant-accused for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, and sentenced him to undergo Rigorous Imprisonment of one year and to pay a fine of Rs.1000, in E default to undergo simple imprisonment for six months and further convicted him under Section 13(d)(i)(ii)(iii) read with Section 13(2) of the said Act and sentenced him to undergo Rigorous Imprisonment for a period of two years and to pay a F fine of Rs.1500, in default to undergo simple imprisonment for six months with stipulation that the sentences would run concurrently.

G 2. Briefly the facts are stated thus: PW1 Girishbhai is the son of PW2 Ranchhodbhai and they owned 28 bighas of agricultural land in village Ratanpur. There was a borewell in the said land fitted with 10 HP motor and it was not bailing out H sufficient water and hence they planned to replace it with 15 HP motor. In order to submit an application for the said purpose to the Electricity Board, they needed documents like village form No.7, 12, 8-A, map from revenue record and certificate regarding sufficiency of the water in the borewell, and therefore,

PW1 Girishbhai approached the appellant/accused Somabhai A
Gopalbhai Patel who was Talati-cum-Mantri at Ratanpur village
and requested for issuance of documents and the accused
asked PW1 Girishbhai to come with money and meet him in
his office at Ratanpur. When PW1 inquired the accused as to B
how much money he has to bring, the accused told him to pay
the amount as per his desire. PW1 Girishbhai lodged Exh.12
complaint in the office of Anti-Corruption Bureau at Palanpur
against the accused. The Investigation Officer on receiving the C
complaint on 20.11.1991 sought assistance of two Panch
witnesses who were government servants and made them to
understand the case and thereafter experiment of U.V. lamp was
carried out with the help of anthracene powder. Thereafter the
complainant produced currency notes of Rs.300 comprising of
two notes of Rs.100 denomination and two notes of Rs.50 D
deomination and a preliminary part of Panchnama was drawn
and signature of Panchas were taken and anthracene powder
was applied to the said notes in the presence of Panch
witnesses. PW1 Girishbhai took the said currency notes in his
shirt pocket and alongwith PW3 Ismailbhai went in his scooter
to the office of the Ratanpur Panchayat. The accused was E
sitting in his chair in the office and both of them occupied chairs
in front of the accused. PW1 Girishbhai told the accused that
as per the earlier talk he had come to take the documents and
the accused handed over the documents and PW1 Girishbhai
asked the accused as to what is the amount he should give for F
it and the accused told him to pay whatever he wants to give.
PW1 Girishbhai gave Rs.250/- and the accused put the same
in his left side shirt pocket. On giving signal, the raiding party
came there and the experiment of U.V. lamp was carried out
on the hands and shirt pocket of the accused and light blue G
fluorescent marks of anthracene were found on the right hand
thumb and the pocket also. Pancha No.2 took out the currency
notes from the left side pocket of the accused and on those
currency notes light blue florescent marks of anthracene powder
were found and the numbers tallied with the numbers mentioned
on the first part of the Panchnama. The second copy of the H

A panchnama was prepared and the Investigation Officer carried out further investigation and after obtaining requisite sanction, laid the chargesheet against the accused.

B 3. The learned trial judge framed the charges in respect of the offences mentioned hereinbefore. The accused pleaded not guilty and sought to be tried. The prosecution examined six witnesses and produced documentary evidence. The accused was examined under Section 313 of the Code of Criminal Procedure and answers were recorded. Exh. 50 is the statement given by him. The trial court found the accused guilty of the charges and convicted and sentenced him as stated supra. The accused preferred appeal and the High Court dismissed the same by impugned judgment. That is under challenge before us.

D 4. The learned counsel appearing for the appellant has raised challenge to the impugned judgment, inter alia, but primarily on the following grounds:

E (a) There is no evidence to prove demand and voluntary acceptance of illegal gratification

(b) The recovery of the currency notes from the accused had also not been proved inasmuch as panchas are not independent witnesses and their evidence did not merit any acceptance.

F (c) Without prejudice to the above contentions it is also urged that the sentence awarded to the appellant is unreasonably excessive and deserves reduction.

G Reliance was placed on the following decisions of this Court : 1. *A. Subair vs. State of Kerala* (2009) 6 SCC 587; 2. *State of Kerala and another vs. C.P. Rao* (2011) 6 SCC 450; 3. *Banarsi Dass vs. State of Haryana* (2010) 4 SCC 450 and 4. *B. Jayaraj vs. State of A.P.* 2014 (4) SCALE 81.

H 5. Per contra the learned counsel appearing for the State

contended that the judgment of conviction and sentence is duly supported by the oral and documentary evidence produced by the prosecution and does not call for any interference. Emphasis was made to the version of panch witnesses, the scientific proof and the testimony of the Investigation Officer and the principle of presumption was pressed into service to bring home the charges leveled against the accused. In support of the submission reliance was placed on the decision of this Court in *Narendra Champaklal Trivedi vs. State of Gujarat* (2012) 7 SCC 80.

6. The primary requisite of an offence under Section 13(1)(d) of the Act is proof of demand or request of a valuable thing or pecuniary advantage from the public servant. In the first two decisions relied on by the learned counsel for the appellant cited supra, on facts, the complainant in the case was not examined and this Court held that there is no substantive evidence to prove the factum of demand. The complainant in the present case has been examined and hence those decisions would not be of any help to the appellant herein. In the remaining two decisions relied on by the learned counsel for the appellant referred to supra, on facts, the complainant did not support the prosecution case insofar as demand made by the accused is concerned and disowned his complaint and declared hostile by the prosecution and in such circumstances, this Court held 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 established.

7. The core question in this appeal is as to whether there is sufficient legal evidence on record to bring home the guilt of the appellant for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. The prosecution examined the complainant Girishbhai as PW1 in the case and in his examination-in-chief he has testified that he met the Talati namely the accused and asked him to issue the documents he

A has applied for and the Talati asked him to come with money and meet him in his office at Ratanpur and the Talati had not told him as to how much money he has to bring and since Talati was asking for bribe from him, he went to the office of ACB and informed the demand of bribe made by accused to the
B police inspector and also gave Exh. 12 complaint which bears his signature. It is his further testimony that the police inspector on receiving the complaint sought assistance of two panch-witnesses who were made to understand the case and he gave two currency notes of Rs.100 in denomination and two currency
C notes of Rs.50 in denomination and the Investigation Officer noted the numbers of the said currency notes and a powder was applied to the said notes and as per instruction he had put the notes in his left side pocket of the shirt and along with
D one panch witness went to the office of Talati at Ratanpur in his scooter. According to the complainant, Talati was sitting in his chair in the office and they also took their seats in front of him and he demanded the documents and the accused handed over the same in the presence of panch witness and at that time he asked the accused as to what amount he has to give to him and thereafter he put Rs.250 on his table and the accused told
E him that he has to take about Rs.100 but he went from there and gave signal upon which the raiding party came in and the Investigation Officer took the currency notes from the accused. At this point of time during the chief examination, public
F prosecutor asked permission of the Court to put questions in the nature of cross-examination to PW1 and permission was granted. It is relevant to point out that PW1 was not declared hostile but the prosecution sought permission to cross examine him and that was granted. As seen above in the examination-
G in-chief itself PW1 Girishbhai has supported the prosecution case by testifying about the demand of money made by the accused and the giving of Rs.250 by him to the accused. There is also corroboration in the form of testimony of shadow
H witness. PW 3 Ismailbhai was summoned by the Investigation Officer to act as Panch witness and made to understand the case as well as the experiment of U.V. lamp and he has

testified that he went along with the complainant PW1 A
Girishbhai in his scooter to the office of Ratanpur panchayat
and they went in and found the Talati namely the accused sitting
in his chair and they sat opposite to him. It is his further
testimony that PW1 Girishbhai told the accused that as per the B
earlier talk he had come to take the documents and the
accused handed over the same to him and PW1 Girishbhai
asked him as to how much amount he should give him for it
and the accused told him to pay whatever he wants to give and
PW1 further asked him as to whether Rs.250 would be proper C
and the accused said it would be o.k. and thereupon PW1
Girishbhai took Rs.250 from his shirt pocket and gave it to the
accused and the accused put the same in his left pocket by
his right hand and PW1 Girishbhai went out and gave signal
while he was sitting there. PW3 Ismailbhai has further testified D
that the raiding party rushed in and in the light of U.V. Lamp,
light blue colour was shining on the right thumb of the accused
and also inside his shirt pocket and the other panch witness
took the currency notes from the pocket of the accused and the
light blue fluorescent marks were found in the light of U.V. Lamp E
on the currency notes and the numbers of the said notes were
tallied with the numbers of the notes mentioned in the first part
of the panchnama and the documents namely Exh. 6 to 9 were
seized along with other articles by the Investigation Officer.

8. The shadow witness has clearly stated in his testimony F
about the demand of bribe and giving of the same to the
accused. Nothing has been brought on record to doubt the
presence of the shadow witness. His testimony fully
corroborates the testimony of the complainant namely PW1
Girishbhai. Though the prosecution was permitted to put G
questions in the nature of cross-examination to PW1, he was
never declared hostile. In fact, as already seen, PW1 Girishbhai
has fully supported the case of the prosecution by testifying
about the demand of illegal gratification made by the accused
to him and acceptance of the same. In our view the prosecution H

A has established the demand and the acceptance of the amount by the accused as illegal gratification.

9. In the same way the recovery of the currency notes from the possession of the accused stood proved by the testimonies of PW3 Ismailbhai PW6 Madarsing and the Investigation Officer PW7. The serial number of the currency notes recovered tallied with the serial numbers written in the first part of the panchanama and on the experiment of U.V. Lamp anthracene powder was found on the toe of right thumb of the accused and the pocket of his shirt. The accused in his statement given under Section 313 Cr.P.C. has stated that a sum of Rs.100 was due towards land revenue tax from the complainant and he had only taken the said amount from him towards the tax. The accused has not substantiated the said plea by producing any document relating to tax due and it appears to be only an afterthought. The Courts below have rightly not accepted the said explanation offered by him. We have no hesitation in stating that the accused miserably failed to dislodge the presumption under Section 20 of the Act. Thus analysed and understood, there remains no shadow of doubt that the appellant-accused had demanded the bribe and accepted the same to provide the documents sought for by the complainant. Therefore, the conviction recorded by the learned trial judge which has been affirmed by the learned single Judge of the High Court does not warrant any interference.

F 10. What remains is the plea made on behalf of the appellant for reduction of sentence. The appellant is said to be 60 years old and suffering from heart disease, facial nerve palsy and speech disorder. Copies of medical reports have been filed in this regard. We are of the view that the imposition of minimum sentence prescribed for the offences for which the conviction is made would meet the ends of justice.

H 11. In the result the sentence of one year rigorous imprisonment imposed on the appellant-accused for the

conviction under Section 7 of the Act is set aside and instead he is sentenced to undergo rigorous imprisonment for a period of six months and the sentence of fine and default sentence imposed on him for the said conviction is retained. Sentence of two years rigorous imprisonment imposed on the appellant-accused for the conviction under Section 13(1)(d) read with Section 13(2) of the Act is set aside and instead he is sentenced to undergo rigorous imprisonment for a period of one year and the sentence of fine and default sentence imposed on him for the said conviction is retained. The sentences are to run concurrently. The Criminal appeal is allowed to the extent indicated above.

Rajendra Prasad

Appeal partly allowed.