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# (2018) 9 Supreme Court Cases 242 : (2018) 3 Supreme Court Cases (Cri) 730 : 2018 SCC OnLine SC 699

## In the Supreme Court of India

(BEFORE RANJAN GOGOI AND R. BANUMATHI, JJ.)

STATE OF GUJARAT . . Appellant;

*Versus*

NAVINBHAI CHANDRAKANT JOSHI AND OTHERS . . Respondents.

Criminal Appeals Nos. 895-96 of 2018†, decided on July 17, 2018

A. **Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988 — Ss. 7, 13(1)(d) and 20 — Illegal gratification — Demand and acceptance of — Sine qua non to constitute offence under Ss. 7 and 13(1)(d) — Demand of money by first accused and acceptance of bribe amount by second accused at the behest of first accused, proved by evidence of complainant and trap witness — Findings of trial court did not suffer from any infirmity and High Court was not justified in setting aside conviction of both accused — No explanation offered by accused to rebut presumption under S. 20 — Conviction under Ss. 7 and 13(1)(d), restored**

**— R-2 was working as Junior Clerk in Non-Agriculture Department and R-1 was also working in the same department — Complainant (PW 1) was businessman dealing in business of sugar as a wholesale retailer — He was desirous of starting a new firm — For such purpose, he purchased a plot — Though original owners of plot had got the plot converted into non-agricultural plot for different purpose, PW 1 had to place revised plan for necessary non-agricultural permission — PW 1 requested R-2, with whom file of PW 1 used to remain, to ensure that matter was expedited at the earliest and necessary permission was accorded — R-2 demanded Rs 1000 for expediting the matter and ultimately it was settled for Rs 500 — PW 1 approached ACB Office and lodged complaint against accused — Trap was arranged — PW 1 went with PW 3 to R-2, who showed R-1 to PW 1 and asked PW 1 to give money to R-1 — PW 1 paid the money to R-1, who kept it in his left side shirt pocket and went near R-2 and sat there — On showing prearranged signal, police party came inside and currency notes were seized from R-1 — After investigation, charge-sheet was filed — Trial court convicted both respondents under Ss. 7 and 13(1)(d) and sentenced each of them to undergo RI for 1 year and 2 years respectively and also imposed fine with default clause — However, High Court reversed it and acquitted the respondents**

**— Held, to establish offence under Ss. 7 and 13(1)(d), particularly those relating to trap cases, prosecution has to establish existence of demand as well as acceptance by public servant — In instant case, demand of money by R-2 and acceptance of bribe amount by R-1 at the behest of R-2, is proved by evidence of PWs 1 and 3 — Same is corroborated by test of ultraviolet light showing presence of anthracene powder on the shirt worn by R-1 and right hand of R-2 — Evidence of PW 1 is corroborated by evidence of PW 3 — Trial**



court recorded findings that evidence of PWs 1 and 3 is consistent and they are reliable witnesses — Upon appreciation of evidence adduced by prosecution, trial court convicted both R-1 and R-2

**— Recovery of tainted currency notes from R-1 and presence of anthracene powder in the right hand of R-2 and the pocket of shirt of R-1, clearly show that they acted in tandem in the demand and acceptance of bribe amount — When demand and acceptance of illegal gratification was proved by evidence of PWs 1 and 3, High Court was not right in holding that it was not proved — Again, accused have not offered any explanation to rebut presumption under S. 20 — On the other hand, evidence of PW 1 that R-2 demanded bribe, appears to be natural — Findings of trial court did not suffer from any infirmity and High Court was not justified in setting aside conviction of accused — Therefore, impugned judgment of High Court set aside and conviction of respondents under Ss. 7 and 13(1)(d), restored**

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**— Regarding sentence of imprisonment for conviction under S. 13(1)(d), trial court imposed sentence of imprisonment for 2 years upon each of accused — As occurrence took place about 27 years ago, considering passage of time, sentence of imprisonment of 2 years reduced to the statutory minimum imprisonment of 1 year**

**(Paras 8 to 14)**

*B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543, *relied on*

*Navinbhai Chandrakant Joshi* v. *State of Gujarat*, 2015 SCC OnLine Guj 6299, *reversed*

*C.M. Sharma* v. *State of A.P.*, (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89; *C.M. Girish Babu* v. *CBI*, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1, *cited*

B. **Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988 — S. 20 — Presumption under — Nature of — Held, presumption raised under S. 20 is a rebuttable presumption — Burden placed on accused for rebutting presumption is one of preponderance of probabilities**

**— Herein, since it is established that accused were possessing bribe money, it was for them to explain how bribe money was received by them and if they fail to offer any satisfactory explanation, it will be presumed that they accepted bribe**

**(Para 11)**

*C.M. Girish Babu* v. *CBI*, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1, *relied on*

Appeals allowed Y-D/60885/CR

Advocates who appeared in this case :

Ms Hemantika Wahi, Ms Jesal Wahi, Ms Vishakha, Ms Mamta Singh, Parthiv Goswami, Pradhuman Gohil, Ms Taruna Singh Gohil, Himanshu Chaubey and Vikash Singh, Advocates, for the appearing parties.

***Chronological list of cases cited*** ***on page(s)***

1. 2015 SCC OnLine Guj 6299, *Navinbhai Chandrakant Joshi* v. *State of Gujarat* **(reversed)** 244*a*, 24

2. (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543, *B. Jayaraj* v. *State of A.P.* 24

3. (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89, *C.M. Sharma* v. *State of A.P.* 245*f*

4. (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1, *C.M. Girish Babu* v. *CBI* 245*g*, 24



The Judgment of the Court was delivered by

**R. BANUMATHI, J.**— Leave granted. These appeals arise out of the judgment dated 16-4-2015 passed by the High Court of Gujarat in *Navinbhai Chandrakant Joshi* v. *State of Gujarat*[1] in and by which the High Court reversed the verdict of conviction passed by the trial court in Special (ACB) Case No. 10 of 1992 and thereby acquitting the respondents under Section 7 and Section 13(1)(*d*) of the Prevention of Corruption Act, 1988 ("the Act").

**2.** Briefly stated, the case of the prosecution is that Accused 1/Respondent 2, J.D. Patel

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was working as a Junior Clerk in Non-Agriculture Department and Accused 2/Respondent 1, Navinbhai Chandrakant Joshi (Navinbhai) was also working in the same department. The complainant, Bhagwandas (PW 1) is a businessman dealing in the business of sugar as a wholesale retailer. The complainant/PW 1 was desirous of starting a new firm by name Purvi Monomal Pvt. Ltd. for manufacturing of acrylic monomal and for this purpose, he has purchased a plot at Village Chhatral from one Sandeep Agrawal and Manoj Agrawal. The agreement to sell was executed in December 1990 and the sale deed was executed in March 1991. Though the original owners of the plot had got the plot converted into non-agricultural plot for different purpose, PW 1 had to place the revised plan for necessary non-agricultural permission.

**3.** It is the case of PW 1 that Accused 1 J.D. Patel used to time and again assure PW 1 that he would see to it that the necessary permission is approved for the revised plan of PW 1. On 27-3-1991, PW 1 learnt through Accused 1 J.D. Patel that the revised plan of PW 1 was not accepted and his application was rejected. On the direction of Taluka Development Officer (TDO), PW 1 paid a fine of Rs 368.30 on 2-4-1991 in the office of Gram Panchayat, Chhatral and the receipt was produced before the TDO. At that time, PW 1 requested Accused 1 J.D. Patel with whom the file of PW 1 used to remain to ensure that the matter is expedited at the earliest and necessary permission is accorded. At that point of time, Accused 1 J.D. Patel had demanded Rs 1000 for expediting the matter and ultimately it was settled for Rs 500. Accused 1 J.D. Patel told PW 1 that he should pay him Rs 500 on 3-4-1991 before recess hours and after he receives the money, he would see to it that necessary order of permission is passed in favour of PW 1. PW 1 approached the ACB Office and lodged the complaint against the accused. After registration of the case and after following the procedural formalities, a trap was arranged.

**4.** On 3-4-1991, PW 1 went with PW 3, Devendra Kumar to Accused 1 J.D. Patel. Accused 1 J.D. Patel showed Accused 2 Navinbhai Joshi to PW 1 and asked PW 1 to give the money to Accused 2 Navinbhai Joshi in the gallery. PW 1 paid the money to Accused 2 Navinbhai Joshi who kept it in his left side shirt pocket and went near Accused 1 J.D. Patel and sat there. On showing the pre-arranged signal, the police party came inside and the currency notes were seized from Accused 2 Navinbhai. On throwing the ultraviolet light on the shirt of Accused 2 Navinbhai Joshi, white colour of light blue light of



anthracene powder could be seen on the left side pocket of the shirt worn by Accused 2 Navinbhai. Likewise, upon throwing of ultraviolet light on the hands of Accused 1 J.D. Patel, white shining of light blue colour of anthracene powder could be seen on the four fingers of right hand of Accused 1. After completion of investigation, charge-sheet was filed.

**5.** To prove the guilt of the accused, the prosecution has examined six witnesses and produced documentary evidence. Upon consideration of oral and documentary evidence, the trial court held that the demand and acceptance of the illegal gratification was proved by the prosecution by the evidence of PWs 1 and 3 and also by the presence of anthracene powder in the shirt pocket of Accused 2 Navinbhai and the right hand of Accused 1 J.D. Patel. The trial court convicted both Accused 1 and 2 under Sections 7 and 13(1)(*d*) of the Act and sentenced each of them to undergo rigorous imprisonment for one year and two years respectively and also imposed fine with default clause.

**6.** Being aggrieved, the accused preferred appeals before the High Court. The High Court, by the impugned judgment, reversed the judgment of the trial court by holding that there was no recovery from Accused 1 J.D. Patel and the demand and acceptance by the accused persons has not been proved by the prosecution and acquitted the accused. Being aggrieved, the State has preferred these appeals, challenging the correctness of acquittal.

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**7.** We have heard Ms Hemantika Wahi, learned counsel appearing on behalf of the State of Gujarat and Mr Parthiv Goswami, learned counsel appearing on behalf of the respondents. We have perused the impugned judgment and also the judgment of the trial court and other materials placed on record.

**8.** It is well settled that to establish the offence under Sections 7 and 13(1)(*d*) of the Act, particularly those relating to the trap cases, the prosecution has to establish the existence of demand as well as acceptance by the public servant. In *B. Jayaraj* v. *State of A.P.*[2], it was held as under: (SCC p. 58, para 7)

> "*7.* Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in *C.M. Sharma* v. *State of A.P.*[3] and *C.M. Girish Babu* v. *CBI*[4]."

**9.** In the present case, demand of the money by Accused 1 J.D. Patel and acceptance of the bribe amount by Accused 2 Navinbhai at the behest of Accused 1 J.D. Patel is proved by the evidence of PWs 1 and 3. In his evidence, PW 1 had clearly stated about the demand by Accused 1 J.D. Patel for



expediting the matter regarding the approval of revised plan for non-agricultural permission. PW 1 further stated that when he met Accused 1 J.D. Patel on 3-4-1991, Accused 1 J.D. Patel told him that it would not look proper if he takes the amount from PW 1 in office and showed him Accused 2 Navinbhai and asked PW 1 to give the money to him. PW 1 further stated that he went to the gallery and gave muddamal currency notes to Accused 2 Navinbhai. Thereafter, Accused 2 Navinbhai had gone near Accused 1 J.D. Patel and sat down. On showing the pre-arranged signal, the police team went inside and questioned Accused 1 and 2. On search of Accused 2 Navinbhai, muddamal currencies were recovered from the left side shirt pocket. Throwing light of ultraviolet lamp had shown presence of anthracene powder in the left side shirt pocket of Accused 2 Navinbhai. Likewise, throwing light of ultraviolet lamp on the hands of Accused 1 J.D. Patel had shown the presence of anthracene powder. From the evidence of PW 1, demand by Accused 1 J.D. Patel and Accused 2 Navinbhai is proved by the prosecution. The same is corroborated by the test of the ultraviolet light showing the presence of anthracene powder on the shirt worn by Accused 2 Navinbhai and the right hand of Accused 1 J.D. Patel. Evidence of PW 1 is corroborated by the evidence of PW 3 Devendra Kumar. The trial court recorded the findings that the evidence of PWs 1 and 3 is consistent and they are reliable witnesses. Upon appreciation of evidence, adduced by the prosecution, the trial court convicted Accused 1 and 2.

**10.** The High Court acquitted the accused on the ground that there was no recovery from Accused 1 J.D. Patel and that the demand by the accused persons has not been established by the prosecution. The High Court took the view that Accused 2 Navinbhai had no idea for what purpose the money was given to Accused 1 J.D. Patel by PW 1 and therefore, it cannot be said that Accused 2 Navinbhai had accepted the bribe amount upon demand to PW 1. The High Court was not right in brushing aside the evidence of PW 1 who has clearly stated that Accused 1 J.D. Patel demanded bribe of Rs 1000 and the same was settled for Rs 500 for expediting the matter for conversion of the plot for non-agricultural purpose. Recovery of the tainted currency notes from Accused 2 Navinbhai and the presence of anthracene powder in the right hand of Accused 1 J.D. Patel and the pocket of the shirt of Accused 2 Navinbhai clearly show that they acted in tandem in the demand and acceptance of the bribe amount. When the demand and acceptance of illegal

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gratification has been proved by the evidence of PWs 1 and 3, the High Court was not right in holding that the demand and acceptance was not proved. The findings of the trial court did not suffer from any infirmity and the High Court was not justified in setting aside the conviction of the accused.

**11.** So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one



of preponderance of probabilities. In *C.M. Girish Babu* v. *CBI*[4], this Court held as under: (SCC p. 786, paras 21-22)

> "*21*. It is well settled that the presumption to be drawn under Section 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. ...
>
> *22*. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt."

Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe.

**12.** In the case in hand, the accused have not offered any explanation to rebut the presumption under Section 20 of the Act. On the other hand, from the evidence of PW 1 that Accused 1 demanded the bribe appears to be natural. The application for approval of revised plan was earlier rejected. When the complainant and his advocate met TDO and on whose direction PW 1 has paid the requisite fine amount, the file has to necessarily move. It was at that point of time Accused 1 demanded bribe amount from PW 1. While appreciating the evidence, the High Court should have given proper weight to the views of the trial court as to the credibility of all evidence of PWs 1 and 3. When the findings recorded by the trial court are based upon appreciation of evidence, the High Court was not right in reversing the judgment of the trial court.

**13.** Insofar as the sentence of imprisonment is concerned for conviction under Section 13(1)(*d*) of the Act, the trial court imposed sentence of imprisonment of two years upon each of the accused. The occurrence was of the year 1991, that is, about 27 years ago. Considering the passage of time, we deem it appropriate to reduce the sentence of imprisonment of two years to the statutory minimum imprisonment of one year.

**14.** In the result, the impugned judgment of the High Court dated 16-4-2015 in *Navinbhai Chandrakant Joshi* v. *State of Gujarat*[1] is set aside and these appeals are allowed affirming the conviction of Accused 1 and 2 under Section 7 and Section 13(1)(*d*) of the Act. The sentence of imprisonment under Section 13(1)(*d*) of the Act imposed upon each of the accused is reduced from two years to one year. The respondents/Accused 1 and 2 shall surrender themselves to serve the remaining sentence within two weeks from today, failing which, they shall be taken into custody.

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† Arising out of SLPs (Crl.) Nos. 8259-60 of 2016. Arising from the Judgment and Order in *Navinbhai Chandrakant Joshi* v. *State of Gujarat*, 2015 SCC OnLine Guj 6299 (Gujarat High Court, Ahmedabad Bench, Crl. As. Nos. 477-78 of 2000, dt. 16-4-2015)

[1] *Navinbhai Chandrakant Joshi* v. *State of Gujarat*, 2015 SCC OnLine Guj 6299

[2] *B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543

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[3] *C.M. Sharma* v. *State of A.P.*, (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89

[4] *C.M. Girish Babu* v. *CBI*, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1

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