

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL NO. 836 of 1997****With****CRIMINAL APPEAL NO. 933 of 1997****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE Z.K.SAIYED**  
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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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RANCHHODBHAI BHIKHABHAI SENGMA....Appellant(s)

Versus

STATE OF GUJARAT....Opponent(s)/Respondent(s)

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Appearance:

MR KB ANANDJIWALA, ADVOCATE for the Appellant(s) No. 1

MR. HARDIK SONI, APP, for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE Z.K.SAIYED****Date : 30/01/2015****ORAL JUDGMENT**

[1] The conviction Appeal No.836 of 1997 has been filed by the appellant–original accused, under Section 374

of the Cr. P.C., against the Judgment and order dated 27.08.1997 passed by the learned Special Judge, City Civil Court No.10, Ahmedabad, in Special Case No. 1 of 1994, whereby the appellant-accused was convicted for the offence punishable under Section 7 of the Prevention of Corruption Act and sentenced to undergo 6 months rigorous imprisonment with fine of Rs.3,00/-, in default of payment of fine, further rigorous imprisonment of 15 days and for the offence punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and sentenced to undergo 1 year rigorous imprisonment with fine of Rs.300/-, in default of payment of fine, further rigorous imprisonment of 15 days. Against the judgment and order of conviction as aforesaid, Criminal Appeal No.933 of 1997 is filed by the State under Section-377 of the Code of Criminal Procedure for enhancement of sentence awarded by the learned trial Judge.

[2] According to the prosecution case, on 31.07.1993, one Ramanlal Purushotam Patel gave a complaint to ACB office alleging that when he was coming in his Jeep bearing No.GRN 1106 and going to old Shahalam Toll Naka from Bhulabhai cross road, his vehicle was stopped by ACB officer and told him that in the Ahmedabad city area and on the highway touching to Ahmedabad City, local police and traffic police stopped the passenger vehicle and were collecting illegal gratification from the said driver by demanding Rs.5/- to 50/-as bribe. The complainant confirmed the said information given by ACB Officer to

him. The ACB Officer also informed the complainant that to verify the said fact as they arranged a trap and he shown his willingness to act as a panch in the said raid. Thereafter, his search was carried out and pocket of left side of his shirt kept open. ACB officer produced Rs.45/-of different currency notes in different denominations. Number of the said notes were noted down in the panchnama. Experiment of ultraviolet lamp and Anthracene powder was carried out and notes were put in the left side pocket of the complainant. Panchas were called and required instructions were given to members of raiding party. Thereafter, the preliminary panchnama was drawn. Thereafter, two panchas and certain ACB Officers sat in the jeep of the complainant and other persons sat in the Government vehicle of ACB Department. They started from Shahalam, Toll Naka and through Maskati Market, Sarangpur bridge, Gomtipur, CTM, Narol Circle, Piranal Toll Naka, Vishala circle and they came near Vasna Toll Naka. At the entrance, there was a tent on left side of the road and there was a traffic post. One Police Constable in Khakhi dress stopped his vehicle and asked the complainant to go near the table and chair. Thereafter, traffic Head Constable asked certain information like name, address and whereabouts and taken Rs.30/-from his in presence of panch No.1 as entry fee. Thereafter, raid was carried out and Rs.30/- was recovered from the traffic Head Constable whose name was Ranchhodbhai Bhikhabhai-appellant-accused herein. The anthracene

powder mark was found on the boarder of pocket of the shirt put up by the appellant-accused and also found the currency notes which were in the pocket of the appellant-accused. Said notes were taken out consisting bunch of 20 and 10 rupees currency notes. On both currency notes, ultraviolet lamp experiment was carried out and anthrecene powder was found. Numbers of currency notes were tallied with the numbers mentioned in the preliminary panchnama. Muddamal were recovered. Offence was registered after due investigation and charge-sheet was filed against the appellant-accused for the offences punishable under Sections-7, 13(1)(d) and 13(2) of the Prevention of Corruption Act before the learned Special Judge, Ahmedabad, which was numbered as Special Case No.01 of 1994.

[3] On the basis of above allegations, charge was framed against the appellant-accused vide Exh.2 and read-over and explained to the appellant-accused for the offences punishable under Sections-7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. Then plea was recorded, wherein, appellant-accused pleaded not guilty to the charge and claimed to be tried.

[4] In support of the prosecution case, prosecution has examined following oral evidences :-

Sr. No.	Exh.	Name of Witness
1	7	Ramanbhai Parottambhai Patel

2	10	Pirkhan Afzalkhan Pathan
3	16	Manubhai Gulabhai Chavda

[5] In support of the prosecution case, the prosecution has produced several documentary evidences like sanction order of appointing authority of Ranchhodbhai Bhikhabhai at Exh.18, complaint (not exhibited), panchnama of trap at Exh.12 and receipt regarding the recovery from the appellant-accused at Exh.11.

[6] Thereafter, after filing closing pursis by the prosecution, further statement of appellant-accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded, wherein, it is explained by the appellant-accused that he has not made any demand to the driver of vehicle and driver tried to thrust the trap amount in his pocket and it was restrained by him. He admitted that he was innocent and he has not committed any offence and was wrongly charge-sheeted. The appellant-accused has denied the case of the prosecution and submitted that a false case is filed against him.

[7] After considering the oral as well as documentary evidence and after hearing the parties, learned Special Judge, City Civil Court No.10, Ahmedabad impugned judgment and order dated 27.08.1997 held the appellant-accused guilty to the charges levelled against him under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, and convicted and sentenced the appellant-accused, as stated above.

[8] Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, City Civil Court No.10, Ahmedabad, the present appellant-accused has preferred this appeal.

[9] Heard Mr.K.B.Ananjiwala, learned advocate for the appellant-accused and Mr.Hardik Soni, learned Additional Public Prosecutor for the respondent-State.

[10] Mr.K.B.Ananjiwala, learned advocate for the appellant-accused submitted that in case of corruption, there must be some cogent evidence to establish that demand of illegal gratification was made by person and in result of that demand, the same was accepted by him. He further submitted that if prior explanation is made by the appellant-accused regarding the recovery of the trap amount from his possession, then probable defence is required to be considered by the learned trial Judge. It is already disclosed by the appellant-accused before the learned trial Judge that when he was on duty with his colleague at Toll Naka and making search and verification of the vehicles by stopping them, at that time, the vehicle of the complainant was stopped by his colleague and he was produced before him and his name, address and whereabouts were asked by him and during that period, driver of the vehicle-complainant tried to thrust the trap amount in his pocket, which he was refrained and therefore, he was wrongly caught by the members of raiding party. Mr.Ananjiwala, contended that the

aforesaid explanation made by the appellant-accused in further statement recorded under Section-313 of Code of Criminal Procedure therefore, it was not afterthought. He further contended that as per Section-20 of the Prevention of Corruption Act, presumption is already rebutted by the present appellant-accused, but learned trial Judge has wrongly considered the evidence of PW-1-driver of the vehicle, who was not mentally fit and he was also declared as hostile. Mr.Anandjiwala, further contended that through the evidence of PW-1-driver, prosecution could not establish that present appellant-accused made demand of illegal gratification and in absence of demand, when the trap amount is recovered from the possession of the present appellant-accused, then it cannot be said that the prosecution has proved its case beyond reasonable doubt. He argued that as per Section-7 of the Act, there must be of specific evidence of PW-1 and PW-2 panch and in absence of the said evidence, the learned trial Judge cannot convict the present appellant-accused. Mr.Anandjiwala, further read the evidence of PW-1-driver and contended that he was suffering from some ailment (mentally not fit), which creates doubt against the case of the prosecution. He then contended that the prosecution has examined PW-2-panch, who was known to one of the members of raiding party Police Inspector-Khan. He contended that leader of the trap Police Inspector-Chavda with the collusion of members of raiding party and with Mr.Pathan, Panch No.2 was selected. He further submitted

that panch witness are from Gujarat State Road Transport Corporation and from the Vigilance Department. Mr. Anandjiwala, further submitted that PW-2-panch is an interested witness and he known to members of raiding party, creates probable doubt. He submitted that evidence of PW-2 panch is not supported by evidence of PW-1 driver. Mr. Anandjiwala, read the evidence of PW-2-panch and submitted that he disclosed reality of the trap made by ACB Officers at the place of trap. It is further disclosed by him that the place of trap was not the specific place, from where, he could see and hear the talk between the driver and the appellant-accused. He further submitted that as per the evidence of PW-3-Trapping Officer, Mr Chavda, who was present in the vehicle, he could not hear anything between the driver and panch No.1. He argued that when Trapping Officer Mr. Chavda could not hear anything, then, it could be possible that panch No.2 also could not hear anything, who was nearer to him. He further argued that in such circumstances, benefit of doubt is required to be given to the appellant-accused. He contended that the defence tried to establish probable defence before the learned trial Judge, but learned trial Judge has not considered the said defence version and by simply considering the evidence of hostile witness PW-1-driver and PW-2, who used to support the evidence of PW-1, wrongly convicted the appellant-accused for the alleged offence of corruption. He further argued that as far as the recovery made from the possession of the appellant-



accused is concerned, it was explained by by him before the learned trial Judge that presence of anthracene powder was found from his fingers, tips etc because Trapping Officer tried to thrust the trap amount in his pocket. In the evidence of PW-2 panch, it is disclosed that anthracene powder was not found from the thumb of the appellant-accused. He argued that a one who receives some amount from one hand, thumb is the important part of the hand which plays vital role and without use of the thumb, no one can accept any amount. Therefore, absence of anthracene powder on the thumb of the appellant-accused creates sufficient doubt and probable defence taken by the appellant-accused before the learned trial Judge that amount was thrust in his pocket, has substance and force.

[10.1] Mr. Anandjiwala, further contended that in the trap, Mr.Chavda, was leader of the trap alongwith other colleagues and through Mr.Khan panchas were selected, who were not selected at random, but were the persons already selected in advance to falsely implicate the appellant-accused. He further submitted that contents of the panchnama is not proved beyond reasonable doubt through oral evidence of PW-1 and PW-2. He argued that conduct of witness PW-3-Police Inspector, in the cross-examination, was bias. He deposed only to support the version of the complainant with a view to achieve his goal to falsely convict the appellant-accused. Mr. Anandjiwala, further submitted that contents of panchnama was not dictated by PW-1 or PW-2 and therefore, the same fatal to the case of the prosecution and therefore, contents

of panchnama cannot be considered as a legal piece of evidence. He contended that complaint of the complainant lodged by PW-3, is not exhibited. At the last, Mr. Ananjiwala, learned advocate, prayed to set aside the judgment and order of conviction prayed to allow the appeal.

[11] Per contra, Mr. Hardik Soni, learned APP, has read the charge and contended that as per the charge framed, appellant-accused was present at the time of trap, and the vehicle was stopped by PI-Ravjibhai Bhikhaji and the driver i.e. the complainant was directed to meet the appellant-accused, who sat on the chair near Tent. As per the direction of that Police Inspector, the complainant went to the place alongwith Panch No.1 and Trapping Officer followed him. He fairly submitted that no doubt it is established by Mr. Anandjiwala, learned counsel, that PW-1-driver was declared as hostile and his evidence cannot be considered, but he was declared as hostile prior to made disclosure regarding the contents of panchnama and the complaint. He read the evidence of PW-1 and contended that when he reached to the place of trap, appellant-accused asked his name, address and whereabouts and told that your Jeep was containing passengers more than the prescribed limit and thereby, the appellant-accused made a demand of Rs.50/- and after some negotiation, it was reduced to Rs.30/-, which accepted by the appellant-accused as bribe from the complainant PW-1. Mr. Soni, further submitted that as PW-1-driver of the vehicle was totally unknown person and

therefore, usually there was no animus with the appellant-accused and he was in Traffic Department. Even in explanation, appellant-accused did not disclose the fact that due to some past incidents, PW-1 filed concocted complaint with the help of Trapping Officer Mr.Chavda and Mr.Khan, PI and other members of raiding party. He further argued that as per the evidence of PW-1, the trap amount was given to the appellant-accused in respect of demand made by him, and the appellant-accused accepted it by one hand and inserted in his pocket by second hand. He argued that explanation made by appellant-accused in statement recorded under Section-313 of the Code of Criminal Procedure, was a got up and concocted story and clearly an afterthought. It is explained by the appellant-accused that at the time of arrest, his hands were inside the pocket. He submitted that if the story of the appellant-accused is believed, then anthrecene powder would not have been found from the pocket. He further argued that PW-2-panch in an independent witness and specific question was asked to him that whether he known to Mr.Khan, PI, and he denied the same. Mr. Soni, read the evidence of PW-2 and contended that in presence of him, vehicle of complainant was stopped by colleague of appellant-accused and he was directed to meet the appellant-accused, who sat on the chair near the Tent. When the complainant went to meet him, the appellant-accused alongwith PW-2 and PW-3 Mr. Chavda. In their presence, demand of Rs.50/-was

made by the appellant-accused and then, some communication took place between the complainant and the appellant-accused and the complainant gave the trap amount to the appellant-accused, which was inserted by the appellant-accused in his pocket. The aforesaid story narrated by PW-2 gets substantiated through contents of panchnama. Mr. Soni, further argued that as per the evidence of PW-3-Chavda, Trapping Officer, to prosecute against the appellant-accused, sanction was obtained by him from the competent authority and it is not challenged by the appellant-accused and therefore, Mr. Soni, has argued this issue on merits. Mr. Soni, read the judgment and order of conviction and contended that learned trial Judge has rightly observed that demand, acceptance and recovery are proved beyond reasonable doubt. He further contended that no doubt in the evidence of PW-2, he did not disclose that whether anthrecene powder was found from the thumb of the appellant-accused or not, but it is established through evidence of PW-3 that anthrecene powder was also found from the thumb of the appellant-accused. He submitted that this is a minor contradiction or omission and does not fatal to the case of the prosecution and thus judgment and order of conviction is required to be confirmed. He read the judgment and order of conviction and submitted that as per the Provisions of Sections-7 and 13 of Act, learned trial Judge awarded lesser punishment to the appellant-accused. He contended that the Apex Court in plethora of decisions, held that

maximum punishment is required to be given to be given to the appellant-accused in cases of corruption to eradicate the menace of corruption and to deterrent public servant. He submitted that against the judgment and order of conviction, State preferred an appeal No.933 of 1997 for enhancement of sentence. He prayed that this appeal is required to be allowed and further requested the Court that sentence imposed by the learned trial Judge is required to be enhanced. As against the this submission, Mr.Anandjiwala, learned counsel fairly argued that looking to the date of trap, judgment and hearing of these appeals, sufficient mental punishment is already undergone by the present appellant-accused and therefore, appeal preferred by the State for enhancement cannot be entertained.

[12] I have perused the documentary as well as oral evidence produced on record. First of all, I have read the charge framed against the appellant-accused for the offence under Sections-7 and 13 of Act. The trap is carried out by the Trapping Officer with the help of decoy and in decoy trap, it is the duty of the Court to peruse the evidence minutely. I have perused the evidence of PW-1 decoyer, who was driver of the vehicle and as per his evidence, he was present at Narol circle and his vehicle was hired by the members of raiding party and cause of hiring vehicle was explained to him and for which he was ready to join with the trap as a decoyer/complainant. Then, in presence of panchas, experiment of ultraviolet

lamp and anthracene powder was made. These are the formal facts of the prosecution case, but actual fact is required to be considered by the Court is that what was happened at the place of trap when they went there after inserting the trap amount in left pocket of the complainant. I have minutely perused the evidence of PW-1 who disclosed that he was called by ACB Officer and he went to the place of trap with panchas and members of raiding party, is also supported by contents of panchnama and complaint and evidence of PW-2 and that was not minutely cross-examined by the defence. Now, the Court is not entered into the said issue, but material issue for the Court to decide is that whether trap amount was accepted and recovered from the possession of the appellant-accused or not. In that case, PW-1 in his evidence disclosed that when police personnel conveyed him to meet to appellant-accused, who was sitting on the chair near the Tent, he went there and PW-2 panch followed him. Specific words were uttered by the appellant-accused were regarding his name, address and whereabouts and further regarding the overloading of the passengers in his Jeep without permit. Thereafter, the appellant-accused demanded bribe under the guise of entry fee of Rs.50/-. For the demand made by the appellant-accused, I have minutely perused the version of PW-2 panch witness, who was examined at Exh.12. It appears from the evidence of PW-1 that specific demand under the guise of entry fee was made by the appellant-

accused to the driver-PW-1 and after some negotiation, it was reduced to Rs.30/-. Then, the driver gave currency notes to the appellant-accused, which were accepted by him with one hand and inserted by himself in his pocket with other hand. PW-2, who is an independent witness also narrated the same story as narrated above. I have minutely perused the said facts with the contents of panchnama and it is crystal clear that evidence of PW-1, PW-2, contents of panchnama and complaint are fully supported in connection of the demand and acceptance made by the appellant-accused. I have verified that whether trap amount was recovered from the possession of the appellant-accused or not. In that case, on verification made from the evidence of PW-1 and PW-2, it is come on face of the record that when the amount was accepted and inserted in the pocket by the appellant-accused, members of raiding party rushed to the place of trap and search was carried out and in light of ultraviolet lamp, anthracene powder was found from the fingers, palm, tips, cover pocket and corner and inside of the pocket of the appellant-accused. Further, the recovered trap amount from the pocket of the appellant-accused was tallied with the contents of panchnama and numbers of the trap amount shown in panchnama was found from the possession of the appellant-accused. Now, looking to Sections-7 and 13 of the Act, whether presumption can be drawn against the appellant-accused or not. As far as Provision of Section-20 of the Act is concerned, appellant-

accused in statement recorded under Section-313 of the Cr.P.C., disclosed that he has not made any demand and PW-1-complainant forcefully tried to thrust the trap amount into his pocket. I have minutely verified the said event and found that when a person tries to thrust any amount in the pocket of some other person, then the said amount could not enter inside the pocket and presence of anthrecene powder could not found from inside the pocket and it can be found only from the hands, tips, thumb of the hand. This shows that the explanation made by the appellant-accused was an afterthought and in the cross-examination of the witnesses, no defence was taken by the appellant-accused that PW-1-complainant tried to thrust the trap amount in his pocket. In view of the above observation, I am of the opinion that prosecution has proved that illegal gratification was made by the present appellant-accused in presence of PW-2-panch and the trap amount was accepted by him, is also supported by evidence of PW-3-Mr. Chavda. In result, learned trial Judge has rightly considered the evidence of witnesses and he has rightly convicted the appellant-accused for the alleged offences of corruption.

[12.1] Though, Mr.Soni, learned APP argued in support of his Criminal Appeal No.933 of 2007 for enhancement of sentence, but as per the submissions made by learned advocate Mr.Anandjiwala that appellant-accused is already retired and dismissed from the services. I have verified the date of trap, panchnama, arrest and judgment.



Considering the long period between the conviction and hearing of this appeal, I am of the opinion that the appellant-accused, who has already suffered mentally and looking to the age of the appellant-accused, appeal preferred by the State for enhancement of sentence, is not required to be allowed. In view of the above observation, learned trial Judge has rightly convicted the present appellant-accused for the said alleged offences. In the result, I am in full agreement with the judgment and order of conviction of the learned Trial Court.

[13] In the result, these appeal are dismissed. The impugned judgment and order of conviction and sentence dated 27.08.1997 passed by the learned Special Judge, City Civil Court No.10, Ahmedabad in Special Case No.1 of 1994 is hereby confirmed. Bail bond, if any, stands cancelled. R & P to be sent back to the trial Court, forthwith. The appellant-accused is hereby directed to surrender within a period of ***eight weeks from today.***

**(Z.K.SAIYED, J.)**

siddharth