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IN THE COURT OF 6th ADDITIONAL DISTRICT JUDGE, PANCHMAHALS AT GODHRA

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Special Case (A.C.B.) No. 4/2017

Complainant :-

The State of Gujarat, Gandhinagar.
A.C.B. Police Station, Godhra.

Versus

Accused :-

Jivabhai Khanabhai Bamaniya
Unarmed Police Constable
Chhakkadiya, Ta.- Godhra, Dist.- Panchmahals.

Offence Punishable U/sec. 7, 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988.

Appearance:-

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For the complainant : Ld. APP Mr. R. D. Shukla
For the accused : Ld. Advocate Mr. P. D. Pathak

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J U D G M E N T

1. The accused herein is arraigned with the charges of committing offence punishable U/sec. 7, 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988, registered before the Godhra A.C.B. Police Station vide C.R. No.5/14, dated 27.05.2014.

2. The facts of the prosecution case in nutshell are that the accused namely Jivabhai Khanabhai Bamaniya was working as Unarmed Police Constable at Morva(H) Police Station, Dist.-Panchmahals. The complainant has approached the accused to obtain Police Clearance Certificate on 27-05-2014 since the complainant had to submit the same at RTO Office, Godhra to get Conductors Licence. The accused has asked a sum of Rs.100/- as bribe from the complainant to issue the said certificate, but the complainant was having only Rs.50/- so, the accused has told the complainant to bring Rs.100/- and come on 28-05-2014. Since the complainant was reluctant to pay the amount of bribe to the accused, he approached the A.C.B. Police Station, Godhra and lodged complaint against the accused on 27-05-2014. Pursuant to the filing of the complaint, two Government Employees were arranged as panch witnesses and the trap came to be laid on 28-05-2014, wherein the accused got engaged in subject oriented talks with the complainant, which came to be recorded using voice recorder and after preparing the concerned certificate, the accused has demanded and accepted the bribe amount of Rs.100/-. On giving pre-fixed signal by calling to the raiding officer by the complainant, the Trapping Officer and members of the raiding party along with the two panchas rushed to the said place and caught the accused red-handed. The scientific test came to be carried out and the presence of phenolphthalein powder was found on the tainted currency note, in as much as on the hands of the accused. Thereafter, the panchnama was completed and the Trapping Officer formally registered the complaint, which was came to be numbered as C.R. No.5/2014 before the A.C.B. Police Station, Godhra.

3. On completion of preparing and signing of the Trap Panchnama and after arresting the accused, further investigation was conducted. Wherein the statements of the witnesses were recorded, also collected requisite documentary evidences which established the accused to be a public servant. **Further, since the accused was removed from the service hence sanction for prosecution was not required.** Hence, at the end of the investigation, as the Investigating Officer found sufficient evidence to send the accused for trial, he filed the charge-sheet with the approval of his higher authority, before the Special Court for committing offence under Section 7, 13(1)(D) & 13(2) of the Prevention of Corruption Act, 1988 which was taken on record and came to be registered as Special Case (A.C.B.) No.4 of 2017.

4. The case came to be placed before the then Learned Additional Sessions Judge & Special Judge, Panchmahals at Godhra, who having considered the *prima facie* evidence against the accused, issued process against the accused. In turn, the accused appeared through his Learned Advocate and the case was opened. As *prima facie* sufficient evidence was found to conduct trial against the accused, the then Additional Sessions Judge & Special Judge, Panchmahals at Godhra, framed charge against the accused vide Exh.6. The charge was read over & explained to the accused and his plea was recorded vide Exh.7, wherein the accused pleaded not guilty and claimed to be tried. In that event, this special case was rested for leading the evidence from prosecution side.

5. In order to bring home the charges leveled against the accused, the prosecution has led following oral as well as documentary evidences :

Oral Evidence

Exh.	**Description**
17	Deposition of P.W.1 - Nareshkumar Bharatsinh Baria – Complainant.
25	Deposition of P.W.2 - Arjanbhai Somabhai Pateliya – Panch No.1
40	Deposition of P.W.3 - Shatrabhai Hirabhai Pargi– Panch No.1 of Script Panchnama.
44	Deposition of P.W.4 - Imranbhai Ahmedbhai Mansur
52	Deposition of P.W.5 - Ramnath Rajmangal Aahir – IO

80	Deposition of P.W.6 - Jesingbhai Masurbhai Damor – IO

Documentary Evidence

Exh.	**Description**
18	Complaint
26	Trap Panchnama
27	Seizure memo
28	Copy of Police clearance certificate issued in favor of the complainant.
29	Copy of PAN Card of complainant
30	Yadi given to the panch witnesses to remain present as panch
31-37	Chits containing the signature of both the panch witnesses along with the signature of the raiding officer
45	Letter from PSI, Morva(H) to ACB PI giving service details of accused
53	Letter from SP Office to ACB PI along with the service documents of accused
54	Copy of service book first page of accused
55	LPC of accused
56	Posting details of accused
57	Attendance details of accused
58	Transfer order of accused
59	Relieve order of accused
60	Suspension order of accused
61	Complaint of previous offence against accused
46	Letter to FSL for analysis of muddamal
47	Details of muddamal and authority certificate
62	Acknowledgment of muddamal received by FSL

63	Letter from FSL to ACB PI after analysis of muddamal
64	FSL Report of analysis of muddamal
48	Letter to FSL for analysis of muddamal
49	Details of muddamal and authority certificate
50	Certificate under Sec.65(B)(4)(C) of The Indian Evidence Act, 1872 with respect to memory card
65	Acknowledgment of muddamal received by FSL
66	Letter from FSL to ACB PI after analysis of muddamal
67	FSL Report of analysis of muddamal
68	Letter from FSL to ACB PI for voice recording
41	Script panchnama
69	Letter from ACB PI to FSL for taking voice sample
19	Control voice recording form of complainant
70	Control voice recording form of accused
71	Acknowledgment of muddamal received by FSL
72	Letter from FSL to ACB PI after analysis of muddamal
73	FSL Report of analysis of muddamal
74	Letter from ACB PI for CDR details
75-76	CDR details
77-78	CD cover & CD

6. Thereafter, further statement of the accused came to be recorded under section 313 of Cr.P.C., wherein he has by specifically denying each and every material circumstances brought on record, mainly contended that panchnama drawn are false; the statements recorded by prosecution are not in accordance with provision of law;

the false charge-sheet has been filed against him; he had neither demanded nor accepted any money as a bribe from the complainant; The complainant has lodged false complaint against him. The accused has denied to step into the witness box and to examine any witness in his defence.

7. The Ld. Prosecutor Mr. R. D. Shukla appearing on behalf of the State vehemently submitted before this Court that mainly four essential ingredients **i.e**. initial demand, actual demand, acceptance of bribe and recovery of tainted currency notes, are sufficiently proved by the prosecution based upon their oral and documentary evidence. He further submitted that the oral and documentary evidence submitted by the prosecution specifically the service record collected by the I.O. clearly proves on record that the present accused was a public servant at the relevant point of time when successful raid was laid and thereby, the prosecution remained succeed to prove that the accused falls within the term *"Public Servant"* as defined in Section 2(c) of the Prevention of Corruption Act, 1988. He further submitted that before filing the charge-sheet, the accused was removed from the service and order pertaining to the same is produced on record as documentary evidence, thereby since the accused was already removed from the service, hence, the issue pertaining to sanction for prosecution would not come in question. He further submitted that all the oral and documentary evidence produced by the prosecution duly proved its case and the guilt against the accused beyond all the reasonable doubts. Thereby, the prosecution remained succeed to prove that the accused has committed an offence punishable under Section 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Finally, he submitted that the accused may be convicted for the said offence with the maximum punishment as envisaged by law.

Per contra, the Learned Advocate Mr. P. D. Pathak by placing reliance upon the decision of the Honb'le Apex Court in the case of ***Kailas S/o Bajirao Pawar Vs. State of Maharashtra AIR 2025 SC 4294*** and ***in the case of Dileepbhai Nanubhai Sanghani Vs. State of Gujarat 2025(0) AIJEL SC 74812*** and in the case of ***State of Gujarat Vs. Ayubmiya Mohammadmiya Malek 2023(0) AIJEL HC 247087*** and in the case of ***Smt. Meena Balwant Hemke Vs. State of Maharashtra 2000 CRI LJ 2273*** as well as the decision of the Honb'le High Court of Gujarat in the case of ***Kanubhai Kantibhai Patel Vs. The State of Gujarat 1996(0) AIJEL HC 206214,*** and by submitting the written arguments vide Exh.85 mainly submitted that the initial complaint lodged by the complainant lacking the name and identity of the present accused; the complainant also remained failed to identify the accused as being the same police personal who had raised the initial demand, thereby the prosecution remained failed to prove the initial demand which is being essential to prove the guilt against the accused. He further submitted that the shadow witness was not accompanying the complainant during the second part of the raiding panchnama, and hence except the complainant, no one witnessed the essential aspects of actual demand of bribe and its acceptance. So far as this aspect is concerned, the deposition of the complainant is not trustworthy, the complainant during his deposition diverted these aspects. The complainant has duly admitted on his own oath that the tainted currency note was neither found and recovered from the personal search of the accused, nor recovered from the pocket of the shirt wored by the accused and the tainted currency note was found and recovered from one of the register maintained in the impugned office, whereas the shadow witness vide Exh. 25 and member of the raiding party vide Exh. 42 deposed the diversion fact that the tainted currency note was found and recovered as lying on the floor. Accordingly, as per the defence, the recovery of the tainted currency notes from the conscious possession of the accused not proved on record. Since except the complainant, no one witnessed to prove the aspect of actual demand of bribe and its acceptance, hence in the present situation, since the prosecution remained failed to prove the actual recovery of tainted currency notes from the conscious possession of the accused, ergo, actual demand and its acceptance cannot said to have proved on record. He further submitted that as admitted by the complainant, the police clearance certificate required by the complainant was already made available to him and the said certificate does not bears the signatures of the present accused, but it bears the signatures of his higher officer. Accordingly, there is no direct or indirect involvement of the present accused in the proposed process initiated by the complainant. In view of the same, the Ld. Advocate for the accused mainly submitted that the prosecution remained failed to prove the essential requirements of law **i.e**. initial demand of bribe, actual demand, its acceptance by the accused and recovery of the tainted currency notes from the conscious possession of the accused. Accordingly, the prosecution remained failed to prove its case and the charges leveled against the accused beyond the reasonable doubt. Hence, in view of the settled law, since the prosecution remained failed to prove their case and the guilt against the accused beyond all reasonable doubt, he requested this court to acquit the present accused. This Court has minutely perused & considered the written arguments submitted by the defence as well as authorities relied upon by them.

8. Considering the evidences available on record, submissions made on both the sides, the following issues arises for consideration :

ISSUES

1. Whether the prosecution succeeds in proving the fact that the accused, Jivabhai Khanabhai Bamaniya, was a public servant on the day of incident as defined under Section 2(c) of the Prevention of Corruption Act, 1988?

2. Whether the prosecution proves beyond reasonable doubt that, the accused has demanded and accepted illegal gratification of Rs.100/- other than legal remuneration and have committed offence punishable under Section 7 of the Prevention of Corruption Act, 1988?

3. Whether the prosecution proves beyond reasonable doubt that, the accused has committed criminal misconduct as per Section 13(1)(d) of the Act by corrupt or illegal means and has obtained amount of Rs.100/- and thereby committed an offence punishable under Section 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988?

4. What order?

9. My findings to the above issues are as under :

1. In Affirmative.
2. In Affirmative.
3. In Affirmative.
4. As per the final order.

<u>R E A S O N S</u>

10. **<u>Issue No. 1 :-</u>**

In a case involving allegations of bribery, wherein a public servant is charged with having demanded and accepted illegal gratification, the prosecution is under a legal obligation to establish that the accused was, at the relevant point of time, a "public servant" within the meaning of Sec. 2(c) of the Prevention of Corruption Act, 1988. In this regard, a minute scrutiny of the oral as well as documentary evidence produced on record, particularly the documents exhibited vide Exh. 53 to 60, assumes considerable significance.

The prosecution, by placing reliance upon the aforesaid documentary evidence, has sought to prove that at the time of commission of the alleged offence, the accused was serving as a public service and was discharging his official duties as such. Upon careful examination, the said documents collectively comprises extracts of the service book of the accused, salary slip pertaining to the month of May 2014 during which period the alleged offence is stated to have been committed, attendance records reflecting the presence of the accused on duty, transfer orders posting the accused at Morva (H) Police Station from Rajgadh Police Station, as well as subsequent transfer orders issued in larger public interest. The prosecution has further relied upon the suspension order dated 16.12.2015 issued by the Commissioner of Police, Rajkot.

A conjoint reading of the aforesaid documents clearly establishes that the accused had been serving as an Unarmed Police Constable at Morva (H) Police Station since the year 2010. The attendance records further reveal that on 27.05.2014, **i.e.**, the date on which the successful trap was conducted, the accused was present on duty and was discharging his official duty as a police constable. The subsequent administrative orders, including the transfer and suspension orders, lend further corroboration to the prosecution case regarding the official status of the accused.

It is pertinent to note that, during the trial, the accused has *neither* denied *nor* disputed his status as a public servant on the day on which the successful trap was conducted. The silence on the part of the accused in disputing his official status further strengthens the prosecution case and permits the Court to draw an adverse inference to that extent.

Even otherwise, in view of the above mentioned documentary evidence adduced by the prosecution, this Court has no hesitation in holding that on the date of the incident, namely 27.05.2014, the accused was serving as an Unarmed Police Constable at Morva (H) Police Station and was discharging his official duties as a public servant. Consequently, the accused squarely falls within the ambit of the term "public servant" as defined under Section 2(c) of the Prevention of Corruption Act, 1988.

Accordingly, this Court is of the considered opinion that the prosecution has successfully established, beyond reasonable doubt, that the accused was a public servant on the date of the incident and was discharging his public duties at the relevant point of time. Hence, **issue No.1** is decided in the ***"affirmative"***.

11. <u>Issue No. 2 & 3 :-</u>

As both these issues are inter-connected, hence to avoid repetition of facts and discussions, and to avoid any ambiguity, they are hereby discussed and determined together for the sake of convenience. Before testifying the evidences on record, let us clarified herein the settled proposition of law so far as various aspects of law on the issues to be determined in the present case,

- **In *Sukumaran vs. State of Kerala (supra),*** the Hon'ble Supreme Court ***laid the burden upon prosecution to prove accusation against the accused for the offence with regards to acceptance of illegal gratification.***

Para-13 is relevant, which reads as :-

13. With reference to the above mentioned rival legal contentions urged on behalf of the parties and the evidence on record, we have examined the concurrent finding of fact on the charge made against the appellant. It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Sections 7 and 13(1)(d) of the Act that ***the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act.*** *Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution.*

➢ In ***B. Jairaj vs. State of A.P. (Supra),*** the Hon'ble Supreme Court held that, **in absence of proof of demand**, *mere recovery of tainted money from the accused would not be sufficient for his conviction*.

Para-8 reads following :

8. *In the present case, the complainant did not support the prosecution case* ***in so far as demand by the accused is concerned. The prosecution has not examined any other witnesses, present at the time when the money was allegedly handed over to the accused by the complainant****, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exh.P- 11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exh. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial Court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is* *admitted by the accused himself.* ***Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7.*** *The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned* ***as 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.*

- The Hon'ble Gujarat High Court in case of ***Bharatkumar Jaimanishanker Mehta (supra)***, in regards to Sec. 5 & 4 of the Old Prevention of Corruption Act, held following in para-11 :

11. It may be stated that in a criminal case whether it be under the Prevention of Corruption Act or under the Penal Code, the burden of proving the case beyond reasonable doubt is always on the prosecution, It is true that after it is established that the accused accepted the amount, presumption Under Section 4(1) of the Prevention of Corruption Act would arise. But for the purpose of coming to the conclusion as to whether the accused accepted the amount or not, the totality of the evidence led at the trial is required to be appreciated. The prosecution evidence alone cannot be considered for *the purpose of coming to the conclusion as to whether the accused accepted the amount or not. The evidence led by the prosecution, the suggestions made by the defence in cross-examination of the prosecution witnesses, the version given by the defence and the defence witnesses., if any, examined at the trial, every "thing is required to be considered in its totality and it is to be seen as to whether the total effect of the entire, evidence led before the Court is of a nature by which the only conclusion possible was that the accused accepted the amount. If such a conclusion is possible then alone it can be held that the prosecution established the case beyond reasonable doubt. In the first place we may say that all the three prosecution witnesses fully supported the prosecution case. It may here be stated that the complainant at one stage thought that the amount was excessive. He wanted favour from the appellant in the sense that he wanted to know before as to in which area the Inspector was to visit for the purpose of checking. This according to him was necessary for the purpose of getting business of repairing, The offence of bribery can only be completed if the amount is offered and accepted and, therefore, the person offering the bribe aids the offender who accepts the amount. The complainant is, therefore, in the eye of law an accomplice and, therefore, his evidence is required to be* *corroborated by independent evidence before it could be acted upon. For that purpose in a raid which is carried, the panch is chosen and he is kept present throughout in order that he might see the transaction and hear the talk which might take place at the time of the transaction. Choosing of a person as a panch is a most important aspect in a corruption case, and an independent person unconnected with the prosecution is required to be chosen so that there is guarantee of his reliability and the learned Special Judge, therefore, must feel that the person chosen is a person on whom implicit reliance could be placed.* ***It must always be remembered that the whole prosecution case in a corruption case practically hangs on the evidence of this panch witness, a single person who either destroys the prosecution case or destroys the career of a public servant.*** *It is at times very difficult, almost impossible for a public servant to find out all antecedents of a panch witness and suggest as to why and under what circumstances he is deposing against him. It is, therefore, necessary that a great care should be taken by the investigating agency to choose a proper person whose integrity and whose reliability cannot be doubted. In regard to Mohanbhai (P.W. 2) panch No. 1 it appears that he was chosen as a panch when he was just standing under a pillar near Pan cabin. The place where he* *was standing was at a distance of about one and half or two miles from his house. That place is at a distance of about half mile from the office of the Police Inspector. Now, therefore, the Police Inspector or his person had traveled a distance of about half mile to find out a suitable person to act as a panch. That person was accidentally found out while he was just standing under a pillar near Pan cabin after taking pan. Curiously, another panch had also come there from a different direction and he was found chitchatting with the first panch. This would show that the two persons were, known to each other and were perhaps friends. It was brought out in evidence that first panch witness cultivates survey No. 130 and a part of that survey number is cultivated by panch No. 2, This fact panch No. 1 was not prepared to admit till copies of panipatraks were shown, to him. He thereafter had to agree that panch No, 2 belonged to his caste. Now, therefore, it clearly appeared that the two panchas belonged to the same caste. So far as agricultural operations were concerned they were neighbours and they from different directions had come together at one place and were talking and, therefore, they were friends. There was no reason for panch No; l after taking pan to wait under a pillar unless he was waiting for panch No. 2 who was his friend. According to the evidence of panch No. 1 he was going to the office of* *the Forest Department because he wanted certain plants which he wanted to plant. He admitted that after the raid he did not go to that office, the reason given by him was that he got some letter by post and, therefore, it became not necessary to go to the office of the Forest department and that letter was not produced either before the Police Inspector or before the Court. Thus it appears that Mohanbhai was a person who was especially chosen and the second panch was also especially chosen because he was friend of panch No. 1, There was hesitation on the part of panch No. 1 to admit the friendship and he was not willing to admit that a part of survey No. 130 was cultivated by panch No. 2 unless he was shown the copies of panipatraks and a position was created by which he had no alternative but to admit that panch No. 2 was cultivating a part of survey No, 130, and the other part was being cultivated by him. If, therefore, there was a panch who was especially chosen and he wanted to fall in line with the prosecution and did not desire to admit certain facts which would go to show that he was friendly with panch No. 2, his evidence was required to be accepted after scrutiny and care. Now if this evidence is considered along with the defence evidence it would appear that Shri Raval (D. W. 1) originally was the prosecution witness according to the charge-sheet. The Additional Public Prosecutor* *who was in charge of the case gave application Ex. 20 by which it was submitted that he did not desire to examine Raval as prosecution witness. The defence raised objection stating that Shri Raval was an important witness and it was stated by endorsement that Shri Raval must be offered for cross-examination. Now here it may be stated that the complainant was cross-examined and he was questioned in regard to the defence version. He was specifically put questions that he had met Shri Raval for obtaining change and the accused was not present at that time. The complainant denied the suggestion. But the fact remains that the defence version was put to the complainant both in regard to the talk which the complainant had with Shri Raval and in regard to the fact that the accused had accompanied him to the State Bank of Saurashtra where they met Shri Upadhyaya. Both these versions were denied by the complainant. Under, these circumstances it was expected of the prosecution to examine Shri Raval. The prosecution did not examine Shri Raval, Ultimately the defence examined Shri Raval. Shri Raval thoroughly supported the say of the defence. Now his evidence cannot be thrown away on the ground that he is serving in the same department as a colleague. He was questioned whether he would be glad if the accused was acquitted and he stated that he would* *be glad if the accused was acquitted. This answer would never mean that Shri Raval would tell lies in order that the accused may be acquitted. When two persons are serving in one office and one person is prosecuted and ultimately acquitted, the other person working in that office is bound to be glad in regard to the outcome in favour of the colleague who was working in the office. From that one could never conclude that the colleague would be willing to tell lies in order that the other colleague working in the same office is acquitted. Shri Raval is a senior person working in the office for last many years. His evidence could not be thrown away on the grounds suggested by the learned Special Judge. In regard to Shri Upadhyaya (D. W. 2) in Ws evidence in examination-in-chief he stated that he was working in Mahuva Branch in 1971 and at that time one Shri Bhatt was working with him and who was his friend and he stated that the accused is the husband of the sister of Shri Bhatt, This was disclosed in examination-in-chief. Now one cannot impute a person working in the Bank for last 13 years that because he had friendship in 1971 with one Shri Bhatt he would be willing to oblige Shri Bhatt and tell lies for saving the husband of the sister of Shri Bhatt. Such a conclusion is not possible. In cross-examination it was. suggested that one Shri Madhubhai Mehta was officer in Bhagtinagar* *branch at Rajkot and the accused is the brother of Madhubhai Mehta. Shri Upadhyaya was not serving under Madhubhai Mehta. He was not serving in Bhagtinagar Branch. State Bank of Saurashtra may have several officers working in several branches of the State. Merely because one of the brothers of the accused is an officer in one of the branches of State Bank of Saurashtra this person who had no connection with Madhubhai Mehta could not be willing to tell lies to save the brother of one of the officers serving in some branch.*

11.1. Thus, it is clear that the case under Prevention of Corruption Act does not give immunity to the prosecution from proving the case beyond reasonable doubt. Like other criminal cases under the Penal Code, the burden of proving the case beyond reasonable doubt always lies upon the prosecution. ***Although Sec. 20 of the P. C. Act provides for the rule of presumption, it does not absolve the prosecution from proving the foundational fact.*** The prosecution, in order to prove the guilt of the accused, <u>is required to prove</u> **initial demand**, <u>**actual demand**</u>, <u>**its acceptance and recovery**</u>.

11.2. In background of above legal position, let peruse & examine the evidences produced by the prosecution to find out as to whether <u>sufficient evidence has led by the</u>

prosecution ***to prove*** **the initial demand**, **actual demand, acceptance** ***and*** **recovery**.

11.3. Minute perusal & test of the prosecution evidences produce on record suggest that, it would be more proper to have determination with respect to the last important aspect of recovery from the accused, first. Hence, initially this court would like to testify the prosecution evidence to come to the conclusion *as to whether the prosecution remain succeed to prove the successful raid & recovery of tainted currency notes from the accused during the raid?*

➔ **Successful raid & recovery of tainted currency notes from the accused during the raid :- (Proved)**

The minute scrutiny of the oral and documentary evidences produced by the prosecution indicative to the fact that, after the complainant has lodged his initial complaint vide Exh.18 on 27-05-2014, immediately the raiding officer has called upon two Government Officials to remain as independent panch witness in the aimed raid. For the said purpose, two Government Officials for the purpose of raid were called from the office of the District Treasury Office, Godhra who took part in the first & second part of raiding procedure conducted by the raiding officer. It is pertinent to note here that, the prosecution has submitted the documents pertaining to the first & second part of raid conducted by the raiding officer vide Exh.26[1]

1 Panchnama of raid.

and Exh.27[2], to prove the entire proceedings of first & second part of raid in the presence of the said two independent panch witnesses along with the complainant. To prove the present aspect, the prosecution has examined the prime witnesses namely Mr. Arjanbhai Somabhai Pateliya vide Exh.25 who stood as prime panch witness in the first & second part of the raid, and also examined one of the raiding member Mr. Imranbhai Ahmedbhai Mansur vide Exh.44 who took active part in the entire raid along with the raiding offer and other team.

It is pertinent to note here that, to prove the first & second part of the raid along with the recovery of tainted currency note from the accused, prosecution has actually relied upon the deposition of the present two important witnesses vide Exh. 25 & 44 along with the documentary evidence vide Exh. 26 to 32, and **the present evidences together appears to have proved the following facts on record :**

> "After receiving the complaint of the complainant, the raiding officer has secured the presence of two Government Officials **i.e.** (1) Arjanbhai Somabhai Pateliya and (2) Kantibhai Jivabhai Machchi as independent panchas. <u>On 28-05-2014</u>, the said both the independent panchas appeared before the raiding officer. The raiding officer has introduced them with the complainant as well as the other members of the raiding party and also make them aware with the entire facts of the complainant's complaint. Also

2 Seizure memo of the trap money.

make them aware to the fact that, they have planned a trap in response to the complainant's complaint and the complainant has secured the trap money **i.e.** currency note of Rs.100/-. The number of the currency note is also noted in the first part of the panchnama. The raiding officer has conducted personal search of the complainant through one of the panch witnesses. Then the chemical experiment was conducted by the raiding officer through one of the police constable Mr. Chhatrasinh M. Solanki, who made the two independent panchas along with the complainant fully aware with the usage of phenolphthalein powder and the experiment of sodium carbonate and its effect on the tainted money as well as the other articles smeared with phenolphthalein powder. Both the panch witnesses also made aware to the fact that the phenolphthalein powder could not be identified by the naked eyes and it easily sticks with any object which comes in contact, but can be identified by sprinkling the mixture of sodium carbonate. In the presence of the independent panchas, the raiding officer through one of the police constable Mr. Chhatrasinh has sprinkled phenolphthalein powder over the currency note secured by the complainant and informed the complainant to put it in right side pocket of his pant and also informed not to touch it until the situation occurs to pay the bribe money. Then after, the raiding officer through Prosecution witness Mr. Imranbhai Ahmedbhai Mansuri examined vide Exh. 44 has <u>secured one Audio recorder and memory card</u> and after verifying the same, it was found in working condition. In the presence of both the panchas the raiding officer has secured their audio recording. The raiding officer has also informed both the panchas to secure safe distance from the raiding spot till the pre-fixed signal is given by the complainant and on receiving the pre-fixed signal from the complainant, all of them would have to reach at the office of accused."

<u>This is what the entire raid procedures conducted by the raiding officer in the presence of both the independent panchas, as well as, the complainant, ***as a first part of raid panchnama.***</u> **The same appears to have been duly proved on record by having due corroboration from the deposition of the present both the witnesses examined vide Exh. 25 & 44. It is pertinent to note here that, <u>*the complainant has also dully corroborated the present facts during his deposition vide Exh. 17*</u>.**

<u>So far as the second part of the raiding panchnama and main raiding procedure is concerned</u>, **following facts appeared to have duly proved on record, from the deposition of present panch witness examined vide Exh. 25 & prosecution witness examined vide Exh. 44 :**

"After the completion of the first part of panchnama, as per the direction of the raiding officer, both the panch witnesses, complainant and the member of the raiding parties departed in the government vehicles to the office of the accused. Then the raiding officer through the prosecution witness examined vide Exh, 44 has handed over the audio recorder to the complainant after switched it on and informed the panch witnesses to keep the safe distance until the prefixed signal receives from the complainant. **Then the complainant alone went into the office of the accused**, **both the panch witnesses** and the member of the raiding parties **waited out side the office of the accused.** ***At 11:27 a.m.,*** the complainant has given prefixed signal to the raiding officer. Immediately, both the panch witnesses along with the the members of the raiding party entered into the office of the accused, where complainant and two other police personal were found present. The complainant has pointed out towards the person to whom he has given bribe, at that time, the accused has thrown the currency note on the floor from his shirt. Then the raiding officer has introduced himself to the accused and informed the accused not to go anywhere. The accused was inquired about his name and he has replied that he is Jivabhai Khanabhai Bamaniya and serving as U.P.C. at Morva (H) Police Station. Then after, the audio recorder kept in the shirt of the complainant was taken away and handed over to the panch witness vide Exh. 25. Then the currency note thrown by the accused on the floor was recovered through the panch witness vide Exh. 25. After verifying, it was found that, the police personal found present there, were come from S.D.P.O Officer at Godhra for the work of inspection. Then after the complainant was asked about the incident so, **he has described why & how he has given bribe to accused**. Then after, the raiding officer has rubbed one filter paper inside the pocket of the shirt of accused **and on sprinkling the sodium carbonate solution on the same, it had turned into pink spot[3].** Then the solution of the sodium carbonate was prepared and **thumbs of both the hands of the accused were washed, wherein the solution turned into light pink**. The said sample of light pink colored solution was taken in two separate bottles and sealed with the chit containing the signature of both the panch witnesses along with the signature of the raiding officer[4]. Then, the solution of sodium carbonate was sprinkled upon the seized currency note and wherever the drops fell, **it had turned into pink spot.** The said currency note was also packed in one cover and sealed with the chit containing the

3 The said Filter paper is seized vide **Mark - E** during the second part of panchnama, and identify the same by the prosecution witnesses vide Exh. 25 & 44 during their deposition.

4 **Mark - B & C**.

signature of both the panch witnesses along with the signature of the raiding officer[5]. Since the said tainted currency note found on the floor was secured through the panch witness vide Exh. 25, **hence his hands was also washed with solution, wherein the solution turned into light pink.** The said solution was destroyed. Then the audio recorder was made hear to the panch witnesses and after verifying the same, memory card stored therein was sealed in cover and seized the same with the chit containing the signature of both the panch witnesses along with the signature of the raiding officer[6]. Then after having personal search of the accused, the seizure memo was prepared with respect to the articles recovered from the accused which is signed by both the panch witnesses, the raiding officer and accused person[7]. Then after, the PI Mr. Rathva has obtained the xerox of the certificate issued to the complainant and also obtained copy of PAN card of complainant and recovered the same with the signature of both the panch witnesses along with the signature of the raiding officer[8]. On completion of the second part of the panchnama, the panch witnesses have singed on it[9]. Then after, the accused was brought to ACB Police Station, Godhra and other signatures were taken wherever required.

5 **Mark - D**.
6 Mark - F.
7 Exh. 27.
8 Exh. 28, 29.
9 Exh. 26.

It is pertinent to note here that, the witnesses examined by the prosecution vide Exh. 25 & 44 have clearly corroborated the present material facts of raid, which is further got due corroboration by the deposition of the complainant vide Exh. 17. It is pertinent to note here that, the independent panch witness examined vide Exh. 25 had duly corroborated the present all the procedure which have been conducted in his presence along with the presence of another panch witness Mr. Kantibhai J. Machhi and also identified his own signature along with the signature of another witness over the complaint of the complainant vide Exh. 18, over the first part & second part of panchnama vide Exh. 26, over the seizer memo vide Exh. 27, over the copy of certificate and PAN card of complainant vide Exh. 28 & 29, over the yadi given to the panch witnesses to remain present as panch vide Exh. 30. The present independent panch witness has also identified before the Court <u>the muddamal article No. 1 currency note</u> to be the same which was seized from the accused during the raid; he also identified the liquid contained in the sealed glass bottles being <u>the muddamal article No. 2 & 3</u> to be the same, by which the thumbs of both the hands of the accused were washed and the same was seized in their presence; he also identified the filter papers being <u>the muddamal article No. 4</u> to be the same which was rubbed inside the pocket of the shirt of the accused, which was seized in their presence; he also identified the shirt worn by the accused at the time of trap being <u>the muddamal article No.5</u>; he also identified the memory card kept in the white folded paper being <u>the muddamal article No. 6</u> to be the same which was seized in their presence; he also identified the reserved sample of phenolphthalein powder kept in the white folded paper being <u>the muddamal article No. 7</u> to be the same which was seized in their presence. The present panch witness also identified his own signature along with the signature of the another panch witness and raiding officer over the chit contained in the above mentioned articles No. 1 to 7."

In view of the above, prosecution remain succeed to prove the entire raid, the presence of both the independent panch witnesses therein along with the complainant and the members of the raiding parties. By virtue of the present evidences, the prosecution also remain succeed to prove the <u>*recovery of tainted currency notes from the possession of the accused*</u>. It is also proved on record that, <u>*the tainted currency notes recovered from the accused during the raid*</u> **was the one** <u>*which was secured by the raiding officer during the first part of the panchnama from the complainant for the purpose of raid*</u>. During the raid, the presence of the phenolphthalein powder, <u>on the recovered tainted currency note</u>, <u>on both the hands of the accused</u>, <u>on the hands of the complainant</u>, *is also verified by the chemical experiments*. Further, during the raid, presence of the phenolphthalein power found on both the hands of the accused by the usage of chemical experiments, the liquid used in the said experiment was seized during the raid vide

Mark - B & C. In the same way, presence of the phenolphthalein powder was also found on the tainted currency note which was seized during the raid vide **Mark - D**. In the same way, presence of phenolphthalein powder was also found in the left side pocket of the shirt wored by the accused, which was secured by using the filter paper and the same was seized during the raid vide Mark - E. The present facts clearly proves the involvement of the accused in the present offence. The same is further corroborated by the Forensic experiment conducted by the FLS and to evident the same **FSL Report vide Exh. 64** is produced on record, which clearly corroborates **the presence of the phenolphthalein powder** on the **Mark - B, C, E**. In view of the same**, the prosecution remained succeed to prove the recovery of the tainted currency notes from the possession of the accused during the raid.**

In relation to the same, if the cross-examination of the panch witness vide Exh. 25 & prosecution witness vide Exh. 44 conducted by the defence side be testified then, **nothing appears on record which may raises a reasonable doubt** over the entire raid, its entire procedure, the presence of both the independent panch witnesses therein, the presence of the complainant, the presence of raiding officer, the presence of members of the raiding party, as well as, the presence of the accused in his office, mainly recovery of tainted currency notes smeared with the phenolphthalein powder from the possession of the accused and the same was being the currency notes which were secured by the raiding officer during the first part of the panchnama. Moreover, during the cross-examination of the present witnesses, the defence failed to materially contradict the facts brought on record by the prosecution, *nor* did it succeed in proving any circumstance to the contrary. During the cross-examination of the panch witness at Exh. 25, the defence succeeded only to elicit that “the tainted currency notes were *neither* found *nor* recovered from the pocket of the shirt worn by the accused, *nor* from his personal possession, but were found lying on the floor.” Further, during the cross-examination of the complainant, the defence elicited that “the tainted currency notes were not recovered during the personal search of the accused or from his clothes, but were found from inside the register kept therein.” However, even in light of the aforesaid admissions, the prosecution evidence clearly establishes that traces of phenolphthalein powder were detected, upon chemical examination, *on both the hands of the accused*, *on the hands of the complainant*, as well as *on the tainted currency notes recovered from the floor*. It has also come on record that *the said currency notes were the very same notes which had been secured by the raiding officer from the complainant during the first part of the panchnama for the purpose of carrying out the trap proceedings*. Therefore, the aforesaid material evidence substantially weakens the aspects elicited by the defence during the cross-examination of the panch witness vide Exh. 25 and the complainant. Except the same, the defence failed to create any reasonable doubt or materially contradict the prosecution case through the cross-examination of the complainant, the panch witness vide Exh. 25, or the prosecution witness examined vide Exh. 44. On the contrary, <u>the material aspects of the prosecution case</u>, namely, the presence of the accused during the successful trap proceedings, the recovery of the tainted currency notes smeared with phenolphthalein powder, the detection of the said substance on both the hands of the accused, and the identification of the recovered currency notes as the very same notes supplied by the raiding officer during the first part of the panchnama, <u>have remained duly established on record</u>.

In view of the above discussion, the prosecution has successfully proved the factum of the successful trap proceedings conducted on 28-05-2014 in the office of the accused by the raiding officer, in the presence of two independent panch witnesses, the complainant, and other members of the raiding party, as well as the recovery of the tainted currency notes from the possession of the accused. The said facts stand duly established on the basis of the oral evidence produced vide Exh. 17, 25, and 44, coupled with the documentary evidence produced vide Exh. 18 and 26 to 32.

➔ **Now, it is to be determine as *to whether the prosecution remain succeed to prove the <u>initial demand</u> of bribe***

raised by the accused, Actual demand during the successful raid & its acceptance? (Proved)

It is a settled position of law that, in order to prove the initial demand of bribe, Actual demand of bribe during the trap, and the acceptance of illegal gratification, the complainant always remains the prime witness. It is equally well settled that, in a situation where the complainant is compromised during the trial or he is not found or he is not able to give deposition or his testimony requires corroboration, then the deposition of the shadow witness, being an independent panch witness to the successful trap proceedings, assumes great significance and reliance can safely be placed upon such testimony. The very purpose of keeping an independent witness as a shadow witness is founded upon the fact that the complainant, being the person who offers the bribe, may in certain circumstances assume the character of an accomplice. The accused being a public servant in many cases may have firstly resisted and forced him to accept the illegal gratification involuntarily. In such a situation, by keeping the interest of an honest public servant, the complainant, in offences under the anti-corruption law, is often treated as a witness requiring careful scrutiny. Therefore, in order to lend credibility and authenticity to the allegations regarding the actual demand and acceptance of bribes, independent witnesses are secured and associated as shadow witnesses during the trap proceedings. Accordingly, for proving the initial demand, the deposition of the complainant assumes considerable significance. Likewise, so far as the <u>actual demand</u> during the trap proceedings and the <u>acceptance of bribe</u> are concerned, the depositions of the complainant, the shadow panch witness, and the members of the raiding party becomes material and relevant.

Keeping the aforesaid legal position in mind, if the deposition of the complainant be carefully scrutinized, then it emerges from his examination-in-chief vide Exh. 17 that, *"on 27.05.2014, he was in need of obtaining a Police Clearance Certificate for the purpose of securing a conductor licence from the RTO authorities. Accordingly, he visited Morva (H) Police Station, where he met the concerned police personnel handling the said procedure and inquired about the requisite formalities. The concerned police personnel verified his residential details and informed him regarding the documents required for processing the application. <u>Thereafter, the said police personnel demanded illegal gratification of Rs.100/- from the complainant</u>. In response thereto, the complainant stated that he possessed only Rs.50/-. <u>The concerned police personnel then instructed him to revisit the following day with the bribe money of Rs. 100/-</u>."*

Present version given by the complainant finds place not only in his initial complaint vide Exh. 18 but also in his oral deposition before the Court. <u>The principal defence raised by the accused is that</u>, *"his name was never* *disclosed by the complainant in the initial complaint”*. <u>Even the prosecution has admitted the said fact</u>. However, during the course of his cross- examination, <u>the complainant categorically identified the accused present before the Court</u> **as the very same police personnel who had demanded illegal gratification from him**.

Thus, from the deposition of the complainant, it stands established that *the present accused was the very same person who had raised the* **initial demand of bribe** <u>from him on 27.05.2014</u>. The complainant, being the direct recipient of such a demand, is undoubtedly the best witness to identify the person who had demanded the bribe. In the instant case, admittedly, the name of the accused was not mentioned in the initial complaint lodged by the complainant. The complainant has also acknowledged the said fact during his deposition. Nevertheless, he has unequivocally identified the present accused before the Court as the same police personnel who had raised the initial demand of illegal gratification. Ergo, mere non-disclosure of the name of the accused in the initial complaint would not, by itself, weaken the prosecution case or dilute the allegation that the initial demand of bribe was raised by the present accused alone.

In view of the above, prosecution appears to have succeeded to prove <u>the initial demand</u> of illegal gratification by the present accused from the complainant.

So far as the aspect of actual demand and acceptance of illegal gratification is concerned, it is pertinent to note that during the second part of the trap proceedings, the complainant alone had gone to meet the accused inside his office. Both the panch witnesses remained outside the office of the accused along with the members of the raiding party. The prosecution witnesses have clearly admitted during their depositions that the complainant entered the office of the accused at about 11:05 a.m. and thereafter, at about 11:45 a.m., gave the predetermined signal. Upon receipt of such signal, both the panch witnesses, along with the members of the raiding party and the raiding officer, entered the spot.

Accordingly, so far as the actual demand and acceptance of bribe are concerned, the complainant appears to be the sole direct witness in relation to the said aspect.

If the deposition of the complainant in relation thereto be carefully scrutinized, then it transpires from his examination-in-chief that, "*after reaching the Morva (H) Police Station, he alone went to meet the concerned police personnel for the purpose of obtaining the Police Clearance Certificate. The complainant asked the police personnel that he required a police clearance certificate to be submitted before the RTO in the process to procure the license of conductor. In response thereto, the police personnel inquired as to what documentary evidence he had brought with him. The complainant has provided the* *copy of his PAN card. Thereafter, the police personnel inquired about the village to which the complainant belonged, to which the complainant replied that he was a resident of Mojari village. Thereafter, upon preparation of the required certificate, the concerned police personnel asked the complainant* ***whether he had brought "anything" with him?*** *In response, the complainant stated,* "***Whatever is to be given, Sir."*** *Thereafter, the complainant took out the tainted currency note of Rs.100/- from the right pocket of his pant and handed over the same to the police personnel.* ***The said amount was accepted by the police personnel."***

During the course of his deposition, **the complainant specifically identified the accused present before the Court** as the very same police personnel to whom he had handed over the tainted currency note of Rs.100/- by way of illegal gratification and who had accepted the same.

Thus, the complainant has duly corroborated the prosecution case to the effect that, *"in order to obtain the Police Clearance Certificate required for securing a conductor licence from the RTO authorities, the present accused had demanded illegal gratification and had accepted the tainted currency note of Rs.100/- smeared with phenolphthalein powder from the complainant."* Accordingly, so far as the aspect of actual demand and acceptance of bribe is concerned, the testimony of the complainant appears to be supportive to the prosecution case.

The complainant has further deposed in his examination-in-chief that, "immediately after the predetermined signal was given, the panch witnesses and the members of the raiding party entered the office. Upon being asked as to who had accepted the bribe amount, the complainant pointed out the present accused. Thereafter, the raiding officer conducted the personal search of the accused; however, the tainted currency note was not found on his person. But the same was found & recovered from inside one register." Thus, though the complainant appears to have slightly modified certain portions of his version during his deposition, but he has consistently corroborated the material particulars of the prosecution case, namely, that the accused had **demanded** illegal gratification of Rs.100/- for issuance of the Police Clearance Certificate and had **accepted** the tainted currency note, which was thereafter recovered by the raiding officer pursuant to the second part of the panchnama.

As clarified herein before, so far as the actual demand of illegal gratification and its acceptance are concerned, **except the complainant**, no other person remained present on the spot. The shadow panch witness vide Exh. 25 had also not accompanied the complainant inside the office of the accused at the time of the actual demand. Hence, in relation to the said aspect, the complainant appears to be the sole and primary witness. In view of the above, his testimony appears to be trustworthy and duly corroborates the prosecution case in relation to the present material aspect.

In order to strengthen the prosecution case regarding the <u>actual demand</u> and <u>acceptance</u> of the bribe, the investigating officer had secured an audio recording conversation that took place between the complainant and the accused during the trap proceedings. The deposition of the prosecution witness vide Exh. 44 clearly establishes that, during the first part of the panchnama, a voice recorder was secured by him, testified the absence of any earlier recording, and before the commencement of the trap proceedings, the recording device was set in the shirt of the complainant. After completion of the successful raid, the recorded conversation stored in the said device was secured and the memory card came to be seized under a seizure memo marked as **Mark - F**. During the course of further investigation, the Investigating Officer, Mr. Ramnath Rajmangal Naik, examined vide Exh. 58, in the presence of independent panch witnesses, secured the said recorded conversation between the complainant and the accused, and prepared a panchnama vide Exh. 41. The prosecution witness vide Exh. 40 has duly corroborated the contents and execution of the said panchnama during the course of his deposition. The conversation recorded between the complainant and the accused assumes considerable significance. The relevant portion of the said conversation is reproduced herein below:

> Accused: “Write properly………… Have you brought anything?”

Complainant: “Whatever is to be given, Sir.”

Accused: “Give whatever you have to give. What else remains to be given?”

Complainant: “Here it is.”

Accused: “Ok go.”

Complainant: “Sir, another certificate is also required.”

Accused: “For whom?, is that person here?”

Complainant: “Should I call him?”

The aforesaid recorded conversation between the complainant and the accused lends substantial assurance and credibility to the material facts deposed by the complainant during his examination-in-chief. The present conversation dully established **the actual demand** of bribe along with **its acceptance by the accused**.

It is further pertinent to note that, by virtue of the panchnama vide Exh. 41, the Investigating Officer prepared a Compact Disc (CD) containing the recorded conversation for the purpose of scientific examination by the Forensic Science Laboratory, Gandhinagar. The same is supported by the certificate vide Exh. 50 prepared in view of Sec. 65(B)(4)(C) of the Indian Evidence Act, 1872. The documents vide Exh. 19, 70, 72, and 73 pertain to the voice analysis report issued by the Forensic Science Laboratory, Gandhinagar, further affirms that the voice conversation recorded in the voice recording device and stored in the memory card vide **Mark - F**, the transcript whereof was prepared through the CD under panchnama vide Exh. 41, indeed contained the voices of the complainant and the accused. Thus, the forensic analysis duly authenticated the voices of both the complainant and the accused recorded in the memory card vide **Mark - F**.

In view of the aforesaid evidence, it appears to have been duly established on record that a material conversation had in fact taken place between the complainant and the accused during the trap proceedings ***regarding the demand of illegal gratification of Rs.100/- for issuance of the Police Clearance Certificate***. The said conversation further indicates that ***the complainant had handed over the tainted currency note of Rs.100/- and that the same was accepted by the accused.***

Accordingly, the prosecution appears to have duly established **the actual demand of illegal gratification by the accused and the acceptance thereof.**

Though the shadow panch witness vide Exh. 25 had not accompanied the complainant at the time of the actual demand and acceptance of bribe. But, immediately upon receiving the predetermined signal from the complainant, the raiding officer, along with the panch witnesses and members of the raiding party, rushed inside the office. Thereafter, the complainant narrated the entire conversation that had taken place with the accused, including the demand of bribe made by the accused and the handing over and acceptance of the tainted currency note of Rs.100/-. The deposition of the panch witness vide Exh. 25 and the prosecution witness vide Exh. 44 duly affirm the aforesaid facts. The depositions of the complainant vide Exh. 17, the panch witness vide Exh. 25, and the prosecution witness vide Exh. 44 further corroborates the fact that, before the raiding party entered the spot, <u>the accused had thrown away the tainted currency notes onto the floor</u>. The complainant, the panch witness vide Exh. 25, and the prosecution witness vide Exh. 44 have consistently deposed that <u>the tainted currency notes were</u> *neither* recovered during the personal search of the accused *nor* from the pocket of the shirt worn by him. All the aforesaid witnesses have categorically affirmed that the tainted currency note was found lying on the floor of the office. Though the complainant, during the course of cross-examination, slightly diluted his version by stating that the tainted currency note was found from inside on registered maintained there, but the panch witness vide Exh. 25 & the prosecution witness vide Exh. 44 have consistently corroborated to the fact that the accused had thrown the tainted currency note onto the floor immediately before the raiding party arrived. The testimonies of all these material witnesses further establish and corroborate the fact that *the tainted currency note was ultimately recovered from the floor and secured by the raiding officer through the panch witness vide Exh. 25*. <u>Thereafter, the chemical examination was conducted by using sodium carbonate solution</u> *upon the tainted currency note*; *<u>Both the hands of the accused were also subjected to wash with the said solution</u>*; Similarly, the hands of the panch witnesses and the complainant were also washed with the same solution, **wherein the presence of phenolphthalein powder was detected.** Accordingly, though the tainted currency note was not recovered from the personal search of the accused or from the pocket of the shirt worn by him, <u>and was recovered from the floor</u>, **but the chemical examination conclusively establishes that** <u>the currency note smeared with the phenolphthalein powder which had been handed over to the complainant during the first part of the panchnama</u>, **was in fact delivered by the complainant to the accused by way of illegal gratification**. <u>*The same tainted currency note was subsequently found lying on the floor*</u>; **however, traces of phenolphthalein powder were detected** <u>upon the said currency note</u>, <u>on both the hands of the accused</u>, and <u>also inside the pocket of the shirt worn by the accused</u>. Since the tainted currency note had been recovered and handled through the panch witness at Exhibit 25, <u>traces of the said powder were naturally found on the hands of the said witness as well</u>. These material circumstances further corroborate the prosecution case that <u>the accused had demanded illegal gratification</u>, <u>in response thereto the complainant had given a bribe amount</u>, and <u>that the same had been accepted by the accused.</u>

Accordingly, the material aspects regarding the **actual demand of bribe**, **its acceptance**, and **the subsequent recovery of the tainted currency note** appear to have been duly proved on record through the evidence of the aforesaid prosecution witnesses.

Upon careful examination of the cross-examination of the complainant, prosecution witness vide Exh. 25, Exh. 40, and Exh. 44, nothing substantial has been brought on record which may create any genuine doubt regarding the actual demand, acceptance, and recovery of the bribe amount from the accused. No material contradiction or omission appears to have been elicited by the defence so as to discredit the core prosecution case on these material particulars. Though the defence has raised several questions and attempted to challenge various surrounding circumstances, none of such suggestions materially affect the consistent and cogent evidence led by the prosecution regarding the demand, acceptance, and recovery of the tainted currency note.

Further, **the accused has failed to offer any plausible or satisfactory explanation** as to how his presence was established at the spot during the raid, how the sodium carbonate solution used for washing his hands turned light pink upon examination, how traces of phenolphthalein powder were detected upon his hands and inside the pocket of his shirt, and how the tainted currency note came to be found lying on the floor at the very place where he was discharging his official duties. **These circumstances constitute material incriminating facts directly connected with the charge framed against the accused**. However, the accused has failed to furnish any probable or convincing explanation in respect thereof.

11.4. In view of the above analysis of the prosecution evidences, prosecution remain succeed to prove the **initial demand**, **Actual demand** of the illegal gratification, **along with its acceptance by the accused**, and **recovery of the tainted currency notes from the accused**. In the present situation since the prosecution remain succeed to prove the foundational facts in issues, Sec. 20 of the Prevention of Corruption Act, mandates the court to raise a presumption[10] against the accused that, *"said illegal gratification was for the purpose of a motive or rewards"*. However, present presumption is rebuttable one, but minute scrutiny of the entire record of evidence, more specifically the cross-examination of the prosecution witnesses and the explanation put forward in the further statements, does not raises any reason to believe that the accused remain succeed to rebut the said presumptions. Even the accused remain failed to explained the material incriminating facts against him.

11.5. In view of the above, it is proved on record that, the prosecution remain succeed to prove its case and the guilt of the present accused beyond all the reasonable doubt. Hence, the present **issue No. 2 & 3** is hereby answered in **“Affirmative”**.

12. Issue No. 4 :-

Considering the discussions & determination as made in the above issues No. 1 to 3, since the prosecution remain

10 Neeraj Dutta V/s. State (Govt. of N.C.T of Delhi).

succeed to prove its case and the guilt of the accused beyond all the reasonable doubt. Hence, *qua* the present issue, ***this court is of the certain view to held*** the present accused, Mr. Jivabhai Khanabhai Bamaniya Unarmed Police Constable, ***guilty U/Sec. 235(2) of Cr.P.C for the offence punishable U/sec. 7, 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988.*** Let the accused be heard for the sentence.

Signed and Pronounced in the open Court today on this 19th day of May, 2026.

Date : 19-05-2026

Place : Godhra

(Raja Ranchhodbhai Patel)
6th Additional Sessions Judge,
Panchmahals at Godhra.
UIC No. GJ00922

The Accused remain present before this court through his Ld. Advocate. Ld. APP also remains present. So far as the imposition of sentence is concerned, it is vehemently submitted by the Ld. APP that, prosecution remain succeed to prove its case and the guilt against the accused beyond all the reasonable doubt and thereby remain succeed to prove that the accused has committed offence punishable U/Sec. 7 read with Sec. 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988. Hence, the accused should be imposed with a rigorous sentence for the offence proved against him.

Per contra, Ld. Advocate for the accused vehemently submitted that, this is being the first offence against the accused, no previous conviction for any offence exist against the accused, the accused had already been suspended from the service and retired as of now, he is being the only bread winner for his family members, he is of old age. Considering all these aspects, he seeks mercy of this court and requested to take a lenient view while imposing sentences.

This court has considered the submissions on both sides. While deciding the appropriate quantum of sentence, it is apt to have reference with the following decisions :

In Dhananjoy Chatterjee alias Dhana v. State of W.B.[11], the Hon'ble Apex Court held at paragraph-15 that, "Imposition of appropriate punishment is the manner in

11 JT 1994 (1) SC 33:1994 (2) SCC 220.

which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime."

In the ***State of Madhya Pradesh v. Bablu***[12], it was held as follows:

"10. It is a well-settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. One should keep in mind the social interest and consciousness of the society while considering the determinative factor of sentence commensurate with the gravity and nature of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages any criminal and as a result of the same society suffers."

In ***Ravi alias Ram Chandra v. State of Rajasthan***[13], this Court held that the sentence should reflect the social conscience of society and that the sentencing process has to be stern, where it should be.

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12 2014 (9) SCC 281.

13 1996 (2) SCC 175.

In ***Shailesh Jasvantbhai and another v. State of Gujarat & Ors.***[14], at paragraph-7, it was held that,
"protection of society and stamping out criminal proclivity must be the object which must be achieved by imposing appropriate sentence".

In ***Hazara Singh v. Raj Kumar and others***[15], this Court took the view that,
"the cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence."

As far as punishment for offences under the PC Act is concerned, this court does not think that there is any serious scope for reforming the convicted public servant. The moment he is convicted, he loses his job. Hence, there is no significance to the theory of reformation of his conduct in public service. The only relevant object of punishment in such cases is denunciation and deterrence. That is the reason the Parliament has restricted judicial discretion in imposing punishment.

Keeping in mind the ratio laid down by the Hon'ble Apex Court in the above-referred pronouncements, in the present case it stands duly proved on record that the accused, while discharging his duties as a Public Servant

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14 2006 (2) SCC 359.
15 2013 (9) SCC 516.

in the capacity of an Unarmed Police Constable at Morva (H) Police Station, demanded and accepted illegal gratification of Rs.100/- other than legal remuneration and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

It is further proved on record that the accused, by corrupt and illegal means, obtained an amount of Rs.100/- and thereby committed criminal misconduct as defined under Section 13(1)(d) of the Act, punishable under Sections 13(2) of the Prevention of Corruption Act, 1988.

So far as the question of sentence is concerned, the offence in the present case was committed on 27.05.2014. Hence, the provisions prevailing after the Amendment Act No. 1 of 2014 and prior to the Amendment Act of 2018 are required to be taken into consideration. In view thereof, the punishment prescribed under Section 7 of the Prevention of Corruption Act, 1988 is imprisonment for a term <u>not less than 3 years</u>, which may <u>extend to 7 years</u>, <u>along with fine</u>. Likewise, the punishment prescribed under Sections 13(2) of the Act is imprisonment for a term <u>not less than 4 years</u>, which may <u>extend to 10 years</u>, <u>along with fine</u>. For determining the quantum of fine, the provisions contained under Section 16 of the Act is also required to be kept in mind.

Keeping in view the object and purpose underlying the Prevention of Corruption Act, 1988, the ratio laid down in the aforesaid pronouncements of law, the mitigating circumstances canvassed on behalf of the accused by his Ld. Advocate, and the most important the fact that the accused demanded and accepted illegal gratification of Rs.100/- and thereby committed criminal misconduct, this Court is of the certain view that imposition of ***sentence of Imprisonment for a period of 3 years*** for the offence punishable under Sec. 7 of the Prevention of Corruption Act, 1988, and ***sentence of Imprisonment for a period of 4 years*** for the offence punishable under Sec. 13(2) of the Prevention of Corruption Act, 1988, would meet the ends of justice in the peculiar facts and circumstances of the present case.

So far as the imposition of fine is concerned, keep in mind the provisions contained in Sec. 16 of the Act, since the accused has demanded and accepted illegal gratification of Rs.100/- and thereby committed criminal misconduct for the said amount, hence, this Court is of the certain view to impose fine of Rs.100/- (Rupees One Hundred only) upon the accused with ***default sentence of Simple Imprisonment for a period of 3 months*** in case of non-payment of fine.

Considering the peculiar facts and circumstances of the present case, this Court is of the certain view that the ends of justice would be adequately met and the object underlying the Prevention of Corruption Act, 1988 would be effectively achieved by imposing the aforesaid sentence and fine. Hence, this court is of the certain view to pass the final order as under,

<u>F I N A L   O R D E R</u>

1 The accused, Jivabhai Khanabhai Bamaniya Unarmed Police Constable, is hereby convicted U/Sec. 235(2) of Cr.P.C for the offence punishable U/sec. 7, 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988.

2. For the offence punishable U/Sec. 7 of the Prevention of Corruption Act, 1988, the accused is hereby sentenced to undergo ***simple imprisonment for a period of 03 years*** and to pay ***fine of Rs. 100/-*** (Rupees One Hundred only), and ***in default*** of payment of fine, to undergo ***Simple Imprisonment for a period of 03 (Three) months***.

3. For the offence punishable U/Sec. Section 13(2) of the Prevention of Corruption Act, 1988, the accused is hereby sentenced to undergo ***simple Imprisonment for a period of 04 (Four) years*** and to pay ***fine of Rs. 100/-*** (Rupees One Hundred only), and ***in default*** of payment of fine, to undergo ***Simple Imprisonment for a period of 03 (Three) months***.

4. ***Both the substantive sentences of imprisonment shall run concurrently***.

5. The accused shall be entitled to the benefit of set-off U/Sec. 428 of the Code of Criminal Procedure for the period of detention, if any, already undergone during the course of investigation, inquiry or trial.
6. The trap money of Rs. 100/- is hereby order to be forfeited to the Government, after the expiry of appeal period. The remaining muddamal articles shall be destroyed after the appeal period.
7. The Copy of this judgment be furnished to the accused forthwith, free of cost, U/Sec. 363 of Cr.P.C.

Signed and Pronounced in the open Court today on this 19th day of May, 2026.

Date : 19-05-2026

(Raja Ranchhodbhai Patel)
4th Additional Sessions Judge,
Panchmahals at Godhra.
UIC No. GJ00922

Place : Godhra