

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1554 of 2005****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE S.V. PINTO: Sd/-**

Approved for Reporting		Yes	

YADAV RAJBAHADUR GHYANSINGH

Versus

STATE OF GUJARAT

Appearance:

MR MANISH J PATEL(2131) for the Appellant(s) No. 1

MR RITESH B DAVE(2815) for the Appellant(s) No. 1

MR. TRUPESH KATHIRIYA, APP for the Opponent(s)/Respondent(s) No. 1

CORAM: HONOURABLE MS. JUSTICE S.V. PINTO**Date : 21/01/2026****ORAL JUDGMENT**

1. The appeal is filed by the appellant – original accused under Section 374 of the Code of Criminal Procedure, 1973 against the judgement and order of conviction passed by the learned Special Judge, Mehsana (hereinafter referred to as “the learned Trial Court”) in Special Case (ACB) No. 10/1998 on 19.07.2005, whereby, the learned Trial Court has convicted the appellant for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC

Act” for short). The appellant was sentenced to rigorous imprisonment for one year and fine of Rs. 10,000/- and in default, simple imprisonment for two months for the offence under Section 7 of the PC Act and rigorous imprisonment for three years and fine of Rs. 10,000/- and in default, simple imprisonment for six months for the offence punishable under Section 13(1)(d) read with Section 13(2) of the PC Act. Both the sentences were ordered to run concurrently.

1.1 The appellant is hereinafter referred to as “the accused” as he stood in the original case for the sake of convenience, clarity and brevity.

2. The brief facts that emerge from the record of the case are as under:

2.1 The accused was employed as an Assistant Inspector in the Railway Protection Force at the Ambaliyasan Outpost Police Station and was, at all material times, a public servant within the meaning of the Prevention of Corruption Act, 1988. The complainant, Premchandra Jayantilal Gupta, was the proprietor of a shopping centre named 'Prem Bharti'

situated in the vicinity of Ambaliyasan Railway Station, comprising five shops let out on rent. It is alleged that the accused summoned the complainant and directed him to vacate the shopping centre on the ground that the shops were situated within railway limits, further threatening to have them removed. Upon the complainant's entreaty, the accused allegedly demanded a colour television of Videocon make and a tape recorder as illegal gratification. When the complainant expressed his inability to incur such expenditure, the accused purportedly reduced his demand to an automatic iron and a revolving chair, instructing the complainant to deliver the same before 26th January. Unwilling to accede to the illegal demand, the complainant approached the Anti-Corruption Bureau (ACB) Police Station, Mehsana, where his complaint was duly recorded.

2.2 The Trap Laying Officer, N. J. Pathan, Police Inspector, Mehsana ACB Police Station, summoned the panch witnesses, and the complainant produced one currency note of Rs. 500/- denomination and twenty-five currency notes of Rs. 100/- denomination. Head Constable Bhavanbhai,

acting under the instructions of the Trap Laying Officer, demonstrated the application of anthracene powder and the use of an ultraviolet lamp in the presence of the complainant and the panch witnesses, explaining the properties of the powder and lamp. All the currency notes were smeared with anthracene powder, folded, and placed in the left pocket of the complainant's pajama. After issuing necessary instructions to all concerned, Panchnama Part-I was prepared and duly signed by all present. Pursuant to the plan, the complainant, a panch witness, and members of the raiding party proceeded in a private jeep bearing registration number GJ-5-N-3337, while the Trap Laying Officer, panch no. 2, and other members of the raiding party followed in a Maruti van. Upon arrival at Ambaliyasan Railway Station, the complainant contacted the accused, who then accompanied them to Mehsana for the ostensible purpose of purchasing the demanded items. The accused occupied the front seat of the jeep alongside the complainant, and they proceeded to 'Natraj Steel Industries' in Mehsana. The complainant and the accused entered the

shop, selected a chair, and informed the shopkeeper that they would collect it later. Thereafter, they visited 'Jai Jinendra' shop and purchased an iron, which was placed in the jeep. Subsequently, they returned to the furniture shop to purchase the chair, where, amidst the presence of several students, the complainant requested the accused to make the payment, stating he would return shortly. The complainant then retrieved the tainted currency notes from his left pajama pocket and handed them to the accused, who accepted the same with his right hand and placed them in his right pant pocket. Upon receiving the predetermined signal from the complainant, the raiding party apprehended the accused. The requisite tests were conducted, and an offence was registered at Mehsana ACB Police Station under Sections 7, 13(1)(d), and 13(2) of the Prevention of Corruption Act, 1988, vide C.R. No. 3 of 1998.

2.3 The Investigating Officer recorded the statements of the connected witnesses and seized the necessary documents and after completion of investigation, a charge-sheet came to be filed before the Sessions Court, Mehsana

and the case was registered as Special Case (ACB) No. 10/1998.

2.4 The accused was duly served with the summons and the accused appeared before the learned Trial Court and it was verified whether the copies of all the police papers were provided to the accused as per the provisions of Section 207 of the Code. A charge at Exh. 8 was framed against the accused and the statement of the accused was recorded at Exh. 9 wherein, the accused denied the contents of the charge and the entire evidence of the prosecution was taken on record.

2.5 The prosecution examined 6 witnesses and produced 8 documentary evidences on record in support of their case and after the learned Additional Public Prosecutor filed the closing pursis, the further statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded. The accused denied the evidence and refused to step into the witness box or lead any evidence and stated that a false case has been filed against him. After the arguments of the learned APP and learned advocate for the

accused were heard, the learned Trial Court, by the impugned judgment and order dated 19.07.2005, was pleased to find the accused guilty and sentence him to rigorous imprisonment for one year and fine of Rs. 10,000/- and in default, simple imprisonment for two months for the offence under Section 7 of the PC Act and rigorous imprisonment for three years and fine of Rs. 10,000/- and in default, simple imprisonment for six months for the offence punishable under Section 13(1)(d) read with Section 13(2) of the PC Act. Both the sentences were ordered to run concurrently.

3. Being aggrieved and dissatisfied with the judgment and order of conviction, the appellant has preferred the present appeal, primarily contending that the learned Trial Court has erred in convicting the appellant by failing to properly appreciate the evidence of the witnesses and by not adequately weighing the merits and demerits of the case, thereby resulting in a wrongful conviction. It is submitted that the learned Trial Court failed to appreciate that the appellant did not make any demand for illegal gratification,

and that there was no material on record to justify the drawing of the presumption under Section 20 of the Prevention of Corruption Act, 1988. It is further contended that the sanction for prosecution was not accorded with due application of mind, rendering it void ab initio and illegal, and that the proceedings initiated on the basis of such a sanction order are contrary to law. The learned Trial Court failed to consider that the Sanctioning Authority was not conversant with the Gujarati language and had admitted to having considered a draft sanction order while according sanction at Exhibit 34. Furthermore, the complainant deposed that, while he was inside Natraj Steel and Furniture, the panch witnesses and the accused were outside the showroom, and he alone had gone to select the revolving chair. Similarly, for the purchase of the iron, the accused did not accompany the complainant, and none of the witnesses heard the accused making any demand for illegal gratification from the complainant. The evidence demonstrates that the officials apprehended the accused while he was standing outside the showroom of Natraj

Furniture, and the panch witness did not support the factum of demand and acceptance of illegal gratification from the complainant. The learned Trial Court failed to appreciate that mere recovery of money, divorced from the circumstances under which it is paid, is insufficient to convict the accused when the substantive evidence in the case is unreliable. There is no corroboration for the alleged reiteration of demand for illegal gratification, and there is no evidence to prove that any demand was made by the appellant. There are significant contradictions in the manner of demand and payment of the amount, and the impugned judgment and order is contrary to law and the evidence on record, is unwarranted, and is liable to be quashed and set aside, and the appellant ought to be acquitted of the offence.

4. Heard learned advocate Mr. Manish Patel with learned advocate Mr. Ritesh Dave for the appellant and learned APP Mr. Trupesh Kathiriya for the respondent State. Perused the impugned judgement and order of acquittal and have reappreciated the entire evidence of the prosecution on

record of the case.

5. Learned advocate Mr. Manish Patel, appearing for the appellant, has meticulously taken this Hon'ble Court through the entirety of the prosecution evidence and has submitted that, upon a careful perusal thereof, there is no evidence to establish that any of the panch witnesses were present at the time when the complainant allegedly handed over the tainted currency notes to the appellant. The bill for the iron is in the name of the complainant, and the complainant has admitted that he lodged the complaint as his tenants had informed him that the accused was harassing them. The complainant has further admitted that no bribe amount was demanded by the accused, but rather, the demand was made by the labourers, and that the complaint was filed due to a misunderstanding. The panch witness has deposed that he was standing outside the shop when the complainant allegedly gave the amount to the accused, but he did not witness the transaction or the exchange of money, and when the complainant went inside the shop to select the chair, the accused was standing

outside. The panch witness was also outside the shop and was unaware of what transpired inside, and when the complainant emerged from the shop, the accused was also outside. The Trap Laying Officer has admitted that there was a dispute regarding the land between the complainant and the railway, and that the accused was shown as a panch witness when the panchnama in the Civil Suit was drawn. The Trap Laying Officer has also admitted that he was standing outside the shop and was not aware of what transpired inside. During the investigation, it was not found that any steps were taken by the accused regarding the shopping centre of the complainant. With respect to the sanction, the Competent Authority who granted the sanction was not conversant with the Gujarati language and admitted that no record was produced before him which was translated into either Hindi or English. In the entirety of the evidence, the prosecution has failed to prove the demand and acceptance of illegal gratification and has not established the charge against the appellant beyond reasonable doubt. Accordingly, learned advocate has urged

this Hon'ble Court to allow the appeal and acquit the appellant of all offences.

6. Learned APP Mr. Trupesh Kathiriya for the respondent State has submitted that the learned Trial Court has appreciated all the evidences in its proper perspective and there is no illegality or infirmity in the impugned judgement and order. The prosecution has proved the case beyond reasonable doubt and the prosecution has proved all the ingredients of demand, acceptance and recovery and the learned Trial Court has considered all the evidences in its true perspective. That no order of interference is required in the judgement and order and the appeal of the appellant must be rejected and the judgement and order of conviction must be confirmed.

7. Before appreciating the evidence of the prosecution on record, it is necessary to reiterate the cardinal principles of jurisprudence as settled by the Apex Court in a catena of decisions and the first cardinal principle is that the prosecution is required to prove their case beyond

reasonable doubts. The prosecution cannot take any benefit of the weaknesses of the defense. The second cardinal principle is that in a criminal trial, the accused is presumed to be innocent until he/she is proved guilty by the evidence adduced by the prosecution on record beyond reasonable doubts and the third cardinal principle is that the onus of burden never shifts from the prosecution.

8. As far as conviction appeals are concerned, the Apex Court in **Goverdhan & Anr. Vs. State of Chattisgarh** reported in **2025 INSC 47** has observed in para 23 to 26 as under:

*23. The concept of reasonable doubt has to be also understood in the Indian context, keeping in mind the social reality and this principle cannot be stretched beyond a reasonable limit to avoid generating a cynical view of law as observed by this Court in **Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793** as follows:*

“6. Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the

contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent" In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and

appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago.”

24. Further, what would be the standard degree of “proof” which would be required in any particular case was also discussed in the aforesaid case of **Ramakant Rai (supra)** in the following words:

“23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case. Referring to (sic) of probability amounts to “proof” is an exercise, the interdependence of evidence and the confirmation of one piece of evidence by another, as learned author says : [see The Mathematics of Proof II : Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)]

“The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice.

But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.”

24.

25. *The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154].”*

25. At this point, it may be also relevant to mention an observation made by **Lord Denning, J. in Miller v. Miller of Pensions (1947) 2 All ER 372, 373 H:**

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the court of justice....”

26. Thus, the requirement of law in criminal trials is not to prove the case beyond all doubt but beyond reasonable doubt and such doubt cannot be imaginary, fanciful, trivial or merely a possible doubt but a fair doubt based on reason and common sense. Hence, in the present case, if the allegations against the appellants are held proved beyond reasonable doubt, certainly conviction cannot be said to be illegal.

9. With regard to the cases under the PC Act, the Apex Court, in the case of **Aman Bhatia Vs. State (GNCT of Delhi)** reported in **2025 INSC 618** has observed in Para No. 51 to 54 and paras 63 to 65 as under:

51. It is well settled that mere recovery of tainted money, by itself, is insufficient to establish the charge against an accused under the PC Act. To sustain a conviction under Sections 7 and 13(1)(d) of the Act respectively, it must be proved beyond reasonable doubts that the public servant voluntarily accepted the money, knowing it to be a bribe. The courts have consistently reiterated that the demand for a bribe is a sine qua non for establishing an offence under Section 7 of the PC Act.

52. A five-Judge Bench of this Court in Neeraj Dutta v. State (Government of NCT of Delhi), reported in (2023) 4 SCC 731, categorically held that an offer by bribe-giver and the demand by the public servant have to be proved by the prosecution as a fact in issue for conviction under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. Mere acceptance of illegal gratification without proof of offer by bribe-giver and demand by the public servant would not make an offence under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. The relevant observations are reproduced

hereinbelow:

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

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

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

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

53. It was further explained by this Court in *P. Satyanarayana Murthy v. State of A.P.*, reported in (2015) 10 SCC 152, as follows:“

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.”

54. From the above exposition of law, it may be safely concluded that mere possession and recovery of tainted currency notes from a public servant, in the absence of proof of demand, is not sufficient to establish an offence under Sections 7 and 13(1)(d) of the PC Act respectively. Consequently, without evidence of demand for illegal gratification, it cannot be said that the public servant used corrupt or illegal means, or abused his position, to obtain any valuable thing or pecuniary advantage in terms of Section 13(1)(d) of the PC Act.

55.xxxxx

56.xxxxx

57.xxxxx

58.xxxxx

59.xxxxx

60.xxxxx

61.xxxxx

62.xxxxx

v. Presumption under Section 20 of the PC Act

63. *Insofar as the presumption under Section 20 of the PC Act is concerned, such presumption is drawn only qua the offence under Sections 7 and 11 respectively and not qua the offence under Section 13(1)(d) of the PC Act. The presumption is contingent upon the proof of acceptance of illegal gratification to the effect that the gratification was demanded and accepted as a motive or reward as contemplated under Section 7 of the PC Act. Such proof of acceptance can follow only when the demand is proved.*

64. *In that case, the prosecution evidence alone cannot be considered for the purpose of coming to the conclusion. The evidence led by the prosecution and, the suggestions made by the defence witnesses, if any, are also required to be considered. It is then 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 public servant accepted the amount. If the answer is in affirmative, then alone it can be held that the prosecution established the case beyond reasonable doubt.*

65. *Undoubtedly, the presumption under Section 20 arises once it is established that the public servant accepted the gratification. However, in determining whether such acceptance occurred, the totality of the evidence led at the trial must be appreciated. The evidence led by the prosecution, the suggestions made by the defence witnesses, if any, the entire record is required to be considered. Only if the cumulative effect of all the evidence is such that the sole possible conclusion is that the public servant accepted the gratification can it be said that the prosecution has established its case beyond reasonable doubt.*

10. As per the settled principles of law in conviction appeals and as observed by the Hon'ble Apex Court in the case of Govardhan (supra), when the appellate Court finds that the findings of fact was based on a wholesome erroneous approach and the very basis of reasoning was not in the right perspective and the intrinsic merit of the evidence of the witness who was not considered and the trial was perversely disposed of permitting manifest errors and glaring infirmities, the appellate Court can interfere and exercise the powers in a conviction appeal and a finding on merits, after considering and meticulously dissecting the evidence on record, is imperative. As far as the conviction under the PC Act is concerned it is settled by the Apex Court that the prosecution has to prove the case beyond reasonable doubts and proof of demand is a *sine qua non* for an offence under the PC Act. Only if the demand is proved beyond reasonable doubts with cogent and convincing evidence, the prosecution would benefit by the presumption under Section 20 of the PC Act and the conviction would be sustained.

11. In light of the above settled principles of law the evidence on record is minutely dissected and the prosecution has examined PW1 – Premchandbhai Jayantilal Gupta at Exh. 13 and the witness is the complainant who reiterated the facts as stated in his complaint, which is produced at Exhibit 14. With respect to the trap, the witness deposed that they proceeded to Natraj Steel and Furniture at Gandhi Market, where he and the accused viewed various chairs and decided to purchase one; however, as they intended to purchase additional items, they informed the shopkeeper that they would collect the chair later. Thereafter, they travelled by jeep to Azad Chowk to a shop named Jai Jinendra, where they selected and purchased an iron. The bill for the iron was in the name of the complainant, but the guarantee card was made out in the name of the accused. Subsequently, they returned to the furniture shop, where the complainant informed the accused that he was running late and would attend to some work, and requested the accused to purchase the chair. The accused then asked the

complainant to hand over the money, whereupon the complainant took the tainted currency notes amounting to Rs. 2,400/- and gave them to the accused, who accepted the same and placed them in his left pant pocket. The predetermined signal was then given, and the members of the raiding party apprehended the accused. In cross-examination by the learned advocate for the accused, the witness stated that he had filed Regular Civil Suit No. 306 of 1997 against the Railways, and a panchnama was drawn in the said Civil Suit. The accused was employed as an Assistant Inspector and had no connection with the land in question, and the witness could not recall when the accused had met his tenants. The I.O.W had visited his land, and his labourers had informed him that a Videocon television set was being demanded. When they visited Natraj Steel and Furniture, the complainant alone entered the shop, while the accused and both panch witnesses remained outside. Similarly, at Jai Jinendra shop, the complainant entered alone, while the accused and both panch witnesses were outside, and the complainant

instructed the shopkeeper to prepare the guarantee card in the name of the accused. Upon returning to Natraj Furniture, there were eight to ten students present in the shop, and the complainant informed the accused that he had some work, but the accused insisted that he attend to his own work. The complainant forcibly placed the amount in the hands of the accused, at which point the accused was apprehended. The accused was then made to sit in the jeep and taken to the ACB office, where the panchnama was prepared by the writer at the dictation of the Police Inspector. Neither the complainant nor the panch witnesses dictated any portion of the panchnama, and the facts stated in his examination-in-chief were based on his reading of the panchnama. The witness categorically admitted that the accused did not demand any illegal gratification from him, and that the demand was made by the labourers; even in the furniture shop or at Jai Jinendra shop, the accused did not demand any illegal gratification from him.

11.1 PW2 – Ramanji Somaji Thakarda examined at Exh. 17

is the panch witness. In his examination-in-chief, he has narrated the entire procedure that was undertaken in his presence from the time he and the other panch witness, namely Nathubai Jivabhai Chaudhary, reached the A.C.B. Police Station until the trap was allegedly successful. In the cross-examination by the learned advocate for the accused, this witness has stated that when they visited the furniture shop, the complainant alone entered the shop, while he, the other panch witness and the accused were standing outside the shop. He has further stated that the accused remained outside the shop. When they went to purchase the iron, the accused again remained outside the shop and the complainant came out and informed them that the iron had been purchased. At that time, the accused went to purchase some medicine; however, upon the insistence of the complainant, he returned, sat in the jeep and they thereafter proceeded to the furniture shop. The witness has further stated that at the furniture shop, there were eight to ten students inside and the shop was crowded. He waited outside the shop and did not know as to what had

transpired inside. He has further stated that when the A.C.B. Officers arrived at the spot, the accused was insisting that he had refused to accept the amount and that the complainant had forcibly placed the currency notes in his hand.

11.2 PW3 – Pathan Nazirkhan Jamalkhan examined at Exh. 21 is the Trap Laying Officer. In his examination-in-chief, he has narrated the entire procedure undertaken by him from the time the complainant approached him for filing the complaint, the arrangement of the trap and until the alleged success of the trap. In his cross-examination, this witness has stated that when the complainant came to file the complaint, he had not produced any document pertaining to his property. He has further admitted that he was aware that a Civil Suit was pending in respect of the land dispute concerning the complainant. He has further stated that the procedure relating to the railway land was to be carried out by the I.O.W. and that the accused was merely a panch witness in the Civil Suit. The witness has further admitted that the place where the accused was

apprehended was a public place with considerable noise and that he did not hear any conversation between the complainant and the accused. He has further stated that even at the shop where the iron was purchased, he was standing outside and was unaware as to what had transpired inside. He has admitted that the iron was seized from the jeep and that he could not see the inside of the furniture shop from the place where he was standing. He has further admitted that the tainted currency notes used for purchasing the iron were recovered from the shopkeeper, but no ultraviolet lamp test was conducted on the hands of the shopkeeper.

11.3 PW4 – Himmatsinh Parbatsinh Chavda examined at Exh. 24 is the Investigating Officer. In his examination-in-chief, he has narrated the procedure undertaken by him during the course of investigation. In his cross-examination, this witness has admitted that the accused had nothing to do with the construction activity and that he was merely a panch witness in the panchnama. He has further admitted that the complainant had filed a Civil Suit against the Police

Inspector, Western Railway, Union of India and the I.O.W., and that there were no allegations made against the accused in the said Civil Suit.

11.4 PW5 – Kachrabhai Dalabhai Parmar examined at Exh. 28 is the Investigating Officer who has filed the charge sheet after the order of sanction for prosecution was received.

11.5 PW6 – Munavar Khursheed examined at Exh. 33 is the competent authority who accorded sanction for prosecution. The sanction order is produced on record at Exhibit-34. In his cross-examination, the witness has admitted that his mother tongue is Hindi and that he is unable to write in the Gujarati language. He has further admitted that there is nothing on record to show that the sanction order was translated or explained to him either in Hindi or in English. He has further stated that the draft sanction order was received in the office of the Assistant Security Commissioner and that the same was looked into. He has admitted that the draft sanction order was taken into consideration while according the sanction order at Exhibit-34 and that he is unable to name the Law Officer with whom he had allegedly

discussed the matter. He has further admitted that from the contents of Exhibit-34, it is not clear as to which documents were considered at the time of according sanction. He has also admitted that the draft sanction order was sent by an officer of the Anti-Corruption Bureau and that he did not think it proper to make any corrections therein. The witness has further admitted that the Railway Protection Force is not directly concerned with construction activities and that its primary function is the protection of railway properties. He has further admitted that the R.P.F. department had no concern whatsoever with the removal of encroachment.

12. Upon a meticulous appreciation of the entire evidence adduced by the prosecution, it is evident that, with respect to the alleged prior demand, the complainant has unequivocally admitted that no demand was made by the accused, but rather, the demand emanated from the labourers. Regarding the alleged demand at the scene, the panch witnesses were outside the shop and did not hear any such demand. The evidence further reveals that, at both the furniture shop and the iron shop, the complainant alone

entered the premises, while the accused remained outside. Consequently, there is no evidence of any conversation between the complainant and the accused at the time the currency notes were allegedly exchanged. According to the complainant's own statement, the accused desired the shopping centre to be vacated on the ground that it was situated on railway land; however, it is an admitted fact that a Civil Suit was filed in respect of the same, and the accused was not a party to the said suit. The record further establishes that the Railway Protection Force, of which the accused was a member, had no concern with the land in question, and the purported reason for the demand of illegal gratification is not credible. With respect to the sanction, PW6, Munawar Khurshid, has admitted that a draft sanction order was sent to him, and he did not deem it necessary to make any alterations thereto; he has also admitted that he was not conversant with Gujarati, and there is no evidence to show that the relevant papers were translated and placed before him. Furthermore, the complainant has admitted that the warranty card was

prepared by the shop owner at his instruction, yet the shop owner was not examined as a witness before the learned Trial Court. The complainant has categorically stated that no demand was made by the accused, and the essential ingredients of demand and acceptance have not been established; accordingly, the presumption under Section 20 of the Prevention of Corruption Act, 1988, is not available to the prosecution. In view of the aforesaid infirmities, this Court holds that the prosecution has failed to prove the indispensable ingredients of demand and acceptance of illegal gratification beyond reasonable doubt. In absence of proof of demand which is a *sine qua non* for the offence under the PC Act, the statutory presumption under Section 20 of the Prevention of Corruption Act is not attracted. The learned Trial Court, therefore, erred in recording the conviction on the basis of conjectures and incomplete appreciation of evidence. Consequently, the appeal succeeds and is allowed.

13. The impugned judgment and order of conviction in Special Case (ACB) No. 10/1998 passed by the learned

Special Judge, Mehsana on 19.07.2005 is hereby quashed and set aside and the accused is acquitted from all the charges against him.

14. Bail bonds stand cancelled. Fine to be refunded to the accused after due verification. Record and proceedings, if any, be sent back to the concerned Trial Court forthwith.

VASIM S. SAIYED

**Sd/-
(S. V. PINTO,J)**

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VASIM SHABBIR SAIYED(HC01902), PRIVATE SECRETARY, at High Court of Gujarat on 10/02/2026 17:44:33