

CASE NO.:
Appeal (crl.) 408 of 2008

PETITIONER:
Bechaarbhai S. Prajapati

RESPONDENT:
State of Gujarat

DATE OF JUDGMENT: 29/02/2008

BENCH:
Dr. ARIJIT PASAYAT & J.M. PANCHAL

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO 408 OF 2008
(Arising out of SLP (Crl.) No.6213 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Gujarat High Court dismissing the appeal filed by the appellant.
3. Challenge before the High Court was to the judgment and order dated 5.11.1993 passed by learned Sub-Judge, Bhavnagar, in Special Case No.9 of 1991 whereby the appellant was convicted and sentenced to suffer rigorous imprisonment for one year in respect of offence under Section 161 of the Indian Penal Code, 1860 (in short the 'IPC') and for offence punishable under Section 7(2) of the Prevention of Corruption Act, 1988 (in short the 'Act'), he was sentenced to undergo rigorous imprisonment for one year in respect of each of the offence and fine with default stipulation.
4. Background facts in a nutshell are as follows:

On 12.12.1990, one Luxury Bus bearing No. GTS-9919 was hired by Ramnikdas Hargovindas from Bharat Travels Company for carrying a marriage party from Mahuva to Selana. According to the complainant-Ghelabhai Jasabhai, the Mehtaji of Bharat Travels who was present in the bus, at around 6.00 or 6.15 a.m. of that day when the bus reached Aasarana Chokadi, the appellant-accused stopped the luxury bus and demanded the documents relating to the luxury bus whereupon the complainant had shown the permit and other papers. However, the police staff kept these papers with them. The appellant-accused, then demanded Rs.250/- in the name of entry fee. The complainant, then requested the appellant-accused who was P.S.I. at the relevant time to let them go as the bus was carrying a marriage party. However, the appellant-accused demanded Rs.250/- to which the complainant refused as instructed by the owner of the bus. It is further the case of the prosecution that the appellant-accused then told the complainant that Rs.225/- be paid and the papers be collected from that spot where the bus was intercepted by 10.00 O'clock, and in case the complainant is late, the amount be paid at Khuntvada Police Station. So saying, the appellant-accused issued a receipt in token of having taken away the permit and other papers which was received by Bhagwanbhai

Ranchhodbhai, the driver of the luxury bus. The driver was then allowed to run the bus towards village Selana. The complainant thereafter, returned to Mahuva and narrated the incident to the owner/proprietor of the luxury bus. On hearing this, the owner of the luxury bus was against giving any illegal gratification as all the documents relating to the luxury bus were genuine. Therefore, the owner decided to approach the Anti Corruption Bureau, Bhavnagar. Accordingly, the complainant, the owner of the luxury bus and one Ramjibhai who happens to be the elder brother of the owner of the luxury bus went to the Office of the Anti Corruption Bureau, Bhavnagar, met Mr. Bhatt, P.I, of Anti Corruption Bureau, Bhavnagar, apprised him of the matter and lodged the complaint. It is further the case of the prosecution that two Panchas were called and they were told the purpose for which they have been called, the complaint was read over to them and they agreed to be Panch Witnesses. They were also explained the purpose and use of anthracene powder. Thereafter, the complainant gave two currency notes in the denomination of Rs.100/-each and one currency note in the denomination of Rs.50/- aggregating Rs.250/-. These currency notes as also the hands of the complainant, Panchas and other staff were observed in ordinary light and nothing significant appeared. Thereafter, a bottle containing anthracene powder was taken from the cupboard, some anthracene powder was put in a blank paper, these currency notes were smeared with anthracene powder and when they were again observed in ordinary light no visible marks were seen. These currency notes were again tested under ultra-violet lamp and glowing marks of bluish powder were seen. These currency notes were then put into the shirt pocket of the complainant after ensuring that the shirt pocket was empty. It was explained to the complainant that in ordinary light the marks of anthracene powder will not appear but only under ultra violet lamp the bluish powder marks of anthracene powder can be seen. The anthracene powder that remained in the blank paper was then put back into the bottle; the bottle was placed in the cupboard and locked. The blank paper was burnt and destroyed. The complainant was instructed not to touch the currency notes put in his pocket except for the purpose of giving them to the appellant-accused and that these currency notes should be given to none other than the appellant-accused. With these instructions the constable washed his hands and made sure that there were no marks of anthracene powder by viewing under ultra violet lamp. The preliminary Panchnama Exh. 14 was drawn. The raiding party then left for Khuntvada - some persons went by Ambassador Car while the others went by Jeep. The complainant was instructed to give signal as soon as the amount is demanded and accepted by putting his hands on his head and Panch No.1-Hemantkumar Jayantilal Bharu was instructed to remain in the company of the complainant. In this manner, with a view to apprehend the appellant-accused red handed while demanding and accepting the illegal gratification from the complainant, the trap was arranged. It is further the case of the prosecution that they reached Khuntvada at 5.30 p.m. and on instructions by P.I. Mr. Bhatt, Ramjibhai Ukabhai, the elder brother of the owner of the luxury bus went to Khuntvada Police Station to inquire whether the P.S.I. was present or not, however, since the P.S.I. was not available at the Police Station, they decided to wait for an hour. It is alleged that within an hour the Police Jeep went towards the Police Station, and therefore, Panch No. 1 along with the complainant was sent to the Police Station. They went to the Police Station on foot and so did the others who

followed. The complainant went up the first floor where he met the appellant-accused (P.S.I.) who was sitting in the Chamber while Panch No. 1 who accompanied the complainant waited at the door of the P.S.I.'s Chamber. The complainant requested to handover the papers of the luxury bus, but the appellant-accused asked whether he (complainant) had brought the money i.e. the illegal gratification. The complainant suggested that some lesser amount than Rs.250/- be accepted to which the appellant-accused replied that Rs.200/- be given. Accordingly, the complainant handed over the tainted currency notes of Rs.200/- to the appellant-accused who accepted the same by his left hand, put it in his right hand and then into his right hand trouser pocket. The appellant-accused then gave the portfolio that was in the cupboard. In the meanwhile, the complainant had kept the remaining currency note of Rs.50/- in his pocket. The appellant-accused then demanded the receipt which was given at the time of interception at the spot, but the complainant told that the receipt was with the driver. It is alleged that, at that time, Panch No.1 was at a distance of five feet from the Chamber of the appellant-accused and heard the conversation between the complainant and the appellant-accused. It is also alleged that the complainant, thereafter, came out near the staircase and gave the preplanned signal to the ACB personnel who rushed to the Chamber of the appellant-accused in the company of Panch No.2 Ishwarlal Girdharlal Chauhan. The ACB Inspector revealed his identity by showing his card, took away the revolver from the appellant-accused (P.S.I.). At that time, the appellant-accused got frightened and took out the said tainted currency notes from his trouser pocket and kept them in his fist. The P.I. ACB, Bhavnagar then apprehended the appellant for having demanded and accepted a sum of Rs.200/- from the complainant for showing him favour by allowing the luxury bus to go to the destination and the appellant-accused was asked to place his hands on the table and the tainted currency notes were recovered from the appellant-accused. Thereafter, the test of anthracene powder was carried out on the hands of the raiding party by viewing their hands under ultra violet lamp and no marks of anthracene powder was found. Similar test was carried out of the hands of the complainant, the appellant-accused and trousers of appellant-accused and presence of anthracene powder was noticed. It is further alleged that the recovered currency notes of Rs.200/- were compared with the numbers and denominations of the currency notes mentioned in the pre-trap Panchnama and the same having tallied in toto were seized. The appellant-accused was taken into custody. The tainted currency note of Rs.50/- that remained in the pocket of the complainant was also compared with the number and denomination mentioned in the pre-trap Panchnama and the same also tallied. Thereafter, a detailed second part of the Panchnama was drawn in presence of the Panchas, muddammal currency notes, trouser worn by the appellant-accused etc. were attached. It is further the case of the prosecution that on the next day, further statement of complainant was recorded and at that time he produced the receipt issued by the appellant-accused. The statements of witnesses were recorded and the sanction for prosecution in respect of the appellant-accused was obtained from Mr. Brar, Junagadh.

After completion of investigation a charge sheet was filed undertaking alleged commission of offence punishable under Sections 7, 12 and 13(1)(d) of the Act. Learned Special Judge framed charges for offence punishable under Sections 7, 12 and 13 (1)(d) read with Section 13(2) of the Act and Section

161 of IPC.

As noted above, the appellant was convicted for offence punishable under Section 7(2) of the Act and Section 161 IPC. The appeal before the High Court was dismissed on the ground that there was sufficient evidence on record to hold that the appellant did demand and accept the bribe money from the complainant.

5. The learned counsel for the appellant submitted that the evidence is inadequate and does not establish demand and acceptance of illegal gratification. The appellant all through has taken the stand that he was falsely implicated. Alternatively, it was submitted that the sentence as imposed is heavy considering the amount of bribe alleged to have been received.

6. Learned counsel for the respondent-State on the other hand supported the order.

7. It is to be noted that both the trial Court and the High Court have analysed the evidence in great detail and have found that the appellant had demanded and accepted a sum of Rs.200/- from the complainant for allowing the luxury bus to go to the destination. The tainted currency notes were recovered from the appellant. The test of anthracene powder was carried out of the hands of the raiding party under ultra violet lamp but no marks of anthracene powder was found. Similar test was carried out on the hands of the complainant. On the accused-appellant's trouser presence of anthracene powder was noticed. It has also been established that the numbers of the currency notes were matched with the denominations mentioned in the pre-trap panchnama.

8. Looked at from these angles, it cannot be said that the conclusions of, either the trial Court or the High Court, suffer from any infirmity.

9. The alternative submission relates to the harshness of sentence. The occurrence took place nearly seven years back. It is stated that the appellant has suffered custody for more than six months. Taking into account all these aspects, we feel interest of justice would be best served if the sentence is reduced to the period undergone, while maintaining the conviction. It is to be noted that the minimum sentence prescribed under Section 7(2) of the Act is six months.

10. The appeal is dismissed subject to modification of the sentence as noted above.