2026 INSC 890

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1177 OF 2015

RAFIKMIYA AHMEDMIYA MALEK APPELLANT

VERSUS

STATE OF GUJARAT RESPONDENT

WITH

CRIMINAL APPEAL NO.1183 OF 2015

SIRAJBHAI RASULBHAI VORA APPELLANT

VERSUS

STATE OF GUJARAT RESPONDENT

J U D G M E N T

ATUL S. CHANDURKAR, J

1) These appeals take exception to the common judgment of the learned Single Judge of the High Court of Gujarat dated 22.01.2015 whereby the conviction of the appellants for the offence punishable under Sections 7, 12 and 13(1)(d) of the Prevention of Corruption Act, 1988[1] has been upheld. They were sentenced to suffer rigorous imprisonment for a period of one year and fine of

[1] For short, 'the Act of 1988'.

₹2000/-. The appeal preferred by the State of Gujarat seeking enhancement in the sentence of punishment was, however, dismissed.

2) As per the prosecution case, one Hasmukhbhai Maganbhai Chauhan[2] was pursuing his education and was required to produce an Income Certificate for being entitled to certain concessions. For obtaining the Income Certificate, he approached the Mamlatdar on 06.02.1996 and made an application in that regard. The application was examined and forwarded to the Talati-cum-Mantri of Village Bechri. The complainant, accordingly, went to the Bechri Grampanchayat and met the Talati-cum-Mantri[3] on 07.02.1996. On perusing the said application, A1 demanded an amount of ₹120/- from the complainant. A1 stated that ₹100/- was to be given to him and ₹20/- was to be given to the Peon[4]. The complainant, thereafter, returned back stating that he would get the money afterwards. The complainant, thereafter, went to the office of A1 on 14.02.1996. A1 demanded a copy of his father's income certificate along with the amount of ₹120/-. The complainant was asked to come back with the certificate. The

[2]For short, 'the complainant'.
[3]For short, 'A1'.
[4]For short, 'A2'.

complainant, thereafter, on 19.02.1996 met A1 near the bus stand at about 11:30 am. He gave him the income certificate of his father. The complainant, thereafter, proceeded to the office of the Anti-Corruption Bureau and lodged a complaint as he did not want to pay the money demanded by A1. Accordingly, the complaint was accepted and preparations were made for laying the trap.

3) The complainant along with the raiding party visited the office of A1 on 19.02.1996 for collecting the concerned certificate. According to the prosecution, on receiving such certificate the complainant gave a note of ₹20/- to A2 who put it in his pocket. On giving the pre-determined signal, the raiding party appeared and, thereafter, drew the necessary panchnama. After completing all the formalities, an offence was registered against A1 and A2. Investigation was, thereafter, undertaken. On its completion, a chargesheet was duly filed. The charge was framed against A1 and A2 alleging commission of offence under Sections 7, 12 and 13(1)(d) of the Act of 1988. In addition, charge for the offence punishable under Section 120B of the Indian Penal Code, 1860[5] was also framed. As A1 and A2 denied the charges, they were tried. The prosecution examined five witnesses to prove the charge. The

[5]For short, 'the Penal Code'

defence raised by A1 and A2 was of denial. They submitted their explanation in writing.

4) At the conclusion of the trial, the learned Judge of the trial Court after considering the evidence on record held that A1, who was holding the post of Talati-cum-Mantri and A2, who was serving as Peon with the Grampanchayat were public servants. The sanction granted for their prosecution by the Deputy District Development Officer and the Sarpanch respectively, was found to be valid. The demand of the amount of bribe was proved as against A1 but not against A2. It was further held that the prosecution had failed to prove criminal conspiracy between A1 and A2 for demanding the amount of bribe. By its judgment dated 30.11.1999, A1 and A2 were held guilty of having committed the offence punishable under Section 7 read with Section 13(1)(d) of the Act of 1988. After hearing A1 and A2 on the question of sentence, they were directed to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 13(1)(d) of the Act of 1988. As regards offence punishable under Section 7 of the Act of 1988, they were awarded punishment of rigorous imprisonment for a period of six months with fine of ₹2000/-.

5) A1 and A2 being aggrieved by their conviction preferred Criminal Appeal Nos.1343 of 1999 and 1344 of 1999 respectively. The State of Gujarat preferred Criminal Appeal No.1380 of 1999 seeking enhancement in the quantum of punishment. A learned Single Judge of the High Court heard all the appeals together. On re-consideration of the evidence on record, the conviction of A1 and A2 was maintained. Their respective appeals were dismissed. It was also held that since A1 and A2 were dismissed from service after their conviction, there was no necessity to enhance the sentence. Accordingly, the appeal preferred by the State of Gujarat was also dismissed. Being aggrieved, A1 and A2 have challenged the judgment of the High Court.

6) Mr. Divyesh Pratap Singh, learned counsel for the appellants in support of the appeals made the following submissions:

a) It was submitted that insofar as A1 was concerned, he was serving on the post of Talati-cum-Mantri. The District Development Officer was the competent authority to make an appointment on the post of Talati-cum-Mantri. The sanction for prosecution of A1, however, was given by PW-2, Mukesh Kumar, who was serving as Deputy District Development Officer at the relevant point. Since the Deputy District

Development Officer was not the competent authority to appoint a Talati-cum-Mantri, the order granting sanction vide Exhibit 25 was defective. On the ground that A1 was prosecuted on the basis of an invalid sanction order, his conviction could not be maintained. Placing reliance on the decisions in **Gopalbhai Mohanbhai Nagoda vs. State of Gujarat**[6] and **Shamji Karshan vs. The State of Gujarat**[7], it was submitted that it was only the District Development Officer, who was competent to grant valid sanction for prosecuting a Talati-cum-Mantri. Without considering this aspect in its proper perspective, the conviction of A1 had been upheld. Reliance was also placed on the decision in **Mohd. Iqbal Ahmad vs. State of Andhra Pradesh**[8] to urge that as the sanction was granted without due application of mind, it vitiated the entire proceedings.

b) It was submitted that according to the case of the prosecution, a demand of ₹100/- was made on behalf of A1 while demand of ₹20/- was made on behalf of A2. The evidence on record indicated that an amount of ₹20/- was

[6] 1993 II LLN 540
[7] 1974 SCC Online Guj 64
[8] 1979 INSC 11

placed in the pocket of A2 by the complainant. Amount of ₹100/- was neither offered to A1 nor was it found on his person. Only on the basis of placing a note of ₹20/- in the pocket of A2, A1 had been prosecuted. In absence of any amount whatsoever being accepted by A1, he could not have been prosecuted for the aforesaid offence. The evidence on record was not appreciated in the light of these facts. In fact, there was no demand whatsoever made by A1 as alleged. A1, therefore, was liable to be acquitted from the charge. In that regard, the learned counsel placed reliance on the decisions in **Pramatha Nath Taluqdar vs. Saroj Ranjan Sarkar**[9] and **Shri Ram & Another vs. The State of Uttar Pradesh**[10]. It was also urged that since the amount of ₹20/- was stated to be given to A2 after receiving the certificate that was sought by the complainant, presumption under Section 20 of the Act of 1988 would not arise. The decision in **State of Lokayuktha Police, Davanagere vs. C.B. Nagaraj**[11] was referred to in this context. Relying upon the decision in **N. Vijayakumar vs. State of Tamil Nadu**[12], it was submitted that in the absence

[9] 1961 INSC 357
[10] 1974 INSC 230
[11] 2025 INSC 736
[12] 2021 INSC 60

of demand being proved, no presumption under Section 20 of the Act of 1988 could be drawn.

c) Coming to the case of A2, it was submitted that the trial Court had found that the alleged demand by A2 was doubtful. This finding by the trial Court was also accepted by the High Court in Paragraph 20 of the impugned judgment. Thus, when any demand by A2 was not proved, as held by both the Courts, it was clear that the complainant had thrust the note of ₹20/- in the pocket of A2 without any demand. The defence as raised that the festival of Eid was to be celebrated on the next day and it was for that purpose that the complainant had given the note of ₹20/- to A2 after receiving the necessary certificate, therefore, assumed significance. It was, thus, clear that even in absence of any demand whatsoever by A2, he had been convicted by both the Courts. Thus, from the material on record it was evident that no amount of bribe was paid to A1 while there was no demand made by A2. The trial Court rightly held the absence of any conspiracy between A1 and A2 in that regard. Ignoring this vital aspect, the High Court proceeded to uphold the conviction of the appellants.

d) It was, thus, submitted that on considering the entire evidence on record, it was clear that the prosecution had failed to prove its case beyond reasonable doubt. The appellants were entitled to acquittal. Both the Courts had erred in coming to the conclusion that A1 and A2 were guilty of the offence punishable under Sections 7, 12 and 13(1)(d) of the Act of 1988.

7) On the other hand, Mr. Prashant Bhagwati, learned counsel appearing for the State of Gujarat while opposing the appeals, made the following submissions:

a) It was submitted that the trial Court as well as the High Court concurrently found that demand of ₹120/- had been made by A1. Out of the said amount, ₹100/- was to be retained by A1 and ₹20/- was to be paid to A2. With the payment of ₹20/- to A2, the trap was successful which also proved the demand as well as acceptance of the amount of bribe. Merely because the amount of ₹100/- was not actually paid to A1, it could not be said that the offence was not proved. For the purposes of issuing the requisite certificate, such demand had been made by A1. Hence, they were rightly convicted by the trial Court and its judgment was upheld by the High Court.

b) A1 and A2 being public servants, the sanction granted for their prosecution was in accordance with law. After due application of mind and after considering all relevant aspects, the sanction orders had been issued. Considering the nature of evidence on record coupled with the concurrent findings by both Courts, it was submitted that there was no reason whatsoever to interfere with the conviction of A1 and A2. Both the criminal appeals were liable to be dismissed.

8) We have heard the learned counsel for the parties at length. With their assistance, we have also perused the records of the case. We have, thereafter, given thoughtful consideration to the entire material on record.

9) It would be necessary to first consider the aspect of demand, which has been held to be proved against A1. The trial Court recorded a finding that insofar as the aspect of demand is concerned, the same was proved as against A1 and that there is no demand by A2. This finding has been affirmed by the High Court. In this regard, it would be necessary to first consider the deposition of the complainant at Exhibit 13. He had stated that for the purpose of obtaining an Income Certificate, he had approached the office of the Mamlatdar and had made an application in that regard on 06.02.1996. That application was forwarded to the office of Talati-cum-Mantri of village Bechri. In that regard on 07.02.1996, A1 after seeing the papers had stated that complainant would have to pay ₹120/- for the certificate. From the said amount, ₹100/- was to be paid to A1 and ₹20/- for A2. This demand was repeated on 14.02.1996. It is, thereafter, that on 19.02.1996 that the complainant met A1 at the bus stand where he was told to get the Income Certificate of his father after which the certificate could be collected in the evening. The complainant was told to come with ₹120/-.

10) As regards demand of the amount of ₹120/-, the complainant in his cross-examination was confronted with his deposition that was recorded in Criminal Case No.826 of 1996. According to the complainant, after the Anti-Corruption Bureau had lodged the report against A1 and A2, he had filed another case against both of them. This case related to threats given by A1 and A2 to the complainant. The complainant admitted that in his deposition in the said case, he had stated that A1 had demanded an amount of ₹200/- and that the amount of ₹120/- was agreed by way of final settlement. Relevant portion of his cross-examination reads thus:

> "9. After the A.C.B. filed case against the accused persons, I have filed another case against both of them. I have filed the said case against him in lower Court for threatening me. I have given deposition in the

said case. My sister has also given deposition in the said case. My father has also given deposition in the said case. The case no. 826/96 has been filed against the accused in the J.M.F.C. Court of Umreth. My deposition has been recorded in the said case. I do not know that I might have dictated such in the said deposition that, when I went to the Talati on 07.02.96, the Talati had demanded Rs.200/- from me. It is true that, I have dictated such in my deposition that, when I went to the Talati for the last time, he demanded Rs.120/-. It is true that, I had dictated such in my deposition that, the Talati demanded Rs.200/- and the amount of Rs.120/- was decided towards final settlement. As per your say, I produce certified copy of my deposition recorded in Criminal Case No. 826/96. It is given exhibit 21."

From the aforesaid, it is clear that when the complainant deposed in the present proceedings, he did not refer to an initial demand of ₹200/- being made by A1 on 07.02.1996. He further does not state that by way of final settlement an amount of ₹120/- was agreed to be paid. The version of the complainant as recorded in this case, therefore, is in variance with his deposition in Criminal Case No.826/1996 on the amount of demand by A1. Be it noted that the complaint leading to Criminal Case No.826/1996 was made on 06.03.1996, which is within a month of the alleged demand.

11) The complainant further in his deposition stated that after lodging the complaint, he was instructed by the Anti-Corruption Bureau office to give the entire amount of ₹120/- in the form of two notes of ₹50/- and one note of ₹20/- to the accused. This fact is reiterated in the cross-examination of PW-3, the first Panch witness, who admitted that the complainant was instructed to give all the currency notes when the demand was made by A1. On 19.02.1996, when he had gone to collect the Income Certificate, A1 and A2 were in the office. A2 was at a distance of one to two feet away from A1. The complainant admitted that if anyone talked with A1, A2 could have heard it. In his examination-in-chief, the complainant stated that after receiving the certificate along with other papers, the same were placed in his plastic bag. When the complainant stood up with the said papers, A1 demanded the amount of ₹120/- from him and told him that the said amount be given to A2. According to the complainant, as he understood that A2 was to be given ₹20/-, he took out the currency note of ₹20/- and gave it to A2, who thereafter placed it in his left pocket. In his cross-examination, the complainant stated that when A1 demanded ₹120/- from him, he did not take out the money from his pocket at that time. A2 did not demand any money from him. He further admitted that he was instructed at the Anti-Corruption Bureau office to take out the entire money from the pocket when it was demanded. Though A1 told him to give ₹120/- to A2, he understood it as to give ₹20/- to A2. He further admitted that when he gave the money to A2, A2 did not inquire as to why he was giving only ₹20/- though A1 had told him to give ₹120/-.

12) From the aforesaid evidence of the complainant, it becomes clear that though he was instructed to give the entire amount of ₹120/- on demand being made, he gave ₹20/- only to A2. Further, according to the complainant an amount of ₹120 was demanded from him after receiving the certificate and A2 was standing at a distance of one to two feet from A1. However, A2 did not inquire from the complainant as to why only ₹20/- was being given though A1 had told him to give an amount of ₹120/-. This again raises a doubt as regards demand of ₹120/- by A1 in the backdrop of the complainant giving ₹20/- to A2 despite being instructed to give the entire amount of ₹120/- whenever the demand was made. When this conduct of the complainant is considered along with his admission in the cross-examination that A2 did not make any demand, the entire episode gives rise to serious suspicion. There is no explanation as to why the instructions given to the complainant at the Anti-Corruption Bureau office of giving the entire amount of ₹120/- on demand were not followed.

13) The complainant in his cross-examination volunteered to demonstrate as to how he took out the currency note of ₹20/- from his pocket for being given to A2. According to him, he held the said currency note with his first two fingers and thumb. PW-3 who acted as Panch was examined *vide* Exhibit 26. In his cross-examination, he stated that he knew as to how the complainant gave the money to A2. He stated that the complainant took out the currency note of ₹20/- from his left pocket using all five fingers of his right hand. He denied the suggestion that the complainant took out the money using his three fingers, his thumb and two other fingers.

Though the aforesaid could be termed as a discrepancy when considered in isolation, the same would have some bearing while considering the entire evidence, especially as regards demand and giving of the amount of bribe. In our view, the prosecution evidence is insufficient to hold that demand of ₹120/- by A1 was proved beyond reasonable doubt.

14) It is also material to note that both the accused were also charged with having hatched a criminal conspiracy to demand and receive the amount of bribe from the complainant. The said charge was under Section 120B of the Penal Code. The trial Court, however, on consideration of the evidence on record held that prosecution had failed to bring on record any evidence to substantiate this charge. It, therefore, acquitted both the accused from the offence punishable under Section 120B of the Penal Code.

Though the State Government preferred an appeal before the High Court seeking enhancement in the amount of punishment imposed on the accused, their acquittal under Section 120B of the Penal Code has not been interfered with by the High Court. This aspect assumes relevance in view of the fact that both the Courts have held that it was proved that A1 had made the demand of bribe while it was only A2 who received the amount of ₹20/-. The demand as against A2 was held to be not proved. Similarly, A1 was not found with any bribe amount.

15) It was sought to be urged on behalf of the prosecution that the presumption under Section 20 of the Act of 1988 would arise once it was proved that the bribe amount of ₹20/- was received by A2. This contention cannot be accepted for the reason that the statutory presumption under Section 20 of the Act of 1988 would come into play only after the initial demand is proved by the prosecution beyond reasonable doubt. If the initial demand itself is not proved, mere recovery of the amount of ₹20/- from A2 would not resurrect the case of the prosecution to enable the Court to hold that the charge was proved. This position is clear in view of the decision of the three Judge Bench in *N. Vijayakumar (supra).* The High Court in the impugned judgment has proceeded to draw presumption under Section 20 of the Act of 1988 on the premise that both the accused were public servants and that A2 was found in possession of the currency note smeared with anthracene powder. It is clear from the evidence brought on record by the prosecution that the demand by A1 itself is doubtful and, hence, not proved. The presumption under Section 20 of the Act of 1988, therefore, cannot be drawn in such a situation.

16) Another relevant aspect that cannot be ignored is that the amount of ₹20/- was given by the complainant to A2 after receiving the Income Certificate from A1. This is another relevant factor that requires consideration inasmuch as the Income Certificate for the issuance of which it was alleged that the bribe was demanded had already been prepared and was handed over to the complainant. When this circumstance is considered in totality of the prosecution material on record, it again raises a doubt as the Income Certificate was duly prepared and handed over to the complainant by A1, after which he gave the amount of ₹20/- to A2. Reference in this regard can be made to the decision in *State of Lokayuktha Police, Davanagere (supra)* wherein it was held that *ipso facto*, it cannot be assumed that such payment was pursuant to a demand made.

17) According to the learned counsel for the appellants, the sanction granted to the prosecution of A1 was invalid in view of the fact that the same was granted by PW-2, who was holding the post of Deputy District Development Officer. As A1 was holding the post of Talati-cum-Mantri, sanction for his prosecution was required to be granted by the District Development Officer. This was for the reason that the District Development Officer was the authority competent to remove a Talati-cum-Mantri from his office. As A1 was holding the post of Talati-cum-Mantri, the provisions of Section 19(1)(c) of the Act of 1988 would be required to be complied with. As per the said provision, cognizance of an offence punishable under Sections 7 and 13 of the Act of 1988 cannot be taken unless there is previous sanction of the authority competent to remove the public servant from office. In his deposition at Exhibit 24, PW-2 admitted that he was performing duties as a Deputy District Development Officer since September 1995. He further admitted that if a Talati-cum-Mantri desires to go abroad, he has to seek no objection of the Department and permission of the appointing authority. He admitted that in such a situation, it was the District Development Officer, who had authority to issue a no objection certificate. It has not been brought on record by the prosecution that a Deputy District Development Officer is empowered to remove a Talati-cum-Mantri from office. It may be true that A1 was initially appointed on ad-hoc basis as Talati-cum-Mantri by an order issued by the Deputy District Development Officer. What is contemplated by Section 19(1)(c) of the Act of 1988 is the grant of sanction by an authority competent to remove the concerned public servant from office. When the sanction was sought, A1 was holding the substantive post of Talati-cum-Mantri and, hence, it was only the District Development Officer under the Gujarat Panchayats Act, 1961 who could have removed him from office. On this count, the sanction granted to the prosecution of A1 by the Deputy District Development Officer is found to be invalid. We would, however, not set aside the conviction of A1 solely on the ground of an invalid order of sanction. Even otherwise, we find on an appreciation of the entire material brought on record by the prosecution that it falls woefully short of proving the charge against both the accused beyond reasonable doubt.

18) Having found that the charge of demand of bribe amount has not been proved against A1 coupled with the fact that both the Courts have recorded a finding that no demand was made by A2, it is obvious that the case of the prosecution must fail. As noted above, mere possession of a currency note of ₹20/- with A2 by itself would not be sufficient to uphold the conviction of A1 and A2 for the offence punishable under Sections 7, 12 and 13(1)(d) of the Act of 1988. The defence raised by A2 that the festival of Eid was on the next day and, hence, the complainant gave ₹20/- to him after receiving the Income Certificate is also probable.

19) For all these reasons, the judgment of the trial Court in Special Case No.15 of 1996 dated 30.11.1999, as affirmed by the High Court in its common judgment dated 22.01.2015 in Criminal Appeal Nos.1343/1999 and 1344/1999 is set aside. The appellants are acquitted of the charge of having committed an offence punishable under Sections 7, 12 and 13(1)(d) of the Act of 1988. The appellants are presently enlarged on bail. Their bail bonds shall stand cancelled. The Criminal Appeals are, accordingly, allowed.

……………………………J.
[UJJAL BHUYAN]

……………………………J.
[ATUL S. CHANDURKAR]

NEW DELHI,
AUGUST 19, 2026.