Reserved On : 12/08/2026
Pronounced On : 05/11/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2232 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIMAL K. VYAS Sd/-

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Approved for Reporting	Yes	No
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MUKESH CHIMANLAL GANDHI
Versus
STATE OF GUJARAT

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Appearance:
MR CJ VIN(978) for the Appellant(s) No. 1
MR RC KODEKAR(1395) for the Opponent(s)/Respondent(s) No. 1
MS ASMITA PATEL, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE VIMAL K. VYAS**

CAV JUDGMENT

1. The present Criminal Appeal has been preferred under Section 374 of the Code of Criminal Procedure, 1973, by the convict, and is directed against the judgment and order of conviction and sentence dated 06.12.2004 passed by the learned Special Judge, Court No.4 (Special) for C.B.I. Cases, at Navrangpura, Ahmedabad, in Special (C.B.I.) Case No.58 of 1995.

2. By the aforesaid judgment and order of conviction and sentence, the trial court has held the appellant-accused guilty and convicted him for the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Consequently, the trial court has imposed a fixed term of sentence upon the appellant-accused to undergo imprisonment as under :-

Section	**Imprisonment**	**Fine (Rs.)**	**In default of payment of fine**
7 r/w 13(2)	Imprisonment for one year	1000	Simple Imprisonment for two months
13(1)(d)	Imprisonment for two years	1000	Simple Imprisonment for two months

3. Being aggrieved and dissatisfied with the judgment and order of conviction and sentence, the appellant-accused has preferred the present Criminal Appeal seeks to quash and set aside the judgment and order of conviction and sentence dated 06.12.2004 passed by the trial court.

PROSECUTION'S CASE IN A NUT-SHELL :

4. It is the case of the prosecution that the complainant

Mr.Anton Earnest Dias, a resident of Shakra Ganchi's Chawl, Road No.12, Khokhra Mehamdabad, Maninagar, Ahmedabad, was appointed on 29.06.1985 and discharging his duties as a Khalasi since last ten years in the CNW Department, Western Railway, Ahmedabad. It is alleged that during the service, his right eye got damaged on 18.12.1994 and he lost his eye-sight. It is further alleged that on 05.06.1995, the Screening Committee of the Railways decided to continue him on service as a Scaleman. Thereafter, he was awaiting his posting order, and in the interregnum period, he came to know that he has been transferred from the Carriage Department to the Traffic Department of the Railways. It is further the case of the prosecution that subsequently the complainant Mr.Anton Dias approached the present appellant-accused, who was serving as the Chief Clerk in the Traffic Department, O/o Divisional Railway Manager, Western Railway, Pratapnagar, Baroda, regarding his posting order, as he was not getting his salary and was facing monetary crisis. It is alleged that the appellant-accused had demanded Rs.500=00 from the complainant for issuance of the posting order. On 12.10.1995, the complainant Mr.Anton Dias had again met the appellant-accused, who told him to pay Rs.500=00 for the posting order or else his work

would not be done and directed him to come again on 17.10.1995 with the bribe money.

5. It is alleged that because the complainant, Mr.Anton Dias, was unwilling to pay the bribe, he approached the CBI office and explained his grievance to the Police Inspector Shri Sanjaykumar Ranvijaybahadur Singh. The Police Inspector then took him to the Superintendent of Police Shri Pawar, where the complaint was formally lodged on 16.10.1995. On the strength of the complaint, a trap was laid by Shri Sanjaykumar Ranvijaybahadur Singh. In furtherance thereto, the members of the raiding team along with the complainant and two panchas, namely, Shri Satish Vasudevan Nair, Field Assistant, Vigilance Department, IPCL, Baroda, and Shri Harshawardhan Marutirao Thorat, Senior Officer, Vigilance Department, IPCL, Baroda, went to the office of the Divisional Manager, Western Railway, Pratapnagar, Baroda. It is alleged that the complainant had told the trapping officer Shri Sanjaykumar Singh that the appellant-accused had asked him to come to his office on the next day on Thursday, i.e. on 19.10.1995, as there were many persons present in the office. Therefore, on 19.10.1995, all the members of the raiding team had again reached the DRM Office at Baroda,

and at around 3 O'clock in the afternoon, the complainant and the panch no.1 met the appellant-accused, who then demanded the bribe money from the complainant. Thereafter, the complainant tendered the tainted currency notes worth Rs.500=00 to the complainant, who accepted it with his right hand, counted the notes and the same were put in the rear pocket of his trouser. Upon receiving the prearranged signal, all the members of the raiding team rushed to the place and the appellant-accused was caught red-handed accepting the bribe money from the complainant in presence of the panchas. The raiding party, thereafter, recovered the currency notes smeared with phenolphthalein powder from the possession of the appellant-accused and the same were verified and compared with the number of the currency notes written in the panchnama, whereupon the recovered notes were found to be the same.

6. On the basis of the complaint, the accused came to be arrested. The trial court, after following due procedure, framed the Charge *vide* Exh.27 on 26.09.2001 against the accused, for the commission of offences punishable under Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act. Thereafter, the

statement of the appellant-accused was recorded *vide* Exh.28, who abjured his guilt by pleading his innocence and claimed to be tried.

7. To bring home the charge, the prosecution had examined eight witnesses and adduced ten documentary evidence in support of his case, which are as follows :-

NO.	WITNESSES NAME	EXHIBIT
1.	Satish Vasudevan Nair, Shadow/Panch-Witness No.1	33
2.	Anton E.Dias, Complainant	41
3.	Sanjaykumar Ranvijaybahadur Singh, Trapping Officer	47
4.	Kanchanlal Madhobhai Vasawa, Staff Member, Railway Office	52
5.	Sanjay Surendrakumar Suri, Sanctioning Officer	64
6.	Omprakash D.Khurana, Staff Member, Railway Office	73
7.	Arifkhan B.Pathan	77
8.	Jitendrasing Vishwanathsing, Investigating Officer	78

DOCUMENTARY EVIDENCE		
SR. NO.	**DESCRIPTION OF THE DOCUMENT**	**EXHIBIT**
1	FIR in RC No.39(A)/95-ABD	53

2	Panchnama Parts I to IV	34
3	Complaint of Anton Dias	42
4	CFSL Opinion	54
5	Blank Letter bearing signature of Shri A.B.Pathan	35
6	Receipt & Recovery Memo	48 & 36
7	Note-sheet of personal file of Anton Dias	55
8	Report of Screening Committee	56
9	Approval Note of ADRM	57
10	Original Sanction Order for prosecution of the accused	65

8. On completion of the recording of the evidence, the trial court explained the incriminating circumstances appearing against the accused. The accused, in his further statement recorded under Section 313 of the Cr.P.C., denied the allegations levelled against him by the prosecution of accepting the bribe and stated that he is innocent and has been falsely implicated in the alleged offence.

9. On completion of the trial, the trial court, *vide* judgment and order dated 06.12.2004, convicted the accused for the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal No.2232 of 2004, which came to be admitted *vide* order dated 12.01.2005.

SUBMISSIONS ON BEHALF OF THE APPELLANT-ACCUSED :

11. At the outset, learned counsel Mr.C.J.Vin appearing for the appellant (original accused), while taking this Court through the factual matrix of the case, has submitted that the trial court did not consider the entire evidence in its true perspective, which resulted into an erroneous conviction of the appellant under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act.

12. Learned counsel Mr.Vin, while inviting the attention of this Court to the ocular as well as documentary evidence adduced by the prosecution before the trial court, has submitted that appreciation of the evidence in its entirety would clearly demonstrate that the appellant had not committed the alleged offence. He has further submitted that on the contrary, the

evidence on record unequivocally indicates that the complainant, at the instance of one Shri C.N.Vani, who was serving as a Head Clerk on the establishment of the Western Railways, Pratapnagar, Vadodara, at the relevant point of time, and with the active help of the CBI officials, had deliberately and in a calculated manner, falsely implicated the appellant in the alleged offence.

13. Learned counsel Mr.Vin has further submitted that the appellant had been junior in rank to the Head Clerk Shri C.N.Vani. However, by virtue of his competence, efficiency and constant success in various examinations, the appellant earned promotion to a senior rank to that of Shri C.N.Vani, and was subsequently, appointed as Chief Clerk. According to learned counsel Mr.Vin, such advancement in service had become a source of envy and resentment.

14. It is further contended that, at the time of the incident in question, the appellant was due for promotion to a higher grade. Learned counsel urged that, with a view to frustrating his prospects of promotion, the appellant was deliberately implicated in the present criminal case pursuant to a premeditated

conspiracy, thereby casting a stigma upon his otherwise unblemished service record.

15. Learned counsel Mr.Vin has empathetically submitted that notwithstanding the fact that the entire evidence adduced by the prosecution before the trial court was inherently suspicious from the very inception and clearly indicates that the appellant has been deliberately and systematically implicated in the alleged offence. It is further submitted that unfortunately the trial court has failed to consider these material circumstances, and in doing so, the trial court has overlooked the glaring infirmities, inconsistencies and inherent contradictions apparent on the face of the evidence adduced by the prosecution, thereby rendering the impugned judgment of conviction and sentence erroneous and unsustainable in law.

16. In the course of his detailed submissions, learned counsel Mr.Vin has averred the following principal contentions in support of his case, which may be summarised as under :

(i) The allegation against the appellant is that he had demanded illegal gratification from the complainant for issuance

of the posting order. However, the appellant had neither the power nor the authority to issue the posting order in question.

(a) The appellant was not even authorized to deal with the file pertaining to the posting of the complainant, rather the authority to deal with the said file was vested with the Head Clerk Shri C.N.Vani.

(b) The appellant was neither associated, in any manner whatsoever, with the proceedings or process relating to the posting of the complainant nor the file pertaining to the posting of the complainant routed through the appellant at any stage. Therefore, there was no occasion for the appellant to demand illegal gratification from the complainant regarding his posting.

(ii) Admittedly, there is no material on record to substantiate the allegation of initial demand of illegal gratification. Furthermore, the evidence of the prosecution witnesses with regard to the alleged demand on the day of trap is mutually inconsistent and contradictory. The version of the alleged demand as reflected in the panchnama also materially differs

from the oral testimonies of the prosecution witnesses, thereby rendering the prosecution's case highly doubtful.

(iii) According to the prosecution's case, on 12.10.1995, when the complainant (PW-2) Mr.Anton Dias approached the appellant in connection with his posting, the appellant allegedly asked the complainant to bring money on 17.10.1995 if he wants to obtain the posting order. The complainant is stated to have lodged the complaint with the CBI office, Ahmedabad, on 16.10.1995. However, the evidence on record reveals material contradictions regarding the recording of the complaint.

(a) The complainant, during his cross-examination, has specifically elicited that he himself had written down the complaint in his own handwriting independently without any dictation or direction from anyone, and thereafter, the same was submitted to the CBI office, Ahmedabad. In contrast, the trapping officer (PW-3) Shri Sanjaykumar Singh, in his deposition at Exh.47, has stated that on 16.10.1995, he had reduced the facts narrated by the complainant in writing and obtained his signature thereon.

(b) Significantly, the shadow witness (PW-1) Shri Satish

Vasudevan Nair, in his deposition at Exh.33, has stated that on 17.10.1995, the complaint was prepared on the basis of the facts narrated by the complainant Mr.Anton Dias at the IPCL Guest House, Vadodara, and that both the panch-witnesses had endorsed their signatures on it.

(c) Thus, the evidence of the prosecution discloses material contradiction as to who had actually prepared the complaint and on which date it was recorded. These inconsistencies assume significance in assessing the reliability of the prosecution’s case.

(iv) The complainant has failed to disclose the specific date on which he had initially met the appellant in connection with his posting order and on which date the initial demand for illegal gratification was made. According to the prosecution's case, when the complainant met the accused again on 12.10.1995, the accused allegedly asked the complainant that the work would not be done unless the money is paid. However, despite the alleged demand, the complainant did not lodge a complaint until 16.10.1995, which assumes significance.

(v) On the basis of the complaint dated 16.10.1995, a trap was arranged on 17.10.1995. However, according to the prosecution's case, on 17.10.1995, the accused neither accepted the money at Vadodara Railaway Station nor accepted it on 19.10.1995 in the morning hours, when the complainant met him at the Divisional Railway Manager’s office, Western Railway, Pratapnagar, Baroda. However, when approached again at 3:00 p.m., the appellant accepted the same near the cyclostyle room on the lobby.

(vi) Since the processing of the complainant's posting was within the domain of the Head Clerk Shri C.N.Vani, there was no occasion for the appellant-accused to demand illegal gratification on 12.10.1995.

(vii) A conjoint reading of the evidence of the witnesses (PW-7) Shri Sadiqkhan B.Pathan and (PW-6) Shri Omprakash D.Khurana along with the evidence of the Investigating Officer (PW-8) Shri Jitendrasing Vishwanathsing reveals that Shri C.N.Vani had proceeded on leave only for the period from 17.10.1995 to 19.10.1995 and he had remained absent from the office.

(viii) According to learned advocate Mr.Vin appearing for the appellant-accused, such absenteeism was not co-incidental but was a deliberate and strategic tactic to facilitate the false implication of the appellant-accused in the alleged offence.

(ix) The circumstances surrounding the alleged demand, including the delay in lodging the complaint, the appellant-accused's alleged refusal to accept the money on the earlier occasion, the subsequent alleged acceptance by the appellant-accused near the cyclostyle room, and the absence of Shri Vani during the relevant period, cast serious doubt on the prosecution's case when considered cumulatively, and lend support to the defence's plea of false implication.

(x) The evidence of the complainant (PW-2) Mr.Anton Dias and the shadow witness (PW-1) Shri Satish Vasudevan Nair are materially at variance with respect to the place where the appellant allegedly accepted the bribe amount and the place from where the same was recovered. This discrepancy assumes considerable significance in assessing the credibility of the prosecution's case.

(a) The complainant, in his deposition, has stated that the appellant accepted the bribe amount with his right hand, counted the currency notes with his left hand, and thereafter placed them in a wallet kept in the rear pocket of his trouser. He has further deposed that the appellant thereafter returned to his office and resumed his seat. According to the complainant, upon his giving the predetermined signal, the members of the raiding party arrived at the spot and recovered the tainted currency notes from the rear pocket of the appellant's trouser.

(b) The shadow witness (PW-1) Shri Satish Vasudevan Nair, however, has deposed that the appellant accepted the bribe amount near the cyclostyle room, and that upon the complainant giving the predetermined signal, the members of the raiding party rushed to the said place and recovered the amount from the appellant's wallet near the cyclostyle room itself.

(c) Thus, the testimonies of the complainant and the shadow witness are materially inconsistent as regards the place where the alleged bribe amount was recovered. While

the complainant's version places the recovery at the appellant's office, after he had resumed his seat, the shadow witness places it near the cyclostyle room on the lobby. This discrepancy relates to a material circumstance of the prosecution case and assumes considerable significance in evaluating the reliability of the evidence adduced by the prosecution.

(xi) According to the prosecution's case, after the arrest of the appellant, the file relating to the complainant's posting (Exh.37) containing the noting made by Shri C.N.Vani concerning the complainant's posting, was seized from Ms.Gopinathan, an officer in the department. It is significant to note that the said file was not seized from the possession of the appellant at the time of his arrest.

(a) The testimonies of the witnesses concerning the said file disclose material inconsistency. The complainant, in his deposition, has stated that at the time of seizure, the file comprised of a total number of 52 pages, of which, page No.32 contained his application for allotment of a quarter. In contrast, the shadow witness (PW-1) Shri Satish

Vasudevan Nair, in his deposition at Exh.33, has stated that at the time of seizure, the file comprised of only 12 pages and not 52 pages, as stated by the complainant.

(b) This material discrepancy raises a serious doubt whether the file, which was seized in the presence of the shadow witness, comprised of only 12 pages, and whether additional pages were inserted subsequently therein. Significantly, the Investigating Officer, Shri Jitendra Singh, in his deposition at Exhibit 78, has referred to the noting made by Shri O.P.Khurana on pages 14 and 15 of the said file. This circumstance assumes added significance in view of the discrepancy concerning the number of pages contained in the file at the time of its seizure and raises a legitimate doubt as to whether additional pages were incorporated into the file subsequently. The contradiction cannot be brushed aside as a mere discrepancy, as it raises a serious doubt regarding the integrity and authenticity of the documentary evidence and lends credence to the apprehension that additional pages might have been inserted into the file subsequent to its seizure pursuant to a deliberate design.

(c) It is also noteworthy that the prosecution has not examined two material witnesses, namely, Shri C.N.Vani and Ms.Gopinathan. Their non-examination assumes particular significance in the facts and circumstances of the present case, especially when the number of pages in the file at the time of its seizure and the integrity of the document itself are matters of material dispute.

(xii) The Investigating Officer was not impartial. The noting made by Shri O.P.Khurana on pages 14 & 15 of the file at Exh.58 indicates that, on 02.11.1995, after the raid, the Investigating Officer, Shri Jitendra Singh, had recommended transfer of the complainant to Ahmedabad. This fact was admitted by Shri O.P.Khurana in his cross-examination and was also admitted by the complainant, Mr.Anton Dias, in his cross-examination. It is noteworthy that there was no apparent reason for the Investigating Officer, CBI, to take an interest in securing the complainant's transfer to Ahmedabad. It is further significant that, pursuant to the recommendation made by the Investigating Officer, the complainant was, in fact, transferred to Ahmedabad.

(xiii) The sanction embodied in Exh.65, issued by the Chief Personnel Officer, Shri Sanjay Surendrakumar Suri (PW-5), appears to have been accorded mechanically and without due application of mind. As borne out from the record, the sanction letter was issued on 09.11.1995, the very day on which the FSL report was received.

(a) A perusal of the original sanction letter further reveals that, although the letter was prepared on an electronic typewriter/computer, the name of the department and its address appearing at the top of the letter, the name of the officer appearing in the middle portion of the letter, and the name and designation of the officer appearing at the end of the letter which were kept blank were subsequently filled in manually by a typewriter. In his deposition at Exh.64, the said officer has stated that he had read all the documents before according the sanction. However, the complaint in the present case was in the Gujarati language, and the officer admitted that he could neither read nor write Gujarati.

(b) In view of the aforesaid circumstances, the claim by the sanctioning officer that he had read all the relevant documents before according the sanction becomes doubtful. The manner in which the original sanction letter was prepared gives rise to a serious apprehension that the sanction order had been prepared in advance and that the requisite particulars which were kept blank were subsequently filled in manually by a typewriter, and thereafter the officer merely authenticated the document by affixing his signature. These circumstances cast serious doubt on whether the sanctioning authority had independently considered the relevant material and applied its mind to the facts of the case before according sanction. Consequently, the sanction accorded vide Exh.65 cannot be regarded as a valid sanction granted upon due application of mind.

(xiv) The trial court, while appreciating the evidence, has laid much emphasis on the provisions of Section 20 of the Prevention of Corruption Act, which raises presumption once it is established that the accused accepted the amount. However, for the purpose of arriving at the conclusion, whether the accused

accepted the amount of illegal gratification or not, the totality of the evidence led by the prosecution at the trial is required to be appreciated. It is settled legal position of law that in the absence of any proof of demand, the legal presumption under Section 20 of the Prevention of Corruption Act would not arise, since the proof of demand and its subsequent acceptance is a *sine qua non* for the offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. Therefore, only on the basis of acceptance of the amount without there being any proof of demand, the accused cannot be held guilty of the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. It is submitted that the trial court, while appreciating the evidence in this regard, has completely lost sight of the aforesaid settled legal position. It is further submitted that except the bare averments in the complaint, no evidence has been led by the prosecution to prove the essential elements of the offence, more particularly, the proof of demand of illegal gratification and its subsequent acceptance, beyond reasonable doubt.

17. Thus, it is submitted that considering the entire evidence on record, it clearly establishes that the prosecution has failed to

prove the essential elements of the offence, viz. demand, acceptance and recovery, beyond reasonable doubt, and in the absence of proof of demand and its subsequent acceptance, the trial court has committed a serious error in raising a presumption under Section 20 of the Act. In such circumstances, learned advocate Mr.Vin has implored the court to allow the appeal preferred by the appellant-convict, set-aside the impugned judgment and direct the acquittal of the appellant-convict from the charges levelled against him.

SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE:

18. Vehemently opposing the appeal filed by the accused-convict and the submissions canvassed by learned advocate Mr.C.J.Vin appearing for the accused-convict, learned Special Public Prosecutor Mr.R.C.Kodekar appearing for the Central Bureau of Investigation has submitted that the trial court has convicted the appellant-accused for the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, and consequently, sentenced him to undergo imprisonment for two years along with the fine of Rs.2,000=00. He has submitted that the prosecution has proved all the three

essential elements of the offence, viz. demand, acceptance and recovery, beyond reasonable doubt through cogent and convincing evidence of the core witnesses, i.e. the complainant (PW-2) Mr.Anton E.Dias, the shadow witness (PW-1) Shri Satish Vasudevan Nair, and the trapping officer (PW-3) Shri Sanjaykumar Ranvijaybahadur Singh. Learned Special Public Prosecutor Mr.Kodekar has, therefore, urged that the conviction recorded by the trial court does not call for any interference by this Court and the criminal appeal preferred by the accused-convict, challenging his conviction, may be dismissed.

19. Learned APP Ms.Patel, while adopting the arguments canvassed by learned Special Public Prosecutor Mr.Kodekar for the CBI, has submitted that since the evidence of the core witnesses are clear, cogent and convincing, as well as, the same remained unshaken and are in corroboration with the evidence of the trapping officer and the allegations made by the complainant, this Court may not interfere with the findings recorded by the trial court in convicting the present appellant-accused for the alleged offences. She has, therefore, urged that the present appeal may be dismissed.

FINDINGS AND ANALYSIS :

20. Before adverting to the facts and circumstances of the case, it would be apt to reiterate the fundamental principle of criminal jurisprudence as affirmed by the Supreme Court that, in criminal trial it is for the prosecution to bring home the guilt of the accused since the burden of proving the guilt beyond reasonable doubt always rests upon the prosecution. It is also settled that the prosecution has to stand on its own footings and cannot take advantage or undue advantage of the defence put forth by the accused. The Supreme Court, in the case of ***Rabindra Kumar Dey vs. State of Orissa***, reported in *AIR 1977 SC 170*, reiterated three cardinal principles, namely, (i) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt, and it cannot derive any benefit from weakness or falsity of the defence version while proving its case; (ii) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and (iii) that the onus of the prosecution never shifts. Thus, it is well-settled that in criminal trial, the guilt of the accused must be proved beyond reasonable doubt in order to convict him.

21. The Supreme Court, in the case of ***State of Uttar Pradesh vs. Krishna Gopal***, reported in *(1988) 4 SCC 302*, has held that the person has, no doubt, profound rights not to be convicted of an offence, which is not established by the evidential standard of proof beyond reasonable doubt.

22. Bearing in mind the aforesaid legal position, this Court has considered the submissions canvassed by the respective parties and carefully perused the materials produced on record. It is well-settled that for establishing the commission of an offence under Section 7 of the Prevention of Corruption Act, the proof of demand of illegal gratification and the subsequent acceptance is *sine qua non.* Moreover, the presumption under Section 20 of the Prevention of Corruption Act can be invoked only on proof of facts in issue, namely, the demand of illegal gratification by the accused and the acceptance thereof. The Constitutional Bench of the Supreme Court in the case of ***Neeraj Dutta vs. State (Government of NCT of Delhi)***, reported in *(2023) 4 SCC 731* has, in paragraph-68 of the judgment, held as under :

> *"68. What emerges from the aforesaid discussion is summarised as under :*

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(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 Section 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 Section 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 Section 13 (1) (d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course,

the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d) (i) and (ii) of the Act.

(h) We clarify that the presumption of law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature."

23. Thus, it is held by the Supreme Court that in order to bring home the charge, the prosecution has to prove beyond reasonable doubt the "demand of illegal gratification" and the "subsequent acceptance" either by direct or by circumstantial evidence.

24. The cases of corruption largely depends on the testimonies of three crucial witnesses; (i) the complainant, (ii) the shadow witness, and (iii) the trapping officer. These witnesses play a decisive role in determining the fate of the accused. As such, the testimonies of the complainant (PW-2) Mr.Anton E.Dias, the shadow witness (PW-1) Shri Satish Vasudevan Nair, and the trapping officer (PW-3) Shri Sanjaykumar Ranvijaybahadur Singh, must be examined with great care and caution. It is expected that their statements should be consistent, credible

and of sterling quality. If there are significant contradictions in their evidence on material aspects, such discrepancies cannot be overlooked. In such circumstances where the evidence allows for two possible interpretations, the one which favours the accused must be considered. This is because the law firmly upholds the principle that "*no innocent persons should be wrongfully punished*".

25. In light of the aforesaid settled principles of law and the ratio laid down in the judgments referred to herein above, the evidence adduced by the prosecution in the instant case must now be scrutinized to determine, whether the prosecution has successfully established, beyond reasonable doubt, that the appellant-convict had demanded and accepted illegal gratification from the complainant.

26. This Court has carefully and anxiously considered the evidence on record. A meticulous scrutiny thereof reveals several material inconsistencies in the prosecution's case.

27. As per the case of the prosecution, the complainant, Mr.Anton Dias, was employed as a Khalasi in the CNU

Department of the Railways since the year 1985. In the year 1994, while discharging his duties, he sustained injury on his right eye, due to which he lost vision in his right eye. Consequently, the Railway Screening Committee, by its decision dated 05.06.1995, decided to retain him in service as a Scaleman and transferred him from the Carriage Department to the Traffic Department. It is the further case of the prosecution that, when the complainant approached the appellant for issuance of his posting order, the appellant demanded a sum of Rs.500=00 from him towards the same.

27.1 It is pertinent to note that neither in the complaint (Exh.42) nor in his deposition (Exh.41) the complainant has disclosed the date, time or place when he approached the appellant and the appellant had allegedly made initial demand for illegal gratification from him. Thus, it is an undisputed fact that there is no direct or indirect evidence on record to establish the alleged initial demand for illegal gratification by the appellant-convict.

28. So far as the foundational requirements of demand and subsequent acceptance of illegal gratification are concerned, the

evidence adduced by the prosecution does not inspire confidence. The depositions of the three material witnesses, namely, the complainant, the shadow witness and the trapping officer, disclose material inconsistencies and contradictions on significant aspects of the prosecution's case, thereby diminishing the probative value of their testimonies and casting considerable doubt on the veracity of the prosecution's version.

29. In the present case, the complainant, in his deposition, without specifying the date, time or place of the alleged occurrence, has stated that when he approached the appellant in connection with his posting order, the appellant demanded a bribe of Rs.500=00. He further deposed that when he again contacted the appellant on 12.10.1995, the appellant told him that his work would not be done unless he paid the money and asked him to bring the same on 17.10.1995. Significantly, the complainant had not lodged any complaint during the intervening four days.

29.1 The record further reveals material contradictions regarding the date, authorship and place of preparation of the original complaint. The complainant, Mr.Anton Dias (PW-2),

deposed that on 16.10.1995, he had personally written the complaint in his own handwriting and submitted it to the CBI office at Ahmedabad. He categorically deposed that he had prepared the complaint himself in his own handwriting, independently and without any dictation from anyone. In contrast, the trapping officer, Shri Sanjaykumar Singh (PW-3), has deposed that on 16.10.1995, the complainant narrated the facts of the complaint to him, whereupon he reduced the same into writing. More significantly, the shadow witness, Shri Satish Vasudevan Nair, in his deposition at Exh.33, has stated that on 17.10.1995 at the IPCL Guest House, Vadodara, the complainant had narrated the facts constituting the complaint in the presence of the panch-witnesses, whereupon the complaint was reduced into writing and then the signatures of both the panch-witnesses were obtained on it.

29.2 Thus, the depositions of the three core witnesses, namely, the complainant, the shadow witness and the trapping officer, disclose material contradictions regarding the date on which the original complaint was prepared, the person who prepared it, and the place where it was drawn up. These discrepancies pertain to the very genesis of the prosecution's case and give rise

to serious doubt regarding the veracity of the prosecution's version.

30. At this stage, in the context of the prosecution's allegation that the appellant had demanded bribe in connection with the issuance of the complainant's posting order, it becomes imperative to examine, whether the appellant was authorized to deal with the said work, or involved and connected, in any manner, with the processing thereof.

30.1 In this regard, the testimony of Shri Kanchanlal Madhobhai Vasawa (PW-4), who was then serving as Office Superintendent at the D.R.M. Office, Western Railway, Pratapnagar, Baroda, assumes considerable significance. In his deposition at Exh.52, he has categorically stated that the complainant's posting case was to be dealt with by Shri C.N.Vani, and that on the date of the incident, in the absence of Shri Vani, the matter was dealt with by ACM Shri Omprakash Khurana. The witness further identified the noting and signatures of Shri Vani and Shri Khurana appearing on the complainant's posting file, marked as Exh.37. More significantly, in the course of his cross-examination, he has categorically

admitted that neither the said file nor the relevant documents forming part of Exh.58 carried the signature or handwriting of the appellant at any place.

30.2 In the same context, the testimony of Shri Omprakash Khurana (PW-6) assumes significance. In his deposition at Exh.73, he has stated that, on the date of the incident, the appellant had come to meet him; however, the appellant had not shown any file to him. More significantly, during his cross-examination, he has categorically admitted that the complainant's file was being dealt with by Shri Vani, who was serving in the Establishment Department at the relevant point of time. In these circumstances, it is pertinent to note that the prosecution has, for reasons best known to it, chosen not to examine Shri Vani, a material witness who was directly concerned with the processing of the complainant's posting file.

30.3 Considering the aforesaid clear evidence on record, it becomes apparent that the appellant-convict had no connection whatsoever with the work in question and, therefore, he had no reason to demand bribe in relation to the said work. The file concerning the complainant’s posting was being dealt with by

Shri Vani, who was absent on the date of the incident. However, there is no evidence whatsoever to establish that Shri Vani was absent on 12.10.1995. Considering the said fact, the complainant's assertion that the appellant-convict demanded bribe upon meeting him on 12.10.1995 in connection with his posting does not appear to be credible.

31. This Court has examined the evidence of the three core witnesses with particular reference to the place where the appellant allegedly demanded the bribe in the presence of the shadow witness, the place where the alleged bribe was accepted, and the place where the said amount was recovered from the appellant. A careful appraisal of their respective testimonies reveals material inconsistencies and contradictions on these crucial aspects, thereby casting serious doubt upon the prosecution case as a whole.

31.1 As this Court has already observed herein above that the evidence of these three core witnesses is determinative of the fate of the accused, such evidence must not only be unambiguous and of sterling quality, but must also be of such unimpeachable quality as to inspire complete confidence in its probative value.

31.2 In this backdrop, a comparative scrutiny of the respective testimonies of the three core witnesses assumes significance, more particularly, with regard to the divergent versions emerging from their depositions concerning the demand for the bribe amount, its acceptance, and its recovery.

32. As noticed herein above, the complainant, Mr.Anton Dias, has not furnished any particulars as to when the appellant initially demanded the alleged bribe amount from him. Further, the complainant's assertion that, on 12.10.1995, the appellant reiterated his demand that unless the money is paid, his work would not be done, remains unsupported by any other direct or indirect evidence on record.

33. It is the case of the prosecution that the complainant lodged the complaint on 16.10.1995 and that the trap was laid on the following day, i.e. on 17.10.1995, and on the same day, phenolphthalein powder was applied to the currency notes intended to be tendered as the alleged bribe, and thereafter, the tainted notes were placed in the upper pocket of the complainant's shirt. According to the prosecution case, upon

completion of the first part of the panchnama, the complainant, the panch-witnesses and the members of the raiding party proceeded to the DRM Office at Pratapnagar, Vadodara, at about 11:00 a.m. However, the appellant was not found at the office, and the raiding party learnt that he had gone to Vadodara Railway Station. Consequently, the complainant, the panch-witnesses and the members of the raiding party proceeded to the railway station.

33.1 In his deposition at Exh.41, the complainant (PW-2) Mr.Anton Dias, has stated that when he and the shadow witness reached at the Vadodara Railway Station and met the appellant, the appellant asked the complainant in Hindi, saying that, "*Maine bataya tha, woh intezam ho gaya hai*? *Paise ka intezam ho gaya hai*?" (Has the arrangement been made for what I had told you about? Has the money been arranged?), to which the complainant replied saying that, "*Jaise-taise karke main Rs.500 lekar aaya hoon*" (I have somehow managed to bring Rs.500). The complainant has further deposed that the appellant had declined to accept the money at the railway station, and instead, instructed him to come to his office after two days. Subsequently, the complainant, along with the members of the

raiding party, returned to the IPCL Guest House, where the tainted currency notes were taken out from the complainant's pocket, placed the same in a cover and sealed. The trapping officer and the panch-witness, thereafter, affixed their respective signatures on the sealed cover. It is pertinent to note that the prosecution did not produce the said sealed cover bearing the respective signatures of the trapping officer and the panch-witness before the trial court.

33.2 The complainant (PW-2) further stated in his deposition that, on 19.10.1995, when he along with the shadow witness, again visited the appellant's office, he came out of his office and asked them to meet after some time. Later on, the appellant came with the complainant’s posting file and suggested them to go to the office of Shri Khurana. However, leaving behind the complainant and the shadow witness to wait outside, the appellant proceeded to the chamber of Shri Khurana, and after approximately five to ten minutes, the appellant returned and asked the complainant and the shadow witness to come back at 3:00 p.m. Accordingly, at about 3:00 to 4:00 p.m., the complainant and the shadow witness again went to the appellant's office. Thereafter, the appellant came out on the

lobby and again enquired whether they brought the money. So, the complainant replied in the affirmative and tendered the tainted currency notes to the appellant near the cyclostyle room on the lobby. The appellant accepted the notes, counted and placed them in the wallet on the rear pocket of his trouser. Thereafter, the appellant returned to his office and resumed his seat. Subsequently, upon the complainant passing the prearranged signal, the members of the raiding party arrived at the office and recovered the bribe amount through the panch no.2 from the wallet kept in the rear pocket of the appellant's trouser, within the appellant's office itself.

33.3 Thus, according to the complainant, after accepting the bribe amount near the cyclostyle room on the lobby, the appellant returned to his office and resumed his seat. It was only thereafter, upon the complainant passing the prearranged signal, that the members of the raiding party entered the appellant's office and recovered the tainted currency notes from his wallet. It is significant to note that the wallet from which the tainted currency notes were recovered was not subjected to any test to ascertain the presence of phenolphthalein powder. It is noteworthy that neither the statement of any employee working

in the appellant's office was recorded, nor any such employee was examined as a witness.

34. At this stage, it becomes necessary to consider the testimony of the shadow witness Shri Satish Vasudevan Nair (PW-1) who, in his deposition at Exh.33, has tried to corroborate the complainant's version of the incident. However, it is noteworthy that his narration of the events places the alleged transaction at a particular place. According to him, at about 3:00 p.m., when he and the complainant met the appellant in his office, the appellant enquired whether the complainant had brought the money. Thereafter, the complainant and the shadow witness came out on the lobby, and the appellant followed them. All the three then entered the adjoining room housing the cyclostyle machine, where the appellant asked the complainant to hand over the bribe amount. The complainant accordingly tendered the tainted currency notes, which the appellant accepted and placed in a wallet kept in the rear pocket of his trouser.

34.1 The shadow witness further deposed that upon the complainant passing the prearranged signal, the members of the

raiding party arrived at the spot and instructed the appellant to remain in the same position. The appellant's hands were thereafter washed in a solution of sodium carbonate for the purpose of ascertaining the presence of phenolphthalein powder, and the tainted currency notes were recovered from the wallet through panch no.2. Thus, as per the testimony of the shadow witness, after the demand for illegal gratification made by the appellant-accused at his office, the subsequent acceptance of the bribe amount and the recovery of the tainted currency notes occurred at the entrance to the room housing the cyclostyle machine.

34.2 Thus, a serious doubt arises whether the entire sequence of events relating to the alleged demand for the bribe, its subsequent acceptance and the recovery thereof, took place in the room housing the cyclostyle machine, situated on the lobby at some distance from the appellant's office, or whether the demand for and acceptance of the bribe amount occurred on the lobby near the cyclostyle room, whereas, the subsequent recovery took place inside the appellant's office. It is significant to note that the prosecution has offered no satisfactory explanation for the inconsistent and contradictory evidence

brought on record in this regard.

35. It is the case of the prosecution that after the arrest of the appellant, the trapping officer Shri Sanjaykumar Singh seized the file pertaining to the complainant's posting from Ms.Gopinathan, an officer in the department. The said file assumes considerable significance as the same contains noting made by various officers in their own handwriting and bearing their respective signatures, on different dates, in the course of the proceedings relating to the complainant's posting. The said file was brought on record as Exh.37 through the deposition of the shadow witness, Shri Satish Vasudevan Nair (PW-1). A comprehensive evaluation of the prosecution evidence pertaining to the said file brings to light several striking facts which emerge from the record.

35.1 At the outset, it is significant to note that, according to the prosecution’s case, on the date of the incident, the appellant had gone to the chamber of Shri Khurana with the file pertaining to the complainant's posting. However, the said file was not recovered from the possession of the appellant. As per the testimony of the trapping officer, Shri Sanjaykumar Singh (PW-

3), the file was seized from Ms.Gopinathan, an officer in the department. Upon perusal of the file produced on record as Exh.37, it is evident that a noting "1 to 52" appears on the first page. During his deposition, the complainant, Mr.Anton Dias (PW-2), upon being shown the said file, identified the same and stated that it comprised of fifty-two pages, and at page 32 his application seeking allotment of a quarter was there.

35.2 Significantly, Shri Satish Vasudevan Nair (PW-1), in whose deposition the said file came to be produced before the trial court, categorically stated that, at the time when the file was seized in his presence, it did not contain fifty-two pages and comprised only twelve pages. When, according to the prosecution itself, this witness remained present at the spot throughout the trap proceedings in his capacity as a shadow witness, and the entire proceedings were conducted in his continuous presence, this discrepancy assumes considerable significance. It raises the possibility that material documents might have been subsequently inserted in the file after its seizure. This circumstance gives rise to a serious doubt regarding the prosecution's case and lends support to the appellant's defence that he was falsely implicated pursuant to a conspiracy.

36. It is pertinent to observe that the prosecution has also chosen not to examine Shri C.N.Vani, who was directly associated with the processing of the complainant's file, and Ms.Gopinathan, from whose possession the said file was seized by the trapping officer. Both were material witnesses whose testimony was of considerable relevance to the present case. Their non-examination assumes added significance in view of the controversy surrounding the number of pages forming part of the file at the time of its seizure, more particularly, when the same has a direct bearing on the integrity and the authenticity of the document sought to be relied upon by the prosecution.

37. The defence has contended that the sanction order produced in the present case was accorded without application of mind and, therefore, the same cannot be regarded as a legal and valid sanction. In this regard, this Court has carefully scrutinized the deposition of the Sanctioning Authority, namely, Senior Divisional Personnel Officer Shri Sanjay Surendrakumar Suri (PW-5), the original sanction order at Exhibit 65, and the entire evidence on record.

37.1 The record reveals that after the trap proceedings, the investigation was entrusted to the then CBI Inspector Shri Jitendra Singh (PW-8), who recorded the statements of the necessary witnesses, and upon receipt of the FSL report, he obtained the sanction for prosecution from the Senior Divisional Personnel Officer and thereafter filed the charge-sheet. Significantly, the FSL report was received by the Investigating Officer on 09.11.1995 and the sanction order was prepared on the very same day.

37.2 Upon careful examination of the sanction order, it is evident that the same was prepared in advance and the requisite particulars, viz. the name of the department and its address appearing at the top of the letter, the name of the officer appearing in the middle portion of the letter, and the name and designation of the officer appearing at the end of the letter, which were kept blank were subsequently filled in manually by a typewriter, upon receipt of the FSL report, and thereafter, the officer concerned merely sign the order. Therefore, these circumstances cast serious doubt on whether the sanctioning authority had independently considered the relevant material and applied its mind to the facts of the case before according

sanction.

37.3 It is further pertinent to note that the Sanctioning Authority Shri Sanjay Suri categorically deposed that he was unable to read or write Gujarati, whereas the complaint lodged by the complainant before the CBI, Ahmedabad, was admittedly in Gujarati. During his cross-examination, he further stated that he could not recollect when he had received the case papers from the CBI, and whether he had perused the complaint, or whether the same was in Gujarati or English. He has also admitted that after receiving the case papers, he had not discussed the same with any other officer in his department.

37.4 Having carefully considered all the aforesaid facts and circumstances borne out from the record, this Court is unable to arrive at a definite conclusion that the sanction for prosecution was accorded upon proper examination of all the relevant documents and due application of mind.

CONCLUSION :

38. Thus, upon a cumulative consideration of the evidence on

record, several significant infirmities emerge in the prosecution's case which cannot be overlooked. The process concerning the complainant’s posting was within the administrative domain of Shri C.N.Vani, who had custody of the relevant file. It is pertinent to note that, on the date of the incident, the file was recovered from Ms.Gopinathan and not from the appellant. The discrepancies concerning the number and nature of documents contained therein, more particularly, the possibility of subsequent insertion of documents into the file that initially comprised only of twelve pages, lend considerable support to the defence plea of false implication pursuant to a conspiracy.

38.1 Significantly, the file bears neither any noting, initial or signature of the appellant, nor is there any evidence establishing his involvement in the complainant's posting. The absence of any such nexus substantially undermines the allegation of demand. This is further borne out from the testimony of Shri Kanchanlal Vasawa (PW-4), who categorically stated that, in the absence of Shri C.N.Vani, the complainant's matter was dealt with by Shri Khurana (PW-6), and not by the appellant. Therefore, there was no occasion for the appellant to demand illegal gratification from the complainant regarding his posting.

38.2 The credibility of the prosecution's case is further undermined by the fact that the testimony of the core witnesses regarding the entire sequence of events relating to the alleged demand, its acceptance and recovery of the bribe money, as well as the precise place of occurrence, are mutually inconsistent and materially contradictory. These discrepancies strike at the very root of the prosecution's case and render its version of events highly doubtful. Furthermore, the prosecution's failure to examine Shri C.N.Vani and Ms.Gopinathan, both material witnesses, result in suppressing the evidence on crucial aspects of the case.

38.3 Equally significant is the Investigating Officer's subsequent intervention in recommending the complainant's posting at Ahmedabad, despite having no connection whatsoever with the administrative affairs of the Railways. The consequential noting in the posting file and the complainant's eventual posting at Ahmedabad raises serious doubt regarding the impartiality/neutrality of the Investigating Officer and the fairness of the investigation.

38.4 Furthermore, when the prosecution evidence itself is doubtful with regard to the alleged demand, its subsequent acceptance and recovery, as well as, the precise place of occurrence, it cannot be said that the foundational facts necessary to attract the statutory presumption have been established beyond reasonable doubt. In these circumstances, the trial court fell in error in invoking the presumption under Section 20 of the Prevention of Corruption Act, without the prosecution having first established the requisite foundational facts.

39. The Supreme Court, in the case of ***Mallappa vs. State Of Karnataka***, reported in (2024) 3 SCC 544, has held thus :-

> *"26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The two-views theory has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action...."*

40. In view of the aforesaid, and considering the discrepancies in the evidence of the three core witnesses regarding the acceptance of the illegal gratification, when two views are possible, certainly, the one in favour of innocence of the accused, must be considered.

41. Thus, on examination of the entire evidence, this Court is of the considered opinion that the prosecution has failed to establish beyond reasonable doubt, the essential element of demand of bribe and the subsequent acceptance of illegal gratification.

42. Since the prosecution has failed in establishing the foundational fact by leading cogent and convincing evidence regarding the aspect of demand and its subsequent acceptance beyond reasonable doubt, the question of presumption under Section 20 of the Prevention of Corruption Act does not arise in the present case.

43. In view of the aforesaid discussion and re-appreciation of the entire evidence on record, the Court is of the considered

opinion that the prosecution has not proved the case beyond reasonable doubt by leading cogent and convincing evidence and the trial court has not appreciated the entire evidence in its true perspective.

44. Before parting with the judgment, it would be apt to reiterate the fundamental principle of criminal jurisprudence as affirmed by the highest court that, in criminal trial it is for the prosecution to bring home the guilt of the accused since the burden of proving the guilt beyond reasonable doubt always rests upon the prosecution. It is also settled that the prosecution has to stand on its own footings and cannot take advantage or undue advantage of the defence put forth by the accused.

45. As noted earlier, the Supreme Court, in the case of ***Rabindra Kumar Dey*** *(supra),* has reiterated three cardinal principles, namely, (i) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt, and it cannot derive any benefit from weakness or falsity of the defence version while proving its case; (ii) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and (iii) that the onus of the prosecution never shifts.

46. Keeping in mind the cardinal principles of the criminal jurisprudence as stated herein above and considering the evidence on record, this Court is of the considered opinion that in the instant case it cannot be said that the prosecution has proved the case beyond reasonable doubt by leading cogent and convincing evidence and, therefore, the benefit of doubt goes in favour of the appellant-accused. Thus, it appears that the trial court has made an error while convicting the present appellant for the alleged offence and, therefore, interference by this Court is warranted.

47. In the result, the appeal preferred by the accused-convict succeeds, and the same is hereby allowed. The impugned judgment and order of conviction and sentence dated 06.12.2004 passed by the learned Special Judge, Court No.4 (Special) for C.B.I. Cases, at Navrangpura, Ahmedabad, in Special (C.B.I.) Case No.58 of 1995, is hereby quashed and set-aside.

48. Bail bonds stand cancelled. The amount of fine, if any, paid by the accused-convict shall be refunded to the appellants-

accused. Records and proceedings be returned to the trial court forthwith.

(VIMAL K. VYAS, J.)

/MOINUDDIN

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MOINUDDIN ABDULLAH SAIYED(HC00172), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 05/11/2026 18:27:11