otherwise of the defence. The prosecution case should, therefore, fail.

ORDER

i) Criminal Appeal No.422 of 2014 is allowed.

ii) The judgment and order dated 10.07.2014 passed by learned Additional Sessions Judge, Aurangabad, in Sessions Case No.184 of 2013 is quashed and set aside.

iii) The appellant - Vishnu Asaram Kanade is acquitted of the offences with which he was charged.

iv) The appellant be set at liberty forthwith, if not required in any other case.

v) Fine amount, if paid by the appellant, be refunded to him.

vi) Criminal Revision Application St. No.267 of 2014 stands dismissed.

***Result*:-** Appeal allowed.

ABC 2016 (II) 410 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(S.G. Shah, J.)

Criminal Misc. Application (For Leave to Appeal) No. 2387 of 2016 In Criminal Appeal No. 99 of 2016 with Criminal Appeal No. 99 of 2016
Decided on 9 September, 2016

STATE OF GUJARAT ***- Appellant(s).***

Versus

MAHESHKUMAR PARSHOTTAMDAS PARMAR - Respondent(s).

Law Covered*:-** ***(A) Code of Criminal Procedure, 1973 — Section 378— Appeal against Acquittal —Prevention of Corruption Act— Sections 7, 13 [1][d] r/w 13[2] —Conviction under — Decoy trap — Bribe by Octroi Department staff — allegation of — No cogent and reliable evidence regarding actual demand, offer & acceptance— Acquittal upheld. (Para 11)

(B) Prevention of Corruption Act— Sections 7, 13 [1][d] r/w 13[2] — Decoy trap — Giving prize to raiding party —Tradition of —Held, there is a reason to believe that they are interested in arranging such trap

—and to trap someone irrespective of factual details — that whether there was actual demand of bribe by concerned person or not. (Para 4)

(C) Prevention of Corruption Act — Sections 7, 13 [1][d] r/w13 [2] — Offence under — Essential ingredients — [i] Prior demand of bribe amount by the accused— [ii] there must be demand and acceptance at the time of raid — [iii] there must be passing off tainted currency notes just before the trap/ raid and — [iv] there must be acceptance and thereby possession of tainted currency notes by the accused. (Para 4)

(D) Prevention of Corruption Act — Sections 7, 13 [1][d] r/w13 [2] — Offence under — Prior demand — Absence of — Held, when there is no scope of prior demand— there must be cogent and reliable evidence to prove rest of the issues. (Para 4)

(E) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Evidence of witness — nowhere stated that the amount demanded by the accused is towards bribe & that he has offered and paid it as a bribe — Acquittal upheld — Prevention of Corruption Act — Sections 7, 13 [1][d] r/w13[2]. (Para 9)

(F) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Penalty — Admission of witness — the amount demanded by the respondent was towards penalty for over-loading of the vehicle— Held, there is little scope of confirming that there was demand of bribe —Acquittal — Prevention of Corruption Act — Sections 7, 13 [1][d] r/w13[2]. (Para 9)

(G) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Tainted money — Delivery of — Receipt for the alleged bribe given by Receiving Officer — Held, transaction was not towards illegal gratification—Acquittal —Prevention of Corruption Act — Sections 7, 13 [1][d] r/w13[2]. (Para 11)

(H) Criminal Jurisprudence — Prevention of Corruption Act — 7, 13 [1][d] r/w13[2] — Tainted money — Possession of — Held, only because of presence of tainted currency notes and even if possession of such tainted currency notes is with the accused— it cannot be said that he has asked for any bribe or accepted the same— Acquittal. (Para 11)

(I) Criminal Jurisprudence — Prevention of Corruption Act — 7, 13 [1][d] r/w13[2] — Demand, Acceptance & Recovery — Held, mere acceptance of any amount alone by way of illegal gratification or recovery thereof without the proof of demand —would not ipso facto be

sufficient to bring home the charge — Admission and acceptance of bribe — is sine qua non for constituting offence under the PC Act. (Para 14)

(J) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Hostile witness —on point of admission and acceptance of bribe — Panch witness — not hearing the actual conversation between accused and complainant, at the time when complainant had approached to give bribe money — factum of demand cannot be considered as proof. (Para 14)

Facts:- *As per the prosecution case the investigating agency was in receipt of the intimation that staff of Octroi Department of Municipal Corporation is accepting bribe from the vehicles entering into the city area and, therefore, investigating agency arranged decoy trap by requesting some vehicle owner to support the investigating agency in performing raid by offering the amount of bribe in the form of tainted currency notes to the staff of Octroi Department of the local authority, as and when there is demand of illegal gratification - bribe. The respondent accused was acquitted by the trial Court and the aggrieved State is in appeal before the honourable Gujarat High Court. Regarding decoy trap it was observed by the Court that though there may not be ban on such decoy trap, the fact remains that practically when for all such traps staff of the investigating agency is getting prize, there is a reason to believe that they are interested in arranging such trap and to trap someone irrespective of factual details that whether there was actual demand of bribe by concerned person or not. No cogent and reliable evidence regarding actual demand, offer of bribe & acceptance was found. Acquittal was upheld.*

Law of relief:- Because of tradition of prize money, raiding parties are 'interested party' in arranging the decoy traps.

Held:- Though there may not be ban on such decoy trap as being nomenclatured by the investigating agency, the fact remains that practically when for all such traps staff of the investigating agency is getting prize, there is a reason to believe that they are interested in arranging such trap and to trap someone irrespective of factual details that whether there was actual demand of bribe by concerned person or not. (Para 4)

Fatesing Damor, who was selected as a secret witness and thereby Investigating Officer [IO] has conveyed him all the procedural details, which are not material to be recollected or reproduced herein. It is his case and on the contrary admission and that too in the examination-in-chief itself that when auto rickshaw of Rameshbhai was intercepted by the staff of Octroi Department, such

officer has inquired and verified the loaded material/ goods in the rickshaw and found that it is beyond capacity of auto rickshaw to carry such goods. Therefore, such officer, who is now charge- sheeted, but acquitted by the impugned judgment i.e. respondent herein, had conveyed to the witness that his auto is having more load and, therefore, he has to pay penalty upto three times. Thereupon, rickshaw driver Rameshbhai had in presence of such witness, asked the respondent- accused to reduce the amount of penalty and at that point of time, it is alleged that the respondent had stated that alright, hand over whatever is in your pocket and, therefore, Rameshbhai has handed over tainted currency notes to the respondent and thereupon it was confirmed that there is successful raid and thereby respondent was trapped alleging that he has accepted the bribe. However, the fact remains that the rickshaw driver Rameshbhai has nowhere stated in his deposition that the amount demanded by the respondent is towards bribe and that he has offered and paid it as a bribe. On the contrary, it is categorically admitted more than once by the witness that the amount demanded by the respondent was towards penalty for over- loading of the vehicle and he has also paid the amount towards penalty. If it is so, then there is little scope of confirming that there was demand of bribe, so also payment was towards bribe and not towards penalty for overloading. (Para 9)

Whereas P.W. No. 3 at exh. 35 - Rameshbhai Babulal Thakor is a material witness being decoyer through whom investigating agency has tried to offer the amount of bribe to trap unknown officer or staff. Such witness is rickshaw driver, who admits that the police staff has provided him tainted currency notes to be paid to the Octroi staff if they ask for bribe, but at the same time, he confirms that when he has given Rs.40/- to the Octroi staff, the Octroi staff has given him receipt and, therefore, that transaction was not towards illegal gratification. Thereupon, they again went to another Octroi post where again he has paid Rs.50/-, but as admitted by him as well as P.W. No. 1, it was also not towards bribe but that Rs.50/- was towards amount of Octroi to be paid. Thereby prosecution could not prove by cogent and reliable evidence that there was actual demand and offer of bribe, so also acceptance. Therefore, only because of presence of tainted currency notes and even if possession of such tainted currency notes is with the respondent - accused, it cannot be said that the respondent - accused has asked for any bribe or accepted the same. (Para 11)

In view of above evidence, I do not find any illegality or irregularity in the impugned judgment, more particularly, in view of settled legal position, as emerging from the following decisions :

(A) ***P. Satyanarayana Murty v. District Inspector of Police, State of Anhdra Preadesh, reported in 2016(1) SCC (Cri.) 11 = ABC 2015 (II) 288 SC (B) Selvaraj v. State of Karnataka, reported in 2016 (1) SCC (Cri.) 19 = ABC 2015 (II) 184 SC and (C) Krishan Chander v. State of Delhi, reported in AIR 2016 SC 299 = ABC 2016 (I) 151 SC*** that; in such cases for confirming conviction, all 3 actions are must and shall be proved by prosecution beyond reasonable doubt viz;

(i) Prior demand (ii) Demand at the time of trap and

(iii) Acceptance of the amount. In absence of specific clinching evidence to prove all such acts by the accused, there cannot be any conviction. Evidence of other witnesses may not be sufficient to prove demand even though recovery is proved. In that case, benefit of doubt is to be extended to the accused. Mere acceptance of any amount alone by way of illegal gratification or recovery thereof de-hors the proof of demand, ipso facto, reiterated, would not be sufficient to bring home the charge. Thereby, admission and acceptance of bribe is sine qua non for constituting offence under the Prevention of Corruption Act. If complainant or witness turns hostile on point of admission and acceptance of bribe and when panch witness did not hear conversation between accused and complainant at the time when complainant had approached to give bribe money, it is held by Hon'ble Supreme Court of India that factum of demand cannot be considered as proof and, thereby conviction was set aside. (Para 14)

Counsel:- ***For Respondent(s):*** *Mr C S Mohanan, Advocate.*

Cases Referred:-

1. *P. Satyanarayana Murty v. District Inspector of Police, State of Anhdra Preadesh; 2016(1) SCC (Cri.) 11= ABC 2015 (II) 288 SC. (Para 14)*
2. *Selvaraj v. State of Karnataka; 2016(1) SCC (Cri.) 19= ABC 2015 (II) 184 SC. (Para 14)*
3. *Krishan Chander v. State of Delhi, AIR 2016 SC 299= ABC 2016 (I) 151 SC. (Para 14)*

JUDGMENT

S.G. SHAH, J.: - Heard learned advocates for the parties. Perused the record.

2. The petitioner - State being prosecuting agency wants to challenge the judgment and order of acquittal dated 20/11/2015

rendered in Special Case [ACB] No. 15/2005 by the Special Judge [ACB], Court No. 4, Ahmedabad city. By said impugned judgment, the Special Judge has acquitted the respondent herein from the charges under sections 7, 13 [1][d] read with 13[2] of the Prevention of Corruption Act and, therefore, leave to appeal has been requested.

3. The sum and substance of prosecution case before the Special Court was to the effect that the investigating agency was in receipt of the intimation that staff of Octroi Department of the Ahmedabad Municipal Corporation is accepting bribe from the vehicles entering into the city area and, therefore, investigating agency has arranged decoy trap by requesting some vehicle owner to support the investigating agency in performing raid by offering the amount of bribe in the form of tainted currency notes to the staff of Octroi Department of the local authority, as and when there is demand of illegal gratification - bribe. Therefore, prima-facie, it becomes clear that there is no allegation against the accused prior to raid that he had demanded particular amount and, therefore, prosecution has admitted that there is no prior demand i.e. demand of bribe amount for which trap was arranged after lodging complaint.

4. Though there may not be ban on such decoy trap as being nomenclatured by the investigating agency, the fact remains that practically when for all such traps staff of the investigating agency is getting prize, there is a reason to believe that they are interested in arranging such trap and to trap someone irrespective of factual details that whether there was actual demand of bribe by concerned person or not.

5. In any case, the law is well settled whereby there must be cogent and reliable or evidence by the prosecution to prove that [i] there is prior demand of bribe amount by the accused, [ii] there must be demand and acceptance at the time of raid, [iii] there must be passing off tainted currency notes just before the trap/ raid and [iv] there must be acceptance and thereby possession of tainted currency notes by the accused. In the given case, when there is no scope of prior demand, now it becomes clear that there must be cogent and reliable evidence to prove rest of the issues.

6. The perusal of available record in the form of depositions of the witnesses and submissions by Ld. APP, it becomes clear that there is no cogent, reliable and sufficient evidence to prove any of the above ingredients. It is also clear from the record that there is neither

irregularity nor illegality in any manner whatsoever in the impugned judgment and, therefore, there is little scope of interfering with the impugned judgment. However, before concluding, one has to examine the evidence adduced before the trial Court to verify and to confirm the determination.

7. The evidence includes history of pre- arranged trap, which is not material except to record that prosecution has failed to disclose and prove the source of information that staff of Octroi Department is accepting bribe. To that extent, there is lack of relevant and sufficient evidence on record which allows the investigating agency to carry out such raid without any allegation against any particular person and in absence of complaint or FIR for the purpose. Even if we may not be so technical in refusing the leave to appeal only on such ground, even the evidence shows that there is no substance in oral evidence by the witnesses so as to even frame charge against the accused and thereby to convict him, when there is no evidence on record.

8. Instead of reproducing evidence of different witnesses, it would be appropriate to recollect the relevant portion only.

9. Fatesing Damor, who was selected as a secret witness and thereby Investigating Officer [IO] has conveyed him all the procedural details, which are not material to be recollected or reproduced herein. It is his case and on the contrary admission and that too in the examination-in-chief itself that when auto rickshaw of Rameshbhai was intercepted by the staff of Octroi Department, such officer has inquired and verified the loaded material/ goods in the rickshaw and found that it is beyond capacity of auto rickshaw to carry such goods. Therefore, such officer, who is now charge- sheeted, but acquitted by the impugned judgment i.e. respondent herein, had conveyed to the witness that his auto is having more load and, therefore, he has to pay penalty upto three times. Thereupon, rickshaw driver Rameshbhai had in presence of such witness, asked the respondent- accused to reduce the amount of penalty and at that point of time, it is alleged that the respondent had stated that alright, hand over whatever is in your pocket and, therefore, Rameshbhai has handed over tainted currency notes to the respondent and thereupon it was confirmed that there is successful raid and thereby respondent was trapped alleging that he has accepted the bribe. However, the fact remains that the rickshaw driver Rameshbhai has nowhere stated in his deposition that the amount demanded by the respondent is

towards bribe and that he has offered and paid it as a bribe. On the contrary, it is categorically admitted more than once by the witness that the amount demanded by the respondent was towards penalty for over- loading of the vehicle and he has also paid the amount towards penalty. If it is so, then there is little scope of confirming that there was demand of bribe, so also payment was towards bribe and not towards penalty for overloading.

10. Even P.W. No. 2 at exh. 30 namely Karshanbhai Rambhai Bhuva, Trapping Officer, has also practically narrated the same story as narrated by P.W. No. 1 and thereby he also confirms that it was his presumption that the amount offered was towards bribe, but he came to know that transaction was towards penalty for overloading of goods. If it is so, he would not have filed charge-sheet even if it is instructed or directed by the higher authority.

11. Whereas P.W. No. 3 at exh. 35 - Rameshbhai Babulal Thakor is a material witness being decoyer through whom investigating agency has tried to offer the amount of bribe to trap unknown officer or staff. Such witness is rickshaw driver, who admits that the police staff has provided him tainted currency notes to be paid to the Octroi staff if they ask for bribe, but at the same time, he confirms that when he has given Rs.40/- to the Octroi staff, the Octroi staff has given him receipt and, therefore, that transaction was not towards illegal gratification. Thereupon, they again went to another Octroi post where again he has paid Rs.50/-, but as admitted by him as well as P.W. No. 1, it was also not towards bribe but that Rs.50/- was towards amount of Octroi to be paid. Thereby prosecution could not prove by cogent and reliable evidence that there was actual demand and offer of bribe, so also acceptance. Therefore, only because of presence of tainted currency notes and even if possession of such tainted currency notes is with the respondent - accused, it cannot be said that the respondent - accused has asked for any bribe or accepted the same.

12. Remaining two witnesses are formal in nature since they have completed formality of filing charge-sheet and hence they were also not cross-examined at length. Whereas statement of respondent under section 313 of the Code of Criminal Procedure confirms his defense that in fact he has asked for legal charges towards Octroi and he tried to issue receipt, but before he issued receipt, Trapping Officer has raided the place and shown that it is successful trap may be because of their quota to be completed for the purpose.

13. In view of above facts and circumstances, I do not see any substance or reason in the application for leave to appeal or in the appeal itself to accord leave, as prayed for.

14. In view of above evidence, I do not find any illegality or irregularity in the impugned judgment, more particularly, in view of settled legal position, as emerging from the following decisions :

(A) ***P. Satyanarayana Murty v. District Inspector of Police, State of Anhdra Preadesh, reported in 2016(1) SCC (Cri.) 11 = ABC 2015 (II) 288 SC (B) Selvaraj v. State of Karnataka, reported in 2016 (1) SCC (Cri.) 19 = ABC 2015 (II) 184 SC*** and ***(C) Krishan Chander v. State of Delhi, reported in AIR 2016 SC 299 = ABC 2016 (I) 151 SC*** that; in such cases for confirming conviction, all 3 actions are must and shall be proved by prosecution beyond reasonable doubt viz;

(i) Prior demand (ii) Demand at the time of trap and

(iii) Acceptance of the amount. In absence of specific clinching evidence to prove all such acts by the accused, there cannot be any conviction. Evidence of other witnesses may not be sufficient to prove demand even though recovery is proved. In that case, benefit of doubt is to be extended to the accused. Mere acceptance of any amount alone by way of illegal gratification or recovery thereof de-hors the proof of demand, ipso facto, reiterated, would not be sufficient to bring home the charge. Thereby, admission and acceptance of bribe is sine qua non for constituting offence under the Prevention of Corruption Act. If complainant or witness turns hostile on point of admission and acceptance of bribe and when panch witness did not hear conversation between accused and complainant at the time when complainant had approached to give bribe money, it is held by Hon'ble Supreme Court of India that factum of demand cannot be considered as proof and, thereby conviction was set aside.

15. Under the above circumstances, this application for Leave to Appeal is dismissed for want of substance. Rule is discharged.

16. In view of dismissal of application for Leave to Appeal, Criminal Appeal does not survive and the same stands disposed of accordingly.

Result:- Appeal dismissed.