

CASE NO.:
Appeal (crl.) 546 of 2002

PETITIONER:
SUBASH PARBAT SONVANE

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT: 24/04/2002

BENCH:
M.B. Shah, Bisheshwar Prasad Singh & H.K. Sema

JUDGMENT:

Shah, J.

Leave granted.

Appellant was convicted by the Special Judge, City Civil Court, Ahmedabad by judgment and order dated 10.9.1997 for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500, in default of payment of which to further undergo rigorous imprisonment for 15 days. He was also convicted for the offence punishable under Sections 13(1)(d) and 13(2) of the Act and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default to further undergo rigorous imprisonment for 15 days. Against that judgment and order, appellant preferred Criminal Appeal No.881/97 before the High Court of Gujarat at Ahmedabad. The High Court dismissed the said appeal by passing the impugned judgment. That order is challenged by filing this appeal.

At the time of admission hearing, this Court passed the following order:

"Considering the contentions raised by learned counsel for the petitioner and the evidence on record the impugned order passed by Special Judge and confirmed by the High Court with regard to the conviction of the petitioner under Section 7 of the Prevention of Corruption Act cannot be assailed in any manner. Hence, with regard to that part of the judgment this petition is dismissed. However, with regard to the conviction of the petitioner under Section 13(1)(d) issue notice returnable on 9th January, 2002."

Thereafter, the matter was directed to be placed on a non-miscellaneous day for final hearing.

The learned senior counsel Mr. Anand appearing on behalf of appellant submitted that the judgment and order passed by the High Court confirming the conviction of the appellant under Section 13(1)(d)(i) of the Act is on the face of it illegal and erroneous. He submitted that for convicting the appellant for the offence under

Section 13(1)(d), the prosecution must establish that by corrupt and illegal means accused has obtained for himself or for any other person any valuable thing or pecuniary advantage. He submitted that in the present case, there is no evidence on record that appellant 'obtained' any amount by corrupt or illegal means.

In our view, mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). Section 13(1)(d) is as under:

"13. Criminal misconduct by a public servant.(1) A public servant is said to commit the offence of criminal misconduct,

(d) if he,

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."

In Sections 7 and 13(1)(a) and (b) of the Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. Further, the ingredient of sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under clause (ii), he obtains such thing by abusing his position as public servant; and sub-clause (iii) contemplates that while holding office as the public servant, he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

This Court interpreted similar provisions under the Prevention of Corruption Act, 1947 in Ram Krishan and another v. The State of Delhi [(1956) SCR 183]. In the said case, the Court dealt with similar clause (d) of sub-section 1 of Section 5 and held that there must be proof that the public servant adopted corrupt or illegal means and thereby obtained for himself or for any other person any valuable thing or pecuniary advantage. The Court observed

"In one sense, this is no doubt true but it does not follow that there is no overlapping of offences. We have primarily to look at the language employed and give effect to it. One class of cases might arise when corrupt or illegal means are adopted or pursued by the public servant to gain for himself a pecuniary advantage. The word "obtains", on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. One may accept money that is offered, or solicit payment of a bribe, or extort the

bribe by threat or coercion; in each case, he obtains a pecuniary advantage by abusing his position as a public servant"

The Court further observed that

".It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour"

Similarly, in *M.W. Mohiuddin v. State of Maharashtra* [(1995) 3 SCC 567] the Court dealt with Section 13(1)(d)(i) and (ii) and after referring to the decision quoted above as well as dictionary meaning of word "obtains" observed whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances of each case. In that case, the Court held that it was proved that accused made a demand and also got the affirmation from the complainant that he had brought the demanded money and at his instance, the complainant wrapped the money in the handkerchief given by the accused and placed the same on the bag which was brought by the accused and as asked by him; these steps have been taken into consideration in arriving at the conclusion that the accused had in fact "obtained" the pecuniary advantage, namely, that he received the illegal gratification. Therefore, the Court upheld the conviction under Section 13(1)(d). Lastly, in *C.K. Damodaran Nair v. Govt. of India* [(1997) 9 SCC 477], this Court considered the word "obtain" used in Section 5(1)(d) and held as under

"12. The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence, prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) and not under Section 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment".

Same is the position of statutory presumption under Section 20 of the Act and is available for the offence punishable under Section 7 or Section 11 or Clause (a) or clause (b) of sub-section (1) of Section 13 and not for clause (d) of sub-section (1) of Section 13.

In the background of aforesaid settled legal position, we would now refer to the relevant part of the evidence. Before the trial court, it was submitted by the learned APP that complainant has not supported the prosecution case on main ingredients of demand and acceptance and was treated hostile. In cross-examination also, he has not supported the prosecution version on demand or acceptance of the amount. The trial court has also observed that the complainant deliberately does not support on the points of demand and acceptance. However, the Court relied upon the evidence of Panch Shailesh

Devshankar Pandya (PW2). We were taken through the evidence of PW2 Pandya and from his evidence, it is difficult to find out any statement made by him that accused demanded any amount from the complainant. The relevant part of the evidence of this witness suggests that when the prosecution party went at the police chowki, accused asked the complainant as to why he had come there at that time? To that, complainant replied that he was waiting since one 0'clock and that he has brought one witness to be examined. Accused informed him to come in the evening as his writer was not present. When the accused started to go towards toilet, the complainant followed him and he gave something from his pocket to the accused who took the same and put that in his pocket. From this evidence, it cannot be inferred that accused demanded any amount from the complainant or that he had obtained the same. It is apparent that the trial court and the High Court misread the evidence of PW2 and held that there was demand by the accused and the amount was paid to him by the complainant. It was unreasonable to hold that accused demanded money from the complainant. Complainant denied the said story and PW2 had not stated so.

In this view of the matter, this appeal is partly allowed. Impugned judgment and order passed by the High Court confirming the order passed by the Special Judge, City Civil Court, Ahmedabad convicting the appellant for the offence punishable under Section 13(1)(d)(i) is set aside and the appellant is acquitted for the same.

.....J.
(M.B. SHAH)

.....J.
(BISHESHWAR PRASAD SINGH)

.....J.
(H.K. SEMA)

April 24, 2002.