
(1965) 09 GUJ CK 0021
In the Gujarat High Court

Bhanuprasad Hariprasad Dave and Another	APPELLANT
Vs	
The State of Gujarat	RESPONDENT

Date of Decision : 10-09-1965

Acts Referred:

Bombay District Police Act, 1890 — Section 80
Bombay Police Act, 1951 — Section 161(1), 161(1)
Criminal Procedure Code, 1898 (CrPC) — Section 155
Penal Code, 1860 (IPC) — Section 161, 161, 165A
Prevention of Corruption Act, 1947 — Section 5(1)(d), 5(2), 5(2)

Citation : (1965) 6 GLR 958

Hon'ble Judges : N.G. Shelat, J; Akbar S. Sarela, J

Bench : Division Bench

Judgement

Akbar S. Sarela, J.—The appellant No. 1 Bhanuprasad Hariprasad Dave and appellant No. 2 Rajuji Gambhirji were accused Nos. 1 and 2

respectively in the trial Court. At the relevant time appellant No. 1 (who for convenience will be referred to as accused No. 1 hereinafter) was a

Police Sub-Inspector in charge of the Navrangpura Police Station Ahmedabad and appellant No. 2 (who for convenience will be referred to

accused No. 2 hereinafter) was his writer constable. The case relates to an alleged offence of acceptance of bribe by the accused No. 1 with the

assistance of and through accused No. 2. The accused No. 1 was charged with an offence u/s 161 of the Indian Penal Code and Section 5(1)(d)

read with Section 5(2) of Prevention of Corruption Act 1947 The accused No. 2 was charged with an offence u/s 161 read with Section 165A of

the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act 1947 Both of them have been found guilty of

the offences with which they were charged by the learned Special Judge

Ahmedabad who by his judgment and order dated 9th of June 1964

sentenced each of them to rigorous imprisonment for two and a half years and a fine of Rs. 1000/in default further rigorous imprisonment for one

year. Against those convictions and sentences both the accused have come in appeal.

2. The prosecution case is set out in detail in the testimony of the principal witness the complainant Ramanlal Ramjibhai Patel (Exh. 19). We shall

set out that testimony later on. In brief the prosecution case broadly falls into three stages:

(1) Ramanlal the witness just referred to wrote a post-card on or about 11th February 1963 to one Kumari Madhukanta Ranchhodlal a school

teacher who has been examined as a witness at Exh. 10. In that letter the contents of which we shall refer to later he desired one Chandrakanta

Natverlal Patel (Exh. 13) also a teacher in the same school to go and see him suggesting at the same time that if possible Madhukanta may also

accompany her. This post-card reached the Principal of the school Manilal Gordhandas (Exh. 141 and he rebuked Madhukanta. Accordingly

Madhukanta decided to bring Ramanlal to senses and according to the prosecution case that post-card of Ramanlal was passed on the accused

No. 1 Dave.

(2) On 16th February 1963 accused No. 2 who is referred to in the evidence as Rajuji came to Ramanlals house in the morning and asked him to

accompany in on the plea that he (Ramanlal) was to see Chandrakanta and Madhukanta and took him to the Navrangpura Police Station where

the complainant Ramanlal found none of the two ladies present but he was taken to accused No. 1 Dave. According to the prosecution accused

No. 1 ill-treated Ramanlal and threatened him in connection with the post card above referred to and he was allowed to go thereafter on his

promising to pay a bribe of Rs. 100/- to accused No. 1. Ramanlal tried to obtain money immediately but on his failing to succeed it was agreed

that he was to pay the amount of Rs. 100/- to accused No. 1 on the morning of 18-2-1963.

(3) On the morning of 18th of February 1963 Ramanlal went to the Anti-Corruption Branch and eventually succeeded in seeing Deputy

Superintendent Medh of that Branch at about 11-00. His complaint was recorded

there and panch witnesses were called. Necessary steps relating to the marking on notes with anthracene powder making the panchnama etc. were taken and Ramanlal was asked to go ahead and pay the amount of Rs. 100/in the notes marked to P.S.I. Dave at Navrangpura Police Station if demanded. He was accompanied by one of the panchas viz. Dahyabhai Vadilal Shah who has been examined in this case at Exh. 23. The accused No. 1 at that time being out of Police Station the trap had to be abandoned and in the morning it was decided to repeat the trap in the evening. Accordingly at about 5-30 p. m. that evening again the same procedure was gone through afresh another set of notes being used and Ramanlal and Dahyabhai proceeded to the Police Station at Navrangpura. Accused No. 1 had not arrived by that time but accused No. 2 was present. The two witnesses along with accused No. 2 went to a restaurant to take tea and by the time they returned accused No. 1 had arrived. Money was offered to accused No. 1 who directed that the money be paid to accused No. 2 in another room and accordingly it was so paid by the complainant. With that money accused No. 2 went out. The complainant finding accused No. 2 gone got confused and went to Deputy Superintendent Medh who accordingly came to the Police Station and started investigation. The accused No. 2 who had been followed by one of the constables viz. Santramji of the raiding party was noticed exchanging some of the notes with shopkeepers Those notes were attached and after the completion of the investigation and after obtaining necessary sanction the two accused were charge-sheeted. These are broadly the three stages of the prosecution story.

3. The defence case is simple. The first stage of the prosecution story is not seriously disputed. The only part of it which is disputed is the case that the post-card written by Ramanlal to Madhukanta was passed on to the police for further action. The defence suggestion is that the post-card was destroyed. There is also an alternative suggestion viz. that if it was not destroyed it was not passed on to accused No. 1 but to P.S.I. Sisodiya. In the statement of both the accused however they have attempted to plead ignorance about the post-card and about what happened to it. As regards the second stage of the story both the accused have categorically denied the allegations made against them. They have denied that part of

the prosecution story which relates to the events of 16th. As regards the third stage of the prosecution story viz. the events of the 18th accused

No. 2 pleads alibi saying that he was not present at the police station Navrangpura after 5.00 p.m. as he left the Police Station at that time to go to

a cinema and did not return thereafter to the Police Station. Accused No. 1 admits his presence at the Police Station at the time of the incident in

question but denies having any knowledge of what happened. He states that he was in P.I.s room all the while whereas the whole incident

admittedly took place in the P.S.I.s room. His suggestion appears to be that it must be some other Police Officer who must be concerned with the

incident. He does not say who that officer was but he alleges that he has been falsely involved by the complainant at the instance of P.S.I. Sisodiya

with whom he is on bad terms. The accused No. 2 states that he has been falsely involved because he was the writer constable of accused No. 1.

4. The learned Judge having discussed the prosecution evidence and the materials placed before him came to the conclusion that inspite of some of

the infirmities to which attention will be drawn hereafter the evidence was on the whole reliable and deserved to be accepted. He rejected the

defence theory and accordingly he has convicted and sentenced the appellants as earlier stated.

5. At the hearing Mr. Shelat who argued the appeal on behalf of the appellants made the following submissions:

1. The post-card written by Ramanlal to Madhukanta on which the whole of the prosecution story rests was in fact destroyed by Madhukanta

immediately on its being handed over to her by her Principal and therefore the whole foundation for the alleged events of the 16th and 18th is

lacking.

2. The story of the events of 16th February as regards the payment of bribe rests only on the testimony of Ramanlal who it is argued by Mr. Shelat

is not a reliable or truthful witness and therefore that story cannot be said to have been satisfactorily made out. It has been suggested further in the

argument that presumably it was P.S.I. Sisodiya and not accused No. 1 who must have called Ramanlal to the Police Station on 16th. The defence

suggestion is that if the post-card written to Madhukanta was not destroyed by her it must have been handed over by her P.S.I. Sisodiya for

further action.

3. The evidence regarding what happened on the 18th of February should not be accepted because the witnesses who depose to the events of that

day are not reliable and are deposing falsely at the instance of P.S.I. Sisodiya who was on bad terms with accused No. 1.

4. The prosecution is barred u/s 161(1) of the Bombay Police Act 1951 as it was instituted more than six months after the commission of the offence.

There are certain other points of law urged at the time of argument which we shall deal with at appropriate places.

...

[After discussing the evidence His Lordship further observed.]

23. Turning now to the legal contentions raised on behalf of the defence the first contention to be noticed is as regards that part of the evidence

which relates to the proof of anthracene powder on the notes and on the hands of various persons and on the table and bench in P.S.I.s room. It is

urged by Mr. Shelat for the appellants that the prosecution not having led any evidence by way of expert evidence or books of science to prove

the sure method of detection of anthracene powder the nature of the test to be applied the nature of the result to be expected and whether a

layman can detect anthracene powder when such a test is applied the evidence relating to the presence of anthracene powder on the hands and

other articles in this case should not be accepted. In respect of that proposition reliance was placed on a Division Bench decision of this Court in

Ramsing Ramsing Badharsing Vs. State, . In that case the proof of the prosecution case of acceptance of bribe substantially rested on the evidence

relating to the presence of marks of anthracene powder on the hands of the officer who had accepted the bribe. It appears from the facts of that

case stated in the judgment that before or after the powder was applied to the notes and the notes were handed over to the trap witness no

demonstration was made to show as to what was the effect of the ultra-violet light on the notes or other articles before the powder was applied

and after the powder was applied. It also appears from the two facts stated in that case that Head Constable Jaswantsinh who had applied the

powder in that case and who according to the evidence was supposed to know

something more about the powder and the means of detecting it had not been examined. It was in these circumstances that it was held that if the prosecution wanted to prove the presence of anthracene powder on the hands of the appellant it was the duty of the prosecution to prove by means of expert evidence or books of science the nature of anthracene powder the method of its detection and the nature of test to be applied. Such evidence was absent in that case. In the present case the position is different. The presence of anthracene powder plays a very minor role in the prosecution case here. Even if all the evidence relating to the presence of the anthracene powder on the hands table and bench and on the hands of certain persons is excluded it makes no material difference to the other evidence in the case because the prosecution substantially rests on that other evidence and on the fact that the four notes which were traced were and could be identified even otherwise by reason of the identity of their serial numbers with the numbers noted in the panchnama which had been prepared before the investigation started. No doubt in so far as the presence of anthracene powder lends any corroboration to the prosecution evidence in this case the nature of the evidence indicated under the ruling is substantially led in the case because the evidence of the material witnesses shows that a demonstration was made as contemplated by that decision before the application of the powder and after the application of the powder and the constable who made the demonstration viz. Chandrapal has been examined. In his evidence the prosecution has sought to prove not only the fact of the demonstration both under the ordinary day light and under ultra-violet light but also the fact that anthracene powder was seen under ultra-violet light emitting a shine of blue green colour. In the cross-examination the witness was asked whether he had made a special study of the powder and he stated that he had not. He also stated that there are other powders besides anthracene having their own shine. This statement would not in any way take away from the evidence given in his examination-in-chief. That being the position the decision relied on by Mr. Shelat has no application to the facts of the present case.

24. The next contention of law urged by Mr. Shelat is that Ramanlal being a decoy or a trap witness Dahyabhai being not a wholly independent or reliable witness and the police witnesses viz. Erulkar Santramji and Chandrapal

being members of the raiding party were all partisan witnesses and in law their evidence cannot be accepted as sufficient unless it is corroborated in material particulars from other independent evidence both as regards the commission of the offence and as regards the identity of the offender. In support of this proposition he relied on the observation of the Supreme Court in Major E.G. Barsay Vs. The State of Bombay, . We shall consider those observations presently but before we do so we would like to refer to an earlier decision of the Supreme Court to which Mr. Nanavati for the State has invited our attention. That decision is The State of Bihar Vs. Basawan Singh, . That was a case in which the accused who was a Sub-Inspector in charge of the police station was alleged to have demanded a bribe of Rs. 50/- from two persons one Bhagwandas who was a shopkeeper dealing in grain and the other Mahavir Prasad who purchased grains from the said Bhagwandas. It was reported to the police that Bhagwandas had sold grains in black market to the said Mahavir Prasad and on the basis of that report the accused Basawan Singh attached the grains that were being carried on two ponies by Mahavirprasad after he had purchased from the shop. While the grains were still lying with the police the alleged demand of a bribe was made. Both Bhagwandas and Mahavir Prasad reported to the AntiCorruption Department of the Government of Bihar as a result of which their complaints were recorded by one Mukherji a Deputy Secretary to the Government of Bihar and he asked the police to lay a trap. The raiding party consisted of the two decoys and three officers viz. Mukherji Deputy Secretary Deputy Superintendent Dhamidhar Mishra and Magistrate Rudra Dev Sahai. They proceeded to the house of the accused. The two decoy witnesses went up to the house of the accused and passed on Rs. 50/each to the accused and thereafter the three officers viz. Mukherji Misra and Sahai rushed to the house (verandah) where the accused and the two witnesses were standing and caught hold of the accused. The accused tried to throw away the notes which were in his hands but was prevented from doing so. Panchas were called and a panchnama was made and it was found that there were 9 notes in the hands of the accused. The missing 10th note was on search found in a crumpled condition in the verandah of the accused. Before the court the evidence of the two decoy witnesses and the three

officers and two panchas was led. So far as panchas were concerned they were not present at the time when the three officers caught hold of the accused. The only important part of their testimony was the finding of a crumpled note in the verandah. The learned Special Judge who tried the case accepted the prosecution evidence as trustworthy and convicted the accused. Against that conviction the accused went in appeal to the High Court and the learned Judge who heard the appeal acquitted him on the main ground that there was no independent witness to support the testimony of the raiding party which consisted of two decoy witnesses two Magistrates and a Police officer. For holding that view the learned Judge relied on the decision of the Supreme Court in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, . Against that acquittal the State came in appeal to the Supreme Court and the principal questions which arose for decision in the appeal were firstly whether the learned Judge of the High Court was right in his view that the decision in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, laid down any universal or inflexible rule that the testimony of witnesses who formed the raiding party must be discarded unless corroborated by independent witnesses secondly if not what was the correct rule with regard to such testimony in cases of this nature and thirdly whether the learned Judge was right in his view that there was no independent corroboration of the testimony of the witnesses of the raiding party in that case.

The Supreme Court held that its earlier decision in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, did not lay down any such rule as was inferred by the learned Judge of the High Court. They went on to say:

It is plain and obvious that no such rule can be laid down for the value of the testimony of a witness depends on diverse factors such as the character of the witness to what extent and in what manner he is interested how he has fared in cross-examination etc. There is no doubt that the testimony of partisan or interested witnesses must be scrutinized with care and there may be cases as in *Shiv Bahadur Singh's* case where the court will as a matter of prudence look for independent corroboration. It is wrong, however to deduce from that decision any universal or inflexible rule that the evidence of the witnesses of the raiding party must be discarded unless independent corroboration is available.

Later on Their Lordships have made the following observations:

The correct rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged their evidence must

be treated as the evidence of accomplices is treated if they are not accomplices but are partisan or interested witnesses who are concerned in the

success of the trap their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations

which must vary from case to case and in a proper case the Court may even look for independent corroboration before convicting the accused

person.

Thereafter Their Lordships have discussed the question as to the nature of the corroboration in case the Court comes to the conclusion that some

corroboration is necessary and have observed:

but independent corroboration does not mean that every detail of what the witnesses of the raiding party have said must be corroborated by

independent witnesses As was observed by Lord Reading in 1916 K.B. 658 even in respect of the evidence of an accomplice all that is required is

that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it

In 1952 S.C.R 377 . 385 AIR 1952 SC . 57 to which we have referred in an earlier paragraph the nature and extent of corroboration required

when it is not considered safe to dispense with it have been clearly explained and it is merely necessary to reiterate that corroboration need not be

by direct evidence that the accused committed the crime it is sufficient even though it is merely circumstantial evidence of his connection with the

crime.

Their Lordships proceeded to examine the evidence in that case in the light of these considerations They found no difficulty in accepting the

testimony of the raiding party in that case and they stated that that testimony received even otherwise sufficient corroboration from the finding of the

crumpled note as deposed by the panch witnesses. Accordingly the appeal was allowed and the acquittal was set aside and the accused was

convicted. The principles enunciated by the Supreme Court in that decision are a sufficient answer to the argument urged by Mr. Shelat on behalf

of the appellants that the evidence of decoy witnesses or the members of the

raiding party cannot be accepted unless corroborated in material particulars by independent evidence both as regards the commission of the crime and the identity of the offender. In that Supreme Court case the witnesses were either decoy witnesses or officers who formed the raiding party. The finding of the crumpled note was the only independent piece of evidence. The prosecution case rested substantially if not wholly on the oral evidence of the five witnesses in that case. That evidence was held sufficient in an acquittal appeal. Mr. Shelat however argued that the later decision of the Supreme Court to which he has referred makes a difference in this legal position and we may now therefore turn to that decision. Before referring to the facts of that case it will be noticed that the decision of the Supreme Court in State of Bihar v. Basawan Singh is a decision by five Judges whereas the decision of the Supreme Court in the case of Major E.G. Barsay v. State of Bombay on which reliance has been placed by Mr. Shelat is a decision of three Judges. Now in that case some army officers were prosecuted in respect of misappropriation of large amounts of army stores and one of the army officers so prosecuted was Major Barsay in that case who was second in command of the army depot and was incharge of the Stores Section. The prosecution case substantially rested on the testimony of one Lawrence who was at the relevant time acting as a Security Officer in that depot. Major Barsay planned a large scale conspiracy for the removal of the Stores and took into confidence several officers and one of the persons whom he took into confidence was this witness Lawrence. Lawrence took part in the plans of the conspirators from time to time and was instrumental in fabricating gate-pass so that the lorries containing the materials might be taken out from the gate and in fact X accompanied the lorries on the date the lorries were eventually attached after they were taken out from the gate. It appears that Lawrence ostensibly joined the conspiracy with a view to bring to book the culprits and was informing the superior officers and the police orally and in writing from time to time as and when the important events were taking place. The Special Judge who tried the case held on a consideration of the evidence before him that all the charges were made out against Major Barsay and he was of the view that there was no good ground to discard the evidence of Lawrence but he placed him in the

category of an interested witness whose testimony required independent corroboration before acceptance. In his judgment the learned Special

Judge observed as under:

He (Lawrence) is obviously decoy or spy and agent provocateur and his evidence will have therefore to be approached with great caution and

much weight cannot be attached to it unless it is corroborated by other independent evidence and circumstances in the case.... Not being tainted

evidence it would not suffer from a disability of being unworthy of acceptance without independent corroboration. But being interested evidence

caution requires that there should be corroboration from an independent source before its acceptance. To convict an accused on the tainted

evidence of an accomplice is not illegal but it is imprudent to convict an accused upon the partisan evidence of a person at whose instance a trap is

laid by the police is neither illegal nor imprudent but inadvisable.... Shri Lawrences evidence can therefore be accepted and relied upon only if it is

corroborated by other independent evidence and circumstances in the case.

The High Court took the same view and observed as under:

To convict an accused upon the partisan evidence of a person at whose instance a trap is laid by the police is neither illegal nor imprudent.... All the

same as the person who lodges information with the police for the purpose of laying a trap for another is a partisan witness interested in seeing that

the trap succeeds it would be necessary and advisable to look for corroboration to his evidence before accepting it.

The Special Counsel for the State in that case accepted this position and desired the Court to examine the evidence of Lawrence on that basis. The

Supreme Court stated that both the Courts had approached the evidence of Lawrence from a correct stand point. Though he was not an approver

he was certainly an interested witness in the sense that he was interested to see that the trap laid by him succeeded. He could at least be equated

with a partisan witness and it would not be admissible to rely upon such evidence without corroboration. It would be equally clear that his evidence

was not a tainted one but it would only make a difference in the degree of corroboration required rather than the necessity for it. Thereafter dealing

with the nature of necessary corroboration. Their Lordships observed as under:

The corroboration must be by independent testimony confirming in some

material particulars not only that the crime was committed but also that the appellant committed it. It is not necessary to have corroboration of all the circumstances of the case or every detail of the crime. It would be sufficient if there was corroboration as to the material circumstances of the crime and of the identity of the accused in relation to the crime. These principles have been settled in *R. v. Baskerville* (1916) 2 KB 658 which has rightly been considered as the locus classicus of the law of approvers evidence and has been followed by Courts in India.

It will be noticed that the question before the Court was that Lawrence's evidence needed corroboration. Lawrence was there very much involved in the hatching of the conspiracy. The observations of the Supreme Court must be read in the light of that fact. In fact Their Lordships have referred to the principles in *R. v. Baskerville* (1916) 2KB 658 which laid down the law of evidence of an approver and which has been followed in the Courts in India. It was therefore at that point that the Supreme Court was considering viz. Lawrence's evidence who though not an accomplice was very much a partisan. In so far as the Supreme Court approved the statement of law laid down by the High Court it meant not that in respect of a partisan witness corroboration is in law necessary but that it was advisable to look for corroboration. No doubt after saying that the evidence of witness Lawrence cannot be said to be tainted they state that it would make only a difference in the degree of corroboration thereby emphasising the necessity of corroboration but the necessity of corroboration is emphasized in the light of the circumstances of the case and not as a matter of law. If it were otherwise the Supreme Court would have had to re-consider its previous decision by five Judges in *State of Bihar v. Basawan Singh* (Supra). That decision has not been referred to and there is no reason to hold that any departure from the principles laid down in that decision was intended or made as contended by Mr. Shelat on behalf of the appellants. Therefore from these two rulings of the Supreme Court the conclusion to be drawn is that the trap witnesses who are members of the raiding party may be treated as partisan witnesses but as regards partisan witnesses there is no rule of law that their evidence cannot be accepted in the absence of independent corroboration in material particulars. There cannot be such a rule of law when even the evidence of an accomplice is not by law

required to be corroborated. It is only as a rule of prudence that the evidence of an accomplice is required to be corroborated. The object of corroboration is to produce mental satisfaction in the mind of the Court that the accomplice is a witness of truth. The rulings go to show that in a trial by jury if the Judge draws the attention of the jury to this rule of prudence in respect of the evidence of an accomplice and cautions it and the jury thereafter accepts the evidence of the accomplice as sufficient a conviction based on such a verdict cannot be said to be wrong. Therefore the true position is that a decoy need not be corroborated but the weight to be attached to his evidence will depend on his character his standing his position the circumstances under which he became a decoy and how he has fared in the witness box. The considerations in the light of which his evidence is to be tested will naturally vary from case to case.

...

[Holding that the defence had made no attempt to rebut the presumption and the explanation offered was not reasonable or probable. His

Lordship further observed:]

27. It is then urged by Mr. Shelat for the defence that even accepting the prosecution evidence there can be no conviction u/s 161 of the Indian

Penal Code. His argument is that to attract Section 161 the agreement to accept or the acceptance of a bribe must have reference to the doing by

accused No. 1 or his forbearing to do any official act or his showing or forbearing to show in the exercise of his official functions favour or

disfavour to Ramanlal. His argument is that accused No. 1 was not acting officially or exercising any official functions when he called Ramanlal to

the Navrangpura Police Station in respect of the post-card and threatened to proceed against him unless Ramanlal satisfied him by payment

because it was not possible for accused No. 1 to do or forbear to do any such official act or to show favour or disfavour to Ramanlal in exercise

of his official functions in so far as the matter of the post-card was concerned. This argument runs counter to his submissions u/s 161(1) of the

Bombay Police Act 1951 which we shall later notice but the argument needs to be examined. Does Section 161 I.P.C. require that the officer

concerned must in fact be in a position to do or forbear to do the official act which he promised or threatened or to show the promised favour or

disfavour? The learned Assistant Government Pleader argues that Section 161 I.P.C. does not so require and he has invited our attention to a decision of the Bombay High Court in *Indur Davaldas Advani v. The State of Bombay* 53 Bom. L.R. 699. That was a case where one Sales Tax Officer had demanded a bribe from a businessman in order to assess his sales-tax returns in such a way as would throw a lesser burden of saletax on the businessman than the returns would disclose if carefully examined. It appears that the accused the Sales-Tax Officer in that else Was not really in charge of the ease of the complainant nor was he in a position to do any favour to him and it was contended before the High Court that in these circumstances Section 161 of the I.P.C. was not attracted. In negating the contention Bavdekar J. who spoke for the Court observed as under:

The section (Section 161) does not say anything about official act being within the power of the public servant concerned. Nor does it say anything about it being within the power of the public servant concerned to show favour disfavour to any person in the exercise of his official function. It is true that the section does not penalise the public servant in obtaining any gratification other than legal remuneration in all eases. The section would have application only when gratification is taken a motive or reward for doing the things mentioned above But even though this would exclude the ease in which money is accepted for example, in a private capacity or for doing something which is entirely unconnected with the official duties of the taker we do not think that there is anything in the section which requires the State to prove that the act which was committed was within the power of the public servant concerned. The words as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official function may constitute the ingredient which English lawyers call mens rea. But these words in the first instance do not postulate a state of mind in the public servant that he was going to do the promised official act or he was going to show the promised official favour.... It would appear therefore that a state of mind to do anything for the giver of the bribe would not render his act innocuous.

Therefore all that was necessary was that the bribe taker was acting in his official capacity and not in a purely private capacity unconnected with his

official functions and that he made a representation that he was in a position to do or forbear from doing the alleged official act or that it was within

this power or within his official functions to show the alleged favour or disfavour. If these conditions are satisfied Section 161 1. P.C. would be

attracted. Those conditions are satisfied in this case. Accused No. 1 was as we shall later point out entitled as a police officer in charge of the

police station to inquire into the matter of the post-card which had been handed over to him apparently in his capacity as a police officer and he

was entitled to take action as a police officer in respect of that postcard in order to prevent the repetition of such acts on behalf of Ramanlal. It

may be that his duties and powers as a police officer in respect of that post-card did not in fact go so far as to do the promised favour or to do the

threatened harm to Ramanlal but if even on an untrue representation made by him as to what he can and would do Ramanlal believing it and in

order to avoid the consequences that may fall on him promises to pay him the money and pays the necessary ingredients of the section would be

fulfilled. Mr. Shelat submitted that the Bombay case was not rightly decided and in support of that argument he relied on the Privy Council decision

in AIR 1948 156 (Privy Council) . There the question was whether sanction of the Central Government was necessary in respect of certain

offences for which an army man was being proceeded against by the Court-Martial. It was held that Section 270(1) of the Government of India

Act which required sanction in respect of civil or criminal proceedings was not attracted in respect of proceedings before the Court-Martial but

even on the assumption that it was attracted in so far as that section laid down the requirement of sanction for civil and criminal proceedings

instituted against any person in respect of any act done or purporting to be done in the execution of his duty the requirement so laid down was not

satisfied in that case because the act in respect of which the appellant was proceeded against was an act of criminal misappropriation of

Government money. The Privy Council relied on an earlier decision of that Court in AIR 1948 128 (Privy Council) where the Privy Council had

held that:

A public servant can only be said to act or to purport to act in the discharge of his official duty if his act is such as to lie within the scope of his

official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe though the judgment which he delivers may be such an

act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining,

though the examination itself be such an act. The test may well be whether the public servant if challenged can reasonably claim that what he does

he does in virtue of his office.

These observations may have relevance in considering another contention urged on behalf of the appellants viz. the contention that the prosecution

is time barred u/s 161 of the Bombay Police Act but it is not clear how they are relevant for considering the applicability of Section 161 I.P.C.

What the Privy Council was construing in the decision was the language of Section 270(1) of the Act and to some extent the language of Section

197 of the Code of Criminal Procedure. It was not considering the language of Section 161 of the Indian Penal Code. The contention that Section

161 I.P.C. is not attracted in this case cannot therefore be sustained.

28. That takes us to the last legal contention urged on behalf of the appellants and that contention is that the prosecution in this case is barred under

Sub-section (1) of Section 161 of the Bombay Police Act 1951 That subsection reads as under:

In any case of alleged offences by the Commissioner a Magistrate Police Officer or other person or of a wrong alleged to have been done by such

Commissioner Magistrate Police Officer or other person by any act done under colour or in excess of any duty or authority as aforesaid, or

wherein it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid the prosecution or suit shall not

be entertained or shall be dismissed if instituted more than six months after the date of the act complained of.

Under this sub-section therefore the period of six months is applicable in respect of the prosecution for offences by any act done under colour or in

excess of any such duty or authority as aforesaid. The expression any such duty or authority as aforesaid has reference to Section 159 which

provides as under:

No Magistrate or Police Officer shall be liable to penalty or to payment of damages on account of an act done in good faith in pursuance or

intended pursuance of any duty imposed or any authority conferred on him by any provision of this Act or any other law for the time being in force

or any rule order or direction made or even therein.

Therefore to attract Section 161(1) the offence must be under colour or in excess of duty imposed or authority conferred on the officer by

provisions of this Act meaning the Bombay Police Act or any other law for the time being in force or any rule order or direction made thereunder.

Now the act done which constitutes the offence in the present case is the demand for and acceptance of a bribe from Ramanlal a member of the

public for agreeing not to pursue the complaint made against him. It is with reference to this act that we have to determine whether it is done under

colour or in excess of such duty or authority as is set out in Section 159. The argument is that the act was under colour of duty imposed by the

provisions of the Bombay Police Act and also by the provisions of the Indian Penal Code and Criminal Procedure Code. Whether or not a

particular act is under colour of duty is a question of fact and this position is conceded by Mr. Shelat. It is therefore not necessary to refer to

authorities on that point. We have therefore to determine as a fact what was the relation of the act to the duty or in what way it was under colour of

that duty that the act was committed. But before we do so it would be better to be clear about the meaning of the expression under colour of duty

and about the scope and object of Section 161 which gives protection to an act under colour of the duty.

29. There are three sections dealing with the protection of a police Officer against civil and criminal proceedings. Section 159 which we have

earlier quoted protects him from the liability to penalty or to payment of damages on account of an act done in good faith in pursuance or intended

pursuance of any duty imposed by or under the law mentioned therein. Section 160 protects him from the liability or payment of any damages for

giving effect in good faith to any such order or direction issued with apparent authority by the State Government or by other competent authority.

Sub-section (1) of Section 161 has been read. It protects him from prosecution after the time limit specified therein and the protection is with

respect to the prosecution in respect of the offences falling within the terms of that section. Sub-section (2) gives a similar protection in respect of

civil proceedings arising out of such acts as have been mentioned in Sub-section (1). Reading these sections together it would appear that the

protection given to the public servant concerned here the police officer has reference to the discharge of his functions as a public servant. The

functions of which these sections speak are functions arising out of any duty imposed by or any authority conferred upon him by the provisions of

this Act and any other law rule or direction made in that regard that is to say legal functions of an obligatory nature. This is the broad scope and the

object underlying the protection to the public servant under these sections. Now in the light of this position we may turn to the precise content of

the protection given by Sub-section (1) of Section 161 of the Bombay Police Act in so far as that protection relates to an act done under colour of

duty that being the protection sought on behalf of the appellants in this case. Now an act can be said to be under colour of duty if there is some

reasonable connection between the act and the duty. This is plain for it is difficult to see how an act can be under the colour of duty if it is

altogether unconnected with the duty, game connection must be there if the expression is to have any meaning and that connection must be reason,

able if the legislative intent as disclosed by the scope and the object of the section is borne in mind. Whether in a particular case this minimum

requirement is sufficient to invite the protection afforded by Sub-section (1) of Section 161 will depend upon the facts of that case but at least the

existence of such a connection is implied in the expression "under colour of.

30. It was argued by Mr. Shelat that for an act to be under colour of duty no such reasonable connection is necessary and all that is necessary is

that the officer must on holding one of the offices set out in that subsection. In the present case the office is of a Police officer and while holding that

office and purporting to act as such officer if he does any other act that act will according to him get the protection of Section 161(1). In support of

that argument he relied on the definition of the expression colour of office in Whartons Law Lexicon Fourteenth Edition. There the expression

colour of office has been defined as under:

When an act is unjustly done by the countenance of an office being grounded upon corruption to which the office is as a shadow and colour.

Under this definition if an act is to be under colour of office then that act though

unjustly done has to be by the countenance of the office. Mr.

Shelat accepts the position so far and states that in this case such an act was the tearing of the post-card which destroyed the evidence of the

complainants alleged criminal behaviour in making an imputation in respect of Madhukanta in that post-card. His argument however is that the

definition also covers the further act of demand and acceptance of a bribe because he argues that act would fall under the expression being

grounded on corruption and would under the definition be an act to which the office is a shadow and colour. We are unable to accept Mr. Shelat's

reading of the definition and particularly of the expression being grounded on corruption. That expression has reference to the motivating force

behind the unjust act. It is the unjust act done by the countenance of office which must be one to which the office is as shadow or colour. The

definition in Strouds Judicial Dictionary Third Edition may in this connection be referred to. That definition reads as under:

Colour of office"" is always taken in the worst part and signifies an act evil done by the countenance of an office and it bears a dissembling face of

the right of the office whereas the office is but a veil to the falsehood and the thing is grounded upon vice and the Office is as a shadow to it.

Therefore to be under colour of office the act must be by the countenance of office that is to say must seek the cover of the duties and rights of the

office though the cover may be a false one. In short even according to these definitions to claim an act to be under colour of duty there must be a

reasonable connection between the act and the duty.

31. Now turning to the authorities in which the expression colour of duty has been construed we may first refer to the decision of the Full Bench of

the Bombay High Court in *Narayan Hari Tarkhande v. Yeshwant Raoji Naik Dattatraya Ramchandra v. Annappa Pandurang Kokatnur* 30 Bom.

L.R. 1018 to which attention has been invited by Mr. Nanavati for the State. There were two References in this case made to the High Court one

a Criminal Reference and the other a Civil Reference. The section that the High Court was construing was Section 80 of the Bombay District

Police Act 1890 Sub-section (1) of that section was substantially in terms similar to Section 159 of the Bombay Police Act 1951 Sub-section (2)

of that section corresponds to Section 160 of the Bombay Police Act and Sub-

sections (3) and (4) of that section correspond to Sub-sections (1) and (2) of Section 161 of the Bombay Police Act. In the Criminal Reference the accused a police sub-Inspector deliberately recorded incorrect statements of two witnesses during the course of investigation and on the basis of those statements filed a summary in respect of the case. He was prosecuted under Sections 167 and 218 of the Indian Penal Code. The prosecution was launched more than six months after the date of the complaint. The period provided u/s 80 of the Bombay District Police Act 1890 had thus passed and the contention urged on behalf of the accused was that the prosecution was barred u/s 80 of the Bombay District Police Act. In the Civil Reference the police officer concerned viz. an Inspector of Police had called a person for questioning in the course of investigating a cognizable offence. The person so questioned did not disclose any information. The Police Officer then pulled his moustaches and beat him. In respect of this assault that person filed a suit for damages and the question again was whether the suit having been filed beyond the period laid down under Sub-section (4) of Section 80 of the Bombay District Police Act 1890 was barred by limitation. The Full Bench answered the Criminal Reference in favour of the police officer and the Civil Reference against him. Madgavkar J. in his judgment stated:

Clearly not every act because it is done by a Magistrate or Police officer is thereby necessarily an act having any relation to his duty or authority and whether prima facie the act alleged was so done is a question of the facts in each case which ordinarily should not be difficult of answer.

Therefore the test laid down was that there must be some relation between the act and the duty or authority under which an act is alleged to be done. On that basis it was held that in recording false statements while performing the duty of taking down statements the police officer was doing an act under colour of duty and was entitled to the protection of Section 80(3) of the Bombay District Police Act 1890. But when the police officer went beyond even the dereliction of that duty and did an act wholly unconnected with it and assaulted the person who was being questioned he was not entitled to such protection. Madgavkar J. said:

In the second case however while the acts of the Sub-Inspector from the summoning of the plaintiff and questioning him also fell under colour of his

duty or authority by no process of reasoning can the alleged acts of battery and assault be said to fall under such colour or in excess of such duty or authority.

Mirza J. who was one of the other Judges adopted a similar test. He stated:

For a thing to be the colour of another there must be some likeness or semblance between the two. There is no likeness or semblance between committing assault and battery on the one hand and obtaining intelligence on the other.

His Lordship has also observed:

The police officers may have believed that if they beat the plaintiff he would be induced to give them the information they wanted with reference to

the cognizable offence they were investigating. That in itself would not make the dealing of blows by them to the plaintiff a part of their duty or

authority under the act or something akin to but in excess of such duty or authority.

The next case that may be referred to is the Supreme Court decision in Virupaxappa Veerappa Kadampur Vs. The State of Mysore, on which

Mr. Shelat has placed reliance. In that case a Head Constable actually caught one offender carrying a bundle containing 15 packets of Ganja.

These 15 packets were seized by him and a seizure panchnama was prepared. In that panchnama which was prepared on 23rd February 1954 the

number of packets seized was mentioned as 9. On the next day the Head Constable prepared another panchnama in substitution of the one

already prepared and in that panchnama again the number of packets seized was shown as 9; but as regards the offender it was stated that he

threw the bundle and ran away. The Head Constable was prosecuted for an offence u/s 218 of the Indian Penal Code. The prosecution being

more than six months after the date of the offence a bar of limitation u/s 161(1) of the Bombay Police Act was pleaded. Their Lordships of the

Supreme Court upheld the contention that the Head Constable was entitled to the benefit of that sub-section. After referring to the definitions in

Whartons Lexicon 14th Editions and in Strouds Judicial Dictionary 3 Edition to which we have already referred Their Lordships went on to say:

It appears to us that the words under colour of duty have been used in Section 161(1) to include acts done under the cloak of duty even though

not by virtue of the duty. When he (the police officer prepares a false Panchnama or a false report he is clearly using the existence of his legal duty

as a clerk for his corrupt action or to use the words in Strouds Dictionary as a veil to his falsehood. The acts thus done an dereliction of his duty

must be held to have been done under colour of the duty.

We do not see how the fact that the seizure was made on 23rd and the false report was prepared on the 24th affects this position. Whether the

false report was prepared on the 23rd or 24th the fact still remains that he prepared this under cover of his duty to prepare a correct panchnama

and a correct report and there is no escape from the conclusion that the acts by which the offence u/s 218 of the Indian Penal Code was alleged to

have been committed by the appellant were done by him under colour of a duty laid down him by the Bombay Police Act.

Therefore according to this decision there must exist some legal duty and the act complained of should be such as would fall or could be claimed to

fall under the cover of that duty. If the officer is clearly using the existence of a legal duty as a cloak for his corrupt action the act though in

dereliction of duty would be under the colour of duty. There must however exist a legal duty to do an act and the act which was done must be

referable to such duty though it may be in violation of it. In the Supreme Court case there was a duty to make a panchnama and a report and with

reference to that duty a false panchnama and a false report was made. The Supreme Court decision therefore does not support the contention

urged by Mr. Shelat that a reasonable connection between the act which constitutes the offence and the duty is not necessary. This becomes

further clear from a later decision of the Supreme Court in The State of Andhra Pradesh Vs. N. Venugopal and Others, . There a person alleged

to be a thief was brought to the police station and three police officers are alleged to have assaulted him and caused him injuries and thereafter he

died. The officers were prosecuted for offences under Sections 348 331 and 201 read with Section 109 of the Indian Penal Code. It was

contended by the defence that the prosecution not having been launched within the period provided for by Section 53 of the Madras District Police

Act 1859 was barred by limitation. That section provided as under:

All acts and prosecutions against any person which may be lawfully brought for

anything done or intended to be done under the provisions of this

Act or under the provisions of any other law for the time being in force conferring powers on the police shall be commenced within three months

after the act complained of shall have been committed and not otherwise.

The Madras High Court took the view that the accused were entitled to the benefit of that section and they were accordingly acquitted. The

Supreme Court said that the High Court was in error. The Court was called upon to construe the expression anything done or intended to be done

under the provisions of this Act or under the provisions of any other law for the time being in force conferring powers on the police and the Court

said:

An act is not under a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in

the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done under a

provision of law one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation

the act cannot be said to be done under the particular provision of law.

Mr. Shelat argues that the language of Section 53 of the Madras District Police Act 1859 is different from the language of Section 161(1) of the

Bombay Police Act. That is true but it will be apparent from the further observations of the Supreme Court to which we shall refer presently that

even in respect of the provisions of Section 161(1) of the Bombay Police Act their Lordships considered that their earlier decision in *Virupaxappa*

Veerappa Kadampur Vs. The State of Mysore, had laid down the test of reasonable relationship between the duty and the act for they go on to

say in *Venugopals* case that:

This aspect of the matter was emphasized by this court recently in *Virupaxappa Veerappa Kadampur Vs. The State of Mysore*, when examining

the language of a similar provision in the Bombay Police Act. ""These principles apply equally to the decision of the question whether the act

complained of was intended to be done under the provisions of the Police Act or some other law conferring powers on the Police. When we apply

these principles to the facts of the present case we look in vain for any provision of law-whether under the Police Act or under some other law-

under which the acts complained of viz. beating a person suspected of a crime or confining him or sending him away in an injured condition can be

said to have any relation.

Therefore judicial decisions are consistent with the conclusion earlier reached from a consideration of the scope and object underlying the catena of

sections of the Bombay Police Act and of the definition of the expression under colour of duty. The conclusion is that for an act to be under colour

of the duty there must be some reasonable connection between the act and the duty.

32. Now applying these principles to the facts of the present case the first point to consider is what was the duty of the appellant No. 1 Dave in

this case. Mr. Shelat has argued that having regard to the imputations with reference to Madhukanta contained in the post-card written by

Ramanlal to Madhukanta Dave as a police officer in charge of the police station had two duties to perform-one u/s 155 Criminal Procedure Code

and the other u/s 64(b) of the Bombay Police Act 1951 Information relating to this offence which was not a cognizable offence was received by

Dave as an officer in charge of the police station and it was his duty u/s 155 of the Criminal Procedure Code to enter the substance of the

information in a book kept for the purpose. u/s 64(b) of the Bombay Police Act it was his duty as a police officer to prevent the commission of

cognizable and within his view of non-cognizable offences. Mr. Shelat states that in calling Ramanlal to the Police Station with a view to prevent

commission of similar offences by Ramanlal the accused Dave was discharging his duty under this provision also. We may accept that submission.

His next argument is that the dereliction of that duty lay in the fact that he did not carry out what he was required to carry out u/s 155 of the

Criminal Procedure Code and did not do anything which was expected of him u/s 64(b) of the Bombay Police Act but instead he decided not to

do anything further in the matter and to destroy the very evidence on the basis of which he was required to take further action u/s 155 of the

Criminal Procedure Code or Section 64(b) of the Bombay Police Act. This dereliction of duty he argues was a wrongful act. Upto this stage it is

not necessary to find any fault with this argument for it is not that act which is an offence in this case. The offence here is the demand and

acceptance of money to induce him to do that wrongful act. The demand and acceptance of money may be a reason for doing the wrongful act

which wrongful act was under colour of the duty but this demand and acceptance cannot be said to be under colour of the duty. The question to be

asked is-to use the language of the Supreme Court in Virupaxappas case-was he clearly using the existence of his legal duty as a cloak for his

further corrupt act namely the demand and acceptance of a bribe? The answer must be in the negative.

33. Mr. Shelat argues that the case of demand and acceptance of a bribe was not specifically considered in either of these cases and if it had been

considered such an act would have been held covered by the principles enunciated by the Supreme Court in Virupaxappas case. In support of this

argument he relies on the decision of a Single Judge of the Bombay High Court in *Atmaram Laxman v. The State of Maharashtra* 67 Bom.

L.R.p.25. There the accused were police officers and were carrying on investigation in connection with a suspected murder case and during the

course of performing their duties in the investigation they questioned the Suspects for that purpose and in order to elicit information they wrongfully

detained these persons and assaulted them for the purpose of extorting statements of a confessional nature in the course of that investigation. They

were prosecuted for offences under Sections 330 342 343 348 read with Section 34 Indian Penal Code. The prosecution having been filed more

than six months after the commission of offence it was urged before the High Court in appeal against their conviction that they could not be

proceeded against in view of the provisions of Section 161(1) of the Bombay Police Act. His Lordship Justice Paranjpe upheld that contention

holding that the act constituting the offence was under colour of duty. In support of that view he relied on two earlier unreported decisions of his

viz. *Shriram v. State* and *Narhari v. The State* in which on a construction of the Supreme Court decision in Virupaxappas case he had taken the

view that the acceptance of a bribe by a public servant to induce him not to do his duty was an act done under colour of duty. The reasoning

underlying that view appears in the following passage at page 36 extracted from the Courts unreported decision in *Narhari v. The State*:

The result that was to be achieved in the Supreme Court case was also to lessen the gravity of the offence and the object of the police officer in the

instant case was also a similar one giving either complete relief to the accused or at least a partial relief. The facts of this case therefore would

certainly bring it within the ratio of the decision of the Supreme Court in *Virupaxappa v. State of Mysore*.

34. With respect there is in our view a fallacy in this reasoning. Section 161(1) of the Bombay Police Act is concerned with an act and not with an

object or motive underlying it. The object or motive may be the reason or motivating force behind a just or an unjust act but it must be the act itself

which has to be connected with the duty and it is that act that has to be considered and not the motive behind it. It may be that on the facts of the

case in *Atmaram Laxman v. The State of Maharashtra* (Supra) the decision in that case was not incorrect though it is doubtful how it can be

reconciled with the decision of the Full Bench ruling in civil reference in 30 Bom. L.R. 1018. However the point does not need to be pursued for

the earlier decisions of Paranjpe J. holding that acceptance of bribe by a police officer would be under colour of the duty have not been approved by

a Division Bench decision of the Bombay High Court reported in *Gorakh Tulji Mahal v. The State of Maharashtra* 66 Bom. L.R. 799. In that case

the accused a police constable was prosecuted u/s 161 of the Indian Penal Code Section 5(1)(d) read with Section 5(2) of the Prevention of

Corruption Act on a charge of accepting illegal gratification as a motive for releasing a person whom he had arrested on suspicion. The prosecution

was instituted more than six months after the bribe was alleged to have been taken and the question that arose for consideration before Their

Lords was whether the act was under colour of duty and the accused was entitled to the benefit of the period of limitation provided for by

Section 161 of the Bombay Police Act. The matter came before a Single Judge whose attention was drawn to the previous decisions of Paranjpe

J. and in particular the decision in *Narhari v. The State*. The learned single Judge found some difficulty in following that decision and therefore the

matter was placed before the Division Bench. The Division Bench disapproved of the decision in *Narharrao Madavrao Patil v. The State*. Justice

Chandrachud who spoke for the Bench examined the language of the section and having considered various rulings on the point set out what that

Court considered to be the correct position of law as under:

In order that an act could be said to be done under colour of office or colour of duty it would at least be necessary that there should be some

relationship between the act complained of and the duties appertaining to the office. The existence of such a nexus is indispensable for proof that

the act is done under colour of office though in a conceivable class of cases even such a nexus may not be adequate in the light of other facts for

proving that the act was done under colour of office...

Acceptance of bribe cannot in our opinion be described as an act done under colour of office or under colour of duty because it is wholly

unconnected with the rights and duties attaching to the office. It is an act which is entirely extraneous to the nature of duties which the office

imposes on the incumbents. The only connection if at all between the office and the acceptance of bribe by the officer is that the office affords an

opportunity to the officer to demand and accept the bribe. That however is not a relevant consideration because what law requires is not that the

act must be done by virtue of office but that it must be done under colour of office.

Later on His Lordship has made the following observation:

A public servant who accepts an illegal gratification cannot either in justification or in explanation point to the rights and duties of his office if he is

challenged in the act of taking the bribe that is to say he cannot ever use the office as a veil to his falsihood though of course he exploits his office to

extort the bribe.

With respect we agree with these observations. In our opinion therefore the contention that the prosecution is barred by Section 161(1) of the

Bombay Police Act cannot be sustained.

35. In the result therefore the appeal is dismissed. Mr. Shelat pleaded for a reduction of the sentences on the ground that these sentences are

excessive. We are unable to agree with this submission. If Police officers who are expected to enforce the laws of the land themselves commit

breaches of those laws and in addition take bribes for commission of those breaches they must be adequately punished. In our opinion the

sentences are adequate and cannot be said to be harsh. The convictions and sentences are confirmed. The accused to surrender to their bail.