

(2013) 04 GUJ CK 0118

In the Gujarat High Court

Case No : Special Civil Application No. 17602 of 2011

Jaswant K. Gandhi

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2014) 1 GLR 19 : (2014) LabIC 69

Hon'ble Judges : R.R. Tripathi, J;R.D. Kothari, J

Bench : Division Bench

Advocate : Amit M. Panchal and Ms. Shivani Rajpurohit for P.M. Lakhani, for the Appellant; Harsheel Shukla, A.G.P. for Respondent No. 1 and Shalin Mehta assisted by Hemang M. Shah, for the Respondent

Judgement

R.R. Tripathi, J.—The Hon''ble the Apex Court in the matter of Ishwar Chand Jain Vs. High Court of Punjab and Haryana and Another, had an occasion to observe in Para 14 as under:

14. Under the Constitution the High Court has control over the subordinate Judiciary. While exercising that control it is under a constitutional obligation to guide and protect, judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil Courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field, the subordinate Judiciary will not be able to administer justice in an independent and honest manner. It is, therefore, imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case, we have no doubt in our mind that

the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Sh. Mehalawat and others were motivated which did not deserve any credit. Even the vigilance Judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments.

1.1. The Hon"ble the Apex Court had time and again made similar observations so as to see that an atmosphere is created in which the Judges of the Courts below are able to discharge their functions in an independent manner.

1.2. It will be appropriate at this very juncture to refer to the latest decision of the Hon"ble the Apex Court in the matter of *Nirmala J. Jhala v. State of Gujarat*, in Civil Appeal No. 2668 of 2005 decided on 18-3-2013 (reported in *Nirmala J. Jhala Vs. State of Gujarat and Another*, , wherein the Hon"ble the Apex Court reiterated the same thing with due emphasis on various aspects. The Hon"ble the Apex Court quoted the observations made by it in the case of *Yoginath D. Bagde Vs. State of Maharashtra and Another*, The same is reproduced for ready reference:

The Presiding Officers of the Court cannot act as fugitives. They have also to face sometimes quarrelsome, unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs.

A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure - contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death-knell of the institution. "Judge-bashing" has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent Judiciary, to dispense justice without fear and favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. (Vide: *L.D. Jaikwal Vs. State of U.P.*, *K.P. Tiwari Vs. State of Madhya Pradesh*, *Haridas Das Vs. Smt. Usha Rani Banik and Others* and *Apu Banik*, and In Re: *In Re: Ajay Kumar Pandey, Advocate*,

The subordinate judiciary works in the supervision of the High Court and it faces problems at the hands of unscrupulous litigants and lawyers, and for them "Judge-bashing" becomes a favourable pastime. In case the High Court does not protect the honest judicial officers, the survivor of the judicial system would itself be in danger.

In the case on hand, a Judicial Officer, having put in about 19 years long service, came to be dismissed from service by Order/Notification dated 10-10-2011, a copy of which is produced at Annexure-F, Page No. 251. This order was passed as the authority (High Court), after having held a preliminary inquiry, deemed a

proper to hold a regular inquiry and the Inquiry Officer, after holding a detailed inquiry, was pleased to record in the concluding part of his inquiry report as under:

77. In sum up, the charge Nos. 1 to 6 levelled against the delinquent are proved without any doubt, and therefore, the delinquent has indulged himself in corrupt practice and he is guilty of dereliction of his duty and he has acted with mala fide intention and has committed misconduct. Furthermore, the delinquent has acted in a manner unbecoming of a Judicial Officer, and therefore, the delinquent is amount to acts of grave misconduct and tantamount to conduct unbecoming of a Judicial Officer, therefore, necessary action may kindly be taken against the delinquent.

1.3. It is thereafter that the petitioner was served with a show-cause notice, to which he filed a detailed reply. After the said reply, he also filed written arguments, but at the end, the result was order of dismissal dated 10-10-2011.

2. To take stock of the facts of the case, it will be necessary to have a glance over the judicial career of the petitioner.

2.1. The petitioner was appointed as Civil Judge (Junior Division) and Judicial Magistrate, First Class on 23-8-1991. He was promoted to the post of Civil Judge (Senior Division) on 7-7-2000 and was further promoted as Assistant Judge on 11-11-2002, and lastly, he was promoted as Joint District Judge on 11-11-2003. He worked as such till he was dismissed from service by Order/Notification dated 10-10-2011.

2.2. The present misfortune of the petitioner started when a person, describing himself as Bhavesh Laxmidas Joshi, stating that he is resident of Madhapar, Dist. Kutch at Bhuj, made an application bearing dated 14-1-2009. It will be appropriate to note here that this person was summoned during the course of preliminary inquiry more than once and as is stated, at least thrice, but he never appeared before the authority. For ill-luck of the petitioner, during that very period, an anonymous letter in the name of, "Satya Mev Jayate" was received by the High Court and inspired by the contents of that anonymous letter and the complaint of Shri Bhavesh Laxmidas Joshi (whose whereabouts are not known till date), the authority decided to hold a preliminary inquiry. The preliminary inquiry was conducted. The Preamble of the preliminary inquiry reads as under:

The High Court of Gujarat has received two applications vide V.C. Nos. 42 and 64 of 2009 respectively against Mr. J.K. Gandhi, Presiding Officer, Fast Track Court No. 1, District Kachchh at Bhuj.

In V.C. No. 42 of 2009, it is alleged that on 8-12-2009, learned Judge has released accused of an offence punishable under Sec. 306 of I.P.C. without considering the seriousness of the offence and after two days, learned Judge has made a huge alteration in the order just to save himself. Learned Judge indulging in corrupt practice at large. The applicant has requested to examine the tiles.

There are some allegations against Public Prosecutor also. Copy of application annexed herewith at Mark "A".

In V.C. No. 64 of 2009, it is alleged that, the learned Judge is conducting only A.C.B. matters and in all cases, whether evidence available or not demands huge amount to acquit the accused. The learned Judge makes deal with the Advocate Mr. K.T. Chaudhary, S.T. Patel, Hemashi Chaudhary and Sardar Vakil. The deal has been made between Rs. 2 to 5 lacs by taking into consideration category of accused and learned Judge threat to convict the accused even in case where conviction not possible, if amount not paid to him. Copy of application annexed herewith at Mark "B".

In view of the above, the Preliminary Inquiry was ordered to be held against Mr. J.K. Gandhi, Presiding Officer, Fast Track Court. Hence, this inquiry.

2.3. Learned Senior Advocate Mr. Shalin Mehta for respondent No. 2-High Court made available for perusal report of the preliminary inquiry in response to a query raised by this Court. In the charge-sheet, it is mentioned that, "While you were working as Additional District Judge, as a Presiding Officer of Fast Track Court No. 1, Kachchh at Bhuj from 19-6-2008 to 26-2-2009 and as a Presiding Officer, Fast Track Court, Jamnagar from 12-12-2003 to 7-5-2005 it was found that:

2.4. Learned Senior Advocate for the High Court was asked to apprise the Court as to why the period from 12-12-2003 to 7-5-2005, while the petitioner was at Jamnagar was also taken into consideration. In the applications referred to hereinabove, the complaint was only about his working at Bhuj, and therefore, his period at Bhuj from 19-6-2008 to 26-2-2009 was rightly taken into consideration.

2.5. Learned Senior Advocate for the High Court submitted that it appears that while the matter was being investigated at the preliminary inquiry stage, it was felt by the Registrar (Vigilance) that his working at other stations, but dealing with A.C.B. cases may also be looked into, and therefore, the said period is taken into consideration. At this stage, it will be appropriate to mention that nine cases decided by him while the petitioner was working at Jamnagar are set out in the charge-sheet.

2.6. The charge-sheet then starts with Charge No. I. It will be appropriate to mention here that charge-sheet runs into as many as twenty pages. Charge No. I reads as under:

You were interested in conducting only the special cases filed under the provisions of Prevention of Corruption Act. You were, after accepting bribe from the accused who were involved in corruption cases and acquitting them. Though, in so many cases there was ample evidence on record, you had, by overlooking the settled principles of law and also by not properly appreciating the evidence adduced by the prosecution, acquitted the accused after accepting bribe from

them. You were making the deal of Rs. 2 to 3 lacs for acquitting the accused and if the amount of the deal is not paid, you were threatening the accused to convict them and thereby, you were compelling the accused involved in A.C.B. cases to give bribe. You had conducted all the A.C.B. matters with an oblique motive and acquitted the accused involved in an economic offence for a consideration other than judicial one, and thereby, you were indulged in corrupt practice. Mr. K.T. Chaudhary, Mr. S.T. Patel, Ms. Hemashi Chaudhary and Mr. Sardar Vakil were your favourite Advocates. You were indulged in corrupt practice in collusion with the said Advocates.

When you were working as Presiding Officer, Fast Track Court at Jamnagar, you had conducted the following 9 (nine) Spl. A.C.B. cases and all the accused of 8 cases were acquitted by you for a consideration other than judicial one.

When you were working as Presiding Officer, Fast Track Court at Bhuj you had conducted the following 5 (five) A.C.B. cases and you had acquitted all the accused involved in serious offence merely on technical ground and keeping aside all the settled principles of law which you were well aware.

2.7. It is thereafter that the table of five cases is set out, and thereafter, description about the method and manner in which the petitioner decided Special A.C.B. Case No. 5 of 1999 at Jamnagar is set out and after that, it is stated that:

The way in which, you have delivered judgment in Spl. A.C.B. Case No. 5 of 1999 at Jamnagar shows that you being a Senior Judge, are fully aware of the following principles laid down by the Higher Courts:

(i) that the premise to be established on the facts for drawing the presumption is that there was payment or acceptance or gratifications and that once the said premise is established, the inference to be drawn is that the said gratification was accepted as motive or reward for doing any official act.

(ii) that before drawing presumption there must be proof of acceptance of gratification by the accused.

(iii) that any error or irregularity in any sanction for the prosecution shall not be a ground for reversing an order of conviction unless in the opinion of the Court there is failure of Justice has in fact been occasioned.

(iv) that acquaintance with police by itself would not destroy a main independent outlook as long as they are not dependent on the police for their living or liberty or for any other matter.

(v) that the evidence of trap officer can be relied on even without corroboration.

(vi) that Court is not entitled to reject the evidence of witnesses merely because they are Government servant.

(vii) that the Court should not attach much importance to minor discrepancies, which do not shake the basic version of the prosecution and should ignore the

errors due to lapse of memory of the witness.

(viii) that it is a matter of appreciation of evidence and there cannot be any hard and fast rule or any presidential guidance.

(ix) that recovery memo signed by the accused while in police custody amounts to a confession by the accused, however, it can be considered to test the regularity and propriety of the recovery proceedings.

(x) that corroboration need not be direct evidence that the accused received bribe. It is sufficient even though, it is circumstantial evidence connecting him with the crime.

(xi) that it cannot be expected from a witness to reproduce the incident just like a video cassette.

(xii) that if the selection of the panch witness is made by immediate superior of the panch, that fact itself does not create doubt about selection of this panch witness and also that P.I. himself directly cannot order panch witness to accompany him during the office hours.

(xiii) that while appreciating oral evidence, the Court has not only to read particular part of the oral evidence but has to peruse the whole oral evidence.

(xiv) that complaint is never supposed to be Encyclopedia document containing minute to minute details of A to Z prosecution case. It is ultimately meant for the purpose of the putting the criminal law in motion.

(xv) that presumption has provided under Sec. 20(1) of the Prevention of Corruption Act, 1988 is inevitable and the Court has no choice in the matter. This presumption is, of course, not conclusive but rebuttable.

2.8. The other charges are in the same nature and the main accusation is that the petitioner selected special cases filed under the provisions of the Prevention of Corruption Act for being tried and in those cases, he did not properly appreciate the evidence and he overlooked the settled principles of law and acquitted the accused after accepting bribe between Rs. 2 to Rs. 3 lacs and if the amount is not paid, the petitioner was threatening the accused to convict them and thus, the petitioner compelled the accused involved in A.C.B. cases to give bribe. Last but not the least, it is also stated that the petitioner conducted all the A.C.B. matters with oblique motive and acquitted the accused involved in economic offence for consideration other than judicial one.

2.9. What is required to be noticed from this charge is, (i) the petitioner was interested in conducting only the special cases filed under the provisions of the Prevention of Corruption Act, (ii) the petitioner was over-looking the settled principles of law, (iii) the petitioner was not properly appreciating the evidence, (iv) the petitioner was striking deal and was acquitting the accused after accepting the bribe, (v) if the amount of the deal was not paid, the petitioner was threatening the accused to convict them, (vi) the petitioner conducted

A.C.B. matters with oblique motive and acquitted the accused involved in an economic offence for a consideration other than the judicial one, (vii) this, the petitioner indulged in corrupt practice, and (viii) the petitioner was indulging in this corrupt practice in collusion with Advocates named in the charge-sheet, who are Mr. K.T. Chaudhary, Mr. S.T. Patel, Ms. Hemashi Chaudhary and Mr. Sardar Vakil.

2.10. At this juncture, it will be appropriate to mention that not a single witness is examined by the authority to bring home any of the charges aforesaid. The authority has not produced any documentary evidence (though some of the documents like diary of the Stenographer) are referred to. On perusal of the record, it is found that the report of the Inquiry Officer is running into as many as 167 pages. The reason for this volume seems possible because of the five cases decided by the petitioner at Bhuj are discussed in detail. (The cases decided at Jamnagar are though set out in the opening part of the report, are not discussed at all).

3. The Court has found the present case to be one of the poorly handled cases by the authorities right from the stage of framing of charge till the inquiry and even subsequent thereto. To illustrate, Charge No. 1 starts with opening phrase, "You were interested in conducting only the special cases filed under the provisions of Prevention of Corruption Act". Now, to show this, the authority ought to have relied upon the material that number of cases of various categories were available for the learned Judge to decide and from amongst those cases, he selected the special cases filed under the Prevention of Corruption Act and decided them. That is the only way the opening phrase can be read because it is specifically mentioned that the petitioner was "INTERESTED ONLY IN THE SPECIAL CASES FILED UNDER THE PROVISIONS OF PREVENTION OF CORRUPTION ACT". This premise falls to the ground. It ought to have been taken note of the fact that the petitioner filed his first reply to the charge-sheet on 9-10-2009, a copy of which is produced at Annexure-B, wherein the petitioner has mentioned number of cases decided by him category-wise within the period under consideration, i.e. 19-6-2008 to 26-2-2009. For ready perusal, the same is reproduced hereunder:

Criminal Work

Civil Work:

3.1. From the aforesaid details set out in the written statement, it ought to have been appreciated by the authority that the charge as it stood will not stand the test of scrutiny, and it ought to have been accordingly dealt with by the authority. But then, the matter proceeded, the Inquiry Officer submitted his report, which ultimately resulted into order of dismissal dated 10-10-2011.

3.2. In addition to what is stated by way of figures, one cannot lose sight of the fact that the opening part of Para 4 of the written statement reads as under:

(4) Regarding the statement made in the amputate of charge, I have to state that I was never interested only to conduct cases filed under the provisions of Prevention of Corruption Act. I being Additional Sessions Judge and Fast Track, I had no choice of work. I have to conduct the cases which are assigned to me or transferred to my Court.....

(Emphasis supplied)

3.3. The petitioner has also mentioned in the same Para that:

..... Meanwhile, Principal District Judge, Bhuj by his Confi. D.O. letter dated 29-9-2008 directed me to conduct ten years old cases pending in my Court.....

(Emphasis supplied)

3.4. At this stage, it will be appropriate to take note of the fact that the five A.C.B. Cases were all 14 year old, and therefore, the accusation of petitioner being interested in conducting only the special cases filed under the provisions of the Prevention of Corruption Act is totally baseless and glaring example of non-application of mind. There has to be a limit in the matter of non-application of mind, more particularly when the High Court is under a constitutional obligation to give not only protection, but is required to give guidance to the members of the subordinate Judiciary.

3.5. If we then proceed to examine Charge No. 1 against the petitioner, the same is vague. But, if one contests this finding about the charge being vague, one will have to agree that there are no specific allegations made in the said charge and whatever little specific allegation is made, no trouble was taken to prove it by examining any witness. It is a part of the charge that, "the petitioner is indulging in corrupt practice in collusion with the Advocates named therein". If that is so, the required material would have been number of cases decided by the petitioner of the same type, of other Advocates and of the Advocates named therein. That would be the concrete example of passing contradictory orders, one in favour of the Advocates named and the Advocates other than the one who are named. The authority has not taken trouble to undertake that exercise. Except bald allegations that the petitioner is indulging in corrupt practice in collusion with the Advocates named in the charge, no other effort/attempt/try is undertaken by the authority to prove that charge. Rest of the charge it too general in term, viz. you had by overlooking the settled principles of law and also by not properly appreciating the evidence adduced by the prosecution acquitted the accused after accepting bribe from them. If at all the authority was serious, the authority should have articulated a particular principle of law and then should have demonstrated that in the following facts, that principle was required to be followed and the same is not followed by the petitioner, and thus, by applying the principle of preponderance of probability, he is guilty of having indulged into corrupt practice. The Court is at pains to put it on record that the Inquiry Officer, who was otherwise suppose to undertake this exercise, has not taken that trouble. It is really surprising that in the inquiry report, he reproduced the entire

charge-sheet (which runs into 18 pages) and then he reproduced the entire statement of imputation (which runs into 18 pages) and at more than one places, the Inquiry Officer has observed that:

6. But it is surprising to note that Presenting Officer has very surprisingly lastly said that though the delinquent has not looked into the settled principle of law while appreciating evidence of panch witness, despite that he has not played corrupt practice. Such type of submission made by the Presenting Officer is also very surprising and unacceptable.

(Emphasis supplied)

3.6. Similarly, the Inquiry Officer has observed in Para 49 as under:

49. In respect of this allegation the Presenting Officer has argued that the delinquent has merely stated in his judgment that the panch witnesses are Government servant and they are giving their deposition according to the panchnama and if they not give deposition according to the panchnama and they declared hostile they would face departmental inquiry with that fear kept in their mind they give their deposition according to the panchnama and with that presumption the delinquent has totally set aside the evidence of the panch witness and it is clearly a dereliction of his duty. But the Presenting Officer has not believed that the delinquent is indulged in corrupt practice and acted as misconduct.

(Emphasis supplied)

3.7. The aforesaid observations of the Inquiry Officer are suggestive of the fact that the Inquiry Officer wanted the Presenting Officer to make submissions of his choice. This Court is of the opinion that these observations do go to show that the Inquiry Officer was not up to the mark in discharging his duty as Inquiry Officer. It is a pious duty of the Inquiry Officer to find out truth. But, the aforesaid observations are suggestive of the fact that the Inquiry Officer wanted by any means to record guilt of the petitioner and when the Presenting Officer made submissions on the line the aforesaid, he was disturbed, and therefore, he has to say that, "Such type of submission made by the Presenting Officer is also very surprising and unacceptable".

3.8. This Court is conscious of the fact that the Court should not go into commenting upon the conduct of the Inquiry Officer, but then, the Court is not able to restrain itself because for the good luck of the petitioner, it so happened that out of the five cases which he decided while he was at Bhuj, in three cases, the Division Bench of this Court confirmed the judgment and order of the petitioner, in one case, appeal is stated to be pending even as on date and in another case, as per the information available to the petitioner, the appeal is not preferred by the State.

3.9. Though, the judgments rendered by the petitioner at Jamnagar are not discussed at all, but then the available information shows that in four cases, out

of nine, the State did not deem it proper to prefer appeal, whereas in five cases, the appeal preferred by the State is pending as on date.

3.10. What follows is important. Before the Inquiry Officer, the petitioner brought this fact to the notice of the Inquiry Officer that one of his judgments, which is the subject-matter of inquiry, is confirmed by the Division Bench of this Court. The Inquiry Officer, after making the aforesaid observations, i.e. "Such type of submission made by the Presenting Officer is also very surprising and unacceptable", deals with the aforesaid submission of the petitioner in Para 7. For ready perusal, Para 7 is reproduced hereinbelow:

7. On the other hand, the delinquent has submitted his written arguments vide Exh. 51 and submitted his defence in respect of the charge levelled against him regarding the A.C.B. Cases. He has categorically submitted that in the A.C.B. Case No. 23 of 1995, acquittal appeal preferred by the State is dismissed on merits by the Hon"ble Division Bench of Gujarat High Court. Taking in consideration entire evidence on records, defence of the accused and relying on pronouncement of the Hon"ble Apex Court, he has given his findings on merits and while upholding his acquittal order judgment the Hon"ble Division Bench has observed in Para 10 that "We have gone through the judgment and order passed by the trial Court. We have also perused the oral as well as documentary evidence led by the trial Court and also considered the submissions made by learned A.P.P. for the Appellant/State. The trial Court has clearly recorded a finding that Police Inspector, Solanki is not a witness to demand or acceptance of bribe amount and his conduct is suspicious. It is also observed by the trial Court that no ultra violate lamp test was carried out at the place where bribe amount was demanded and accepted. Not only that the person, who was driving the vehicle and from whom bribe amount is stated to have been accepted has not supported the case of the prosecution. The prosecution has chosen not to examine the witnesses, who are stand (sic. - stated) to be eye-witness of demand and acceptance of amount. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond the reasonable doubt". Hon"ble Division Bench of Hon"ble High Court has well discussed evidence and has re-appreciated evidence of prosecution.

3.11. This Court is not able to accept the aforesaid finding because it did not except from an officer of the rank of Inquiry Officer to have deal with this submission in the manner he did in the next Para. In the next Para, the Inquiry Officer has dealt with the aforesaid submission of the petitioner in the following words:

8. So, the delinquent relied upon the judgment given by the Hon"ble High Court in appeal which has been filed against Spl. A.C.B. Case No. 23 of 1995 and the delinquent has relied that the Appellate Court has considered his findings, and therefore, he has not made any kind of corrupt practice. But at this juncture, it is pertinent to note that the Hon"ble Supreme Court has held in the case Noida Entrepreneurs Assn. Vs. Noida and Others, in Para 11, that the purpose of

departmental inquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. Hence, considering the ratio laid down in the above-mentioned citation, the arguments advanced by the delinquent on this point does not sustain.

(Emphasis supplied)

3.12. At this stage, this Court will like to remind itself that the charge against the petitioner is that the petitioner overlooked the settled principles of law and did not properly appreciate the evidence adduced by the prosecution and acquitted the accused after accepting bribe from them. The Division Bench stated in its judgment in Para 10 as is mentioned in Para 7 of the inquiry report that, "We have gone through the judgment and order passed by the trial Court. We have also perused the oral as well as documentary evidence led by the trial Court and also considered the submissions made by learned A.P.P. for the Appellant/State. The trial Court has clearly recorded a finding that Police Inspector Solanki is not a witness to demand or acceptance of bribe amount and his conduct is suspicious. It is also observed by the trial Court that no ultra violate lamp test was carried out at the place where bribe amount was demanded and accepted. Not only that the person, who was driving the vehicle and from whom bribe amount is stated to have been accepted has not supported the case of the prosecution. The prosecution has chosen not to examine the witnesses, who are stand (sic. - stated) to be eye-witness of demand and acceptance of amount. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond the reasonable doubt.

(Emphasis supplied)

3.13. If this was so, where is the question of distinction between the purpose of departmental inquiry and the prosecution. The charge is very clear. It says that the petitioner overlooked the settled principles of law and did not properly appreciate the evidence. The Division Bench of this Court in the very same case has come to conclusion that, "the prosecution has chosen not to examine the witnesses, who are stand (sic. - stated) to be eye-witness of demand and acceptance of amount. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond the reasonable doubt". Then to say that the petitioner is still guilty of the aforesaid charge is too stretched finding recorded by the Inquiry Officer.

Dated: 17-4-2013:

4.1 About the Inquiry Officer, the Hon''ble the Apex Court in the matter of Nirmala J. Jhala (supra), reproduced the observations made by it in the matter of M.V. Bijlani Vs. Union of India (UOI) and Others, The observations of the Hon''ble

the Apex Court reproduced in the said judgment are as under:

.....Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although, the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.

(Emphasis supplied)

4.2. In the matter of *Nirmala J. Jhala (supra)*, the Hon'ble the Apex Court also reproduced the observations made by it in the matter of *Noor Aga Vs. State of Punjab and Another*, . The said read as under:

It was held that the departmental proceeding being a quasi-judicial one, the principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded there from. Inference on facts must be based on evidence which meet the requirements of legal principles.

(Emphasis supplied)

4.3. The Hon'ble the Apex Court also referred to and relied upon the observations made by it in the matter of *M.S. Bindra Vs. Union of India and Others*, which are as under:

While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "*Nemo Firut Repente Turpissimus*" (no one becomes dishonest all of a sudden) is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

(Emphasis supplied)

4.4. The Hon"ble the Apex Court referred to and relied upon the observations made by it in the matter of High Court of Judicature at Bombay through its High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, The same are as under:

The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct.

(Emphasis supplied)

4.5. After the aforesaid discussion and reference to earlier cases, in the case of Nirmala J. Jhala, (2013 (3) GLR 2308 (SC)), the Hon"ble the Apex Court had to say as under (at page No. 2315 of GLR):

In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The Court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The ratio of the judgment in Prahlad Saran Gupta Vs. Bar Council of India and Another, does not apply in this case as the said case was of professional misconduct, and not of a delinquency by the employee.

(Emphasis supplied)

4.6. All these observations of the Hon"ble the Apex Court are required to be considered in light of the service record of the present petitioner. Learned Senior Advocate for the High Court was requested to make available the service record of the petitioner quarter-wise. Learned Senior Advocate for the High Court made available the service record of the petitioner in a tabular form. The same is reproduced for ready perusal:

4.7. Coming back to the Inquiry Officer's report, as it is already stated hereinabove that no witness was examined in the inquiry, no material, except judgments and orders passed by the delinquent in the cases mentioned in the charge-sheet, was taken into consideration. To be specific, though there was an allegation that the petitioner is indulging in corrupt practice in collusion with the Advocates named in Charge No. "I" of the charge-sheet, no one was examined during the inquiry; as referred to in Charge No. VI, though there was a specific charge that the petitioner though dictated judgment in a particular case on particular dates, did not pronounce the same, neither a Stenographer was examined nor a diary of Stenographer was produced during the inquiry and considered by the Inquiry Officer. Despite that, the Inquiry Officer has recorded a finding that all the charges levelled against the petitioner are held to be proved,

as mentioned in Para 77 of the inquiry report. At the cost of repetition also, the said Para 77 is reproduced hereinbelow:

77. In sum up, the Charge No. 1 to 6 levelled against the delinquent are proved without any doubt, and therefore, the delinquent has indulged himself in corrupt practice and he is guilty of dereliction of his duty and he has acted with mala fide intention and has committed misconduct. Furthermore, the delinquent has acted in a manner unbecoming of a Judicial Officer and therefore the delinquent is amount to acts of grave misconduct and tantamount to conduct unbecoming of a Judicial Officer, therefore, necessary action may kindly be taken against the delinquent.

4.8. So far as Charge No. I is concerned, it is already stated hereinabove that the Inquiry Officer did not examine any witness or did not have any material other than the R. & P. of the cases referred to in the charge-sheet. But, so far as Charge No. VI is concerned, it was specifically mentioned as under:

While you were serving at Jamnagar, you had disposed of Spl. A.C.B. Case No. 865 of 1994 on 6-1-2009. In this case also, the arguments were heard on 7-11-2008. In this case also with an oblique motive the judgment was not pronounced till one & half month. Though, there was sufficient evidence on record, you, with an oblique motive and to give the benefit to the accused for a consideration other than judicial one, misinterpreted the evidence in your judgment and acquitted the accused. In this case, written arguments were submitted on 7-11-2008 vide Exh. 64 and the citations were also submitted by the parties but the matter was adjourned from time to time for submitting more authorities. From the diary of the stenographer, it is found that the judgment was dictated by you from 18-11-2008 to 21-11-2008 and was typed during 20-11-2008 to 24-11-2008 and the typed judgment was submitted to you by the stenographer on 24-11-2008. But instead of pronouncing judgment, the case was adjourned on the ground of submitting authorities and also for hearing arguments and ultimately, it was pronounced on 6-1-2009. Thus, in this though, the judgment was already typed it was not pronounced by you with an oblique motive till 6-1-2009 and thereby,

- (a) You are indulged in corrupt practices;
- (b) You are guilty of dereliction in your duties;
- (c) You are guilty of the aforesaid acts of misconduct;
- (d) You acted in a manner unbecoming of a Judicial Officer.

These acts of yours, would amount to acts of grave misconduct and tantamount to conduct unbecoming of a Judicial Officer, in violation of the provisions contained in Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971.

4.9. This particular charge, if required to be proved, at least, as mentioned in the charge itself, Stenographer was required to be examined and diary of the

Stenographer was required to be before the Inquiry Officer. But, the list of witnesses and documents in Part-A mentions names of witnesses and there is only one name, viz. Shri Bhavesh Laxmidas Joshi, residing at Madhapar, Dist. Kutch at Bhuj (this is the person on whose application the proceedings started and this is the very person who did not appear before the authority despite issuance of notice more than once). It is not placed before this Court that as to in what manner, the notices were served, but the fact remains that it is on record that this man never appeared before the authority.

4.10. So far as list of documents is concerned, it contains only two documents, in addition to R. & P. of the cases concerned. These two documents are application dated NIL and complaint of Shri Bhavesh Laxmidas Joshi, residing at Madhapar, Dist. Kutch at Bhuj dated 14-1-2009. No diary of Stenographer is mentioned as document having been relied upon and to that extent, any reference to such diary by the Inquiry Officer is nothing else than "taking into consideration the extraneous material". It appears that the Inquiry Officer was so obsessed with the contents of the charge-sheet and the statement of imputation, and therefore, he not only reproduced the entire charge-sheet and statement of imputation but also reproduced wherever possible the very same material.

4.11. So far as Charge No. VI is concerned, it is discussed in Para 48 of the Inquiry Officer's report. The said Para 48 is reproduced for ready perusal which will show that the Inquiry Officer could do nothing better than reproducing the very same material of charge-sheet and/or statement of imputation:

48. In respect of Charge No. VI the allegations levelled against the delinquent is that he disposed of Spl. A.C.B. No. 86 of 1994 on 6-1-2009. In this case also, the arguments were heard on 7-11-2008 but with oblique motive the judgment was not pronounced till one and half month. It is charged that though there was sufficient evidence on records, but he with oblique motive and to give the benefit to the accused for a consideration other than judicial one, misinterpreted the evidence in his judgment and acquitted the accused. It is also alleged that the judgment was dictated from 18-11-2008 to 21-11-2008 and typed during the period from 20-11-2008 to 24-11-2009 and typed judgment was submitted by the Stenographer on 24-11-2008. But instead of pronouncing judgment, the case was adjourned on the ground of submitting authorities and also for hearing arguments, and ultimately, it was pronounced on 6-1-2009. Though, the judgment was already typed it was not pronounced by the delinquent with an oblique motive till 6-1-2009, and thereby, the delinquent is indulged in corrupt practice and aforesaid acts of misconduct and acted in a manner unbecoming of a Judicial Officer.

(Emphasis supplied)

4.12. It is after reproducing the contents of charge-sheet, the Inquiry Officer recorded the submissions made by the Presenting Officer in Para 49. This is the very charge, wherein the Inquiry Officer did not like the Presenting Officer not

believing that the delinquent has not indulged in corrupt practice and that is why at the end of the submission, the Inquiry Officer recorded his reaction to the submissions made by the Presenting Officer. The said Para 49 reads as under:

49. In respect of this allegation the Presenting Officer has argued out that the delinquent has merely stated in his judgment that the panch witness are Government servant and they are giving their deposition according to the panchnama and they declared hostile they would face departmental inquiry with that fear kept in their mind they give their deposition according to the panchnama and with that presumption the delinquent has totally set aside the evidence of the panch witness and it is clearly a dereliction of his duty. But the Presenting Officer has not believed that the delinquent is indulged in corrupt practice and acted as misconduct.

4.13. The Inquiry Officer then recorded the submissions made by the delinquent (petitioner) in Para 50, wherein the petitioner set out his defence in detail and explained the situation as to why this charge is required to be discarded. In fact, if the authority itself or the Inquiry Officer or even thereafter the authority had taken into consideration the explanation/defence of the petitioner, they would have certainly come to conclusion that Charge No. VI is without any substance and the same is required to be dropped. For this purpose, defence of the petitioner set out in Para 50 is required to be reproduced. The same is reproduced hereinbelow:

50. Simultaneously the delinquent has also made submission against this allegation in his written arguments that the Charge is that in A.C.B. Case No. 86 of 1994 though an argument was heard on 7-11-2008 and judgment was not pronounced till one and half month. Regarding the said allegation, I have to state that the Inquiry Officer has tried to create confusion and has made report against the documentary evidence on record. It is alleged that in A.C.B. Case No. 86 of 1994 arguments were heard on 7-11-2008 i.e. before the defence concluded in A.C.B. Case No. 14 of 1994 on 5-12-2008 if the Inquiry Officer would have perused the record, he would have found that on 7-11-2008, I was on leave and in my absence before in-charge Judge (Pri. District Judge) written arguments were submitted. How it can be said that I have heard arguments on 7-11-2008? Now I request to Your Honour to peruse evidence on record that on 7-11-2008 I was on leave, matter was adjourned to 17-11-2008 for arguments. On that day it was adjourned for submitting authorities and for arguments. Said matter was adjourned to 27-11-2008, but on that day, once again I was on leave. Matter was adjourned on 3-12-2008. As authorities were not submitted, on oral request matter was adjourned to 11-12-2008. On that day adjournment report vide Exh. 66 was preferred on behalf of the accused praying time for arguments and last time was granted to submit authorities. Once again on 22-12-2008 on oral request matter was adjourned on 30-12-2008 for arguments. On 30-12-2008 I was on leave. Statement showing that I was on leave is submitted. On 1-1-2009 arguments were heard and matter was kept for

judgment on 6-1-2009. Record itself speaks that written arguments on behalf of the accused were submitted in my absence. Till 1-1-2009, I have not heard complete arguments from both the side. To avoid dispute from the Advocates normally time is given to submit authorities, though Judge is aware of such authorities. Your Honour is requested to take note, as Your Honour is well experienced and senior Judicial Officer, that the Steno diary is not maintained by the Presiding Officer or not at per direction of Presiding Officer. Under above circumstances, no presumption can be made against me, as in absence of such evidence. I have clearly clarified in my statement before your honour. For speedy disposal it was my practice to start to dictate judgment up to reasoning also regarding undisputed issues like sanction etc. After I peruse entire record and before I heard arguments. Not only that for speedy disposal, I was dictating order to any steno, who was found free and work less. But in none case, I have kept dictated judgment with me with the oblique motive. Regarding this charge nothing oral as well as documentary evidence is on record.

(Emphasis supplied)

4.14. It is in light of these facts that the observations made by the Hon''ble the Apex Court in the matter of M.V. Bijlani (supra), reproduced in the case of Nirmala J. Jhala (supra) become most relevant. Even at the cost of repetition, the same are required to be reiterated:

We cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.

(Emphasis supplied)

4.15. In the opinion of this Court, in the present case, the Inquiry Officer has failed to act up to the expectation set out by the Hon''ble the Apex Court in its observations quoted hereinabove.

5. The gist of the defence of the petitioner is that though it is mentioned in the charge that, "In this case, written arguments were submitted on 7-11-2008 vide Exh. 64 and the citations were also submitted by the parties but the matter was adjourned from time to time for submitting more authorities", the Presiding Officer was on leave on 7-11-2008 and the matter was before the Principal District Judge and was adjourned to 17-11-2008. The factum of the present petitioner being on leave is reflected in the "Rojkam". The said "Rojkam" is signed by the In-charge Special Judge, Kutch-Bhuji and not a regular Judge. In the present case, the petitioner was the regular Judge and the matter was placed before the Principal District Judge, as he being in-charge of the matter on the day when the regular Judge is not available. On 17-11-2008, the authorities

which were to be produced were not produced and the matter was adjourned to 27-11-2008. Again on 27-11-2008, incidentally, the petitioner was on leave and the matter was before the Principal District Judge, as he was in-charge of the matter. On that day also, the authorities were not produced, and therefore, the case was adjourned for producing the authorities and for arguments. The matter was then adjourned to 3-12-2008. On 3-12-2008, learned Advocates did not produce the authorities and asked for time, and therefore, the case was adjourned to 11-12-2008 for producing authorities and for hearing arguments. On 11-12-2008, the matter was required to be adjourned because learned Advocate for the accused sought adjournment by filing application for the same, which was given Exh. No. 66 (it is marked as D-66 to show that the application is filed by the defence, i.e. accused side). The matter was then adjourned to 22-12-2008. On that day again, learned Advocates did not produce the authorities and at their request, the matter was again adjourned for producing the authorities and for hearing arguments to 30-12-2008. On 30-12-2008, the petitioner was again on leave and the matter was before the learned Principal District Judge, as he being in-charge of the matter. The matter was adjourned to 1-1-2009 for producing authorities and to hear arguments. On 1-1-2009, the authorities were produced, both the sides were heard and the matter was adjourned for judgment to 6-1-2009. On 6-1-2009, the judgment was pronounced.

5.1. All these dates are required to be set out after perusing the "Rojkam" a certified copy of which is made available for perusal and which is taken on record.

5.2. What is important is these details were placed on record at the first available opportunity by way of reply to the charge-sheet dated 9-10-2009. A copy of reply dated 9-10-2009 is produced at Annexure-B. In Para 24, all what is stated hereinabove by the petitioner was placed on record. It is therefore required to be observed by this Court that if the authority had taken into consideration contents of Para 24, possibly, the matter would not have taken a colour and complexion in which it is before this Court today.

5.3. This is not the end of the matter. Even after full-fledged Inquiry Officer's report, when the petitioner was asked to submit his response to the same, the petitioner once again drew attention of the authorities to the aforesaid facts as set out in Para (J) of Annexure-K, which is written arguments submitted by the petitioner after Inquiry Officer's report was served to him. So far as Inquiry Officer is concerned, the whole thing is incorporated by the Inquiry Officer in Para 50, which is quoted hereinabove. But, he did not take trouble of considering the most relevant piece of defence/written arguments. Thus, he excluded the relevant facts from consideration and drew inference which is recorded in Para 77, which is also quoted hereinabove.

6. In view of the aforesaid discussion, this Court is of the opinion that inescapable conclusion are:

(i) There is total non-application of mind on the part of the authority issuing charge-sheet, reflected from not only the contents of the charge but also from the list of documents and list of witnesses and also from the fact that undue reliance is placed on anonymous application and on an application, the author of which never turned up despite issuance of notices by the authority. So far as non-application of mind is concerned, it is borne out from the opening sentence of Charge No. I that, "You were interested in conducting only the special cases filed under the provisions of Prevention of Corruption Act.....

(ii) The Inquiry Officer failed to take into consideration the relevant material and without doing so, he drew inferences which are not borne out from the record of the case, more so when he is able to find and give an explanation to the submissions made by the petitioner pointing out that his judgment and order is confirmed by the Division Bench of this Court, not merely by dismissing the appeal, but by a speaking order, wherein the Division Bench of this Court had stated in so many words that, "We have gone through the judgment and order passed by the trial Court. We have also perused the oral as well as documentary evidence led by the trial Court and also considered the submissions made by learned A.P.P. for the Appellant/State. The trial Court has clearly recorded a finding that Police Inspector, Solanki is not a witness to demand or acceptance of bribe amount and his conduct is suspicious. It is also observed by the trial Court that no ultra violate lamp test was carried out at the place where bribe amount was demanded and accepted. Not only that the person, who was driving the vehicle and from whom bribe amount is stated to have been accepted has not supported the case of the prosecution. The prosecution has chosen not to examine the witnesses, who are stand (sic. - stated) to be eye-witness of demand and acceptance of amount. Thus from the evidence itself it is established that the prosecution has not proved its case beyond the reasonable doubt". The Inquiry Officer has still to say that the petitioner is guilty of the charges levelled against him, even qua this particular discussion.

(iii) So far as absence of material and absence of due diligence is concerned, the same is also borne out from the fact that though it is mentioned that the petitioner was indulging in corrupt practice in collusion with the Advocates named in Charge No. I, for no reason and for that no explanation is coming forward, the authority decided not to examine one single Advocate. Least it be said, that the Court is harping upon the non-examination of the Advocates. It is already discussed hereinabove that the authority has not produced any material to show that in similar cases of other Advocates, different orders were passed by the petitioner. In absence of any such material, how a charge of this gravity can be considered to be proved.

(iv) The authority who served charge-sheet incorporating Charge No. VI, making a specific reference to Stenographer's diary, does not mention that diary can be in the list of documents and the Inquiry Officer, without taking pain to either call for that diary and confronting the petitioner with that diary, reproduced the same

charge and recorded a conclusion that the petitioner has indulged in corrupt practice, the petitioner is guilty of dereliction of his duties, the petitioner is guilty of the act of misconduct and the petitioner has acted in a manner unbecoming of a Judicial Officer.

6.1. This Court is at loss as to on what basis and what material, such grave charges are held to be proved.

7. At this juncture, it will be appropriate to refer to the submissions made by learned Senior Advocate Mr. Shalin Mehta for the High Court, who submitted that only because judgment and order of a Judicial Officer stands confirmed in an appeal before the High Court, the same should not be held to be a conclusive proof of he having not indulged in corrupt practice. This Court is conscious and takes note of the aforesaid submission and this Court is not pronouncing about the innocence of the petitioner only because his judgments, three in number, while he was working at Jamnagar, were confirmed by this Court or that in one case, while he was working at Jamnagar, appeal is not preferred by the State, and similarly, in four cases, while he was working at Kutch-Bhuj, the State has not preferred appeal, but then, this Court has the duty to consider the material which is placed before it for judicial review.

7.1. About the "Judicial review", the Hon"ble the Apex Court in its recent judgment in the matter of Ms. Nirmala J. Jhala (supra), after taking into consideration various decisions of the Hon"ble the Apex Court, had to observe under the title of, "Scope of Judicial Review" as under:

(i) It is settled legal proposition that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

(Emphasis supplied)

7.2. Similarly, the Hon"ble the Apex Court quoted the observations made by it in the matter of Zora Singh, The same are as under:

The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is

found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for Certiorari the superior Court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.

7.3. The Hon'ble the Apex Court, after referring to its earlier decisions, finally stated thus:

(iii) The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal, but it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene.

(Emphasis supplied)

7.4. Similarly, the Hon'ble the Apex Court had very emphatically observed about the judicial review in departmental proceedings in the matter of M.V. Bijlani Vs. Union of India (UOI) and Others, , the same is reproduced for ready perusal:

25. It is true that the jurisdiction of the Court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although, the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant

testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

8. Learned Senior Advocate for the High Court invited attention of the Court to a decision of the Hon'ble the Apex Court in the matter of Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another, Learned Senior Advocate for the High Court invited attention of the Court to Paras 80 and 81 of the said decision, which read as under:

80. The mandate of Art. 235 of the Constitution is that the High Court has to maintain constant vigil on its subordinate Judiciary as laid down by this Court in High Court of Judicature at Bombay through its High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, In the said case, this Court has explained that the lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and need to stem it out by judicial surgery lies on the Judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Arts. 235 and 124(6) of the Constitution, and therefore, it would be necessary that there should be constant vigil by the High Court concerned on its subordinate Judiciary and self-introspection.

81. Judicial service is not a service in the sense of an employment as is commonly understood. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is no manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

9. This Court cannot dispute the aforesaid position. The question is whether that power is rightly exercised in the case on hand.

10. While parting, the Court will like to remind itself about the duties which are expected to be discharged by the Higher Courts, set out in the decision of the Hon'ble the Apex Court in the matter of K.P. Tiwari Vs. State of Madhya Pradesh, The Hon'ble the Apex Court had an occasion to articulate the duties of the High Courts vis-?-vis the subordinate Courts in Para 4, which reads as under:

4. We are, however, impelled to remind the learned Judge of the High Court that however anguished he might have been over the unmerited bail granted to the accused, he should not have allowed himself the latitude of ignoring judicial precaution and propriety even momentarily. The higher Courts every day come across orders of the lower Courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior Courts. Our legal system acknowledges the fallibility of the Judges and hence provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said

that a Judge who has not committed an error is yet to be born. And that applies to Judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower Courts is purely a result of a difference in approach and perception. On such occasions, the lower Courts are not necessarily wrong and the higher Courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks -- more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher Courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive. It is possible that a particular judicial officer may be consistently passing orders creating a suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such cases, the proper course for the higher Court to adopt is to make note of his conduct in the confidential record of his work and to use it on proper occasions. The Judges in the Higher Courts have also a duty to ensure judicial discipline and respect for the judiciary from all concerned. The respect for the Judiciary is not enhanced when judges at the lower level are criticised intemperately and castigated publicly. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary than when the Judges of the higher Courts publicly express lack of faith in the subordinate Judges for one reason or the other. It must be remembered that the officers against whom such strictures are publicly passed, stand condemned for ever in the eyes of their subordinates and of the members of the public. No better device can be found to destroy the Judiciary from within. The Judges must, therefore, exercise self-restraint. There are ways and ways of expressing disapproval of the orders of the subordinate Courts but attributing motives to them is certainly not one of them. That is the surest way to take the Judiciary downhill.

(Emphasis supplied)

10.1. At this juncture, this Court deems it necessary to reiterate that right from September quarter in the year 2001 up to March quarter in the year 2009, the petitioner is given "VERY GOOD". If that is so, the period under consideration, of his working at Jamnagar from 12-12-2003 to 7-5-2005 and the petitioner's working at Bhuj from 19-6-2008 to 26-2-2009 both things cannot go together. If he was very good for all these years, i.e. from 2001 to 2009, why were these cases, which are made basis for holding him guilty of charge like, "the petitioner was over-looking the settled principles of law and was not properly appreciating the evidence adduced by the prosecution and was acquitting the accused after accepting bribe from them, went unnoticed for all these years, i.e. starting from 12-12-2003 to 7-5-2005 and from 19-6-2008 to 26-2-2009". The Court cannot lose sight of the fact that the opening sentence of the charge, i.e. "You were interested in conducting only the special cases filed under the provisions of Prevention of Corruption Act", speaks volumes about the non-application of mind

on the part of the authority. It has also come on record that there was a special direction from the High Court and that was in turn communicated to the petitioner by the learned Principal District Judge and accordingly, it was the learned Principal District Judge who placed these cases before the petitioner. Still, it is suggested that the petitioner was interested in conducting only the special cases filed under the provisions of Prevention of Corruption Act. As if the petitioner had choice to conduct only few cases stands belied the moment the Court takes into consideration his total working at the station, which is already made part of this judgment and order and was already before the authority right from first written statement dated 9-10-2009 (Annexure-B), in Clause (A) of Para. (3) of written arguments dated 26-4-2011 submitted by the petitioner after show-cause notice was given to the petitioner (Annexure-K) and again in Clause (G) of reply to show-cause notice in Departmental Inquiry No. 18 of 2009 dated 1-8-2011 (Annexure-E).

10.2. A reference is also required to be made to the observations made by the Division Bench of this Court (Coram: Hon"ble the Chief Justice Mr. K.S. Radhakrishnan, as he was then and Hon"ble Mr. Justice Anant S. Dave) in the matter of S.J. Pathak Ex. Addl. Sessions Judge Vs. State of Gujarat and Another, In Para 25, the Division Bench had observed as under (at page No. 169 of GLR):

25. We are of the view that various bail orders passed by the delinquent officer has to be tested in the light of Charge Nos. 2 and 3. Enquiry Officer has clearly found that Department had failed to prove that the delinquent officer had passed various bail orders with oblique motive and after receiving illegal gratification. The Enquiry Officer has also clearly found that the Department had failed to prove the charge of grave misconduct and the delinquent officer had acted unbecoming of a judicial officer. These findings have been accepted by the Disciplinary Committee headed by Justice N.G. Nandi with regard to both the enquiry proceedings. The Apex Court in Kashi Nath Roy (supra) held that human element in justicies being an important element, computer-like functioning cannot be expected of the Courts; however, hard they may try and keep themselves precedent-trodden in the scope of discretions and in the manner of judging. Whenever any such intolerable error is detected by or pointed out to a superior Court, it is functionally required to correct that error and may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the Court and independence of Judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow, but clear and result-orienting, but rarely as a rebuke. The premises that a Judge committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge Subordinate, unless there existed something else and for exceptional grounds. Principle laid down by the Apex Court, in our view, clearly applies to the facts of this case. Judicial pronouncement in the absence of clear-cut evidence of favouritism, lack of integrity, corrupt practices, extraneous consideration etc. cannot be the foundation of disciplinary proceedings or else it will affect the judicial freedom

and independence. Judicial officers have to be saved to uphold the rule of law and the independence of Judiciary. If the High Court entertains anonymous complaints which are frivolous or motivated and originated from unscrupulous lawyers and litigants, no judicial officers would be secure and would not be able to discharge their duties without fear or favour. Judicial officers especially dealing with bail matters, cannot dance to the tune or dictates of lawyers, but has to act in accordance with the settled principles of law.

(Emphasis supplied)

10.3. The Division Bench has also stated about the method and manner in which work of assessment and functioning of the Judicial Officer be undertaken. In this regard, observations made in Para 33 are relevant. The same is reproduced hereunder (at page No. 172 of GLR):

33. We may caution that great care has to be taken by the Unit Judge in-charge while recording his opinion in the confidential reports. If proper assessment of the functioning of the Judicial Officer as well as the quality of the judgments and orders are not correctly reported, same would affect the functioning of the subordinate Courts, and thereby, erode the faith of the people in judicial system. We are sure that serious thought would be bestowed by the High Court in that regard. So far as this case is concerned, we have already indicated that the confidential report of the delinquent officer was unblemished, that is also an added factor to hold that various bail orders issued by him during the said period could not be subjected to disciplinary proceedings unless and until it is shown that such orders were tainted due to corrupt practices or issued for extraneous reasons, which are lacking in this case apart from the mere allegations raised in an anonymous complaint raised against Judicial Officers.

10.4. The Division Bench while dealing with the method and manner in which such cases are dealt on the administrative side of the High Court had to say thus (at page No. 173 of GLR):

34. Chamber Meeting in which all the Judges of the High Court are expected to participate is a serious meeting, where important decisions touching the administration of the entire Judiciary is taken. Larger the Committee, lesser the application of mind, which is a hard reality, but members of quorum are free to express their views, but at times too much of views and opinions takes the House from the real issue and leads to unchartered areas just like the present case. If serious thought was bestowed on the issue in the Chamber Meeting held on 6-5-2003, then the High Court would not have entrusted the enquiry to the Committee which had already pre-judged the issue, which we have already found was a serious legal infirmity. We are sure that the Chamber would be more watchful and circumspect when such issue comes up for deliberations before it in future and would not be carried away by personal views or predilection.

10.5. It is brought to our notice that the aforesaid judgment of the Division Bench was the subject-matter of Civil Appeal Nos. 1838-1839 of 2013 arising out

of SLP (C) Nos. 7876-7877 of 2010, which were decided by the Hon''ble the Apex Court by judgment and order dated February 26, 2013 and the Hon''ble the Apex Court observed as under:

18. The Division Bench of the High Court, after hearing the matter at quite some length, has recorded a finding that Full Court had committed a serious error in entrusting the departmental enquiry to the third Disciplinary Committee vide Chamber decision dated May 6, 2003.

19. We do not find any error in this conclusion arrived at by the Division Bench. The Full Court (in the Chamber) on May 6, 2003, had the complete material before it including the replies submitted by the delinquent to the two show-cause notices and the reports of the second Disciplinary Committee. The fairness of the procedure demanded that the Full Court considered the entire material available before it and took decision one way or the other and did not leave the matter to another Committee. There was no occasion much less justification for constituting another Committee to proceed from the stage of show-cause notice on the point of penalty.

11. In the result, the petition is allowed. The Notification dated 10-10-2011, dismissing the petitioner from service issued by respondent No. 1 herein is quashed and set aside. The petitioner is ordered to be reinstated with all consequential benefits including back wages with interest @ 9%. Consequently, letters dated 16-11-2001, decisions dated 25-8-2011 and 29-8-2011 also stand negated. The disciplinary proceedings initiated by charge-sheet dated 4-8-2009 is also quashed and set aside. Rule is made absolute. No costs.

R.D. Kothari, J. (concurring)

12. I respectfully agree with my learned Brother. The typical facts of the present case persuaded me to add few words.

13. The learned Inquiry Officer appears to have seriously misunderstood the scope of inquiry. The learned Advocate for the petitioner, opening the submission, has submitted that report of the Inquiry Officer runs into 167 pages. We were surprised, soon our surprise turned into astonishment when the learned Advocate immediately submitted that the Inquiry Officer has not examined any witness during the inquiry nor any documentary evidence is received during the inquiry. The case of the department revolves around 5 A.C.B. Cases decided by the delinquent wherein the delinquent had alleged to have indulged into corrupt practice.

14. The charge of indulging in corruption is clear and specific. That being so, it was necessary for Inquiry Officer to examine those 4 or 5 Advocates, who were connected with those A.C.B. Cases and whose names appear on record. Beside the learned Advocates engaged in those cases, the Inquiry Officer could have examined other witnesses such as concerned parties of those A.C.B. Cases, staff of the Court etc. Beside the oral evidence, the Inquiry Officer ought to have

taken care to receive relevant documentary evidence such as diary of the Stenographer, copy of the Rojkam of these A.C.B. Cases, daily Board, copy of Account, if any, maintained by the delinquent, copy of passbook and copy of I.T. return etc. would form the material for forming the opinion by the Inquiry Officer. It is the evidence of those witnesses and the other material that would form the basis of the report of the Inquiry Officer.

15. Instead of that what has happened in the present case is that the Inquiry Officer appears to have assumed that the Authority has solicited his opinion as an expert (Sec. 45) to opine, after examining the judgments delivered by the delinquent, whether the delinquent has indulged in corrupt practice or not.

16. The Inquiry Officer discussed these 5 cases threadbare - so to say - and upon appreciating the record, the Inquiry Officer says that, delinquent has placed - "intentionally misinterpretation of the evidence" (Para 119) and "wrong finding is given" (Page 134), "has overlooked settled principle of law" >Para 121), ".....totally wrong finding is given" (Para 136) and concludes that acquittal in all these 5 cases are so much so erroneous that, not only that those judgments can be basis for the departmental inquiry against the delinquent/Judge, but the conclusion of charge established can also be recorded by appreciating these judgments itself.

17. Just two quotes would show how the Inquiry Officer has dealt with inquiry case. The first quote is about submission of the delinquent, - ".....The Inquiry Officer has not to reassess evidence in each case and to give opinion about the judgment. Inquiry Officer is not sitting as an appellate authority against the judgment delivered by the delinquent. It is the function of the Hon'ble Appellate Court in appeal before it to decide whether Judge has committed any error in appreciation evidence on record. Regarding oblique motive there must be reliable some legal evidence. Such serious charge cannot be presumed to be proved only on assumption and presumption. He further argued that in his case charge is given to him for A.C.B. Cases conducted by him and his all judicial orders, which are challenged before the Hon'ble High Court, are confirmed by the Hon'ble High Court....." Rejecting the submission of the delinquent, the Inquiry Officer concludes, "I have find out that in all cases there was ample evidence on records but the delinquent has overlooked the settled principle of law and also not properly appreciated the evidence adduced by the prosecution and acquitted the accused in all five cases..." So he held delinquent guilty. Of the 5 cases under inquiry, 3 were unsuccessfully challenged before the High Court and in remaining 2 cases, the State has not preferred any appeal. What is material and important is, that the High Court has not made any comment or criticism or has passed any stricture in any of those cases, wherein appeal is preferred by the State against acquittal. Here, it may be stated that learned Senior Advocate Mr. Shalin Mehta has rightly pointed out that affirmation of judgment of delinquent by the High Court in appeal, by itself, would not absolve the delinquent or it would not make in any way the judgment less vulnerable to the scrutiny. He had rightly illustrated

that very smart guy, working as a Judge, indulges in corruption and writes a judgment that appears from the record as acceptable then in that case -door would still be wide open - notwithstanding affirmation of his judgment in appeal - for the authority to proceed against him in accordance with law. The submission is good so far as it goes, but it may be added that the Department would require to show and establish the guilt by bringing on record necessary evidence in support of the charge. Belief cannot be the basis. Hearsay material cannot be hailed as an evidence. Charge is required to be proved by acceptable evidence. In the present case, it is more than surprising that specific plea was raised by the delinquent, namely, absence of evidence on record in inquiry, yet it did not occur to the Inquiry Officer that what he proceeds to do has a grave infirmity of vitiating nature. It is more than said that report that has no leg to stand has successfully sail before disciplinary authority and after calling upon the delinquent, what he has to say about the punishment, major penalty of dismissal came to be inflicted upon him.