

(2016) 03 BOM CK 0086
In the Bombay High Court
Case No : Criminal Appeal No. 349 of 2003

Jawansingh Ramsingh Gaud and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, Section 420
Prevention of Corruption Act, 1988 — Section 12, Section 13(1)(d), Section 13(2),
Section 19, Section 20, Section 3, Section 7

Citation : (2016) 3 AICLR 748 : (2016) 2 AIRBomRCri 148 : (2016) ALLMRCri 3295 : (2016) 2 BomCR(Cri) 421 : (2016) CriLJ 2526 : (2016) 5 MhLJCrI 481 : (2016) 5 RCRCriminal 268

Hon'ble Judges : A.M. Thipsay, J.

Bench : Single Bench

Advocate : Satyavrat Joshi, Advocate, for the Appellant; V.B. Konde Deshmukh, APP, for the Respondent

Final Decision : Allowed

Judgement

A.M. Thipsay, J.—1. The appellants were prosecuted on the allegation of having committed offences punishable under Prevention of Corruption Act, 1988 (for short "the P.C. Act") The appellant no.1, at the material time, was a Sub-Inspector of Police. The appellant no.2 was not a public servant. The learned Special Judge for Greater Mumbai (appointed under section 3 of the P.C. Act) after holding a trial, convicted the appellant no.1 of offences punishable under section 7 and section 13(2) r/w section 13(1)(d) of the Prevention of Corruption Act and sentenced him to suffer Rigorous Imprisonment for 1(one) year, and to pay a fine of Rs. 2,000/- on each of the said two counts. The learned Special Judge convicted the appellant no.2 of an offence punishable under section 12 of the P.C. Act read with section 7 thereof, and sentenced him to suffer RI for 1(one) year and to pay a fine of Rs. 2,000/-. Being aggrieved by their conviction and the sentences imposed upon them by the learned Special Judge, the appellants have approached this Court by filing the present Appeal.

2. The prosecution case, as put forth before the trial Court, in brief be stated thus :-

(a) One George Williams was doing the business of Overseas Recruitment and Exports in Leather and Garments. He had his office at Chembur. He had a licence for running his aforesaid business. Reports had been lodged against the said Williams with the police alleging commission of offences punishable under Section 420 of the IPC and 506 II of the IPC read with section 114 thereof. Two criminal cases in that regard were registered against the said Williams. In the course of investigation of one of these cases, i.e. C.R. No. 792/95 which was in respect of an offence punishable under Section 420 IPC, 138 passports were seized by the appellant no.1 from the said Williams. These passports, apparently, were belonging to different persons who had approached the said Williams for getting Overseas Recruitment. Williams had filed an application for return of the said passports to him which was pending before the Addl. Chief Metropolitan Magistrate, 11th Court at Kurla. Notice of this application was given to the appellant no.1. That, on 18th January 1996, the appellant no.1 called the said Williams to Ghatla village Police Chowky of Chembur Police Station, and told him that unless an amount of Rs. 20,000/- was paid to him, he would not give "No Objection" for return of the passports seized by him. After bargaining, the appellant no.1 reduced the amount to Rs. 10,000/-. Williams requested the appellant no.1 for some time to make arrangements for the payment of the said amount. The appellant no.1, however, made it clear that if payment would not be made, he would not submit his report to the Court on 22nd January 1996 which was the date for the hearing of the application for return of the passports. The appellant no.1 did not submit his report to the Magistrate on 22nd January 1996, and the matter was then adjourned to 25th January 1996.

(b) That on 21st January 1996, at about 8.25 a.m, the appellant no.1 contacted Williams on his pager, and demanded an amount of Rs. 10,000/- to be delivered at Hotel Malhar, Chembur at 10.00 p.m. Williams (hereinafter referred to as "the complainant") did not want to pay that amount and lodged a report with the Anti Corruption Bureau (ACB) at about 4.30 p.m on the same day i.e. 23rd January 1996. The said report (Exhibit-41) was recorded by PI Anil Ghuge (PW 3), and a crime was registered against the appellant no.1.

(c) PI Ghuge then issued a requisition letter to Director, BDD Chawl, Worli, for sending two members of his staff to act as panchas. In response, Navnath Pelnekar (PW 1) and one Shri Mahadik were sent to the ACB office to act as panchas. After following usual procedure, and by using Anthracin powder, a trap was laid. Panch Pelnekar (PW 1) was to accompany the complainant to Hotel Malhar, remain with the complainant throughout and was to listen to the conversation and observe the developments. Pre-trap panchnama (Exhibit-15) was prepared.

(d) The police party and panchas then came to Chembur by police vehicles. The vehicles were stopped at a place apparently near Hotel Malhar, and from there,

the complainant and panch Pelnekar went to Hotel Malhar by walking. The other members of the raiding party followed them by maintaining some distance. The complainant and Pelnekar went to the Restaurant and Bar situate in the basement of Hotel Malhar and occupied seats on two different, but adjacent tables. PI Ghuge (PW 3), ACP Patil and a Police Naik also went to the basement and occupied seats at the table which had been occupied by Pelnekar. That, at about 10.45 pm, the appellant no.1 and appellant no.2 both came to the Hotel and joined the complainant at the table where the complainant had been sitting. The appellant no.1 occupied a chair on the left of the complainant and the appellant no.2 occupied a chair opposite the complainant. Then, there was discussion between the complainant and the appellant no.1 regarding the criminal case and the matter of giving "No objection" certificate for return of passport was also discussed. The complainant took out the tainted currency notes from his left chest pocket and gave them to the appellant no.1, who accepted the same in a napkin which was on the table. He then gave the tainted currency notes wrapped in the napkin, to the appellant no.2. The appellant no.2 counted the notes and kept them in the pocket of his pants. The complainant then gave the pre-determined signal, whereupon ACP Patil who was leading the raiding party, apprehended the appellant no.1, and other members of the raiding party apprehended the appellant no.2. The appellant no.1 was in uniform and was having his service revolver, which was taken charge of by ACP Patil. Traces of Anthracin powder were found on the shirt and hand of the appellant no.1. The currency notes were recovered from the pant pocket of the appellant no.2 and traces of Anthracin powder were found on his left pant pocket as also on his hand. Post-trap panchnama was drawn. Some further investigation was carried out and both the appellants were placed under arrest. After completion of investigation, a charge-sheet alleging commission of the aforesaid offences was filed against the appellants, who as aforesaid, were tried, convicted and sentenced.

3. The prosecution examined three witnesses during the trial. Panch Pelnekar is the first witness while Yadavrao Pawar working as Additional Commissioner of Police, at the material time, is the second witness for the prosecution. He is the one who has granted sanction, as contemplated under section 19 of the P.C Act for the prosecution of the appellant no.1. The third witness is PI Ghuge who was a member of the raiding party.

4. The complainant himself was not examined during the trial. It was reported that he was not available for giving evidence.

5. I have heard Mr. Satyavrat Joshi, learned counsel for the appellants. I have heard Mr.V.B. Konde Deshmukh, learned APP for the State. With their assistance, I have gone through the entire evidence -oral and documentary -adduced during the trial. I have carefully gone through the impugned judgment.

6. Mr. Satyavrat Joshi, the learned counsel for the appellants contended that since the complainant was not examined, the prosecution case with respect to

the initial demand could not have been proved. He submitted that the non-examination of the complainant is a fatal weakness in the prosecution case, and that, the appellants were entitled to be acquitted only because of the said reason without the requirement to consider other evidence. He submitted that apart from this, the trap had been laid on the basis of the version of a complainant who, admittedly, had a criminal record and who obviously had a grudge against the appellant no.1. He also submitted that the trap had been laid without making any verification of the alleged demand for bribe which was contrary to the judicial requirements. He also submitted that there were inherent weaknesses in the prosecution case and the prosecution version was not credible. He submitted that the appellant no.1 had taken a defence that complainant had invited him to Hotel Malhar by telling him that he (complainant) would be able to give some information regarding the criminals involved in a case which was being investigated by the appellant no.1. That, the appellant no.1 was lured into coming to Hotel Malhar by the complainant by saying that one criminal who was wanted in a case that was being investigated by the appellant no.1, was likely to come to Hotel Malhar at the material time. The learned counsel for the appellants also contended that the version as to what happened after the FIR was registered and the trap was laid, as given by panch Pelnekar and PI Ghuge, is not uniform, and that there are several variations in their version which include variations about the places occupied by the complainant, the appellants, the panch and the other members of raiding party. According to him, the order of conviction being improper and not in accordance with law, needs to be set aside.

7. Mr.V.B. Konde Deshmukh, learned APP, on the other hand, contended that the impugned judgment is proper and legal. It is submitted that though the complainant was not examined as a witness -as he could not be traced -the evidence of panch Pelnekar and PI Ghuge was sufficient to prove a demand of illegal gratification and the acceptance thereof by the appellant no.1. It is submitted that the appellant no.2 had abetted the commission of the offences by the appellant no.1 and that, he therefore, had also been rightly convicted.

8. It cannot be doubted that want of evidence of the complainant has rendered the prosecution case rather weak. Undoubtedly, it is said that the complainant was not examined as he had absconded and that, that was the reason for not examining him, but even this aspect of the matter is challenged by the learned counsel for the appellants who contended that there was no satisfactory material showing that all possible efforts were made by the prosecution to secure the presence of the complainant. It was submitted that in the absence of such material, it would be proper to draw an adverse inference against the prosecution from the non-examination of the complainant as a witness. Without going into the question as to whether the non-examination of the complainant was deliberate, or whether sufficient and proper efforts were not made to procure the presence of the complainant, and without going to the extent of drawing an adverse inference against the prosecution because of the non-examination of the complainant, what needs to be observed is that the

complainant would be the most material witness in such cases and his non-availability -even if for genuine and bonafide reasons -is bound to affect the prosecution case seriously. In trap cases under the P.C Act, the complainant would be the most material witness with respect to the evidence of initial demand and it is too obvious to emphasize that non-examination of the complainant would render the prosecution case, considerably weak. Though one may not go to the extent of saying that the non-examination of the complainant must invariably result in the acquittal of the accused persons in such cases, one cannot ignore that it would be difficult to achieve the requisite satisfaction about the guilt of the accused persons in the absence of the evidence of the complainant.

9. The learned counsel for the appellants advanced some contentions to the effect that the appellant no.1 could not have had any motive to demand any gratification for giving "No objection" to the return of the passports that had been seized by appellant no.1 from the custody of the complainant. It was contended that the say objecting to the return of the passports, had already been signed by the appellant no.1 on 22nd January 1996 itself, and that, there was no question of the appellant no.1 demanding any gratification for giving "No Objection" for the return of the passports in question to the complainant. I am, however, not impressed by the contentions to this effect. What needs to be observed is that on 22nd January 1996, no say had actually been filed by the Investigating Officer in the matter of the application for return of the passports, and that though the say taking objection for the return of the passports, appears to have been signed by the appellant no.1 on 22nd January 1996, the same was filed in the Court of the learned Magistrate only on 25th January 1996. It was open for the appellant no.1 to change the say and instead give a "No objection", and such change could have been effected by him till the say would be actually filed in the Court of the Magistrate. As such, the contention that "since the appellant no.1 had already signified his objection for return of the passports to the complainant, he could not have demanded illegal gratification to signify his No Objection for the return of the passports", cannot be accepted. The appellant no.1 was indeed in a position to show favour to the complainant by signifying his "No objection" for return of the said passports.

10. However, merely because the appellant no.1 was in such a position, it does not automatically follow that he must have demanded such illegal gratification. When the police are dealing with persons who are accused to have committed offences, a possibility of their being in a position to show favour to such persons always exists, and therefore, in such cases, it is always possible for an accused to claim that illegal gratification was demanded by a police officer for showing a favour, or forbearing to show a disfavour to him. Therefore, one cannot go just on the basis of such a possibility, and every case needs to be decided on the facts thereof, and on the basis of the evidence that would be available in support of such a claim.

11. The question would be whether the evidence of panch Pelnekar and that of PI Ghuge is sufficient to prove the case of the prosecution with respect to the alleged demand of bribe and the acceptance thereof by the appellant no.1.

12. It would be interesting to refer to the conclusions arrived at by the learned Special Judge while holding the appellants guilty. The learned Special Judge framed totally 7 points for determination, the first being "whether the appellant no.1 was a public servant at the material time" and the seventh being "what order?" The other points for determination as framed by the learned Special Judge together with the findings thereon recorded by him, reveal his reasoning in holding the appellants guilty, and as such it would be appropriate to reproduce the same here.

2) Whether the prosecution proves that on 18/1/1996 in Ghatla Village Police Chowky of Chembur Police Station accused No. 1 PSI Gaud made an attempt to obtain Rs. 20,000/- and later on Rs. 10,000/- from complainant George Williams for showing favour to him by submitting No objection report of A.C.M.M, 11th Court Kurla for return of 138 passports and thereby committed offence punishable u/s.7 of Prevention of Corruption Act 1988?.. No.

3) Whether the prosecution proves that on 23/1/96 between 8.25 a.m to 9.00 a.m accused no.1 PSI Gaud made an attempt to obtain Rs. 10,000/- from complainant by way of bribe for submitting no objection report for return of 138 passports to 11th Court Kurla and thereby showing favour to complainant committed offences punishable u/s.7 of Prevention of Corruption Act 1988? No.

4) Whether the prosecution proves that on 23/1/96 at Malhar hotel at about 10.45 p.m accused no.1 PSI Gaud obtained Rs. 10,000/- by way of illegal gratification as first instalment for showing favour to complainant for submitting no objection report to 11th Court Kurla for return of 138 passports and thereby committed offence punishable u/s 7 of Prevention of Corruption Act 1988? Yes.

5) Whether the prosecution proves that on 23/1/96 at about 10.45 p.m at Malhar hotel accused no.1 obtained pecuniary advantage of Rs. 10,000/- from complainant by corrupt or illegal means or by abusing his position as a public servant and thereby committed an offence punishable u/s 13(1)(d) r/w 13(2) of Prevention of Corruption Act 1988? Yes.

6) Whether the prosecution proves that on 23/1/96 at about 10.45 p.m at Malhar hotel accused no.2 Ambre aided and abetted accused no.1 PSI Gaud by keeping cash of Rs. 10,000/- given to him by accused no.1 PSI Gaud and thereby committed an offence punishable u/s.7 r/w 12 of the Prevention of Corruption Act 1988? Yes.

13. It can be at once seen that the learned Special Judge has not accepted the theory of the initial demand of bribe allegedly made by the appellant no.1 on 18th January 1996. He has also not accepted the theory of the appellant no.1 having made a demand of bribe on 23rd January 1996 at about 8.25 a.m on

telephone. He has categorically recorded negative findings against the points nos.2 and 3 reproduced above. It is easy to see that it is because of the fact that the complainant was not examined as a witness, and that without his evidence, it was not possible to gather proof of the previous demands allegedly made by the appellant no.1. The learned Special Judge rightly observed as follows :

"I have no hesitation to come to a conclusion that the prosecution has not established earlier demands of illegal gratification by Accused no.1 PSI Gaud from complainant referred to in the FIR. I, therefore, answer point nos.2 and 3 in negative.

(para-18 of the impugned judgment)

14. The learned Judge then proceeded to observe as follows :-

"We are, therefore, left with the evidence in respect of demand and acceptance of illegal gratification by accused no.1 during the course of the trap at the Basement, Restaurant and Bar at Malhar Hotel, Chembur (para-19)

(Emphasis supplied)

15. The learned Special Judge then went on to discuss the evidence of panch Pelnekar (PW 1) and PI Ghuge (PW 3) and came to the conclusion that their evidence established the ingredients of the offences punishable under section 7 and section 13(2) r/w section 13(1)(d) of the P.C. Act.

16. While no proposition that "the case of the prosecution must invariably fail in all trap cases, should the evidence of complainant be not available", may be laid down, the fact remains that where the complainant's evidence is not available to prove the initial demand, there has to be some highly convincing and unimpeachable evidence to hold the prosecution case as "proved". In this case, the learned Special Judge has held the initial demand as "not proved". He has held that the first demand which was said to be on 18th January 1996 had not been proved and even the demand allegedly made on 8.25 a.m on 23rd January 1996 had not been proved. Obviously, this is because the complainant could be the only witness in respect of such demands and that the complainant was not examined as a witness.

17. What the learned Judge has held as "proved" is on the basis of the events that took place after the complainant went to the ACB and reported the matter. Thus, it is from the evidence of panch Pelnekar and IO PI Ghuge that the Special Judge held that the obtaining of illegal gratification - i.e. the demand and acceptance thereof -by the appellant no.1 was proved.

18. I have, therefore, examined the evidence of panch Pelnekar and PI Ghuge carefully. I am unable to hold that the same is of such a quality as would inspire confidence about the truth of the prosecution case in spite of the non-availability of the evidence of the complainant.

19. Panch Pelnekar was called in the office of the ACB at about 1.00 p.m and

that, after going there, PI Ghuge explained the brief facts of the case to him and the other panch -one Mahadik. Pelnekar and Mahadik were also introduced to the complainant who was present there. Pelnekar was explained the facts of the case and the procedure for laying down the trap, the qualities of Anthracin powder etc, and then, it was explained to him that he was to accompany the complainant as a witness. He was specifically given to understand that he was to observe the developments and listen to the conversation. However, according to him, after entering Malhar Hotel, the complainant occupied a chair, and he occupied a chair on the adjacent table. (There is some discrepancy in his evidence about whether anybody else, apart from the complainant, was with him when he entered the said Malhar Hotel, but that aspect may be discussed later). In the cross-examination, Pelnekar was asked about his not occupying the same table which the complainant had occupied, and initially he replied that it was because such instructions had been given to him, but immediately changed his version and said that no such instructions i.e. not to occupy the same table, were given. He then said that he did not occupy the same table as that of the complainant "because he thought that Shri Gaud i.e. the appellant no.1 would become suspicious if he would occupy the same table with complainant". He, while admitting -as a result of cross-examination -that instructions given to him were that he should occupy chair by the side of the complainant, shrewdly and in order to be able to claim that those instructions were not violated went on to clarify that "he was not told to occupy a chair on the same table". In the cross-examination, when asked whether the complainant had been given instructions by the Investigating officer that "he should introduce panch Pelnekar properly to the appellants no.1 so as to not to arouse his suspicion", Pelnekar initially said he did not remember about it, but when the relevant portion in the pre-trap panchnama was brought to his notice, he admitted that "the complainant was instructed to introduce Pelnekar to the appellant no.1". It is thus, clear that his occupying a chair at the adjacent table and not at the table that was occupied by the complainant, was not as per the plan, and was contrary to the instructions given by the Investigating Officer PI Ghuge. It is also clear that Pelnekar's explanation for occupying a chair at a different table though he was expected to occupy a chair at the same table that would be occupied by the complainant, is not satisfactory. What is more important is Pelnekar tried to suppress certain facts and admitted them only after an effective cross-examination.

20. Interestingly, Pelnekar has, at one place, said that "after the complainant had entered the Hotel and had occupied a chair, he and ACP Patil took seats at the adjacent table". This would mean that ACP Patil was also sitting with Pelnekar on a chair at a table adjacent to the table where the complainant was sitting. Interestingly, he does not speak of the presence of IO PI Ghuge and therefore, one may presume that PI Ghuge had not entered with panch Pelnekar and ACP Patil and that, at that time, he was waiting outside the Hotel. The ambiguity or vagueness in that regard, even if kept aside, what is significant is that ACP Patil, if he had been sitting by the side of panch Pelnekar, was expected

to see all the happenings, and in that case, he ought to have been examined as a witness. He being the Senior most Officer associated with the trap, his non-examination as a witness, is rather strange and a rather suspicious feature of the matter, but that apart, Pelnekar is not consistent as to who came and when. He has, at another place indicated that when he occupied a chair at the adjacent table, he was alone at that table. He then volunteered to add that subsequently IO Ghuge, ACP Patil and one constable also occupied this table. Thus, as per this version, IO Ghuge, ACP Patil and one constable came to the table where he was sitting, later, and occupied the same, which, it can be easily seen, is inconsistent with his version that he and ACP Patil had gone earlier and had occupied chair at the table adjacent to the table where the complainant had been sitting.

21. Pelnekar was unable to identify the appellant no.2 though, according to him, he had seen him with the appellant no.1. While one may ignore these discrepancies as "not fatal", what cannot be ignored is that panch Pelnekar is unable to give the details of the conversation that took place between the complainant and the appellant no.1 with the necessary minimum details. What he says is that after the appellant no.1 who was in uniform, had occupied a chair across the table where the complainant had been sitting, there was some discussion between the complainant and the appellant no.1 regarding some previous case of the complainant, which was in respect of some "NOC". According to him, this conversation was in Hindi and that the NOC related to "a passport", but he did not remember the nature of the NOC. In the examination-in-chief itself, he says that he did not remember all the details about the conversation.

22. It may be recalled at this stage, that the learned Special Judge has held that the first demand allegedly made by the appellant no.1 on 18th January 1996 and even the second demand allegedly made on 23rd January 1996 at about 8.25 a.m was not satisfactorily proved. What he has held as proved, is the alleged demand made by the appellant no.1 at Hotel Malhar after 10.45 p.m on 23rd January 1996 i.e. after the trap had been laid and during the trap. It is well settled that demand of bribe is implicit, and is an integral part of the offences punishable under Sections 7 and section 13(2) of the P.C Act. It is also well settled, as a corollary to this, that where the evidence regarding the initial demand is not satisfactory, the evidence of acceptance of bribe obtained by laying a trap would be rendered rather weak, and would need extremely careful scrutiny before it is accepted as reliable. In fact, the learned Special Judge was clearly aware of this legal position, and as such, has held as proved, not the demands allegedly made on 18th January 1996 and 23rd January 1996 at 8.25 a.m, but the demand made at about 10.45 p.m on 23rd January 1996 at Hotel Malhar (paragraph 27 of the impugned judgment). When the panch Pelnekar had clearly admitted that he would not be able to give the details of the conversation that took place between the complainant and the appellant no.1, it was extremely hazardous to come to a conclusion that the alleged demand made by the appellant no.1 at Hotel Malhar was satisfactorily proved. Though the learned

Special Judge had held that such a conclusion i.e. of "the appellant no.1 having demanded a bribe can be reached even without the aid of the presumption contained in section 20 of the P.C. Act", it is not possible to agree with him when the panch is unable to give the details of the conversation and has only a vague re-collection thereof.

23. This is particularly so because the evidence of the panch Pelnekar does not seem to be of such a quality so as to at once convince the Court about he being a reliable and truthful witness. There, indeed, are a number of shortcomings in his evidence, some of which are already discussed earlier. The evidence of panch Pelnekar even with respect to the acceptance of the tainted amount, is not satisfactory. Pelnekar said that the complainant handed over Rs. 10,000/- to the appellant no.1 "which the appellant no.1 accepted in paper napkin". According to Pelnekar, the paper napkin was on the table, and it was used by the appellant no.1 for collecting the tainted amount, and the currency notes which were wrapped in the paper napkin were then given by him to the appellant no.2. That, the appellant no.2 thereafter counted the currency notes and kept them in the pocket of his pants whereafter the complainant gave "the agreed signal". That Pelnekar chooses to describe the happening by saying that the complainant gave "the agreed signal" instead of stating what was the signal or what was the act that was done by the complainant, as and by way of giving signal, may be ignored, but the statement that the appellant no.1 used a paper napkin does not appear to be correct. When in the later part of his examination-in-chief, a cloth napkin was shown to Pelnekar, he identified the same as the one in which the currency notes were accepted by the appellant no.1. In the cross-examination, he did admit that the reference to paper napkin made by him was wrong and actually, it was a cloth napkin (Article-F), and that the cloth napkin was shown to him during his examination-in-chief. Thus, that the napkin in which the tainted currency notes were allegedly collected by the appellant no.1 was a cloth napkin was realised by Pelnekar only after a cloth napkin (Article-F) was shown to him in the later part of his examination-in-chief, and till then, he was thinking that the money had been accepted in a paper napkin.

24. Apart from this variation about the napkin in which the tainted currency notes were allegedly accepted by the appellant no.1, there is another aspect of the matter which is curious. According to the prosecution case, the traces of Anthracin powder were noticed on the fingers of the appellant no.1. The evidence of panch Pelnekar does not suggest that the appellant no.1 handled the currency notes and it gives an impression that the notes were collected by him in a napkin without handling the same. If that was so, there ought not do have been any traces of Anthracin powder on the fingers of the appellant no.1.

25. The evidence if Investigating Officer PI Anil Ghuge (PW 3) is undoubtedly consistent with the prosecution case, but it is not that the same is fully free from infirmities. Thus, as per the prosecution case, PI Ghuge had told panch Pelnekar to be with the complainant and hear the conversation that would take place

between the complainant and appellant no.1. It has already been seen that Pelnekar actually chose to disregard the instruction and instead of occupying a chair on the same table where the complainant had been sitting, occupied a chair at the adjacent table. Now, when Ghuge entered inside the Bar and Restaurant at Hotel Malhar and saw panch sitting separately from the complainant, it was expected that he would question him about it and ask him to go and sit near the complainant which was thought necessary for observing the things and hearing the conversation properly. He has not done this.

26. When the complainant's evidence was not available and the evidence of the panch was not of such a quality so as to place complete trust in it, and moreover, when that did not clearly establish all the facts constituting the ingredients of the alleged offences, it was not prudent to hold the prosecution case as satisfactorily proved only on the basis of the evidence of the trap laying Officer/Investigating officer PI Ghuge. That his evidence is consistent with the prosecution case cannot be given much importance when he is the one who had laid the trap and when the evidence of the panch fails to corroborate his evidence with respect to some primary and material aspects of the matter.

27. The evidence of Ghuge shows that one ACP Deshmukh was accompanying the raiding party, but it is not clear what ACP Deshmukh was doing during the raid and the trap. It appears that ACP Deshmukh also went to Chembur near Hotel Malhar, but what he did thereafter, is not clear.

28. There are a number of weaknesses in the prosecution case apart from the glaring and serious weakness of non-availability of the evidence of the complainant. One of these weaknesses was the failure to examine ACP Patil who was the Senior Most Officer present at the place where the demand of bribe was allegedly made and bribe was accepted. There is no explanation for his non-examination. Similarly, what happened to ACP Deshmukh is also mysterious. Also, the trap was laid without verification of the alleged demand, which is contrary to the guidelines provided in the MANUAL OF INSTRUCTIONS 1968 issued by the Maharashtra State Anti-Corruption and Prohibition Intelligence Bureau in the matter of laying of traps. This lack of verification of the alleged demand becomes more significant in this case because of the non-availability of the evidence of the complainant.

29. The tainted amount was actually recovered from the appellant no.2. What was the relationship between the appellant no.1 and appellant no.2 is not clear, and there is no evidence in that regard. If the appellant no.2 had been taken by the appellant no.1 with him so as to facilitate acceptance of the illegal gratification without he himself being involved in the actual acceptance, then, logically, the appellant no.1 would have directed the complainant to hand over the amount to the appellant no.2 himself, instead of first taking it from the complainant and then handing it over to the appellant no.2.

30. Though the learned Special Judge has held the appellants guilty on the basis

that "though the earlier demands were not proved, the demand allegedly made by the appellant no.1 at about 10.45 p.m at Hotel Malhar was duly proved", such a conclusion is not logical because the meeting at Hotel Malhar was itself fixed, allegedly, on the basis of the previous demands. It is not the conclusion of the learned Special Judge that the previous demands allegedly made by the complainant were proved on the basis of what happened between the complainant and the appellant no.1 at about 10.45 p.m at Hotel Malhar, but his conclusion is that there came a new demand at about 10.45 p.m from the appellant no.1 which established the charges against the appellants.

31. The learned Judge has held the appellant no.2 guilty of abetment. Apart from the fact that the prosecution case cannot be held as satisfactorily proved, it is difficult to hold that the evidence of the prosecution, even if believed, would establish that the appellant no.2 had aided and abetted the appellant no.1 in commission of the alleged offences. This abetment is said to be "by consenting to retain the currency notes with him". (para 30 of the impugned judgment) If the prosecution case is believed, it was the appellant no.1 who had already demanded and accepted illegal gratification, and therefore, "whether the subsequent handing over the tainted amount by him to the appellant no.2, without anything more, would amount to abetment of the alleged offences by the appellant no.2;" was not at all considered by the learned Special Judge.

32. This was a case where the complainant had a motive to falsely implicate the appellant no.1, although the appellant no.1 was also in a position to favour the complainant, and therefore, expect illegal gratification from him. In the absence of the evidence of the complainant, however, it was not possible to come to a conclusion about the truth of the prosecution case. What had transpired between the appellant no.1 and the complainant, and what for, exactly, the appellant no.1 had agreed to meet the complainant at Hotel Malhar, why was he in uniform and with his service revolver, is not free from doubt, even if the version of appellant no.1 that he had gone there in anticipation of possible apprehension of a wanted criminal pursuant to the information to that effect given by the complainant, is not believed. The evidence of panch Pelnekar is not of such quality so as to afford sufficient and satisfactory corroboration to the evidence of Investigating Officer Ghuge (PW 3). It would be hazardous to place an implicit reliance on the testimony of Investigating Officer Ghuge when the evidence of panch was not satisfactory and when a Senior member of the raiding party was not examined as a witness.

33. This was a case where there certainly was a doubt about the truth of the matter. The appellants should have been given the benefit of such doubt and should have been acquitted.

34. Appeal is allowed.

35. The impugned judgment and order is set aside.

36. The appellants are acquitted. Their bail bonds are discharged.

37. Fine, if paid, be refunded to them respectively.

38. Appeal is disposed of in the aforesaid terms.