

(2000) 08 GUJ CK 0103
In the Gujarat High Court
Case No : Criminal Appeal No. 209 of 1988

State of Gujarat

APPELLANT

Vs

Ramanbhai Govindbhai Merai

RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (2001) 4 GLR 2947

Hon'ble Judges : K.R. Vyas, J; J.R. Vora, J

Bench : Division Bench

Advocate : S.P. Dave, app, for the Appellant; K.J. Shethna, for the Respondent

Judgement

K.R. Vyas, J.—The State of Gujarat, by way of this appeal, has challenged the judgment and order dated 13.1.1988 passed in Special Case No. 3 of 1985 by the learned Special Judge, Surat acquitting the respondent for offences punishable u/s 161 of the IPC and sections 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947.

2. The respondent at the relevant time was serving as an Extension Officer (Construction) in Taluka Panchayat, Mangrol. The complainant Kalidas Vasava, Ex. 5, at the relevant time was the Sarpanch of Ranakpur village under Mangrol taluka. For the purpose of constructing public well in the village, the village panchayat, by passing a resolution, applied for grant from the District Panchayat and the District Panchayat granted sanction to the amount of Rs. 18,000/- for the said purpose. The first instalment of Rs. 4000/- out of the sanctioned amount was released by the Taluka Development Officer in favour of the complainant on 20.4.1983. As a part of duty to supervise the construction work, the respondent used to come to the site and as per the say of the complainant, the respondent used to raise unnecessary objections regarding the construction work. It is the case of the complainant that after the amount of first instalment was spent, when he demanded payment of next instalment from the respondent, the

respondent refused to part with the amount. On being asked for the reason, the respondent, with a view to take the amount of bribe, asked the complainant as to "what about him?" to which the complainant gave an assurance that let the construction work of well be over. It is the case of the complainant that the respondent agreed to the said suggestion and thereafter on 19.7.1983, second instalment in the form of cheque for Rs. 6087.59 was released in favour of the complainant. It is the case of the complainant that thereafter also, the respondent used to come for the purpose of supervision at the site and by raising unnecessary objections, used to scold the complainant and give threat to stop the construction work. On 15.3.1984, when the complainant had gone to the Office of the Taluka Development Officer, Mangrol for getting the balance amount and met the respondent, at that time, again he inquired about the amount to be paid to him. The complainant wanted to know the exact amount from the respondent. At that time, the respondent mentioned the amount of Rs. 1000/- on a piece of paper and showed it to the complainant and thereafter torned out the same. The complainant told the respondent that it will not be possible for him to pay the entire amount at a time. However, he promised to pay the amount in instalments. After the above talk, the complainant requested the respondent to clear the cheque for the balance amount and accordingly on 16.3.1984, the complainant received the cheque for the balance amount. Thereafter, according to the complainant, the respondent used to visit the house of the complainant demanding the amount of bribe. On 23.4.1984, the complainant was required to visit the Office of Taluka Panchayat, Mangrol for the purpose of inquiring as to whether the amount of Rs. 3000/- was sanctioned for construction of road of village Ranakpur and for that purpose, he met the President of Taluka Panchayat in his chamber. The respondent was called in the chamber by the President and he was asked as to whether the amount was sanctioned or not to which the respondent replied that the amount was sanctioned and was pending for giving Work Order only. After giving the said reply, the respondent left the chamber and was waiting for the complainant to come out of the chamber. When the complainant came out of the chamber, the respondent again reminded him of the amount of Rs. 1000/- to be paid to him. When the complainant showed his inability to pay Rs. 1000/- at a time, the respondent inquired as to how much amount was possible to be paid initially. The complainant told him that at that time, he would be able to manage for Rs. 300/-. Thereafter the respondent told the complainant that he may pay the amount of Rs. 300/- on the next day near Mangrol Bus Station between 10.00 and 11.00 a.m. The complainant agreed to the same. Since the complainant was not prepared to pay the amount of bribe, he went to Police Inspector, ACB, Surat and lodged his complaint before the Police Inspector Chandrakant A. Mahendrakar, PW 3 Ex. 8, who recorded the complaint of the complainant which is at Ex. 9. He contacted Mamlatdar, Choryasi Taluka requesting him to send two persons to act as panchas and to see him on the next morning at 6.00 o'clock in his office. The complainant was also asked to come at the same time. On 24.4.1984, two panchas Ishwarbhai Zinabhai Patel, PW 2 Ex. 6 and Natvarlal Vinodbhai from the Office of the Mamlatdar and the

complainant came and after introducing each other, complaint was read over to the panchas as well as the complainant and they signed the same. The complainant was asked to produce Rs. 300/- in the denomination of Rs. 100/- each and their numbers were noted in the first part of the panchanama. Thereafter the usual test of anthracene powder was carried out by PSI Puwar. The complainant was asked to keep three currency notes having anthracene powder in the left side pocket of his bush shirt and was instructed not to touch the same until the demand was made by the respondent and was further instructed to give a signal after the acceptance of money by lighting a bidi. The raiding party thereafter went to Mangrol in Government jeep and reached Kosamba town. From there, they went to Mangrol by train. The complainant and panch no. 1 met the respondent at the bus stand in the bazar of Mangrol at about 10.30 a.m. when he was talking with some other persons. On seeing the complainant, the respondent asked the other persons to go. Thereafter, the complainant, the panch no. 1 and the respondent entered a nearby restaurant. The respondent entered the restaurant first and sat on a bench at the corner wall of the restaurant and the complainant sat on his right side on the same bench. The panch no. 1 stood near the table. The complainant asked the respondent as to whether they would complete the transaction of payment to which the respondent said "Yes" and asked to give and also raised his hand. Thereafter, the complainant took out the notes from his pocket and placed them in the hand of the respondent. The respondent by closing the palm kept the notes in the right hip pocket of his pant. The complainant, thereafter gave a signal by lighting a bidi. Immediately, the raiding party entered and instructed the respondent to stand up. The panch no. 1, at the instance of the Police Inspector, took out the currency notes from the hip pocket of the respondent. Three notes of Rs. 100/- each were recovered. The numbers of the notes were tallied with the numbers of the notes mentioned in the first part of the panchanama. Police Sub Inspector Puwar thereafter started experiment of anthracene powder with ultra violet lamp and noticed emission of light blue fluorescent on the right hand finger tips and palm as well as on the right hip pocket of the pant as well as back side of the right side corner of safari suit put up by the respondent. Similar emission of light blue fluorescent was noticed on the right hand finger tips of the complainant as well as panch no. 1. Similar experiment was carried out on the members of raiding party. However, nothing was noticed. The second part of the panchanama was prepared there and there after recovering safari suit as well as muddamal notes under panchanama. Police Inspector Mahendrakar, after recording the statements of witnesses and obtaining permission from the Competent Authority, arrested the respondent and filed chargesheet against the respondent. The learned Sessions Judge framed charge Ex. 3 against the respondent accused to which he pleaded not guilty and claimed to be tried. In fact, the respondent filed written statement Ex. 13 wherein he has admitted that at the relevant time, he was serving as Extension Officer in Taluka Panchayat, Mangrol and as a part of his duty, he was required to go for inspection of the construction work of well. He has also admitted that for the purpose of maintaining the quality of work, he was

required to scold the complainant often. According to him, because of the same, the complainant was bearing a grudge against him. According to him, he had no authority to sanction the amount as it was within the power of the Taluka Development Officer. According to him, there was no reason for him to demand the amount as the work of construction of well was already over. He has further stated that even it was within the knowledge of the complainant that all the work was over and there was no reason for the complainant to pay any amount which is clear from the fact that even the complainant has not filed any complaint against him regarding the demand of bribe amount. He has stated that he used to commute from Mandvi to Mangrol and the complainant was knowing that fact very well. According to him, he had never demanded any amount on 23.4.1984 outside the chamber of the President of Taluka Panchayat, Mangrol. He has also denied that he had written the figure of Rs. 1000/- on the piece of paper and thereafter torned it off and, therefore, the story of payment of Rs. 300/- by way of instalment is false and concocted. In substance, he has stated that he has been falsely involved in the last stage of his service career. Regarding the incident in question which has taken place on 24.4.1984, he has admitted that when the complainant came alone, he was at bus stand at 10.30 a.m. talking with some persons. He has stated that he accepted the invitation of the complainant for a cup of tea and both went to the nearby restaurant and when they were talking casually, he started feeling that something is moving on the hip pocket of his pant and he, therefore, immediately stood up and placed his hand on the hip pocket. The complainant was trying to thrust something in his pocket and when he was trying to take out the same, a police man came and caught hold of him and asked him to sit after taking out his hand from the hip pocket. According to the respondent, he came to know for the first time that the complainant, by inviting him for a cup of tea and while talking with him, was trying to insert folded notes of Rs. 300/- in his hip pocket. According to him, he had neither demanded Rs. 300/- nor raised his hand for accepting the amount nor the notes were recovered from his pocket. According to him, the emission of light blue fluorescent noticed on his finger tips as well as on the palm was because of the fact that the complainant wanted to insert notes in his hip pocket and he prevented the complainant from doing so. He has further stated that he had stated the said fact when his statement was recorded by the Police Inspector. Even though he had told the Police Inspector Mahendrakar to carry out the experiment of anthracene powder with ultra violet lamp on the panch as well as the table of the restaurant and inside of his hip pocket, however, no such test was carried out and, therefore, he has been falsely involved. Regarding the selection of panchas, the respondent has stated that the Police Inspector has selected the panchas from a particular department and, therefore, they are interested witnesses. Finally, he has stated that he was about to retire when the incident had taken place and, therefore, he wanted to live peaceful retired life with his wife and he had no Immovable properties nor any bank balance and in spite of serving honestly for the entire career, he and his wife are ruined.

3. After considering the evidence of prosecution witnesses as well as the written statement of the respondent, the learned Special Judge has recorded findings that the prosecution has failed to establish the charge levelled against the respondent and he, therefore, acquitted the respondent. The State of Gujarat has challenged the said judgment and order of acquittal by way of this appeal.

4. Mr. S.P. Dave, learned APP, after taking us through the entire evidence on record as well as the reasonings of the learned judge, submitted that the learned judge has committed an error in acquitting the respondent even though the prosecution has established the charge levelled against the respondent. In the submission of Mr. Dave, the reasons for acquittal recorded by the learned judge are not tenable and sustainable at law in view of the fact that the respondent himself had admitted that the complainant in fact met him on the day in question at the restaurant. Mr. Dave pointed out that the recovery of currency notes from the pocket of the respondent and the emission of light blue fluorescent from the finger tips as well as palm of the right hand and from the side of the hip pocket of the respondent are sufficient to hold the respondent guilty as the explanation tendered by the respondent for the same is neither believable nor acceptable. Mr. Dave further submitted that the learned judge has not at all considered the evidence of panch witness who is a Government servant and, therefore, an independent witness. Mr. Dave, therefore, submitted that the reasons for acquittal recorded by the learned judge are illegal and perverse and interference by this Court is called for.

5. Mr. K.J. Shethna, learned Counsel appearing for the respondent, on the other hand, while supporting the judgment of the learned trial judge in toto, has submitted that this being an acquittal appeal, even if two views are possible, this Court will not interfere.

6. Kalidas Gulabbhai Vasava, PW 1 Ex. 5, the complainant herein was the Sarpanch of Ranakpur village at the relevant time. In his evidence, he has stated that Rs. 18000/- were sanctioned by the District Panchayat for the purpose of construction of well and the said amount was disbursed by the Taluka Panchayat in instalments. According to him, the respondent being an Extension Officer, used to supervise the construction work. However, he used to raise unnecessary objections and used to scold the complainant in presence of villagers. According to the complainant, when the amount of Rs. 4000/- received by way of first instalment was spent and when the complainant demanded for release of further instalment, the respondent denied to make the payment. The complainant was required to meet him at his office. It is the say of the complainant that the respondent demanded bribe by writing the figure of Rs. 1000/- on a piece of paper and after allowing the complainant to see the said figure, he torned out the same. The complainant told the respondent that it was not possible for him to pay the said amount at a time and promised that he will make payment as and when he receives the amount in instalments to which the respondent agreed. A cheque for Rs. 6087.59 was thereafter received by the complainant.

After receiving the second cheque, when the complainant had gone to see the President of Taluka Panchayat and met him in the chamber in connection with road work, the respondent was called by the President in his chamber for the purpose of getting latest information regarding the Work Order. After giving the said information, the respondent, after leaving the chamber, was standing near the door of the chamber waiting for the complainant to come out. At that time, when the complainant came out, the respondent inquired about the amount. The complainant told that at that time, he was not having the amount. However, he promised to make some payment on the next day provided the respondent could make himself available at Mangrol. According to the complainant, the respondent had informed that he will wait for the complainant in the bazar of Mangrol at 10.00 o'clock. Since the complainant did not want to make the payment, he went to the Office of the A.C.B., Surat and met Police Inspector Mahendrakar and lodged the complaint. The complainant was asked to stay over and again to come in the next morning at 6.00 o'clock. In the morning, two panchas were present in the Office of the Police Inspector where the complaint was read over to them and they also signed. The complainant was asked to produce bribe amount and accordingly the complainant produced three notes of Rs. 100/- each. PSI Puwar thereafter performed experiment of anthracene powder with ultra violet lamp in presence of the panchas and the complainant, the details of which we have already given and, therefore, it is not necessary to repeat the same.

Thereafter, the raiding party went in a Government jeep to Kosamba and left the vehicle there and went by train to Mangrol and reached Mangrol at about 10.00 a.m. The complainant as well as panch no. 1 went ahead followed by the raiding party. The complainant thereafter met the respondent and the complainant, respondent and panch no. 1 thereafter entered the restaurant. We have given the details regarding the conversation which had taken place between the complainant and the respondent and how the amount was given and received, in the earlier part of the judgment and, therefore, the same is not repeated.

7. The complainant has been cross examined at length. According to him, he received the entire amount of draft by 25.2.1984 when the construction of well was over. He has also admitted that no other complaint, oral or written regarding the conduct of the respondent was given excepting the complaint given to the ACB. He has also admitted that the respondent used to scold him and demand the amount and, therefore, he thought it proper to teach him a lesson and, therefore, with this idea, he had gone to Surat on 23.4.1984 for filing the complaint. He has stated that when he met the complainant at Mangrol bus stand, no other talk took place and he also did not shake hands with the respondent. He has admitted that the police and the raiding parties were in civilian dress and he had no idea as to at what distance they were standing outside the restaurant. He, however, has added that they must be within the vicinity of 5 to 10 feet. He has stated that the respondent did not inquire about the panch no. 1 and the complainant also did not introduce him to the respondent. He has admitted that he and the respondent were sitting in such a

way that the front pocket of the pant of the respondent was touching him. He has denied the suggestion that the police party came before he gave a signal by lighting a bidi. He has admitted that the respondent did not inquire as to for what purpose, the amount was paid. He has further admitted that he also gave the amount without telling as to for what purpose the payment was made. He has denied the suggestion that the respondent, after taking out the amount from the pocket was about to inquire as to for what purpose the amount was paid and by that time, the police came. He has also denied the suggestion that he thrust the amount in the hip pant pocket of the respondent and while the respondent was about to inquire as to for what purpose the amount was paid, the police party came. He has admitted that the raiding party surrounded the table and the experiment with ultra violet lamp was carried out at the table. He has further admitted that after ascertaining the fact that the notes were in pocket, the experiment commenced. He has also admitted that after completion of the experiment, the hands of the complainant, panchas and members of the raiding party were seen in ultra violet lamp and the same continued for about one-and-half hours. At that time, persons were moving inside and outside the restaurant. He has admitted that the man sitting on "Galla" could see the person sitting inside as well as the person entering from outside. He has also admitted that after the completion of the construction work of well, the respondent could not have done anything in the matter.

8. The evidence of the complainant is corroborated by the evidence of Ishwarlal Zinabhai Patel, PW 2 Ex. 6, panch no. 1. In his evidence, he has stated that on 24.4.1984, he was serving as a Circle Officer in the Office of the Mamlatdar, Choryasi taluka. On receiving intimation from Mamlatdar on 23.4.1984, he and another panch Natvarlal Vinodbhai had gone to the Office of ACB, Surat in the early morning on the next day. He has given identical version regarding the reading over of the complaint, preparation of panchanama, production of currency notes by the complainant, experiment of anthracene powder with ultra violet lamp on currency notes, noting down of numbers of the currency notes, instructions given to the complainant to give signal no sooner the amount is accepted etc. He was asked to remain with the complainant and to hear and observe about the transaction between the complainant and the respondent. According to him, after entering the restaurant, the respondent first occupied a sit and then the complainant sat by his side on the same bench and he was standing near the table. He has stated that the complainant asked the respondent as to "shall we finish?" to which the respondent replied "yes, yes, here only it may be completed" and by telling this, the respondent raised his right hand. The complainant took out notes from the pocket of his bush-shirt and kept in the hand of the respondent. The respondent took with his fingers and kept in the right hip pocket of his pant. The respondent ordered for a cup of tea and at that time, the complainant gave a signal, as agreed, by lighting a bidi and immediately the raiding party, with panch no. 2 came there. Police Inspector Mahendrakar, after giving introduction, asked the respondent not to move. After

inquiring the name of the respondent, he asked PSI Puwar to commence the experiment with ultra violet lamp. He has given identical version regarding the emission of light blue fluorescent from the finger tips as well as palms of the respondent as well as from the hip pocket of the pant. According to him, as per the instructions given to him, he had taken out currency notes from the right pocket of the respondent and after placing the same before the ultra violet lamp, emission of light blue fluorescent was noticed and numbers also tallied with the numbers mentioned in the first part of the panchanama. According to him, on making a further search, Rs. 101/- were recovered from the pant pocket as well as change of Rs. 6/- and odd amount with certain papers were recovered from the pocket of the bush-shirt of the respondent. No marks were found on the said articles when examined before the ultra violet lamp. He has further stated that thereafter the panchanama was completed and both the panchas signed the said panchanama. The said panchanama is produced at Ex. 7. He has specifically stated that the complainant as well as respondent were sitting in the restaurant facing east. According to him, the respondent sat first and thereafter on his right side, the complainant occupied the seat. He has been cross examined at length. However, nothing substantial has been taken out from his evidence. Barring certain minor discrepancies, he has remained consistent with whatever he has stated in the examination-in-chief. He has denied the suggestion that the respondent, after accepting the amount, inquired as to what for the amount was paid. He has also denied that after keeping his hand on the hip pocket, the respondent stood up and inquired as to why and for what purpose, the amount was given and at that time, the police came and made the respondent sit. According to him, the respondent kept the amount in his pocket while sitting. He has admitted that as and when his superior asks to act as a panch, he has to act as a panch and he has to inform his superior that he has completed the work. He has also admitted that he acted as a panch for the first time. He has denied the suggestion that because of the fear of the Office of ACB, he had to give evidence as per their say. He has also denied the suggestion that he was knowing the complainant from the beginning. He has also denied the suggestion that the complainant had selected him as a panch. He has also denied the suggestion that no demand or acceptance of money was made in his presence. He has also denied the suggestion that being a Government servant, because of the fear of ACB, he has given the evidence which may help the prosecution. Finally, he has denied that he had gone to the spot after the raid was over.

9. After scrutinising the evidence of the complainant as well as the panch, we are clearly of the opinion that nothing adverse can be stated regarding their testimony. Their evidence appears to be quite natural and trustworthy. The panch no. 1 being a Government servant, is quite an independent witness. Instead of giving a parrot-like version, he has deposed in the most natural way as to what he had noticed at the time of raid. By pinpointing the discrepancies by the learned Counsel appearing for the respondent with regard to the conversation between the complainant and the respondent when the demand for bribe amount

was made, it contended that the evidence of panch Ishwarlal does not corroborate the say of the complainant. As per the evidence of the complainant, he asked the respondent "shall we complete money transaction here" to which the respondent said "yes and give" while according to the evidence of panch, the complainant asked the respondent "shall we complete" to which the respondent said "yes, yes, let us complete here only". In our opinion, even if the panch has not stated the aforesaid dialogue verbatim as per the say of the complainant, it is not a material omission. It would be too much to expect a witness to give exactly identical version after a lapse of about four years when his deposition was recorded. In any case, except the aforesaid discrepancy in the evidence regarding conversation between the complainant and the respondent, this panch has fully corroborated the evidence of the complainant and there is no reason for us not to accept his evidence.

10. It was contended on behalf of the respondent that the panch no. 1 being a Government servant is supposed to act as per the say of his superior and will always like to support the prosecution in order to maintain good service record. It is not possible for us to accept this submission. By accepting such submission, we will be undermining the Government servant. With a view to see that the raiding party may not get panchas of their own choice by selecting persons who have dubious criminal record, selection of panchas is made from amongst the Government servants. Admittedly, in the instant case, the panch no. 1 has acted as a panch for the first time. There is nothing on record to show that in the past, he had ever obliged police by working as a panch. Nothing is suggested in the cross examination that he has special reason to depose against the respondent and, therefore, he has falsely involved the respondent. In our opinion, the panch no. 1 being an independent witness had no axe to grind against the respondent. There is no reason for us not to accept his evidence. It would be too much for us to conclude that the panch no. 1 was not present at the time of search of the respondent and that his signatures were later on obtained by the Investigating Officer. Unfortunately, the learned Special Judge has not considered and/or appreciated the evidence of panch no. 1.

11. The learned Counsel for the respondent criticized the evidence of the complainant on many counts. In the submission of the learned Counsel for the respondent, the evidence of the complainant is not at all believable on the ground that the respondent being a strict officer, while he was supervising the construction work, he had criticized and scolded the complainant in presence of villagers and, therefore, the complainant, with a view to take revenge, has falsely involved the respondent. It was further contended that after completion of construction of well, nothing further was required to be done at the hands of the respondent and, therefore, there was no need for the complainant to pay any amount by way of illegal gratification to the complainant. It was further contended that the respondent could not have demanded illegal gratification outside the chamber of the President of Taluka Panchayat openly, especially when even as per the say of the complainant, previously, he had demanded the

amount of Rs. 1000/- by mentioning the same on a piece of paper. In the submission of the learned Counsel for the respondent, the story suggested by the prosecution is not at all believable. Needless to say that on the aforesaid grounds, the learned Special Judge has not believed the prosecution story. After close scrutiny of the evidence of the complainant, it appears to us that for the construction of well in village Ranakpur, Rs. 18000/- were sanctioned by the District Panchayat. In the first instance, an amount of Rs. 4000/- was sanctioned on 20.4.1983 and the cheque for the said amount was issued by the Taluka Development Officer, Mangrol to the complainant. At that time, admittedly, no demand was made. However, the respondent, while supervising the work, used to raise unnecessary objections regarding construction. When the question of second instalment arose, the respondent withheld the payment for some time and when inquired about the same, he for the first time, asked as to "what about him?" to which the complainant said "let the work of construction of well be over and thereafter something can be done." Thereafter on 19.7.1983, the second instalment of Rs. 6087.59 was sanctioned. Even thereafter also, as per the say of the complainant, the respondent while supervising the work, used to scold the complainant by raising unnecessary objections. Since much time had elapsed and nothing was finalised, it appears that the respondent decided to suggest a specific amount and he did so when on 15.3.1984, the complainant again met the respondent in his office for the final instalment. At that time, the respondent specifically asked about his money. The complainant by this time was giving evasive replies and was not in fact serious about making payment. When specifically asked by the respondent, naturally, he would like to know the exact amount and, therefore, he asked as to how much amount he desired. The respondent, at that time, wrote down the figure of Rs. 1000/- on a piece of paper and showed it to the complainant and thereafter torned out the same. Since the construction work of the well was a public work, it was not possible for the complainant to pay from his own pocket and he, therefore, stated that it will not be possible for him to pay the entire amount at a time. However, he will make payment by instalments as per his own convenience. The complainant was required to give such answer because in any case, he had to obtain the last instalment and, therefore, he also did not like to displease the respondent. On getting such assurance from the complainant, on the next day i.e. on 16.3.1984, the complainant received cheque for an amount of Rs. 6970.17. One month thereafter i.e. on 23.4.1984, when the complainant was again required to visit the Office of the Taluka Panchayat, Mangrol in connection with construction of road and met the President of the Taluka Panchayat, the respondent was called in the chamber by the President and the respondent gave appropriate answer. Even after leaving the chamber of the President, as per the say of the complainant, he was waiting outside the door of the chamber for complainant. This is but natural as the work of construction of well was over and the entire amount was received by the complainant for the said purpose and nothing was paid to the respondent and, therefore, the respondent, while becoming desperate, would like to know as to what happened to his demand. We do not find this conduct on the part of the

respondent to be unusual. It is to be noted that still the amount of Rs. 3000/- sanctioned for the work of construction of road was not paid to the complainant for which the complainant was required to see the respondent. Therefore, the contention that the allegation of demanding Rs. 1000/- outside the chamber of the President of the Taluka Panchayat by the respondent even though the work of construction of well was over is not believable, does not appeal to us. When the demand for bribe is made for the first time, one may not like to quote the amount orally and one may state the same by mentioning on a piece of paper. However, once the amount is so quoted and if it is not paid, it is not necessary that the person again may demand the amount by mentioning the same on a piece of paper. Second time, naturally, he would like to demand the amount by calling upon the other side to pay the same. It is quite possible that the respondent might have thought that the complainant had come to the office after lapse of a month and it was not certain as to when he would come again and, therefore, out of desperation to get the amount, he waited for the complainant outside the chamber of the President of Taluka Panchayat. The complainant, on the other hand, as stated above, was not keen to make any payment. However, when he came out of the chamber and when he was reminded of Rs. 1000/-, he again gave the same answer that it was not be possible for him to pay the said amount at a time to which the respondent inquired as to how much he could pay. The complainant thereafter stated that at that time, he would be able to manage for Rs. 300/- to which the respondent said "yes and on the next day, he be paid Rs. 300/- "and thereafter the place and time were fixed. Since the complainant was not willing to pay the amount of bribe, he decided to file a complaint against the respondent. In our opinion, there is nothing unusual in this conduct of the complainant. This is particularly in view of the fact that if the amount as demanded was paid, it was quite likely that it would have encouraged the respondent to demand further amount for another work. In our opinion, these are the reasonable inferences which the Court can always draw and, therefore, the contention raised regarding filing of the complaint by the complainant even though the work was over and no demand was made by the respondent, does not satisfy our conscience and, therefore, it is not possible for us to accept the same.

12. One more ground which has weighed with the learned Special Judge in not believing the complainant is to the effect that the complainant had not made any grievance to the superior officer, namely Taluka Development Officer against the respondent. We fail to understand what relief the complainant would have got from the Taluka Development Officer if he had made a grievance regarding the alleged demand made by the respondent. The Taluka Development Officer would have insisted for proof and what would have been the guarantee that the superior officer would have taken immediate action against the respondent. As stated above, the complainant was not keen and serious to succumb to the illegal demand made by the respondent and, therefore, as and when the demand was made on the previous occasion, he had in fact ignored the same and when a

stage came where it was difficult for him to say "No", he decided to approach the ACB. Thus, instead of approaching the superior officer, complainant's approaching the ACB will not be a ground to disbelieve the evidence of the complainant. 1.9.2000:

Unfortunately, the learned Special Judge proceeded on this line of reasoning and consequently rejected the evidence of the complainant by observing that the evidence of the complainant is not believable.

13. This takes us to the question of demand and acceptance of bribe amount alleged to have taken place at the restaurant in Mangrol town. There are rival versions on the point. It was contended on behalf of the respondent that the respondent neither demanded the bribe amount nor accepted and it was the complainant who thrushed the bribe amount in the right hip pocket of the respondent without his knowledge when the parties were talking to each other. It has come in the evidence that the respondent was in fact there at the bus stand in the bazar of Mangrol on the date and time as agreed to between the parties. Not only that, on seeing the complainant, the respondent permitted the other persons with whom he was talking, to go and immediately accepted the suggestion of the complainant to go the restaurant. The respondent was first to enter the restaurant and occupied the seat on the bench near the wall facing the east and the complainant sat besides him on the right side. Once it was agreed on the previous day that the complainant would come with the bribe amount, it was not necessary for the respondent to make a demand nor was it necessary for the complainant to wait for the same and/ or to initiate talk. In such a situation, no further talk or any other conversation is necessary. In the instant case, the complainant in fact initiated a talk by telling the respondent that "Sir, shall we complete monetary transaction here?" to which the respondent said "yes, give" and thereafter the respondent raised his hand. The complainant thereafter took out the notes from his right pocket of bush-shirt and placed them in the hand of the respondent. The respondent, by folding his palm, covered the currency notes and kept them in the right side hip pocket of his pant. The panch Ishwarbhai has fully corroborated this part of the evidence of the complainant. The respondent in his written statement, while denying the say of the complainant as well as of the panch, has come out with a case that the complainant thrushed the notes in his right side hip pocket. Therefore, the question that arises for our consideration is which of the stories is believable? It is not in dispute that the mark of anthracene powder was found on the right hand finger tips of the complainant as well as on the right hand finger tips and right hand palm of the respondent as also on the hip pocket. In view of this, it is clear that the currency notes travelled from the bush-shirt of the complainant to the right side hip pocket of the pant of the respondent. By visualizing the manner in which the complainant and the respondent sat together on a bench, we feel that it would be highly inconvenient for the complainant to thrust the currency notes in the right side hip pocket of pant of the respondent after taking out currency notes from the pocket of his bush-shirt with his right hand since he was sitting on the right side of the

respondent. The way in which they were sitting together, if at all the complainant wanted to thrust the notes on the right side hip pocket of pant of the respondent, it would have been more convenient for him to take out the notes with his left hand because otherwise, it would be inconvenient for the complainant to take out notes with the help of his right hand from the bush-shirt pocket and to turn his body to the left to thrust the notes in the hip pocket of the respondent. Since the entire incident was over within five minutes, when they entered the restaurant, it is suggestive of the fact that the complainant was keen to complete his mission as early as possible. Assuming the story of thrusting notes put forward by the respondent to be believable, in that event, it would be highly inconvenient for the complainant to take out notes with the help of his right hand from his pocket of the bush-shirt and then to move on his left side by turning his body and then to thrust. Instead, he could have simply thrust the currency notes on the right side hip pocket using his left hand only. Suffice it to say that the learned Counsel for the respondent did not give satisfactory answer when we pointedly raised the above query to him. Thus, in view of this, in our opinion, the story put forward by the respondent of complainant thrusting the notes without his knowledge in the right side hip pocket of his pant does not appear to be probable. In our opinion, the story put forward by the prosecution not only appears probable, but also believable and, therefore, we accept the same.

14. It was contended on behalf of the respondent that the respondent could not have demanded bribe in presence of the panch, a stranger who was standing near the table when the transaction took place. It is difficult to know and understand the mind of a person because it varies from person to person. Sometimes, on a particular occasion, a person may behave so unusually that no other prudent person could have behaved so. Considering the facts and circumstances of the case, it is clear that after reaching the restaurant, the complainant immediately came to the point of business by offering money which was accepted without there being any delay. The entire incident happened in no time. It appears to us that the respondent could not have any time to think about the presence of panch no. 1. In any case, in view of the evidence of the complainant as well as Police Inspector Mahendrakar and the panchanama Ex. 7, it is not possible for us to dispute the presence of panch no. 1 when the alleged transaction took place. After having considered two probable versions of the case, the present contention loses all its importance and, therefore, we reject it.

15. The learned Special Judge, in our opinion, has clearly misdirected himself in deciding the question regarding demand and acceptance. In paras 47 and 48 of the judgment, he has observed that after entering the restaurant, it was the complainant who started talking about payment and, therefore, it is not correct to say that the respondent had demanded illegal gratification. The learned Judge, in the alternative, has observed that even if the respondent said "yes" when the complainant asked him about the payment and raised his hand, however, in view of the evidence of the panch, no talk regarding money had taken place and in view of this, raising of hand by the respondent cannot be construed as to for

which purpose he raised his hand and, therefore, the evidence of the prosecution is weak. It is difficult to understand and accept the reasonings of the learned judge. As observed earlier, a prior meeting had taken place between the complainant and the respondent on the previous day whereby the complainant had agreed to make part payment. The parties, in fact, had fixed the date, time and place of their meeting on the next day and in pursuance to the same, had in fact met each other and, therefore, there was no need for either of them to have a detailed discussion about the same. At the time of meeting, once the complainant started with the topic to complete the payment in the restaurant and when the answer was in the affirmative and thereafter hand was raised to accept the amount, no other conclusion is possible. The only possible conclusion is that the respondent accepted the amount of illegal gratification from the complainant.

16. The learned judge has given one more reason, namely that on the previous day, no amount was fixed and, therefore, the natural conduct on the part of the respondent would be to see as to what amount he would receive from the complainant. Frankly speaking, even this reasoning does not appeal to us. In view of the complaint Ex. 9, the complainant has specifically stated that on the previous day, he had told the respondent that he would be able to manage for Rs. 300/- and the respondent had also stated that Rs. 300/- be paid to him. Merely because the learned PP was not able to get the said facts in the evidence of the complainant, it cannot be held that no amount was fixed between the parties. In any case, the natural conduct on the part of the person who receives illegal gratification is to receive whatever amount is paid to him especially when it was agreed between the parties that it was not possible for the complainant to pay the entire amount at a time. Thus, merely because the respondent did not count the amount, it cannot be concluded that the complainant thrusting the amount in the right side hip pocket of the respondent. The learned Special Judge accepted the theory of planting of notes by observing that the complainant was keen to teach a lesson to the respondent. In our opinion, this is a case of total misreading of the evidence of the complainant. In para 25 of the evidence of the complainant, the complainant has admitted that the respondent used to scold him and demand illegal gratification and, therefore, he felt that he should teach the respondent a lesson. It is, therefore, true that after deciding to do so, he had gone to Surat on 23.4.1984 for the purpose of lodging a complaint.

Reading the aforesaid evidence, it is clear that the complainant has admitted two things, namely that the respondent used to scold him and was also demanding illegal gratification and, therefore, he wanted to teach him a lesson. The learned judge, by ignoring the demand of illegal gratification, only relied upon the fact that the respondent used to scold him and, therefore, the complainant wanted to teach him a lesson. Thus, considering the part of the evidence and ignoring the part of the evidence of the complainant by the learned judge has resulted into miscarriage of justice. Apart from this, the learned judge has not at all considered the evidence of panch no. 1 who was very much present at the time

of demand and acceptance. We are conscious of the fact that the trial court which had an advantage of watching the demeanor of the witnesses, after appreciating their evidence, has passed the order of acquittal. Normally, the High Court will not interfere unless it is found that the appreciation of evidence is patently illegal and erroneous. After appreciating the evidence on record, we feel that this is one of such cases where interference is called for. In our opinion, the learned judge has totally misread the evidence on record and, therefore, the findings recorded by him do not stand. In our opinion, no two views are possible in the matter and, therefore, interference by this Court is necessary.

17. Mr. Shethna, learned Counsel for the respondent, to substantiate his submissions, invited our attention to many case laws. In *Sita Ram Vs. The State of Rajasthan*, demand of bribe by the accused from the complainant was not proved and secondly the story of the prosecution was not established beyond reasonable doubt. In the circumstances, the apex Court held that the presumption u/s 4(1) cannot be drawn for convicting the accused. That is not the case before us. As observed earlier, by accepting the evidence of the complainant as well as panch no. 1, we have held that the prosecution case is proved. Not only that, demand of bribe and payment of money by the complainant is also proved.

18. In the case of *Gulam Mahmood A. Malek Vs. State of Gujarat*, the apex Court, in a bribe case, after laying down the principles of appreciation of evidence, has held that the background of the case should not be lost sight of. That was a case where the complainant was himself an accused in four cases and he had paid the bribe amount to the bench clerk in court on several occasions and had launched complaint about demand of bribe after ten days after alleged demand and, though the payment of bribe was made in Court hall, the money was recovered in another room after about twenty minutes and no independent witness from the hall was examined and the apex Court held that the accused cannot be convicted for accepting bribe on the corroborating testimony of the panch witness as to recovery of money and in appreciating the evidence in such cases, the background should not be forgotten.

There cannot be any dispute with respect to the principle laid down by the apex Court. However, in the instant case, as observed earlier, we have accepted the evidence of the complainant who himself is a Sarpanch without there being any black past and, therefore, the principle laid down by the apex Court cannot be made applicable to the facts of this case. In the said judgment, the apex Court has further laid down that the High Court must have sufficient grounds for holding that appreciation of evidence by the trial court is unsupportable while considering the question of reversal of the order of the trial court. As observed earlier, we are having sufficient grounds for holding that the appreciation of evidence by the trial court is unsupportable and, therefore, in our opinion, the judgment cited by the learned Counsel for the respondent will not assist him.

19. In the case of *Suraj Mal Vs. State (Delhi Administration)*, the Supreme

Court laid down that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In the present case, in our opinion, since the substantive evidence is reliable, the judgment of the apex Court will have no relevance in deciding the present case.

29. In the case of *Man Singh Vs. Delhi Administration*, , it has been laid down that it is sufficient if accused offers probable explanation or defence and strict standard of proof is not necessary. We respectfully agree with the principles laid down. After having considered the probable explanation of the respondent accused, we are of the view that the same is not acceptable to us.

30. Reliance was placed by the learned Counsel for the respondent on the decision of this Court in the case of *Kanubhai K. Patel Vs. State of Gujarat* 1998(1) GLH 924 wherein it has been held that conviction not sustainable as demand and acceptance being vital ingredients are not established and mere acceptance of amount will not constitute offence without demand of illegal gratification. As observed earlier, in our opinion, the prosecution in the instant case, has proved beyond reasonable doubt the demand as well as acceptance and, therefore, the judgment of the learned single judge of this Court cannot be made applicable to the facts of the present case.

31. In the case of *Raghubir Singh Vs. State of Punjab*, , apex Court laid down that it is the duty of the officers in anti-corruption department to secure independent and respectable witnesses. It has been further laid down that where a trap is laid for public servant, it is desirable that the marked currency notes which are used for the purpose of trap are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the Court does not have to determine on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of a public servant. That was a case where the PSI secured presence of one of the persons to work as a panch who in turn brought another person to act as a panch also of his relation and, therefore, after considering their evidence, the Supreme Court was of the view that they are not independent and respectable witnesses and, therefore, no reliance can be placed on their evidence.

As far as the present case is concerned, both the panchas are Government employees and in fact, the panch no. 1 has acted for the first time as a panch. Merely because their superior officer Mamlatdar who was requested by PI Mahendrakar to send the clerks to act as panchas, it would be too much to hold that they are interested witnesses. Even though as per the observations of the apex Court, use of phenolphthalein powder in trap cases is desirable, the use of anthracene powder in the present case cannot nullify the raid in question.

32. Thus, considering the facts of the case, we are clearly of the view that the learned trial judge has committed an error in acquitting the respondent for offences punishable under sections 5(1)(d) and 5(2) of the Prevention of

Corruption Act and 161 of the Indian Penal Code. We, therefore, set aside the order of acquittal dated 13.1.1988 passed by the learned Special Judge, Surat and convict the respondent-accused for offences punishable u/s 5(1)(d) and 5(2) of the Prevention of Corruption Act and section 161 of the IPC.

33. On the question of sentence, we have heard the respondent- accused who is present in the Court. He has also filed affidavit pointing out the circumstances to take a lenient view in the matter. He has supported the averments made in the affidavit. In the affidavit, he has stated that he is 71 years of age and is suffering from asthma since ten years and because of the same, he is not able to do any other work. From the date of the incident i.e. from 24.4.1984, he was put under suspension which continued upto 20.11.1987 when he superannuated and at that time, he was getting Rs.1250/as subsistence allowance. That amount was also stopped after he was superannuated. He has received only Rs. 25000/- from his provident fund account after his retirement. Except that amount, no other allowances have been paid to him and, therefore, he has suffered a huge monetary loss. He has further stated that he and his wife aged 64 years along with his elder sister of 74 years of age are staying together and they are being looked after by the nephew. With this fact, Mr. Shethna, learned Counsel for the respondent invited our attention to the decisions of the apex Court in the case of B.G. Goswami Vs. Delhi Administration, followed in the case of Rameshkumar Gupta Vs. State of M.P., AIR 1990 SC 2121, Balaram Swain Vs. State of Orissa, , Ajit Kumar Vasantlal Zaveri Vs. State of Gujarat, . In all these decisions, the apex Court, taking into consideration the overall circumstances of the case, has taken a lenient view in the matter by imposing sentence for the period already undergone. The apex Court has considered that the time gap between the occurrence of the incident and the date of decision rendered in the case and the accused having undergone the agony of criminal proceedings, are the main considerations. This Court (M.S. Parikh, J.), in Criminal Appeal No. 453 of 1987 dated 1.4.1998, after relying upon the decision of the Supreme Court in the case of B.C. Goswami (supra) and Sarup Chand Vs. State of Punjab, has awarded sentence till rising of the Court. The Supreme Court in the case of T.M. Joseph Vs. State of Kerala, , after relying upon the decision in the case of B.C. Goswami (supra), observed as under:

"In the instant case, the learned counsel submits that the appellant suffered some imprisonment during the trial stage. We do not find sufficient proof of the same on the record. However, even taking into account that he has suffered some imprisonment, we think that he has to undergo some more imprisonment. Accordingly, we confirm the conviction and reduce the sentence of one year rigorous imprisonment to 15 days on each count. The sentence of fine, however, is confirmed."

34. Mr. Dave, learned APP invited our attention to the decision of the Supreme Court in the case of Sudam Hari Patil Vs. State of Maharashtra, AIR 1994 SC 1807. In the said case, the appellant was convicted for offences punishable

under sections 5(1)(d) read with section 5(2) of the Prevention of Corruption Act and was sentenced to suffer one year R.I. and to pay a fine of Rs. 300/-. He was also convicted for offence punishable u/s 161 of the IPC and sentenced to suffer one year R.I. and to pay a fine of Rs. 200/-. While confirming the conviction, on the question of sentence, the Supreme Court observed as under:

"The offence is said to have been committed in the year 1984. The appellant has lost his job and for all these years, he has undergone the agony of criminal proceedings. He has also a large family to support. He is now in jail. For all these special reasons, while confirming the conviction, the sentence under each count is reduced to six month"s R.I. The sentence of fine with default clauses are, however, confirmed."

Thus, the question of sentence can vary from case to case depending upon the facts and circumstances of each case. However, considering the facts of the present case, as far as the question of sentence is concerned, we are of the view that instead of awarding minimum sentence provided u/s 5(2) of the Prevention of Corruption Act, we would like to take lenient view in the matter in view of the fact that the appellant is 71 years of age and is suffering from asthma and in view of the conviction, he has to lose all retirement benefits. In any case, considering the fact that the incident in question had taken place in the year 1984 and the present appeal is heard in the year 2000, the respondent has undergone mental agony during all these years and, therefore, in our opinion, these are all the factors warranting us to take lenient view in the matter.

35. In the result, we set aside the judgment and order of acquittal passed by the learned Special Judge, Surat in Special Case No. 3 of 1985 and convict the respondent- accused for offences punishable under sections 5(1)(d) read with 5(2) of the Prevention of Corruption Act and sentence him to suffer S.I. for 15 days and to pay a fine of Rs. 300/-, in default, to undergo further S.I. for 7 days. The respondent- accused is also convicted for an offence punishable u/s 161 of the IPC and is sentenced to suffer S.I. for 15 days and to pay a fine of Rs. 300/-, in default, to undergo further S.I. for 7 days. Both the sentences of imprisonment to run concurrently. Bail-bonds shall stand cancelled. The respondent- accused to surrender before the jail authorities on or before 1st November 2000. Order accordingly.