

(1981) 09 BOM CK 0078
In the Bombay High Court
Case No : Criminal Appeal No. 79 of 1978

State of Maharashtra

APPELLANT

Vs

Jagannath Dattatraya Mahajan

RESPONDENT

Date of Decision : 04-09-1981

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 4(1), 5(1), 5(2)

Citation : (1982) 2 BomCR 98

Hon'ble Judges : S.P. Kurdukar, J; M.P. Kanade, J

Bench : Division Bench

Advocate : S.G. Deshmukh, P.P, for the Appellant; S.J. Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kurdukar, J.—This criminal appeal is filed by the State of Maharashtra against the order of acquittal dated August 30, 1977, in Special Case No. 1 of 1977 passed by the Special Judge, Beed. The learned trial Judge found the respondent-accused (hereinafter referred to as "the accused") not guilty of any of the offences punishable u/s 161 of the Indian Penal Code and u/s 5(1)(d) read with section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the "Corruption Act").

2. Shri Sitaram Tangde, a well-to-do person from Beed, owns substantial properties including a house wherein the complainant Kanhu (P.W. No. 1) and one Pandurang Sirsale reside as tenants in separate blocks. Petty quarrels between the two tenants gave rise to the present prosecution against the accused. Pandurang Sirsale on August 26, 1976 lodged a complaint (Exh. No. 26) at the City Police Station, Beed, complaining about the misconduct on the part of the complainant Kanhu. It appears that this complaint remained unattended till September 26, 1976. It appears that there was a full during this period of one month and at any rate from the record it appears that no untoward incident

happened between Kanhu (P.W. No. 1) and the family members of Pandurang sirsale.

3. On September 27, 1976, a month after the earlier complaint was lodged by Pandurang, Ratnabai wife of Pandurang filed a complaint against the complainant Kanhu (P.W. No. 1) alleging the misconduct on the part of Kanhu and some marpit. The said complaint is at Exh. No. 31. At the relevant time, it is no more in dispute that, the accused was working as Police Head Constable attached to the City Police Station, Beed and was also assigned additional duty as a Beat Jamadar in charge of Malives Police Chowky, which is within the precincts of Beed city. Complainant Kanhu (P.W. No. 1) is also a resident of the said locality. On receipt of the complaint filed by Ratnabi on September 27, 1976, the Station Officer Athavale (P.W. No. 3) handed over the said complaint to the accused for necessary investigation and to submit a report accordingly. On September 27, 1976 at about 6 p.m. the complainant Kanhu was brought to the Police Station by two constables during the investigation on the complaint filed by Ratnabai. Head Constable Bashir, who was in charge of the Police Station, suspecting that the complainant Kanhu was under the influence of liquor, sent him to the Medical Officer for necessary examination. The complainant Kanhu was thereafter brought back to the Police Station. Sitaram Tangde thereafter reached the Police Station and got Kanhu released on bail. It is alleged by the prosecution that Sitaram Tangde, when he was in the Police Station, did not behave properly whereupon the accused asked him to behave in a decent manner. It is alleged by the prosecution that there was some exchange of words between the accused and Sitaram Tangde and thereupon the accused told him that he would see to it. After the release of Kanhu on bail, Sitaram Tangde and Kanhu left the Police Station. These facts are no more in dispute.

4. It is then alleged by the prosecution that after release of the complainant Kanhu on bail, the accused told him to see him on the following day, that is, on September 28, 1976 at about 10 a.m. Accordingly, Kanhu (P.W. No. 1) went to the Police Station at about 9 a.m. The accused then called Kanhu aside the alleged to have threatened him with dire consequences and also asked him to bring a surety. The accused accordingly called Kanhu (P.W. No. 1) to meet him again at about 5 a.m. on the same day at Malives Police Chowky. It is then alleged by the prosecution that the complainant Kanhu (P.W. No. 1) went to the police chowky at Malives along with one Santram at about 5 p.m. At that time Santram requested the accused to hush up the matter and do not take any legal steps in that behalf. It is then alleged by the prosecution that the accused at that time demanded Rs. 50/- by way of illegal gratification to hush up the matter. It is further alleged by the prosecution that the accused also told Santram that in the event the complainant Kanhu (P.W. No. 1) fails to pay this amount, Santram should make good.

5. It is then alleged by the prosecution that on September 30, 1976, the accused happened to meet Santram and he alleged to have reminded the latter about the

amount of Rs. 50/-. Santram accordingly met Kanhu (P.W. No. 1) and conveyed to him the message of the accused and asked him to pay the amount of Rs. 50/- to the accused. Being the last day of the month, the complainant was not in a position to make payment as demanded by the accused. But however, the complainant assured the accused that as soon as he receives the salary after the 1st of October, 1976 he would pay the said amount.

6. It is then alleged by the prosecution that Kanhu (P.W. No. 1) took it to head the illegal gratification demanded by the accused and accordingly on October 1, 1976, approached Inspector Dongaonkar (P.W. No. 6) attached to the Anti-Corruption Bureau. Kanhu (P.W. No. 1) took along with him ten currency notes of Rs. 5/- denomination and told Dongaonkar about the illegal gratification demanded by the accused. Dongaonkar accordingly recorded the complaint of Kanhu (P.W. No. 1) (Exh. No. 21). Dongaonkar (P.W. No. 6) thereafter sent for two panchas from the Soil Conservation Department. Accordingly, Shriram Katkar (P.W. No. 2) and one Kisan Dagduram Kshirsagar came to the office of Dongaonkar (P.W. No. 6) to act as panchas for the trap that was to be arranged at the time of payment of the illegal gratification to the accused. Dongaonkar (P.W. No. 6) thereafter asked these two panchas to ask the complainant Kanhu (P.W. No. 1) about his complaint against the accused. The complainant, it is alleged, then narrated the entire story to these two panch witnesses. Dongaonkar (P.W. No. 6) thereafter approached the Judicial Magistrate, First Class, Beed, and obtained from him the necessary sanction for investigation. It is no more in dispute that such a sanction was granted by the said Magistrate at Beed. Dongaonkar (P.W. No. 6) thereafter demonstrated the entire procedure and also carried out the practical experiment in that behalf. Since that aspect is no more in dispute it is needless to State in our judgment. Dongaonkar (P.W. No. 6) after completing all the preliminaries asked the complainant (P.W. No. 1) and Shriram Katkar (P.W. No. 2) to go to the Malives Police Chowky at Beed with the amount. Dongaonkar directed them to pay the said amount on demand if made by the accused.

7. It is then alleged by the prosecution that on the very same day, that is, October 1, 1976, at about 5 p.m. the complainant and the raiding party moved towards the Malives Police Chowky. Complainant Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2), as per the directions of Dongaonkar (P.W. No. 6), went ahead in the direction of the Malives Police Chowky, whereas the raiding party remained hiding themselves. At about 5/5-15 p.m. complainant Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2) reached the Malives Police Chowky. Upon enquiry with the police constables who were present at the police chowky about the accused, the Police Constables told them that the accused is not available and he may come to the Police Station at about 5.30 p.m. Complainant Kanhu (P.W. No. 1) and Shriram Karkar (P.W. No. 2) thereafter came out of the police chowky and went in the direction of the Ashok Hair Cutting Saloon and waited there for the accused. It is then alleged by the prosecution that at about 5.30 p.m. the accused was found coming on a bicycle and going in the direction of the

Malives Police Chowky. When the accused come near the Ashok Hair Cutting Saloon, the complainant wished him and the accused alleged to have reciprocated the same. Thereafter the accused asked the complainant as to whether he brought the said amount. Saying so the accused then went to the Malives Police Chowky. After some time the complainant Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2) reached the Malives Police Chowky. At that time the accused was sitting in his chair, whereas the complainant and Shriram Katkar (P.W. No. 2) were sitting on a bench. In between the chair and the bench there was a table on which some files were kept.

8. It is then alleged by the prosecution that when the accused, Kanhu (P.W. No. 1) and Shriram katkar (P.W. No. 2) were in the police chowky, two other constables were also present there. It is alleged by the prosecution that the accused asked these two constables to go away. After the informal discussion between Kanhu (P.W. No. 1) and the accused, Kanhu asked the accused as to whether he could sent for a tea for all. The accused thereafter alleged to have told that since good tea is not available from a nearby hotel, it should be send for from Murli's Hotel. Accordingly, the accused asked one constable, who was present in the Malives Police Chowky, to go and fetch tea from the hotel of Murli. According to the prosecution, Murli's Hotel is situated at a far distance and the idea appears to be on the part of the accused that the said police constable would take some time to return from the said hotel and in the meantime the deal of accepting the bribe to be materialised.

9. It is then alleged by the prosecution that the accused took out some papers from his rexin bag and then kept the bag on the table. The accused then asked Kanhu (P.W. No. 1) as to whether he has brought the sum of Rs. 50/-. Complainant Kanhu (P.W. No. 1) replied in the affirmative and thereafter the accused demanded the said amount. It is the case of the prosecution that the complainant took out the currency notes from his pocket and tried to hand it over to the accused. The complainant asked the accused to count the same. But however, the accused said that it is not necessary to count the said amount. It is further alleged by the prosecution that the accused asked the complainant to put that amount in the rexin bag. The accused then opened the mouth of the rexin bag and accordingly the complainant kept that amount of Rs. 50/- in the said bag. The complainant thereafter went into the verandah attached to the Malives Police Chowky and gave the necessary signal to the raiding party. On receipt of the said signal, Dongaonkar (P.W. No. 6) along with other members of the raiding party immediately rushed into the Malives Police Chowky. Dongaonkar (P.W. No. 6) after disclosing his identity asked Jagdale, a Jamadar, to hold the hands of the accused. The search of the accused was then taken and it was found that an amount of Rs. 41/- was in his pocket. Dongaonkar thereafter asked him about the balance of the amount. The accused was said to have replied that he had not got any amount and this amount belongs to him as he has received the salary on that day. It is then alleged by the prosecution that Dongaonkar (P.W. No. 6) further asked the accused as to where is the amount of Rs. 50/- given by the

complainant Kanhu (P.W. No. 1). It is the case of the prosecution that the accused then pointed out that the said amount has been kept in the rexin bag. The amount of Rs. 50/- was then taken out and it was found that the numbers of all these notes tallied with numbers found in the panchanama made on the same day at about 10 a.m. after recording the complaint. The said amount was then taken charge of by the Investigating Officer Dongaonkar (P.W. No. 6). He then again carried out the necessary panchanamas and demonstrated that the amount taken out from the rexin bag was the amount paid by the complainant Kanhu (P.W. No. 1) by way of bribe. It is again needless to refer to the subsequent panchanamas made by the Investigating Officer Dongaonkar as the same are not seriously challenged before us.

10. The Investigating Officer Dongaonkar then recorded the statement of the complainant Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2), and after completing the necessary investigation and after obtaining the necessary permission from the superiors, filed a complaint against the accused for the offences punishable u/s 161 of the Indian Penal Code and u/s 5(1)(d) read with section 5(2) of the Corruption Act.

11. The learned Special Judge, Beed, framed the charge against the accused and the charge reads as under :

"First : That you, on or about the 1st day of October, 1976 at about 5.45 p.m., at Beed, being a public servant directly accepted from P.W. Kanhu Dajiba Sirsat a gratification other than legal remuneration, as a motive or reward for doing of forbearing to do an official act, and thereby committed an offence punishable u/s 161 of the Indian Penal Code, and within my cognizance; and

Secondly : That you, on or about the same day and at the same time and place, being a public servant, by corrupt or illegal means, or by otherwise abusing your position as a public servant obtained for yourself a pecuniary advantage (obtained cash amount of Rs. 50/- from P.W. Kanhu Dajiba Sirsat), and thereby committed an offence u/s 5(1)(d) of the Prevention of Corruption Act, 1947 punishable u/s 5(2) of the Act and within my cognizance."

12. The accused denied the charge and claimed to be tried. The defence of the accused in regard to the demand and acceptance of the amount of Rs. 50/- is of total denial. According to the accused, the complainant never met him on 28th September, 1976 along with Santram nor he took him aside and threatened him. The accused also denied that Santram ever told him that he should hush up the matter, that is, the complaint filed by Ratnabai Pandurang against the complainant Kanhu and thereupon he (that is, the accused) demanded a sum of Rs. 50/- by way of illegal gratification to close the chapter. The accused admits that on September 28, 1976, the complainant Kanhu (P.W. No. 1) and Santram came to Malives Police Chowky at about 5 p.m. and at that time he recorded the statement of the complainant, but did not take any bail bond from him. According to the accused, he asked the complainant to go away. Except this,

there was not talk whatsoever between them. In regard to the incident of October 1, 1976, it is the say of the accused that he never asked the complainant to come to the Malives Police Chowky at about 5.30 p.m. with the bribe amount. According to him, on October 1, 1976 at about 5.30 p.m. as usual, he went to the Malives Police Chowky. The accused, however, admits that while he was on his bicycle, he met the complainant near Ashok Hari Cutting Saloon and both of them wished each other. The accused also denied to have had any talk between him and the complainant about the bribe amount near the Ashok Hair Cutting Saloon. According to the accused, thereafter he went to the police chowky and sat in his chair and started doing his routine work. The accused admits that he was carrying a rexin bag at the relevant time and he had kept the same on the table and the complainant Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2) were sitting on the bench in front of him. There were several files on the table. He took out some papers from the rexin beg and started his work. The accused also admits that the complainant asked his permission to send for tea and thereupon he told him that good tea could be available from Murli's Hotel and, therefore, it may be sent for from that place. Accordingly he sent one constable to get the tea. The accused further denied that as soon as the complainant Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2) entered and took their seats on the bench, he asked the two constables to go away from the police chowky. According to the accused, he never demanded any amount and, therefore, there was no question of accepting any amount from the complainant. It is the further say of the accused that while he was engrossed in his work, the complainant Kanhu might have planted the bribe amount in the rexin bag, to which he was neither conscious nor had any knowledge. According to the accused, while he was working, Dongaonkar (P.W. No. 5) entered the police chowky and Jagdale caught hold of his hands. Dongaonkar (P.W. No. 6) asked him to produce the bribe amount. Thereupon he told Dongaonkar (P.W. No. 6) that he had never accepted any amount nor had he any knowledge about the same. Dongaonkar (P.W. No. 6) thereafter took search of his person and also of the rexin bag and from there the said bribe amount of Rs. 50/- was recovered. The accused admits that the said amount came to be seized under the panchanama. According to the accused, the complainant has lodged a false case against him at the instance of Sitaram Tangde who bore some grudge against him. In regard to the panch witnesses, it is alleged by the accused that both these panch witnesses have been held up in prohibition case and the same was pending. Both these panch witnesses are the good friends of the complainant Kanhu inasmuch as they often go to shindi shop to consume it. According to the accused, the entire story is a cooked up one. He is innocent and he should, therefore, be acquitted.

13. The prosecution in support of its case mainly relied upon the evidence of complainant Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2), the panch witness, to prove the alleged demand and acceptance of the bribe amount by the accused. In addition to these two witnesses, the prosecution also examined

Investigating Officer Dongaonkar (P.W. No. 6), P.S.I. Athavale (P.W. No. 3) attached to the City Police Station. Two other formal witnesses were also examined and the reference to these witnesses is not at all relevant.

14. The accused in defence got his statement recorded on oath and also examined one more witness, namely, Sardar Singh (D.W. No. 1) D.W. No. 1 was examined in order to prove criminal proceedings against the prosecution witnesses in connection with the prohibition offences.

15. The prosecution also relied upon several panchanamas to substantiate its case.

16. The learned special Judge, Beed, on appraisal of oral and documentary evidence on record came to the conclusion that the evidence of Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2) is unconvincing and also suffers from several infirmities. The learned special Judge found that the evidence of these two witnesses does not prove beyond reasonable doubt the guilt of the accused. The learned special Judge found that the antecedents of Kanhu (P.W. No. 1) as well as the panch witness Shriram are not free from doubt. He also found that both these witnesses have belied at several stages. The learned special Judge also came to the conclusion that so far as the demand of September 28 and 30, 1976 was concerned, except the bare word of the complainant Kanhu (P.W. No. 1), which is unreliable, no other evidence, although available to the prosecution, was adduced before the Court. The emphasis appears to be on the fact that the prosecution has not chosen to examine either Sitaram Tangde or Santram, especially Santram, who was present on September 28, 1976, when the initial and the first talk about the bribe was opened by Santram in the presence of the accused. The trial Judge, therefore, came to the conclusion that there is no sufficient material on record to come to the conclusion that the accused demanded any illegal gratification or bribe from the complainant Kanhu on September 28, 1976 or pursued the said demand thereafter on the following dates. In regard to the demand of the illegal gratification made by the accused on October 1, 1976, the learned trial Judge came to the conclusion that the evidence of Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2) suffers from material omissions which amount to contradictions. According to the learned trial Judge, both these witnesses have never stated before the Investigating Officer Dongaonkar (P.W. No. 6) that the accused demanded any amount by way of illegal gratification or bribe at about 5.30 p.m. on October 1, 1976. According to the trial Judge, the prosecution has failed to prove the alleged demands made by the accused on either of the dates. In regard to the finding of the amount in the rexin bag of the accused, the learned trial Judge came to the conclusion that no presumption u/s 4(1) of the Corruption Act could be raised in view of the several infirmities found in the evidence of Kanhu (P. W. No. 1). The learned trial Judge adopted the same reasoning to disbelieve the evidence of Kanhu (P.W. No. 1) as well as of the panch witness as unreliable. In regard to the evidence of Dongaonkar (P.W. No. 6), the learned trial Judge felt that his evidence is also not beyond the pale of

doubt inasmuch as he was also interested in the success of the case. In addition to this, the learned trial Judge also pointed out some infirmities in the evidence of Dongaonkar (P.W. No. 6). Consistent with these findings, the learned trial Judge came to the conclusion that the prosecution has failed to establish the conscious possession or knowledge on the part of the accused in regard to the bribe amount that was in the rexin bag. The trial Judge according, although held that the amount was found in the rexin bag of the accused but having regard to the defence evidence adduced by the accused, he gave the benefit of doubt to the accused and accordingly acquitted the accused of all the charges. The order of the learned Special Judge is dated August 30th, 1977. It is against this order of acquittal the State of Maharashtra has filed this criminal appeal to this Court.

17. Shri S.G. Deshmukh, learned Public Prosecutor for the State, took us through the relevant evidence on record as well as the findings recorded by the learned trial Judge. Shri S.J. Deshpande, learned Advocate appearing on behalf of the accused, urged that the reasons given by the learned trial Judge while recording the order of acquittal are sound and there is no infirmity in these findings. According to Shri Deshpande, the order of acquittal needs no interference and the appeal be accordingly dismissed.

18. We are very much conscious that in an appeal against acquittal the High Court has got powers to reassess the evidence on record, but at the same time, the High Court should give due weight to the reasons given by the learned trial Judge in connection with the appreciation of oral and documentary evidence on record. If two views are probable and the learned trial Judge has given benefit of doubt to the accused, unless it is shown that the said view is not only not probable but also perverse, the High Court will not interfere with the order of acquittal. Bearing in mind these principles, we may now proceed to consider evidence of the two material witnesses.

19. As stated earlier, so far as the demands made by the accused of the illegal gratifications and the bribe from the complainant on September 28, 29 and 30, 1976 are concerned, there is no evidence except the evidence of complainant Kanhu (P.W. No. 1). The evidence of a complainant and other witnesses in a trap case is a word of interest and of partisan witnesses, who are concerned in the success of the trap. It must, however, be tested in the same way as that of any other interested witness. But, however, in a proper case the Court may look for independent corroboration before convicting the accused person. The witnesses accompanying the police on request of police cannot be said to be partisan witnesses, but, however, in the present case, we find that having regard to the antecedents of the panch witnesses, some independent corroboration is necessary. A person who gives bribe is an accomplice of a person who receives it and according to well-settled principles it is unsafe to base a conviction on his testimony without any independent corroboration. See *Panalal Damodar Rathi Vs. State of Maharashtra*, . Thus, having ignored the demands prior to 1st of October, 1976, we come to the allegation of the prosecution that on October 1,

1976 at about 5-30 p.m. at Malives Police Chowky, the accused demanded the bribe and illegal gratification from the complainant. As pointed out earlier, there is material omission in the evidence of Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2) in regard to the fact that both these witnesses have not stated before the Investigating Officer, Dongaonkar (P.W. No. 6), that on October 1, 1976 at about 5.30 p.m. when they went to the accused, the accused demanded the amount of bribe. This material omission, in our opinion, amounts to a contradiction and, therefore, the net result would be that even on October 1, 1976, after the trap was arranged, the prosecution has failed to establish that, the accused ever demanded any amount from the complainant. Shri Deshmukh, Public Prosecutor for the State, was unable to persuade us to come to the conclusion that on October 1, 1976 at about 5-30 p.m., the accused demanded the amount of bribe from the complainant Kanhu (P.W. No. 1). Therefore, there was no demand whatsoever, on the part of the accused until the raiding party along with the Investigating Officer Dongaonkar (P.W. No. 6) entered the premises of the Malives Police Chowky and caught hold of the hands of the accused.

20. Now, the next question that falls for our consideration is as to whether the prosecution can rely upon the presumption available to it u/s 4(1) of the Corruption Act. Shri Deshmukh, learned Prosecutor for the State, heavily relied upon this presumption and submitted that the fact that the amount was found in the rexin bag belonging to the accused was not denied by the accused and it must lead to the presumption that the accused was conscious and had knowledge about the amount having been kept inside the rexin bag by way of illegal gratification. It is no more in dispute that it is a rebuttable presumption and, in our opinion, having regard to the evidence on record the accused has rebutted the same and, at any rate, the preponderance of probabilities weigh in favour of the accused. Shri Deshmukh took us through the evidence of Kanhu (P.W. No. 1) and Shriram Katkar (P.W. No. 2), the panch witness. After going through the evidence of both these witnesses, we find that their evidence is not reliable and which cannot be accepted without a pinch of salt. The antecedents of the complainant Kanhu are relevant in this case, because he happened to be a person known for filing complaints against public officers. It is no more in dispute that the complainant had filed in the year 1975 a complaint against the public officer for having demanded a bribe from him. It is also clear from the evidence of the complainant that two complaints were filed against him, one by Pandurange Sirsale, and the second by Ratnabai wife of Pandurang. In both these complaints, it was alleged that the complainant under the influence of liquor had not only misbehaved and exhibited the misconduct, but also picked up some quarrel which resulted in to marpit. These criminal complaints were pending and which have given rise to the present prosecution against the accused. The third aspect which makes the evidence of the complainant unbelievable is that the complainant admitted that upon 30th of September, 1976 he had no moneys with him such less the amount of Rs. 50/- to be paid to

the accused as demanded by him on September 28, 1976. The accused was cross-examined at length and he was at pains to state the source from where he fetched this amount of Rs. 50/-. It was suggested to the complainant on behalf of the accused that the complainant went to Sitaram Tangde and from him he borrowed the amount and tried to give the said amount to the accused. This suggestion has got some foundation from the fact that on September 27, 1976, when complainant was being taken to the Police Station by the two constables, the complainant asked them to take him to the saw mill of Sitaram Tangde which is situated at as short distance. It is very much obvious that this Sitaram Tangde has been all along working behind the screen. This fact is further established from the conduct of Sitaram Tangde who himself went to the Police Station and got the complainant released on bail. Now, Sitaram Tangde is not examined by the prosecution and, according to the prosecution, he was likely to turn hostile and, therefore, he was not examined. We fail to understand such a submission made on behalf of the prosecution. Sitaram Tangde would have been the most material witness in the present case. Sitaram Tangde appears to be through this drama working behind the screen. It is also clear from the evidence of Kanhu (P.W. No. 1) that he bore a grudge against the police officials, who have been investigating in to the two complaints filed by Pandurang and Ratnabai. The evidence of the complainant suffers from several infirmities and we have pointed out few in our judgment, because the learned trial Judge has referred to all these infirmities in his detailed judgment. It is needless to refer to all these infirmities and suffice it to say that the evidence of the complainant is unconvincing and the learned trial Judge was fully justified in rejecting the evidence of the complainant.

21. In regard to the evidence of Kanhu (P.W. No. 1), suffice it to say that he is untrustworthy inasmuch as he was not prepared to accept the patent facts which are proved by the defence by examining the defence witness Sardar Singh (D.W. No. 1). Shriram Katkar (P.W. No. 2) denied that any criminal proceeding in connection with the Prohibition Act was pending against him. Sardar Singh (D.W. No. 1) produced on record the complaint bearing No. C.R. No. 99/1975 under sections 88 and 66(1)(b) of the Bombay Prohibition Act, 1949, and the said criminal case was registered against Ziauddin Jamaluddin, Shriram Damodar Katkar (P.W. No. 2-Panch witness) and Kisan Dagduram Kshirasagar. Sardar Singh (D.W. No. 1) also produced on record copy of bond (Exh. No. 57) executed by Katkar (P.W. No. 2). Exhibit No. 58 is the copy of the bond executed by Kisan Dagduram Kshirasagar. In spite of this documentary evidence on record, Katkar showed his audacity to deny any such criminal proceeding against him. In addition to the evidence of Sardar Singh (D.W. No. 1) the accused Jagannath (D.W. No. 2), has stated in his evidence on oath that on several occasions, he had seen complainant Kanhu in the company of Shriram Katkar (P.W. No. 2) and Kisan Dagduram Kshirasagar in the shindi shop. There is no effective cross-examination whatsoever on this aspect. We see no reason to reject the evidence of the accused whose evidence prima facie show that the complainant Kanhu (P.W. No. 1), Shriram Katkar (P.W. No. 2) and Kisan Dagduram Kshirasagar are

the birds of the same feathers and having sufficient common features in them. It was also stated by the accused in his evidence on oath that these two panch witnesses were specially chosen and sent for at the instance of the complainant Kanhu. There appears prima facie some truth in the said evidence of the accused. Both these panch witnesses also reside in the same locality namely, Malives, where the complainant and Sitaram Tangde reside. Thus, having regard to the evidence on record, we are satisfied that the learned trial Judge was right in coming to the conclusion that benefit of doubt should be given to the accused in spite of the fact that the amount was found in the rexin bag of the accused. The accused in his statement on oath has averred that while he was engrossed in his work complainant Kanhu (P.W. No. 1) might have inserted the said amount in the rexin bag and he was absolutely not aware nor conscious nor had any knowledge about the same. After going through the evidence on record, we find that the accused has rebutted the presumption which the prosecution wanted to raise u/s 4(1) of the Corruption Act. The evidence of Dongaonkar (P.W. No. 6) again suffers from several infirmities, firstly because he was the Investigating Officer and he was very much interested in the success of this trap. There is no evidence on record to show, except the bare word of Dongaonkar (P.W. No. 6), that the accused pointed out or told Dongaonkar that the amount was lying in the rexin bag. Katkar (P.W. No. 2) does not refer to this aspect at all in his evidence. Complainant Kanhu (P.W. No. 1) shows ignorance about the talk between the accused and Dongaonkar under the pretext that he was standing in the verandah, but it could not be ignored that the distance between the verandah and the actual place of incident could not be more than a feet or two. This ignorance on the part of Kanhu (P.W. No. 1) can hardly be accepted. Thus, after going through the entire evidence on record and the reasons given by the learned trial Judge, we are of the opinion that the view taken by the learned trial Judge is also probable one. We, therefore, do not see any reason to interfere with the impugned order of acquittal. The accused has been rightly given benefit of doubt and we do not see any error or infirmity in the judgment of the trial Court.

22. In the result, this appeal fails and is dismissed. The bail bond of the accused to stand cancelled.