

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 719 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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ISMAILKHAN RASULKHAN PATHAN - Appellant(s)

Versus

SATE OF GUJARAT - Opponent(s)

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Appearance :

MR KB ANANDJIWALA for Appellant.,
Mr.L.R.Pujari, A.P.P. for Opponent.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/11/2007

ORAL JUDGMENT

1. This appeal arises out of the judgment and order dated 3-7-1995 passed by the learned Special Judge, Bharuch, in Special Case no.6 of 1989 whereby the appellant-original

accused-Ismailkhan Rasulkhan Pathan was sentenced to suffer R.I. for one year and to pay fine of Rs.100/-, in default, to suffer further R.I. for one month for the offence punishable under Section 161 of the Indian Penal Code ("the Code" for short), He was also sentenced to undergo R.I. for one year and to pay fine of Rs.100/- , in default further R.I. for one month for the offence punishable under Section 5(1)(d) r.w.s. 5(2) of the Prevention of Corruption Act, 1947 ("the Act" for short). Both the sentences were ordered to run consecutively.

2. Briefly stated, the facts of the case giving rise to this appeal may be enumerated as under:

3. The complainant along with his family members at the relevant time was residing at Harijan Vas, Valanda Koti, Bharuch and serving as a Security Supervisor with Oriental Steel Corporation located at G.I.D.C., Bharuch. It is the case of the prosecution that the wife of the complainant was working as an additional labourer for cleansing toilets with Bharuch Nagarpallika , Ward no.4 , since about 10 years prior to the date of the complaint on 13-7-1987. According to the prosecution, the present appellant-accused was the Sanitary Inspector of Ward no.4 in Bharuch Nagarpallika, at that time, but was transferred to Ward no.9 on 15-6-1987. As per the case of the prosecution, according to the report of the present

appellant who was the Sanitary Inspector any of the labourers could be removed from service as based on such report the Chief Officer used to accord sanction for continuing as additional labourer. It is alleged that the present appellant had given threats to Lalitaben the wife of the complainant in June, 1987 to the effect that she would have to pay Rs.100/- for obtaining sanction to continue her as an additional worker. Accordingly, Lalitaben had agreed to pay the said amount of Rs.100/- as illegal gratification upon receipt of her salary for the month of June, 1987, however, the present appellant-accused having been transferred to Ward no.9, Lalitaben, the wife of the complainant had not paid the amount, and therefore, on 12-7-1987 the appellant-accused sent one labourer named Kishorebhai to the house of Lalitaben asking her to meet him. Lalitaben then told the complainant to meet the present appellant-accused. Thereupon, the complainant went and met the present appellant-accused at Ward no.4 of Bharuch Nagarpallika at Lal Bazaar. At that time, the present appellant-accused enquired of his wife Lalitaben and told the complainant that he had got the sanction for continuing the services of his wife and that she had agreed to pay Rs.100/- from the salary for the month of June, 1987 but she did not pay the same to which the present appellant replied that there is

difficulty at present and that he shall make arrangement of the money within two days. It is further the case of the prosecution that the present appellant had again met the complainant on 13-7-1987 at 11-30 a.m. near Bharti Talkies, and enquired of him as to what happened with regard to the amount and demanded the same. The complainant promised to pay the amount on the next day. The present appellant then told the complainant to meet him in front of Tashkant Beauty Tailor's shop at Valanda Koti to which the complainant agreed. Thereafter, realizing that the present appellant was bent upon receiving illegal gratification on the pretext of obtaining sanction for continuing the services of his wife, went to the ACB Police Station, Bharuch, at 5.30 p.m. of 13-7-1987 and lodged the complaint. On the basis of the said complaint a trap came to be laid between 10.15 a.m. and 12.15 noon of 14-7-1987 near Tashkant Beauty Tailor's Shop at Valanda Koti, Bharuch, after following the necessary formalities of carrying out the experiment on the two currency notes produced by the complainant, giving necessary instructions to Panch no.1 after placing the tainted currency notes on the left pocket of the bush-shirt worn by the complainant and drawing of preliminary Panchnama etc. as required under law, the present appellant-accused was caught red handed accepting the amount of

Rs.100/- from the complainant. Two currency notes of Rs.50/- each aggregating Rs.100/- was recovered from the left pocket of cuffni worn by the present appellant-accused by Govindbhai on instructions from PI. The numbers of the currency notes tallied with the number of the currency notes mentioned in the preliminary Panchnama. Thereafter, these currency notes were viewed under ultraviolet lamp and light blue coloured flourescent marks were visible. On such experiment being carried out presence of anthracene powder was also found on the right hand fingers and palm of the present appellant accused as also the cuffni worn by the present appellant-accused which was seized. The person of the present appellant when searched certain articles were found and seized. The second part of the Panchnama was prepared at the spot, and thereafter the statements of witnesses came to be recorded. Upon completion of the investigation, sanction was obtained by the police from the President of the Nagarpallika, after which, chargesheet was submitted and the case was numbered as Special Case no.4 of 1988. During the course of recording of evidence of witnesses, the accused filed an application Exh.15 stating that the sanction accorded by the President of the Nagarpallika is illegal and prayed for dropping of the proceedings. The learned Special Judge by his order

dated 6-9-1989 discharged the accused by holding that the sanction is not legal and valid. Thereafter, a second sanction order was obtained on 5-12-1989 whereupon a revised charge-sheet came to be submitted along with the fresh sanction order and the case was numbered as Special Case no.6 of 1989. However, when the trial commenced an application under Section 300 of the Criminal Procedure Code was filed on behalf of the accused stating that a second trial is not permissible as the accused was earlier discharged and the evidence was also recorded earlier. This application came to be dismissed on 2-8-1993. The learned Special Judge framed charge Ex.5 against the accused on 26-4-1993 for the offences punishable under Section 161 of the Code and under Section 5(1)(d) r.w.s.5(2) of Act. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried.

4. To prove its case against the appellant-accused the prosecution has examined - (1) PW 1 Mansukhbhai Dahyabhai Solanki (complainant) at Exh.16, (2) PW2 Lalitaben Mansukhbhai Solanki (wife of the complainant) at Exh.19, (3) PW 4 Prabodbhai Mansukhbhai Solanki (son of the complainant) at Exh.25, (4) PW 3 Nasirbhai Mahmadbhai Sheth (Panchwitness) at Exh.20, (5) PW 8 Govindbhai Parshottamdas Patel (Panchwitness) at Exh.41, (6) PW 6 Rasiklal Ranchhoddas

Varsani at Exh.27, (7) PW 7 Jashwantlal Champaklal Dhorawala (Chief Officer, Bharuch Nagarpallika) at Exh.30, (8) PW 5 Gaffurbhai Ibrahimhai (the owner of Takshant Beauty Tailors shop) at Exh.26 and (9) PW 9 Bhimsing Sursing Vasava at Exh.44. The prosecution has also produced documentary evidence such as complaint Exh.45, sanction order Exh.28, trap Panchnamas Exhs.22 and 23, Yadi in respect of articles recovered from the appellant-accused at Exh.46, report of Sanitary Inspector(appellant-accused) for appointment of extra workers at Exh.31, salary register Exh.32 etc.. After recording of the evidence of prosecution witnesses was over, the accused was further examined under Section 313 of the Criminal Procedure Code. The accused has also submitted written explanation vide Exh.49 wherein the defence of the appellant-accused was that PW 2 Lalitaben who was working as a toilet cleaner had borrowed Rs.100/- from him for meeting the expenses for the Srimant Ceremony of her daughter-in-law which was held on 10th July, 1987 and it was that amount of Rs.100/- which he lent to Lalitaben that he received from the complainant i.e.husband of Lalitaben on 14-7-1987 and not the amount of illegal gratification. It was also the case of the appellant-accused that he belonged to village Kishnad the parental home of PW 2 Lalitaben the wife of the complainant

and as such there existed brother-sister relations between him (appellant-accused) and PW 2-Lalitaben wife of the complainant. According to the appellant-accused, the complainant is in the habit of filing false cases against government servants and harassing them and that he had filed such false complaint against Rameshbhai Munshi and N.S.Mehta under the protection of Civil Rights Act and both of them came to be acquitted in those cases; that on account of such conduct of the appellant-accused, he was removed from the services of Homeguard, O.N.G.C. and also by contractor Gumansing for whom he had worked. The appellant -accused has also stated that the complainant in his capacity as a member of the union of Bharuch Nagarpallika used to give threats and abuses to the employees of Nagarpallika. Thus, the sum and substance of the written explanation of the appellant-accused is that he was falsely roped in the case and that he is innocent. On the defence side appellant-accused has examined two witnesses in support of his say. As far as DW 1 Ramesh Dayaram Munshi who has been examined at Exh.54 only stated on oath that in 1982 Mansukhbhai Solanki-the complainant has lodged complaint against him but nothing has come out from the evidence of this witness which falsifies the say of the complainant or the prosecution case. The

appellant-accused has also examined Jayantilal Ambalal Dalal at Exh.55 who stated on oath that he is working in Nagarpallika since 24 years and he is working as Clerk in Administrative Department of Municipality. From the evidence of this witness it is found that by resolution dated 5th April,1995 of Municipality Maheshbhai Mansukhbhai Solanki-the son of complainant and one Pravin M.Solanki were relieved from their duties as they were adhoc workers. From the evidence of this witness, nothing has come out which falsifies the case of prosecution. On the contrary from the evidence of this witness, it is proved beyond reasonable doubt that the administrator was appointed in the Nagarpallika who accorded the sanction for prosecution against the present appellant-accused.

5. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution, both oral as well as documentary, the learned Judge of the trial Court held that the prosecution has established beyond reasonable doubt that the appellant-accused did initially demand the bribe money of Rs.100/- from Lalitaben the wife of the complainant and thereafter received the amount of Rs.100/- from the complainant on 14-7-1987, and therefore, held the appellant-accused guilty of offence with which he was charged and passed the judgment and order of conviction and sentence,

giving rise to the present appeal.

6. I have heard the learned Counsel Mr. K.B.Anandjiwala for the appellant-accused and learned A.P.P. Mr. Pujari for the respondent-State at length and in great details and have also perused the entire record with due care and caution.

7. Learned Counsel Mr. K.B.Anandjiwala after having taken me through the entire evidence on record as also the reasons assigned and conclusions reached by the learned Special Judge submitted that the whole case of the prosecution is improbable and prayed that the appeal be allowed and the order of conviction passed by the learned Special Judge be set aside and the appellant-accused be acquitted of the offence in question. In support of his submissions, he has raised several contentions. Before I proceed to deal with the submissions, I may state that since I am in complete agreement with the views expressed by the learned Special Judge, I do not deem it necessary to reiterate the evidence of all the witnesses in great details and burden the record, but would only discuss the evidence and documents as are necessary for disposal of this appeal on merits.

8. Learned Counsel Mr. K.B.Anandjiwala for the appellant-accused firstly submitted that the appellant-accused had on 14-7-1987 received from the complainant the amount of

Rs.100/- which he had lent to Lalitaben, the wife of the complainant for meeting the expenses of Srimant ceremony of her daughter-in-law and not by way of bribe. To answer this issue, I propose to deal with the evidence of witnesses relevant for the purpose.

9. PW 2 Lalitaben in her evidence (Exh.19) has stated that the complainant-PW 1 Mansukhbhai Dahyabhai Solanki is her husband; that in the year 1987 she was working as an extra toilet cleaner (sweeper) on temporary basis with Bharuch Nagarpallika in Ward no.4 and that her services were extended from time to time; that she was working as such for the last 10 years. This witness has further stated that she used to get work for 15 to 20 days in a month and that she used to receive the salary on the 7th of every English calendar month; that the appellant-accused was the Ward Inspector at that time. According to her, in the year 1987 the appellant-accused was transferred to Ward no.4. She has also stated that the appointment of toilet cleaners was made by Dhorawalla Saheb on the recommendation made by the appellant-accused; that in the year 1987, the appellant-accused told her that she would have to pay Rs.100/- to him for obtaining sanction to continue her services or otherwise she would be removed from service, and therefore, she agreed to make the payment. According to

her, fifteen days thereafter, the appellant-accused was transferred to Ward no.9; that she received her salary on the 7th June, 1987 but did not see the appellant-accused on that day, however, on 12th June, 1987 the appellant accused sent word through one Mr. Kishore calling her to meet the appellant-accused at office of ward no.4, but due to fear of removal from service she did not go there, instead she went to her house, told her husband (the complainant) about the demand of Rs.100/- made by the appellant-accused and also added that he (the complainant) should meet the appellant-accused. It is her say that accordingly her husband PW1- the complainant went at 9.00 a.m., met the appellant-accused, returned immediately and told her that he (the complainant) will give the amount within two days. This witness has further stated that the appellant-accused had met her husband the complainant on the next day i.e. 13th June, 1987 near Bharti Talkies and upon returning he told her that he had given assurance to give the amount on the next day. She has specifically stated on oath before the Court that as appellant-accused was demanding Rs.100/- from her towards illegal gratification her husband had agreed to give the amount of Rs.100/- to the appellant-accused. In her cross-examination she has specifically stated that her parental village is Valan but

since her childhood she was staying at Surat with her father and mother. She has also stated that she has no knowledge whether the appellant-accused belongs to Kishnad or that the appellant -accused kept brotherly relations with her. She denied that her husband- PW 1 had doubts with regard to her chastity and that she was beaten by him. She also denied that the appellant-accused had lent Rs.100/- to her for meeting the expenses of the Srimant ceremony of her daughter-in-law or that there was any such relationship between them.

9.1 PW 1 Mansukhbhai Dahyabhai Solanki (complainant) in his evidence at Exh.16 has stated that in the year 1987 he was working as a Security Officer with a Contractor in G.I.D.C., Bharuch Nagarpallika. According to him, his wife PW 2 Lalitaben was at that time working as an Extra toilet cleaner in Ward no.4 of Bharuch Nagarpallika for the last 10 years. In June, 1987, the present appellant-accused Ismailkhan Rasulkhan Pathan was working as a Sanitary Inspector with Bharuch Nagarpallika and as a part of his duty, the appellant-accused had to obtain sanction from the Health Officer/Chief Officer for continuing the services of extra toilet cleaners. This witness has further stated that in the month of June, 1987, his wife told him that the appellant-accused was demanding Rs.100/-for obtaining sanction to continue her services as extra

toilet cleaner and that if she fails to pay Rs.100/- she would be removed from service. According to this witness, his wife also told him that out of fear of removal from service she had agreed to pay the amount when she receives her salary on 6th/7th July, 1987. Accordingly, the appellant-accused had obtained sanction for continuing services of toilet cleaners including PW 2 Lalitaben the wife of the complainant. This witness has in clear terms stated that he came to know about these facts after transfer of the appellant-accused on 15-6-1987 from Ward no.4 to Ward no.9 as the appellant-accused had sent a message through one worker named Kishore to call PW 2 to the office of Ward no.4 immediately but his wife PW 2 had not gone to the office of Ward no.4 but came home and narrated the entire story regarding demand of Rs.100/-. According to this witness, his wife also requested him to go and meet the appellant-accused as she was not willing to go and upon such request having been made by his wife he went to the office of Ward no.4 at 8.15 a.m on 12th July, 1987. At that time, the appellant-accused was standing outside the office and when this witness met him, the appellant accused enquired of him about the whereabouts of his wife and told him that the permission has been obtained for continuing the services of his wife for which she had agreed to pay Rs.100/-.

According to this witness, the appellant-accused also added that till then the amount of Rs.100/-had not been given by Lalitaben and if that amount is not given, she would be removed from service whereupon this witness agreed to give the amount within two days and returned to his house. This witness has stated that again on 13th July, 1987 at about 11.00 to 11.30 a.m. when the appellant-accused met him near Bharti Talkies, the appellant-accused demanded the said amount of illegal gratification and again this witness told the appellant-accused that the amount would be paid the next day. This witness then asked the appellant-accused as to where they shall meet and the appellant accused suggested that they may meet between 12.00 and 12.30 p.m. of 14-7-1987 at Valanda Koti, Tashkant Beauty Tailor's shop. According to this witness, he then returned home and after having given his serious thought realized that if he does not pay the amount of Rs.100/- to the appellant-accused, his wife would be removed from services. So he went to the office of the ACB at about 4.45 to 5.00 p.m. where he met Police Inspector Vasava who after hearing him(the complainant) recorded the complaint and asked him to approach him(ACB Officer) on 14-7-1987 at 8.00 a.m. with an amount of Rs.100/-. This witness has further deposed that Inspector Vasava then read over the contents of

the complaint to him and he (this witness), had signed the same in token that the contents were true. Thereafter, Police Inspector Vasava also signed the complaint. According to this witness, on 14-7-1987 he went to the office of the ACB, Bharuch at 8.00 a.m. where one Panch was present and after some time another Panch also came. Inspector Vasava then introduced the Panchas to each other. Panch no.1 was Govindbhai Patel and Panch no.2 was Nasir Mahmad Sheth. The witness has further stated that these Panchas had told him that they came from the Collector's office whereupon this witness narrated his complaint to them. Thereafter, Police Inspector Mr. Vasava had read over and explained the contents of the complaint of this witness (complainant) to the Panchas and the Panchas had put their signatures on the complaint in the presence of this witness. Then this witness hand handed over two currency notes of the denomination of Rs.50/- each to Police Inspector Vasava and the numbers of these currency notes came to be noted down in the Panchnama. Thereafter, P.I. Vasava instructed Police Constable Ramdas and the use and characteristics of anthracene powder on the currency notes were explained to these Panchas. These currency notes were then smeared with anthracene powder and exposed to normal light, but nothing significant appeared, however, when

these currency notes were viewed under ultraviolet lamp light blue fluorescent marks were visible. Thereafter, the person of this witness (the complainant) was searched whereupon nothing was found from the left side pocket of the bush-shirt worn by the complainant, however from the right side pocket of the pant of this witness, one handkerchief, one currency note of Rs.5/- and two currency notes of Rs.2/- denomination aggregating Rs.9/- were found. These articles were put back into the respective pocket of this witness and Rs.9/- was there and then handed over to this witness. Thereafter, Constable Ramdas put the two tainted currency notes of Rs.50/- each into the left pocket of the bush-shirt worn by this witness with an instruction not to touch the currency notes or the said pocket until the demand is made and the amount of Rs.100/- is accepted by the appellant-accused. Panch no.1 was instructed to remain in the company of this witness(complainant) and to see and hear the conversation that takes place between the complainant and the appellant-accused and that as soon as the amount is accepted by the appellant-accused to give the signal by combing the hair. Thereafter, Panchnama to this effect was drawn and completed between 9.15 to 10.15 a.m. According to this witness, thereafter all of us, namely, myself (complainant), PI Vasava, Panchas, Police Constable Ramdas and all the

members of the raiding party left for the ACB Office by Jeep. Police Constable Ramdas holding an ultraviolet lamp sat near this witness in the jeep. When they reached Andrew's Road via Ayarvad the jeep was halted and this witness and Panch no.1 Govindas alighted from the jeep and went ahead while others followed them. This witness has further stated that when they reached near Valanda Koti, they found that the appellant-accused was sitting in Tashkant Beauty Tailor's shop. This witness has categorically stated that on seeing this witness (complainant), the appellant-accused waved his hands at him and shouted. So, this witness and Panch no.1 went to the appellant-accused and at that time, the appellant-accused stepped down from the shop and asked him to give the amount of Rs.100/- if he had brought the same. This witness then told the appellant-accused that he had brought the amount of Rs.100/- but requested the appellant-accused not to harass his wife (PW 2 Lalitaben) and that he should also not remove her from the service. The appellant-accused complimented and asked the complainant to give him the amount of Rs.100/- whereupon this witness handed over Rs.100/- to the present appellant. According to this witness, the appellant-accused accepted Rs.100/- with his right hand and put the same into the left pocket of the cuffni worn by him. Then, Panch no.1

gave the pre-fixed signal and P.I. Vasava and all other members of the raiding party rushed to the spot. PI Vasava then instructed the appellant accused not to move and introduced himself and all others members of the raiding party to the appellant-accused. Thereafter , on the instructions of P.I.Vasava, Panch no.1 Govindbhai took out two currency notes of the denomination of Rs.50/- each from the upper left pocket of the cuffni worn by the appellant-accused. Thereafter, they sat in the said tailor's shop, compared the numbers of the currency notes recovered with the numbers of the currency notes mentioned in the preliminary Panchnama and the numbers tallied. Thereupon, these currency notes were viewed under ultraviolet lamp and light blue fluorescent marks were noticed. Similarly, light blue fluorescent marks were also seen on the parts of the fingers and palm of the right hand as also on the left pocket of the cuffni worn by the appellant-accused which was seized from the spot. Thereafter, on searching the person of the appellant-accused, a currency note of the denomination of Rs.10/- and two currency notes of the denomination of Rs.5/- aggregating Rs.20/- were found. Then, slips were attached to the two currency notes of Rs.50/-, the same were sealed ,the signatures of Panchas were taken thereon and recovered.The cuffni worn by the appellant-

accused was also seized. A panchnama to that effect was also drawn and completed at about 12.15 p.m. at the tailor's shop. In cross examination this witness denied that he was removed from the services of homeguard as enquiry was held against him. He admitted that he left the services of Gumansing as the salary was not paid in time. This witness has further stated that he voluntarily left the services from O.N.G.C. after rendering service of 20 to 21 years as his health was not in good shape. He denied the suggestion put to him in cross-examination that that he had remained absent without permission of the Superior Officer and so he was removed from service from the O.N.G.C.. This witness has further admitted that he had lodged complaint under the Protection of Civil Rights against his superior officers Ramesh Munshi and S.S.Mehta but he went on to explain that as evidence was tampered with the matter was dismissed but not in a Court of law. He has fairly admitted that on 5th January, 1988, he had got published in newspaper "Sandesh" that present appellant-accused misappropriated thousands of Rupees by creating bogus pay bills of non existent persons. In cross-examination, he also denied that he sold out his house which was allotted to him by Collector after earthquake took place. He admitted that his son Prabodh was also extra toilet cleaner(sweeper) under the present appellant-

accused. He fairly admitted in his cross-examination that on 10th July, 1987 there was Srimant Ceremony of his daughter-in-law. He denied that in his previous deposition he stated that his family and appellant accused had relations of lending and borrowing monies between them. This witness has further denied that the village of the appellant-accused was near to the parental village of his wife and so there existed brother-sister relations between the appellant-accused and his wife. He also denied that due to his doubtful nature and beating his wife left the matrimonial home. He further denied that the appellant-accused lent Rs.100/- to his wife on the occasion of Srimant ceremony of his daughter in law. He also denied that a false case is filed against the present appellant-accused by taking disadvantage of the situation. This witness has further denied that whenever people opposed against the employees of Bharuch Municipality on the charges of corruption he always spoke in favour of the Municipality. He denied to have threatened the upper class Government Officers including the officers of Bharuch Nagarpallika of indulging them in false cases of atrocity.

9.2 PW 8 Govindbhai Parsottamdas(Panch no.1) Patel in his evidence at Exh.41 has stated that he and Panch no.2 Nasir Mahmad Sheth were called by the residential Deputy Collector

Shri M.N. Patel on 13th July, 1987 in his Chamber and they were instructed to go to the office of ACB on 14th July, 1987 at 8.00 a.m. Accordingly, he reached the ACB office at 8.30 a.m. and Panch no.2 Nasir Mahmad Sheth also reached there at 9.00 a.m. According to him, the ACB Officer introduced them to the complainant Mansukhbhai Dahyabhai who was present there. This witness has further stated that both himself and Nasir Mahmad Sheth consented to act as Panchas, and thereafter, the complaint which was lodged on 13th July, 1987 was read over by the ACB Officer to both of them and that the complainant also affirmed that the contents of the complaint were true. Thereafter, they (Panchas) had put their short signatures thereon. Then, introduction took place among the Panchas, members of the raiding party and the complainant. This witness has further stated that complainant Mansukhbhai then produced two currency notes of the denomination of Rs.50/- the numbers of which were mentioned in the preliminary Panchnama. Thereafter, upon instructions received from the ACB Officer, Police Head Constable Ramdas explained to the Panchas about the characteristics of anthracene powder and ultraviolet lamp and then experiment was demonstrated to them. On seeing these currency notes under ordinary light and under ultraviolet lamp nothing significant appeared but when

these currency notes were smeared with anthracene powder and viewed under ordinary light no marks were visible but when viewed under ultraviolet lamp, light blue fluorescent colour was visible on these currency notes. Thereafter, this witness searched the person of the complainant and found that the left pocket of the bush-shirt worn by the complainant was empty, however, from the right pocket of the pant worn by the complainant, an handkerchief and from the right pocket of the pant worn by the complainant two currency notes of the denomination of Rs.5/- each and two currency notes of the denomination of Rs.2/- each aggregating Rs.9/- were found which were left as it is in the respective pockets. Police Constable Ramdas then placed the tainted currency notes in the left pocket of the bush-shirt worn by the complainant- Mansukhbhai. It was also ensured that there remained no anthracene powder marks on any of the members of the raiding party, the bottle containing anthracene powder was kept safe and the paper used for smearing the currency notes with anthracene powder was also destroyed. According to this witness, he was instructed to remain in the company of the complainant and to see and hear the conversation and the transaction that takes between complainant and the appellant-accused. Panch no.1 was also instructed not to touch the said

currency notes till the demand is made by the appellant-accused and that he should give signal only when the amount of bribe is accepted by the appellant-accused by combing his hair. This witness has further stated that, thereafter, as decided ACB Officer, both the Panchas(including this witness), complainant and both the Head Constables with the ultraviolet lamp left at 10.45 a.m. by Government Jeep via Soneri Mahal, halted the jeep at Valanda Koti Chowk and all of them alighted from the jeep. Then, as instructed earlier , this witness and complainant -Mansukhbhai Dahyalal Solanki went towards Tashkant Beauty Tailor's shop situated at Koti Chowk and he saw one bearded man at the tailor's shop waving his hands at the complainant and the complainant told this witness that the bearded man was Mr. Pathan. Both of them then went to Tashkant Beauty Tailor's shop and the appellant-accused came out of the shop. At that time, as decided earlier, the complainant told the appellant-accused that henceforth he should not harass or depress his wife. He also added that he was not able to make arrangement of money at an earlier point of time, but this time he had brought Rs.100/- as demanded by him(the appellant-accused). The appellant-accused Mr. Pathan then complimented the complainant and demanded the amount. Thereupon, the complainant then took out the two

tainted currency notes from the left pocket of the bush-shirt worn by him and handed over the same to the appellant-accused which he accepted with his right hand. This witness has further stated that the appellant-accused upon receipt of these tainted currency notes, put them into the upper left pocket of the cuffni worn by him (appellant-accused) and that this transaction had taken place at 11-02 a.m. According to this witness, he (Panch no.1) then gave the pre-arranged signal by combing his hair and soon all the members of the raiding party including Panch no.2 reached the spot and after necessary introduction, the currency notes were seized upon performing experiment of ultraviolet lamp and finding the presence of anthracene powder on the same. The numbers of these currency notes tallied with the numbers mentioned in the preliminary Panchnama. Slips bearing signature of the Panchas were affixed on these currency notes. This witness has further stated that when viewed under ultraviolet lamp presence of anthracene powder was also noticed on the fingers of the right hand and palm of the appellant-accused as also on the left upper pocket of the cuffni worn by the appellant-accused which was also seized by affixing slips bearing signatures of both the Panchas. On searching the person of the appellant by Panch no.2 two keys from the right pocket of the

pant and two currency notes of the denomination of Rs.5/- were found which were left as it is in the respective pockets. A detailed second part of the Panchnama (Exh.23) was drawn to that effect and completed at 12.15 p.m. This witness has also stated that this Panchnama also bears his signature, that the contents therein are true and that Panch no.2 has also signed this Panchnama in his presence. This witness has also admitted having signed the slips bearing Exhs.17 and 18 and that the Panch no.2 had also signed the same. This witness has also admitted that Mark 15/5 is with regard to recovery of currency notes of the denomination of Rs.50/- and that it bears his signature and that of Panch no.2 (Exh.42) which he had identified. According to him, in mark 15/5 there is also mention of recovery of cuffni. This witness had identified the appellant-accused Mr. Pathan as the bearded man. This witness has denied that due to fear of being roped in a false case by the ACB persons, he had given false deposition. In cross-examination he has stuck to his above version in all material particulars as to demand, recovery and acceptance as well.

9.3 PW 3 Nasir Mahmad Sheth in his evidence at Exh.20 has in clear terms narrated almost the same version as deposed to by Panch no.1 with regard to the manner in which the raid was carried out, the acceptance of the bribe amount of Rs.100/-

(two currency notes of the denomination of Rs.50/- each) by the appellant accused and the recovery thereof from the appellant accused in presence of the members of the raiding party of the bribe amount, the presence of anthracene powder on these currency notes when viewed under ultraviolet lamp, preparation of the Panchnamas Exhs,.22 and 23 and the contents thereof being true and that these Panchnamas bear the signatures of both himself and Panch no.1; that the complaint was read over and explained to himself as also Panch no.1 by ACB Officer and that the contents thereof are true as the complainant had also affirmed this fact. This witness has further stated that the slips (Exhs.17 and 18) affixed on the tainted currency notes recovered bears his signature and that of Panch no.1. This witness has further deposed that the salary register of Bharuch Municipality was recovered in his presence which shows that Lalitaben PW 2 was appointed as extra toilet cleaner (Safai Kamdar)

9.4 PW 4 Prabodhbhai Mansukhbhai Solanki (who is the son of PW 1 Mansukhbhai Dahyabhai Solanki and PW 2 Lalitaben) in his deposition at Exh.25 has stated that the appellant-accused is known to him as his mother PW 2 was working under the appellant-accused. This witness has admitted that on 10th July, 1987 there was Srimant ceremony of his wife,

however, he denied having borrowed Rs.100/- from the appellant-accused before or after the said Srimant ceremony or that there was any transaction of money between him and the appellant-accused. In cross-examination he also stated that the accused is known to him as he had worked under him as a badli worker (reliever) also. He has also categorically stated that he had to pay Rs.100/- to the appellant-accused whenever sanction was granted for obtaining sanction to continue his services.

9.5 PW 7 Jashwant Champaklal Dhorawala in his testimony at Exh.30 has stated that he has been working with Bharuch Municipality since the year 1983 and from 15th January 1994 he is discharging his duties as a Chief Officer. According to him, on the basis of the report received from the Sanitary Inspector (appellant-accused) extra toilet cleaners were temporarily appointed and that the report requesting for such appointment is made by the Sanitary Inspector depending on the workload. This witness has further stated that Exh.31 is the report dated 1-6-1987 submitted by the appellant-accused seeking appointment of extra toilet cleaners as daily wagers on a payment of Rs.19.32ps. Per day. This witness has also identified signature and body writing of the said report to be of the present appellant-accused. According to him, the Chief

Officer had granted sanction to appoint four extra toilet cleaners(Safai Kamdar) on the basis of the said report Exh.31. According to this witness, he had produced before the police during investigation the salary register which is at Exh.32 wherein the name of Lalitaben figures at Serial no.3 and against her name in the column of wages Rs.19.32 per day is shown. In cross-examination irrelevant questions were put to show that there existed good relations between PW 1 and this witness with a view to show that due to some obligation this witness is giving false evidence.

9.6 PW 5 Gaffurbhai Ibrahimhai in his deposition at Exh.26 has stated that he is the owner of Tashkant Beauty Tailor's shop situated in the area known as Valanda Koti Chowk. This witness has stated that he himself was running the said shop and that he knew the appellant-accused since last 6 to 7 years. According to him, on the day of the trap i.e. 14-7-1987 between 8.45 a.m. and 9.00 a.m. as well as between 10.45 and 11.00 a.m. the appellant-accused visited his shop and on both these occasions enquired of him whether Mansukhbhai had come to his shop to which this witness had replied in the negative. According to this witness, on the second occasion, the appellant-accused had sat in his shop for some time. Thereafter, when the appellant-accused stood up and was

standing on the steps of the shop, he saw Mansukhbhai coming from the opposite direction, so he shouted at Mansukhbhai and Mansukhbhai gave gesture with his hand and told that he would come after some time, however, Mansukhbhai came there immediately along with another person. Then, Pathan Saheb, Mansukhbhai and the person who came along with Mansukhbhai went six steps ahead. This witness has further stated that he continued with his tailoring work, however, while on his work he saw Mansukhbhai handing over something to Pathan Saheb. Thereafter, within five seconds, persons from the ACB reached there, caught hold of the appellant-accused and they brought Pathan Saheb to his shop and recovered two currency notes of the denomination of Rs.50/- from the cuffni that was worn by the appellant-accused. He further stated that these notes were in folded condition. Thereafter, according to him, Panchnama was drawn in his shop and police recorded the statement of this witness.

10. Analyzing the evidence of these witnesses the following facts emerge _ (i) the fact of initial demand has been proved through the evidence of the complainant PW 1 at Exh.16 which is supported by his complaint as also the corroboration from the evidence of PW 2 Lalitaben (ii) This fact is further supported by the conduct of the complainant in going to the

ACB Office to lodge complaint and further approaching the appellant-accused on the trap day, (iii) the fact of initial demand gets further support from the evidence of the complainant that on the trap day when he in the company of Panch no.1 met the appellant-accused, the appellant accused asked the complainant to handover the amount to him if he had brought the same. On this point even Panch no.1 has supported the evidence of the complainant, (iv) As regards the evidence of demand of bribe money on the date of trap, there is evidence of the complainant, Panch no.1, the complaint (Exh.45) and Panchnama (Exh.23), The evidence of consequent recovery of bribe money further supports the case and evidence of pre-trap demand and trap day demand, (vi) The evidence of acceptance can be gathered from the evidence of complainant, Panch no.1, complaint and Panchnama, (vii) The evidence of recovery of bribe money further supports the case and evidence of demand and acceptance, (viii) The fact of recovery of bribe money is proved on record through the evidence of complainant, Panch no.1, I.O. Mr. Vasava, Panch no.2, Panchnama, presence of anthracene powder on the left pocket of the cuffni worn by the appellant-accused on the day of trap on the fingers and right palm of the appellant-accused as also on the left pocket of the bush-shirt worn by the

complainant, (ix) The demand of bribe money of Rs.100/- had been witnessed by Panch No.1 Govindbhai who was present with the complainant at the relevant time, (x) the fact of initial demand of Rs.100/- was informed to the complainant by PW 2 Lalitaben his wife in June ,1987 and that out of fear of removal from service she agreed to pay Rs.100/- on 6th/7th July,1987 and recovery Panchnama (Exh.23) proved through the evidence of Panch no.1 and Panch no.2 who are independent witnesses, (xi) the numbers of the currency notes recovered tallied with the numbers of the currency notes mentioned in the preliminary Panchnama, (xii) the conduct of complainant (PW 1) and his wife Lalitaben (PW 2) having found to be quite natural and probable since even PW 4 Prabodbhai in his evidence has stated that appellant used to demand Rs.100/- for obtaining sanction for continuing the services of toilet cleaners and that he also used to pay such amount as illegal gratification to the appellant-accused which strenthens the sand of PW and PW 2. (xiii) the complaint Exh.45, the Panchnamas Exhs.22 and 23, the Yadi Exh.46 as also the slips Exhs.17 and 18 all bear testimony the fact of intial as well as trap day demand and acceptance. The complaint also reflects that the complainant was not willing to part with the bribe amount but due to threats administered by the appellant-accused to his wife and the fear

of removal from service of the wife of the complainant had necessitated the giving of the bribe and therefore, the complainant cannot be branded as a willing bribe giver and hence not an accomplice. (xiv) The Panchnamas Exhs.22 and 23 are found to be authentic and fully reliable. Panch no.1 Govindbhai and Panch no.2 Nasir Mahmad Sheth has fully supported the prosecution version as reflected in the Panchnamas Exhs.22 and 23 as also the complaint Exh.45. Even in cross-examination these witnesses stood firm on the material part of their deposition and the lengthy cross-examination did not shake their evidence.

10.1 In continuance of the above situation emerging from the evidence as discussed above, it is necessary to look at the background in which the incident had taken place so as to make out how the balance of probability tilts either in favour of the accused or in favour of the prosecution witnesses firstly on the point of demand, acceptance and recovery of the bribe amount. It is worthwhile to note that despite lengthy and searching cross-examination the complainant has not at all been shaken on the substantive part of the evidence regarding the appellant-accused having initially demanded Rs.100/- from his wife Lalitaben PW 2 in the year 1987 for obtaining sanction to continue her services as an extra toilet cleaner and that the

appellant-accused threatened her of removal from service if the amount is not paid and so she agreed to pay on 6th/7th of July, 1987; that on the request of his wife (PW 2), he (complainant) met the appellant accused on 12th July, 1987 at 8.15 a.m. when the appellant-accused had affirmed the fact of such threatening whereupon the complainant had also agreed to pay Rs.100/- to the appellant-accused after two days; that the appellant-accused again met the complainant on 13th July, 1987 and demanded the said amount of bribe and the complainant assured to make the payment on the next day and for that purpose the appellant-accused suggested that they meet at Valanda Koti, Tashkant Beauty Tailor's shop; that as the complainant was not willing to part with the bribe amount, he approached the ACB Office, lodged the complaint and accordingly on 14-7-1987 the trap having been laid and acceptance of the bribe amount of Rs.100/- in presence of Panch no.1 and recovery in presence of all the members of the raiding party is proved through the evidence of the complainant himself, Panch no.1 and Panch no.2. In this case, the authenticity of the complaint is established from the deposition of Panch no.1 at Exh.41 wherein he has positively stated that the complaint (Exh.45) was read over and explained to him and Panch no.2 and they have put their

signatures thereon as the complainant has also affirmed before them that the contents of the complaint are true. This is also evident from the preliminary Panchnama. It is important to note that the evidence of complainant PW 1 and his wife PW 2 is consistent, the complaint Exh.45 recites almost the similar version given by the complainant in his evidence and the evidence of Panch no.1 fully corroborates the evidence of these two witnesses. Apart from this there are documents like Exhs.22, 23, and the slips Exhs.17, 18, Yadi Exh.46 and report Exh.31 pay bill(salary register). Exh.32 stands proved through the independent witness, namely, PW 7 Jashwant Champaklal Dhorawala (Exh.30) when he states that on the basis of report Exh.31 he had granted sanction for appointment of four extra toilet cleaners including Lalitaben PW 2 and the salary register produced by this witness before the police during investigation shows the name of Lalitaben at serial no.3 and against her name in column of wages Rs.19.32ps. per day is reflected. Thus, in the present case, demand, acceptance and recovery is coupled with positive evidence supported by various documents and circumstances pointing to the guilt of the appellant-accused and the chain is complete. In this view of the matter, the defence of the appellant-accused that on 14-7-1987 he received from the complainant the amount of Rs.100/-

which he lent to Lalitaben the wife of the complainant is devoid of merits. Therefore, when the facts of demand, acceptance and recovery have been established beyond reasonable doubt, the prosecution has to be held to have proved that the appellant-accused received the moneys in question as an illegal gratification that was not his legal remuneration and which he was otherwise not entitled to receive, meaning thereby, that the prosecution has become statutorily entitled to the presumption under Section 4(1) of the Act. It is also important to note here that in the cross-examination of PW 2 Lalitaben it has come out that there existed no relationship between the present appellant-accused and PW 2 Lalitaben, and therefore, the defence of the appellant-accused that due to brother-sister relations he had lent Rs.100/- to PW 2 Latlitaben also stands raised to the ground. In view of my aforesaid conclusions, the contention raised by the learned Counsel for the appellant-accused that there is no specific demand of illegal gratification on the day of trap as per the evidence of Panch no.1 Govindbhai as well as the Panchnama also does not merit any acceptance as the appellant did compliment the complainant for having brought the amount of Rs.100/- and demanded the same and accepted it. Merely because there is no mention that the amount is illegal

gratification in the Panchnama or evidence of Panch no.1 that by itself is not a circumstance that would benefit the appellant-accused. The evidence has to be read as a whole and a sentence or part of a sentence cannot be read in isolation. Mere bald suggestions put in cross-examination by the defence that has been denied by the witnesses is not sufficient, but the stand taken by the appellant-accused must be successfully probalised by producing cogent and convincing material. In the present case as discussed earlier, there is ample evidence and documents referred to herein above on record to show that amount in question is demanded by way of illegal gratification, accepted by the appellant-accused and recovered from the person of the appellant-accused in presence of witnesses after laying a successful trap.

11. Learned Counsel for the appellant-accused next made a faint attempt contending that Section 40 of the Indian Evidence act bars a second trial. This submission has to be stated merely for being rejected as in the present case there was neither acquittal of the present appellant-accused in Special Case no.4/1988 nor was there any decision on merits but the Court had only discharged the accused on the ground that the previous sanction obtained was not legal and valid. The learned trial Judge had rightly placed reliance on the decision

rendered in the case of Mohamad Safi vs. The State of West Bengal reported in A.I.R. 1966 SC 69 and held that the first trial was not a trial at all and the order passed was no order of acquittal as contemplated by Section 403(1) of the Criminal Procedure Code. The learned Judge opined that the order was meant merely to put a stop to the proceedings and hence Section 300, Cr.P.C. will not be applicable to this case. Even otherwise, the present appellant-accused has not challenged the said order before the higher forum and so he cannot now wake up from his slumber and contend that a second trial is not permissible.

12. The learned Counsel next contended that the second sanction order obtained on 5-12-1989 is not legal and valid on two grounds (i) that there is non application of mind on the part of the sanctioning authority, and (ii) that Mr. Varsani who had passed the sanction order was not the competent authority to accord the sanction. PW 6 Rasiklal Ranchhoddas Varsani in his deposition at Exh.27 has clearly stated that after considering the police papers and applying his mind in the capacity of an Administrator, he accorded the sanction which is produced at Exh.28. He denied that in a mechanical manner without applying mind the sanction has been accorded. The learned Counsel has failed to point out anything from the

record which would even remotely indicate that the sanction accorded is illegal or that the authority which sanctioned the prosecution was not a competent one as there is no mention in the Notification that the President and the Vice President whose charge Mr.Varsani was holding at the relevant time was not competent to accord the sanction. The learned Counsel has also failed to point out from the record that Mr. Varsani in his capacity as Administrator cannot accord the sanction, and therefore, there is no force in this submission as well.

13. Learned Counsel for the appellant-accused next contended that there are contradictions between the evidence of witnesses with their police statements as also with their earlier depositions with regard to the exact time, date/month and place of incident. In this connection it may be noted that the witnesses belong to the lower strata of society from villages and the evidence having been recorded after a long gap of eight years, minor contradictions not affecting the core of the prosecution has to be accepted as genuine ones. When a ring of truth is found in the version of witnesses so called infirmities, contradictions or variations cannot be given importance. The circumstances in which the bribe is accepted, the quality of the evidence of witnesses, their level of understanding and power of perception, the conduct of the

witnesses and probability in ordinary course of nature about the occurrence of the incident must be judged by the standard of reality of life. Merely pointing out some statements by the witnesses that have been omitted by them in their police statements or earlier depositions are not contradictions affecting the core of the prosecution case. Here, in the instant case, as discussed earlier, on careful dispassionate judicial scrutiny, I am of the view that there is a ring of truth in the evidence of the witnesses and therefore, merely because something is not stated before the police or in their earlier depositions by the witnesses, that by itself would not be a ground to throw the prosecution case overboard. In other words, the contradictions pointed out by the learned Counsel are not fatal to the prosecution, and hence, this submission cannot be accepted.

14. The learned Counsel next submitted that the appellant accused has been falsely roped in the case as the complainant is in the habit of filing false cases against Government servants and harassing them; that the complainant was removed from service of Homeguard, ONGC etc. on account of such conduct is quite irrelevant in view of overwhelming evidence on record which points to the guilt of the present appellant-accused and when the ingredients of demand, acceptance of the illegal

gratification by the appellant-accused is proved through the evidence of trustworthy and reliable witnesses as discussed above. This is more so, as the complainant has given satisfactory explanation in his evidence.

15. The learned Counsel finally submitted that if the Court is not inclined to allow the appeal, a lenient view be taken on the quantum of punishment. He has stated that the appellant-accused is 65 years old; that he has been removed from service, that his financial background is very poor; that the incident in question has taken place more than 20 years back; that his young son had passed away leaving behind his wife and minor children who are fully dependent upon him; that the wife of the appellant is not keeping good health.

16. On the other hand, the learned A.P.P. Mr. Pujari for the State has submitted that the prosecution has successfully established the case of demand, acceptance and recovery of the illegal gratification by the appellant-accused from the complainant through the trustworthy and reliable evidence of complainant and his wife Lalitaben which is fully corroborated by the testimony of independent witnesses and documentary evidence in the form of complaint exh.45, Panchnama s Exhs.22 and 23, slips exh.17 and 18, report exh.31 and pay bill register exh.32. According to the learned A.P.P. the learned

Special Judge is perfectly justified in passing the judgment and order of conviction and sentence against the appellant-accused.

17. Having meticulously and objectively analyzed the evidence with due care and caution, I am of the view that the trial Court has carefully and correctly appreciated the evidence and had given cogent and convincing reasons in the impugned judgment which are consistent with the evidence on record. I find no ground, much less, reasonable ground to doubt the prosecution case and that the learned Counsel for the appellant-accused has failed to persuade me to differ from the conclusions reached by the learned Special Judge. Thus, in my considered opinion, no interference is called for in the impugned judgment so far as conviction of the appellant-accused is concerned. Consequently, I uphold the impugned judgment so far as conviction of the appellant-accused is concerned.

18. In view of the foregoing discussion, the charges levelled against the appellant-accused under Section 161 of the Indian Penal Code as well as under Section 5(1)(d) read with Section 52) of the Prevention of Corruption Act, 1947 stands proved beyond reasonable doubt. The charge under Section 161 stands proved in view of the presumption being attracted

under Section 4 of the Act. The appellant-accused is , therefore, found guilty of an offence punishable under Section 5(2) read with Section 5(1)(d) of the said Act and Section 161 of the Indian Penal Code.

19. I have given my anxious thought and consideration to the question of quantum of punishment that may be imposed on the appellant-accused, keeping in view the submission of the learned Counsel for the appellant-accused before me. Having regard to the facts and circumstances of the case and in light of the decision rendered by the Apex Court in the case of *Biranchi Narayan Mohanty v. State of Orissa* [(2001) 9 SC 288] wherein in para 4 of the judgment while holding that as the appellant has suffered other consequential punishment of loss of government job, the sentence of imprisonment was reduced from one year to a period of six months and the sentence regarding fine was ordered to remain unaltered, I am of the view that the interest of justice will be served if the following order is passed.

20. In the result, the appeal is partly allowed. The sentence of R.I. imposed on the appellant-accused Ismailkhan Rasuklkhan Pathan (vide judgment and order dated 3-7-1995 by the learned Special Judge, Bharuch, in Special Case no.6 of 1989) for the offences punishable under Section 5(1)(d) read

with Section 5(2) of the Prevention of Corruption Act, 1947 as also under Section 161 of the Indian Penal Code are ordered to be reduced to four months R.I. The sentence of fine on both the counts shall remain unaltered. Both the substantive sentences shall run concurrently. Bail bonds of the appellant-accused shall stand cancelled. The appellant-accused is directed to surrender before the jail authority within eight weeks from the date of receipt of the writ of this judgment. Muddammal articles be disposed of in terms of the directions given by the learned trial Judge in the impugned judgment.

(M.D.Shah,J.)

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