

PETITIONER:
SHANTILAL KASHIBHAI PATEL

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT 02/11/1992

BENCH:
[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

ACT:
Indian Penal Code: Section 161.
Prevention of Corruption Act, 1947. Sections 5(1) (d) and 5(2).
Demand for illegal gratification-Statement of complainant-Not corroborated-Not supported by panch witnesses-Complainant-Admitting that he wanted to teach accused a lesson for harassing businessmen-Held accused entitled to acquittal.

HEADNOTE:

The prosecution case was that the complainant was running a shop and dealing in Kimam and that on 7th January, 1984, the Chief Inspector in the Health Department (accused No.1) and accused No. 2 (appellant in the appeal), accused No. 3 and accused No. 4 who were working as Food Inspectors had approached the complainant at his shop and stated that they had been inspecting food articles for adulteration, and took a bottle of Kimam and opened it for sample and when the complainant told them that it may be taken in sealed condition, they refused to do so and stated that the sample would not be passed and the complainant would be put to difficulties, unless he paid Rs. 5,000. The complainant was not willing to make such payment but he was pressurised. On the next day, 8th January, 1984 accused No. 4 came to the shop to enquire whether the money had been arranged. He was given Rs. 500 and the balance was promised to be given on 30th January, 1984.

On 30th January, 1984 the complainant approached the office of the Anti Corruption Bureau and gave his complaint. Two Panchas were called by the A.C.B., the number of 40 currency notes of Rs. 100 each were noted done in two batches of 20 each, the currency notes were treated with anthracene powder, a demonstration was made and shown to the complainant and the Panchas. Panch No.1 was to remain with the complainant and Panch No. 2 was to remain with the raiding party.

The complainant and Panch No.1 went to the stop at about 6.00 p.m. and when accused No. 2 demanded the money, the complainant gave it to him, when he was apprehended by the raiding party. The hands of accused No. 2 (appellant) were seen in the ultra violet light and the four fingers and thumb of the right hand showed the light blue colour and white sparkle. The currency notes also showed the anthracene powder in the ultra violet light.

Thereafter, the complainant and Panchas went to the residence of accused No. 1. The complainant offered money to

accused No. 1. He, however, refused to accept the same, and, therefore no raid was made.

All the four accused were tried by the Special Judge for offences under section 161 of the Indian Penal Code read with Sections 5(1) (d) and 5(2) of the Prevention of Corruption Act. Accused Nos. 1, 3 and 4 were acquitted while accused No. 2 was convicted and sentenced by the Special Judge.

The State filed an appeal against the acquittal of the three accused whereas accused No. 2 filed an appeal against his conviction and sentence.

The High Court dismissed both the appeals. It noticed that: the Panchas did not recognise any of the accused persons; there is no corroboration as to what had happened in the meetings preceding the raid on 30th January, 1984; the evidence of the complainant was disinterested and did not require any corroboration; and the hands of accused No. 2 when seen in ultra violet light the four fingers and thumb of the right hand showed the light blue colour and white sparkle.

Allowing the appeal, and setting aside the conviction and sentence, this Court,

HELD: 1. The High Court had acquitted the accused No. 3 and did not find it safe to convict him on the sole testimony of the complainant supported by the test of seeing anthracene powder on the hands and fingers of accused No. 3 in ultra violet light, but on the same evidence upheld the conviction of accused No. 2 relying on the same evidence which was rejected vis-a-vis accused No. 3. [272-G]

2. When the High Court could not find it safe to rely on the uncorroborated statement of the complainant while upholding the acquittal of accused No.3 it is unsafe to rely on the ipse dixit of the complainant which is unsupported by both the Panch witnesses and the police officials who formed the raiding party for upholding the conviction of accused No. 2, appellant. [273-E]

3. Not only the two Panchas could not recognise any of the accused persons but there is no corroboration to the various statements of the complainant vis-a-vis accused Nos. 1 to 4 by the police officials who constituted the raiding party either. The raiding party including the police officials reached the spot at a time when they could neither hear the talk, if any, between the accused No. 2 and the complainant nor could see the alleged acceptance of money by accused No. 2 and passing it on to accused No. 3. [272-E]

4. The High Court totally ignored the statement of the complainant made during cross-examination on behalf of accused No. 2, that he had thought of teaching accused No. 2 a lesson for harassing businessmen selling Pan and Masalas. [273-A]

5. It is clear that this is not a case merely of a complainant from whom bribe was demanded and he was forced to pay the same but the complainant had thought of teaching a lesson to accused No. 2 for harassing the businessmen selling Pan Masalas and therefore, it could not be said that the complainant was not interested in success or otherwise of the raid. [273-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 646 of 1992.

From the Judgment and Order dated 3.4.92 of the Gujarat High Court in CrI. A. No. 161 of 1992.

T.U.Mehta, N.N. Keshwani, Ashok D. Shah, R.N. Keshwani and S.K. Gupta for the Appellant.

Anip Sachthey and Badri Nath for the Respondent.

The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. On 4th September, 1992 this Court had directed issue of notice on the Special Leave Petition as well as on application for bail returnable in four weeks and it was indicated that the matter will be heard and finally decided on that date. However, there is no appearance on behalf of the State today.

Leave granted. The matter is being disposed of.

This is an appeal by Special Leave against the judgment of the Division Bench of the Gujarat High Court dated 3rd April, 1992.

Four accused persons were tried by Special Judge, Ahmedabad. Out of the said four accused only one of the accused person, namely - accused No. 2, a Food Inspector has been convicted of offences punishable under Section 161 of the Indian Penal Code and Sections 5(1) (d) and 5(2) of the Prevention of Corruption Act, 1947.

The three other accused were acquitted by the learned Special Judge. The State tiled the appeal against the acquittal of the three acquitted accused whereas accused No. 2 filed an appeal against his conviction and sentence.

The High Court dismissed the appeal of the State against the acquittal of accused No.1, 3 and 4 and at the same time dismissed the appeal of accused No. 2. Accused No. 2 has come up to this Court by way of a Special Leave Petition against the aforesaid decision of the Division Bench.

The prosecution case is that the complainant Mohanlal Chhatramal Samnani is running a shop and inter alia dealing in Kimam opposite Maninagar Railway Station, Ahmedabad. On 7th January, 1984, the Chief Inspector in the Health Department (accused No.1) and accused No. 2 (appellant herein) and accused No. 4, who were working under him as Food Inspectors, had approached the complainant at his shop and stated that they had been inspecting the food articles for adulteration and took a bottle of Kimam and opened it for sample and the complainant told them that it may be taken in sealed condition but they refused to do so and stated that the sample would not be passed and the complainant would be put to difficulties. This was stated by accused No. 1 who further stated that the complainant should be practical. The complainant enquired as to what was meant by being practical and the accused No. 2 (appellant) replied that "being practical" means "money". The complainant then enquired as to the amount and he was told Rs. 5,000.00. The complainant was not willing to make such payment. However, he was pressurised. The complainant stated that he did not have that much money and, therefore, he was asked to pay whatever the amount he could pay immediately and the complainant opened his 'galla' and gave Rs. 600.00 to accused No. 1.

The next day, on 8th January, 1984, accused No. 4 had come to his shop and enquired whether the money had been arranged but the complainant replied that it could not be done. However, under pressure he gave Rs. 500.00 to accused No. 4 and asked for more time for making arrangement for more amount. Thereafter, after about 15 days accused Nos. 2 & 4 had come to his shop demanding illegal gratification and the complainant requested for four days time. After four days again the accused Nos. 2 & 4 came to his shop and the complainant again stated that the money could not be arranged and he may be given two days time. After great

difficulties, on complainant making a promise that he would pay the amount with 100% certainty, and on this final promise, accused Nos. 2 & 4 asked the complainant to keep the money ready on 30th January, 1984 at 3.00 p.m.

On 30th January, 1984 the complainant approached the office of the Anti Corruption Bureau and gave his complainant. Two Panchas were called by the A.C.B. In the presence of those two Panchas, the numbers of 40 currency notes of Rs. 100.00 each were noted down in two batches of 20 each. Each of these currency notes was treated with anthracene powder and a demonstration was made and shown to the complainant and the Panchas. One bundle of Rs. 2000.00 was to be given to accused No. 1 and another bundle was to be given to accused Nos. 2 & 4. Panch No. 1 was to remain with the complainant and Panch No. 2 was to remain with the raiding party.

After making this preliminary panchnama raided party went to Maninagar and the complainant and Panch No. 1 went to the shop at about 6.30 p.m. and the others waited outside a little away. After about an hour accused No. 2 came to the shop and the complainant asked accused No. 2 to come and sit but the accused No. 2 replied that he was in a hurry and asked the complainant to come with him where another Inspector was waiting near the Post Office. Therefore, the complainant went with accused No. 2 and Panch No. 1 followed them. Accused No. 3 and Jinto (absconding accused) were waiting and accused No. 2 introduced them to the complainant and asked the complainant as to what he had done about the money which was earlier talked about. The complainant replied that he had brought the money. The accused No. 2 demanded the same and the complainant took out the bundle of currency notes from one of his pockets and gave it to accused No. 2 who accepted it by his right hand and asked the complainant as to how much it was and the complainant replied that it was Rs. 2,000.00 and accused No. 2 asked as to for how many persons it was and the complainant replied that it was for three persons. The accused No. 2 asked accused No. 3 to count the same and while Modi, accused No. 3, was counting the same, the complainant gave the signal and the raiding party which had followed them immediately came there alongwith Panch No. 2. All of them went to the shop of the complainant where Modi was asked to give currency notes to the Panchas and exercise of ultra violet lamp was undertaken and in the ordinary light, hands of each of the three Food Inspectors did not indicate any light change. Thereafter, under ultra violet light, hands of all were seen and the hands of Panch No. 2 and the members of the raiding party did not show any change on their hands. The hands of accused No. 2 (appellant) were seen in the ultra violet light and the four fingers and thumb of the right hand showed the light blue colour and white sparkle. So also was the position with regard to the right hand fingers and thumb of Jinto and his clothes, namely - the right hand pocket of the pant, so also the fingers and thumb of both the hands of accused No. 3, Modi, and the left hand pocket and the woollen cap of Modi showed white sparkle and the light blue colour. The numbers of currency notes were compared with the numbers which were recorded in the preliminary panchnama and they were found to tally. The currency notes also showed the anthracene powder in the ultra violet light. The complainant's hands were also seen and they also showed the anthracene powder in ultra violet light so also both his inside pockets of the coat.

Thereafter, the complainant and the Panchas went to the residence of accused No. 1. The complainant alongwith Panch

No.1 went to the first floor of the flat of accused No.1. Accused No.1 opened the door and asked these people to come inside and made them sit. The complainant offered money to accused No.1. He, however, refused to accept the same and, therefore, they came out and no raid was made.

As stated earlier all the accused were tried by the learned Special Judge and accused Nos. 1, 3, & 4 were acquitted and ultimately the appeal of the State against their acquittal was dismissed by the High Court. The High Court dismissed the appeal of accused No.2 also after noticing -

(i) that the Panchas did not recognize any of the accused persons;

(ii) that there is no corroboration to what had happened in the meetings preceding the raid on 30th January, 1984;

(iii) that the evidence of the complainant was disinterested and did not require any corroboration; and

(iv) that the hands of accused No.2 were seen in ultra violet light and four fingers and thumb of the right hand showed the light blue colour and white sparkle.

The High Court had acquitted accused Nos. 3 & 4 in spite of the fact that their fingers have also showed light blue colour and white sparkle in ultra violet light but the High Court was not prepared to rely on that circumstance alone with the uncorroborated testimony of the complainant. Since according to the High Court no demand had been made by accused Nos. 3 and 4 from the complainant for any bribe.

It will be noticed that not only the two Panchas could not recognize any of the accused persons but there is no corroboration to the various statements of the complainant vis-a-vis accused Nos. 1 to 4 by the police officials who constituted the raiding party either. The raiding party including the police officials reached the spot at a time when they could neither hear the talk, if any, between the accused No. 2 and the complainant nor could see the alleged acceptance of money by accused No.2 and passing it on to accused No.3. We are thus left with the sole testimony of the complainant and the test of seeing anthracene powder on the hands and fingers of accused No.2. The High Court had acquitted accused No.3 and did not find it safe to convict him on the sole testimony of the complainant supported by the test of seeing anthracene powder on the hands and fingers of accused No.3. in ultra violet light. But on the same evidence the High Court upheld the conviction of accused No.2 relying on the same evidence which was rejected vis-a-vis accused No.3.

The High Court felt that the complainant was totally dis-interested in the success of the raid and could not be called interested person and thus felt no need for corroboration of his statement.

The fact remains that the High Court totally ignored the statement of the complainant made during cross-examination on behalf of accused No.2. In his cross-examination the complainant stated;

"It is true that accused No.2 used to carry out raids on and often on Pan gallas. It is true that I had felt that he is harassing

businessmen selling Pan and Masalas. It is true that is why we thought of teaching him a lesson. It is true that in my statement before police, I have not stated that when accused No.1 asked as to why have you come, then I told that I am Kimamwala of Maninagar and according to talk with Shantilal, I have come to give money."

It is clear that it is not a case merely of a complainant from whom bribe was demanded and he was forced to pay the same but the complainant had thought of teaching a lesson to accused No.2 for harassing the businessmen selling Pan Masalas and, therefore, it could not be said that the complainant was not interested in success or otherwise of the raid. In fact the High Court acquitted accused No.3, though the evidence against him was the same as it was against accused No.2. When the High Court could not find it safe to rely on the uncorroborated statement of the complainant while upholding the acquittal of accused No.3 we also find it unsafe to rely on the pise dixit of the complainant which is unsupported by both the Panch witnesses and the police officials who formed the raiding party for upholding the conviction of accused No.2, appellant before us.

The result is that the appeal succeeds, the conviction and sentence of the appellant is set aside and the appellant is acquitted.

N.V.K.

Appeal allowed.