

CASE NO.:
Appeal (crl.) 953 of 1997

PETITIONER:
G.L.Raval

RESPONDENT:
State of Gujarat

DATE OF JUDGMENT: 17/03/2004

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The appellant herein was found guilty of offence punishable under Section 5(2) of the Prevention of Corruption Act, 1947 as also under Section 161 of the Indian Penal Code. He was convicted for the said offences to suffer rigorous imprisonment for one year and to pay a fine of Rs.100/- in default to suffer further rigorous imprisonment for one month by the Special Judge, Ahmedabad. An appeal filed against the said judgment and conviction to the High Court of Gujarat at Ahmedabad having failed, the appellant is now before us in this appeal.

Brief facts necessary for the disposal of this case are as follows:

When the appellant was working as a Senior Clerk in the office of Licensing Board, Gujarat, the complainant was working as a Junior Assistant Electrical Inspector. The appellant while holding the said post was responsible for clearing TA, DA bills of the complainant. It is the case of the prosecution that for clearing one such bill of the complainant, the appellant demanded Rs.101/- hence, the complainant approached the Anti Corruption Bureau who agreed to lay a trap and in the said trap which was organised on the 17th of December, 1984 the appellant did not accept the gratification amount because he was in a hurry to leave the office. It is further case of the prosecution that two days later, i.e. on 19th of December, 1984 the complainant along with ACB officers and other panch witnesses went to the office of the appellant and when the complainant and the panch witnesses approached the appellant he received the said sum of money which was pre-marked and treated with phenophthylin. When the officers of the ACB came into the room of the appellant, the appellant threw away the currency notes which landed on the next table. The members of the ACB team then arrested the appellant and on conducting the necessary test it was found that the appellant had handled the currency. The prosecution in support of its case had examined the complainant, two panch witnesses and the Investigating Officer among other witnesses. The appellant took the defence that the complainant was a person of dubious character having been removed from his previous job and was also in the habit of preparing false TA, DA bills. The appellant had taken the stand that it is because the appellant refused the request of the complainant to approve the false TA, DA bills, the complainant had decided to take revenge on the appellant, accordingly, he had lodged a false complaint. It was also the case of the appellant that the two panch witnesses who were chosen for witnessing the trap were officials working under the father of the complainant in the health department and were specially chosen and the Investigating Officer also for reasons of his own had colluded with the

complainant in implicating the appellant.

The trial court as well as the High Court have accepted the prosecution case and convicted the appellant, as stated above. In this appeal, Shri H.A.Raichura, learned counsel for the appellant contended that from the prosecution case itself it is seen that the demand of Rs.101/- as a bribe seems highly improbable. He contended the fact that earlier attempt to bribe the appellant having failed, the appellant really would not have been careless enough to accept the money the next time around. He also contended that both the courts below have not properly appreciated the defence of the appellant and mechanically proceeded to extract the evidence of the prosecution witnesses given in the examination-in-chief, and without appreciating the contradictions and omissions brought out in the cross-examination, accepted the prosecution case. We have heard the arguments and perused the records and we find no justification to interfere with the concurrent findings of the two courts below.

The learned counsel for the appellant, however, contended if really the demand of illegal gratification was genuine there was no need for the Investigating Officer to choose panch witnesses who were working under the complainant's father which itself shows that the I.O. was unfair to the appellant and had oblique motives in organising the trap. Since on the face of it, we found that if this allegation of choosing of such panch witnesses who were closely associated with the father of the complainant was true then, in our opinion, the prosecution case required a careful consideration. In this process, when we examined the said argument of the learned counsel by perusing the evidence of the panch witnesses as also the I.O. we were unable to find any material to accept the argument of the learned counsel for the appellant that the panch witnesses were either associated with or were working under complainant's father. It has come in evidence that while the complainant's father was working in the Health Department of Municipal Corporation of Ahmedabad City, the panch witnesses were working in the Health Department of State Government which are not situated in the same premises nor is the father of the complainant anyway connected with the panch witnesses. From the perusal of the cross examination of these witnesses also we notice that no suggestion whatsoever has been made to these witnesses that they are in any way associated with complainant's father. Even to the investigation officer no such suggestions have been made, therefore, we find no merit in this contention also. For the reasons stated above, this appeal fails and the same is dismissed.