PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
NARSINGRAO GANGARAM PIMPLE

DATE OF JUDGMENT27/10/1984

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
THAKKAR, M.P. (J)

CITATION:
1984 AIR 63 1984 SCC (1) 446
1983 SCALE (2)659
CITATOR INFO :
R 1987 SC1986 (34)

ACT:
Prevention of Corruption Act-S. 5(1) (a) and 5(2) and s. 161 of I.P.C.- Accused prosecuted for demanding and accepting illegal gratification-Trial Court convicted and sentenced the accused-High Court acquitted the accused-Whether and when Supreme Court should interfere. What should be judicial approach to evidence of witnesses in a trap case.

HEADNOTE:
The respondent, a Sub-Inspector of Police, was charged under s. 161 of the Indian Penal Code and also under ss. 5(1) (a) and 5(2) of the Prevention of Corruption Act. The prosecution case was that one Rege had filed a complaint against his tenant Walawalker, that he was running a distillary. On a search of Walawalker's house made by P.W. 8 Gangurde, a police officer subordinate to the respondent, no trace of distillary was found. The respondent told Rege that since the complaint made by him was prima facie found to be false he was liable to be prosecuted under the Bombay Prohibition Act. The respondent demanded from Rege Rs. 2000 on 9-4-1972 as gratification for not taking any action against him and repeated the same demand on 13-4-1972. Rege was directed to see the respondent near about the police-station at a place called padavi. Rege out of desperation contacted PW 11, M.S. Khamkar and after narrating his story requested him to lay a trap in order to catch the accused. Rege also gave 20 hundred rupee notes to PW 11 which he proposed to handover to the accused at the time of the trap. The raiding party reached padavi round about 7.00 P.M. and waited for the respondent to come. The respondent appeared on the scene at about 8.30 P.M. and on seeing Rege repeated his demand for the 3rd time, Rege gave the money to the respondent. This was watched by P.W. 11, P.W. 3 and some others of the raiding pary. Thereafter Khamkar, PW 11, went into the room and tried to hold the hands of the respondent who had made an attempt to take out the notes from the right side pocket of his pant but despite this the respondent succeeded in throwing out the notes. As the money thus passed had already been treated with anthracine powder, the

hands and the right side pocket of the accused were put before the ultra violet lamp and were found to be stained with the said powder.

The trial court convicted and sentenced the respondent under s. 5(1) (a) and 5(2) of the Prevention of Corruption Act. In appeal the High Court set aside the conviction and sentences imposed upon the respondent. Hence this appeal by the State. The State argued that there was no real and meaningful discussion of the important evidence produced by the prosecution in support of
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its case and the High Court had merely narrated the evidence without examining its intrinsic merit and had sidetracked an issue which was not at all germane for deciding this case. The respondent argued that the High Court having acquitted the accused, this Court should very rarely interfere with the judgment of the High Court and should do so only in cases where there was a grave error of law or serious miscarriage of justice and that too when the accused faced a trial for several years and had been reinstated and promoted as an Inspector.

Allowing the appeal,
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HELD : The judgment of the High Court suffers from serious and substantial errors of law and legal infirmities. This is one of those rarest of rare cases where this Court would be failing in its duty if it did not interfere with the order of acquittal and set aside the judgment of the High Court. On a full and complete discussion of the facts and circumstances of the case the Court is of the opinion that the charges against the respondent-accused have been clearly proved and his acquittal by the High Court was wrong both on law and on facts. [644 E-F]

The respondent took an ingenious though improbable defence that Rege attempted to thrust the notes into his pocket in the presence of Khamkar but he gave a push and the notes fell on the ground; thereby he tried to explain the stains of the anthracine powder on his hands. While putting forward this defence the respondent seems to have forgotten that the notes had been taken out of his pocket which was also smeared with the powder and it is impossible to accept that an ordinary person like Rege would have the courage and audacity to forcibly thrust as many as 20 notes of rupees 100 denomination each into the pocket of the respondent when he knew that the respondent was a police officer armed with a revolver. It is difficult to believe that Rege would take such a grave risk and do so in the presence of Khamkar and others. The testimony of two independent witnesses and one clerk however reveals a different story which fully corroborates the prosecution version. [630 D-F]

The High Court seems to have devoted a major part of its judgment to the various case diaries produced before the court in order to establish that the accused was not present at the police station either on the 9th or on the 13th April 1972 when the first two demands were made. According to the High Court this gave a sufficient alibi to the respondent from which it could be safely inferred that if he was not present at the police station, there could be no occasion for him to make any demand for bribe from the complainant. Assuming that the recitals in the said case diaries are admissible (though there is serious doubt about it) yet it does not at all exclude the presence of the respondent at the Ambarnath police station on the 9th and 13th because he was not sent away to a place situated far from Bombay but was in some other police station within a radius of a few

miles only. Even if he was deputed to some other place he was in possession of a jeep and he could visit the Ambarnath police station for a few minutes on any of these dates. It is well settled that a plea of alibi must be proved with certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. Such, however, is not the case here. Therefore, the discussion of the case diaries, which engaged a substantial portion of the High Court judgment was really an exercise in futility. [632 D-G]

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We have gone through the entire evidence led by the prosecution and, in its opinion, the prosecution case was fully proved because it has been supported by at least two independent witnesses, viz., PW s 3 and 11 and to a great extent by PW 7. [636 D]

This Court is unable to be convinced by any reason why the evidence of PWs 3 and 11 should be discarded particularly when neither of these witnesses bore any grudge or animus against the respondent nor was any such suggestion made to any of these witnesses. Certain minor contradictions or inconsistencies have been pointed out in the statements of PWs 1 and 3 but on close examination they do not appear to be material and, therefore, not sufficient to throw out the prosecution case. PWs 1 and 3 have fully supported the prosecution case. [636 E-H]

The High Court was greatly impressed by what it calls a serious lacuna in the prosecution case-that although both Rege and Khamkar, along with the raiding party, came to the Municipal octroi Naka the first thing which Khamkar did was to ask Rege to stand outside (padavi) where the raiding party was also present. The High Court further held that from the evidence of Rege it appears that after the raiding party came there Khamkar caught hold of the hands of the accused and took him inside the room. The High Court has come to this finding on a complete misreading of the evidence of PWs 1 and 11 overlooking and ignoring the logical sequence of events starting from the morning of 14th April up to the time when the money passed. [637D-638C]

The High Court seems to have been under the impression that PW 1 was not subjected to the ultra violet lamp light test which in fact was done and here the High Court again committed an error of record. [638 D]

The High Court did not make any attempt to scan and appreciate the intrinsic merits of the evidence of PWs 1 and 3 as corroborated by PW 7, which by itself was sufficient to prove the prosecution case regarding the acceptance and recovery of money. [638H-639A]

The High Court failed to consider as to what motive could Rege have to falsely implicate the accused when he had not conducted the search nor was he directly connected with the charge sheet which was going to be filed against him. Indeed, the dominant question which the court should have put to itself would have been as to why a complaint under s. 89 of the Prohibition Act was not filed against Rege even though the chargesheet was ready. The evidence of Gangurde, PW 8 shows that he was ready to file the chargesheet but the accused directed him not to do so until the receipt of further instructions from him. That being the position why did the accused asked Gangurde to delay the filing of the chargesheet ? This question has neither been answered by the High Court nor by the accused. It seems that the approach made by the High Court towards the prosecution has not been independent but one with a tainted eye and an innate prejudice. In fact, the High Court appears to have been so

much prejudiced against the prosecution that it magnified every minor detail or omission to falsify or throw even a shadow of doubt on the prosecution evidence. This is the very ante-thesis of a correct judicial approach to the evidence
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of witnesses in a trap case. Indeed, if such a harsh touchstone is prescribed to prove a case it will be impossible for the prosecution to establish any case at all. [639 D-F; 640H-641B]

The High Court rejected vital evidence of PWs 1, 3, 8 and 11 on frivolous grounds and it did not make any attempt to discus their evidence on intrinsic merits and the superficial manner in which it has dealt with the evidence and circumstances in order to demolish the prosecution case is wholly unacceptable and leaves much to be desired. [644 B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 127 of 1977

Appeal by Special leave from the Judgment and Order dated the 22nd/23rd Jan., 1976 of the Bombay High Court in Criminal Appeal No. 102 of 1974

O.P. Rana, and M.N.Shroff, for the Appellant.

S.B.Bhasme, Ram Jethmalani, and V.N. Ganpule, for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave is directed against a judgment dated 22/23rd January 1976 of the Bombay High Court acquitting the respondent of the charges framed against him under s.161 Indian Penal Code and also under s.5(1) (a) and 5(2) of the Prevention of Corruption Act (hereinafter referred to as the 'Act'). The trial court after very detailed consideration of the evidence held that the charges under the aforesaid sections had been fully proved and the respondent-accused was accordingly sentenced to undergo two years rigorous imprisonment under s.5(1) (a) and 5(2) of the Act and a fine of Rs. 2000 was also imposed and in default of payment of fine further six month R.I. was imposed. The High Court in appeal disagreed with the conclusion of the trial court allowed the appeal of the accused, and set aside the conviction and sentences imposed on him.

We have heard Mr. Jethmalani, counsel for the respondent- accused and Mr. Rana for the appellant and have gone through the entire evidence and the Judgment of the High Court.
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This seems to be a very strange case where truth has been so much polluted that falsehood has taken its place and truth buried under deep debris. This has been possible by a clever police officer like the respondent, who tried to kill two birds with one stone, being seized of an opportunity which came to him through a complaint filed by Pandharinath Shivram Rege (hereinafter referred to as 'Rege') against his tenant Govind Shantaran Walawalkar (for short, to be referred to as 'Walawalkar') to the effect that the complaint suspected that his tenant, Walawalkar, was running a distillery. On a report by the police that on searching the premises no trace of distillery was found, presumably an inference could be drawn that the said complaint was false, though the said complaint was yet to be tested in a court of

law in a prosecution under s.89 of the Bombay Prohibition Act (for facility, to be referred to as 'Prohibition Act'). The police report obviously made Rege extremely nervous for fear of impending prosecution. Rege, as his background would show, was not an ordinary man in the street but a highly educated person who had got a M.Sc. degree and retired as a senior chemist before settling down in his own house called Prapanch. Therefore, being a respectable person he naturally get perturbed by the adverse police report. It was here that the accused, having got an opportunity of his life through his dice, by an ingenious device invited the complainant to offer him bribe by putting him in a tight corner on the one hand, and in an inextricable dilemma on the other.

To begin with, the respondent-accused sensing the nervousness Rege started by showing human sympathy that no harm would come to him. Finding that he had cought Rege in the net, he took undue advantage of Rege's helplessness and frustration and played his game by gradually making an offer to extricate him (Rege) if he could pay him a sum of Rs. 2,000. The demand was repeated and poor Rege found himself between the devil and the deep sea. These repeated demands of the respondent drove Rege into desperation which took him to PW 11, M.S. Khamkar, to whom he narrated his story and requested him to lay a trap in order to catch the accused.

Here, before narrating the facts, we might mention a few words about the nature of the approach made by the High Court. Far from probing into the truth and heart of the matter the learned Judge appears to have readily accepted the visibly attractive argument of the counsel for the Respondent that by foisting a false charge of bribery on the respondent the complainant displayed a diabolical
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character in rendering the step taken by the police against Wala-walkar nugatory and stalled any further action. This argument was reiterated before us by the counsel with all the force at his command but on closer examination, in our opinion, the argument is completely without substance. The learned Judge seems to have over-looked two important circumstances which completely negative the reasoning given by him. In the first place, assuming that the allegation of bribery made by the complainant against the respondent was false, how could it stop any action on the complaint which was being looked after and investigated by PW 8 Gangurde who categorically states that he had prepared the chargesheet (Ex.66) on 11.4.72 and sought permission from the accused to take Rege to the court in order to present the chargesheet but the accused directed him not not to precede with the chargesheet and asked him not to file the same until further orders from him. Therefore, it was the accused who had stalled the prosecution of Rege. In this connection Gangurde stated as follows :

> "On 13.4.72 I again approached the accused and asked him whether the charge-sheet against Rege should be forwarded to the court. He told me that there was no hurry about it and that I should keep those papers with me. He further told me that I should keep those papers till he instructed."

It may thus be noticed that by the time Gangrude wanted to file the chargesheet the first demand for bribery had already been made on 9.4.72 and the second demand was yet to be made on 13.4.72 which clearly shows that there was some "method in the madness" on the part of the respondent in directing his subordinate to withhold submission of the chargesheet until further instruction from him or there was some hidden secret which compelled the accused to give such

a direction. And by a process of elimination it would appear that the only consideration which inspired the accused to take such an extraordinary step was to wait until he was able to get the money demanded so that after receiving the money he would get the matter dropped. This inference is fully supported by the statement of PW 1 who has stated in categorical terms that on one occasion he was assured by the accused that he would see that Rege would be acquitted and even on the 14th when the demand was finally made the accused had assured him in the following words:

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> "You should not worry, I am arranging for the withdrawal of that case, and that I should not harbour any worry on that count. I said that he should see to it."

There would therefore be no other earthly reason why the respondent should have kept the chargesheet pending even though it was ready. Furthermore, the possibility that the allegations made by Rege against his tenant may have been true cannot be reasonably excluded because the complainant categorically states that he used to get smell of liquor and see lot of people going and coming into Walawalkar's house. It may be that Walawalkar having got sense of the matter, as he lived in the same place, removed all the traces of the distillery before the police could reach the premises. After all the complaint filed by Walawalkar against Rege had yet to stand the test of judicial scrutiny and remained in the domain of only an allegation on the basis of which a charge sheet was to be submitted to the Court. This inference is fully fortified, reinforced and rendered very probable by the subsequent conduct of Walawalkar who knowing full well that the complaint filed against him by Rege was false and baseless which seriously and adversely harmed his reputation and the police contemplated to take action under section 89 of the Prohibition Act at his instance against Rege, he kept quiet and made no attempt whatsoever to pursue his complaint or take proceeding under section 182 I.P.C. or for that matter file a suit for malicious prosecution against Rege. In view of such a meaningful silence on the part of Walawalkar a fair possibility of the allegation made by Rege against Walawalkar may have been after all true, could not reasonably be excluded. This, therefore, completely knocks the bottom out of the reasoning adopted by the Judge and the argument put forward by Counsel.

Further, it is not understandable why the accused after being informed that the charge-sheet of Rege was ready to be submitted, directed Gangurde, his subordinate officer, to let it lie over until further instructions. This is, therefore, something more than meets the eye and provides an intrinsic, nay, a conclusive proof of the factum of the demand of bribe from Rege and inferentially suggests that the accused wished to wait until his demand was complied with by Rege in which case the proceeding against Rege might be dropped. This is fully corroborated by the evidence of Rege who states that after the two demands on 9th & 13th April 1972, even on 14.4.72 the accused assured Rege that he would be acquitted. The fact,

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however, remains that the charge sheet to be submitted against Rege was put in a cold storage, vanished into thin air and was never revived thereafter, which still remains an unsolved mystery. In these circumstances to dub the complainant as a person of a dubious or a diabolical character as the High Court has done was most unfortunate and amounted to inflicting on him, "an unkind cut indeed."

The story of this dextrous drama staged by the respondent with complete adroitness and alacrity begins with a complaint filed by Rege on the 25th of March 1972 at police station Ambarnath at 8.30 a.m. under the Prohibition Act. Before the complaint was reduced in writing Rege had narrated the facts to the respondent who had asked him to give a written complaint. On the basis of the complaint, PW 8, Gangurde carried out a search after preparing a panchnama and reported that nothing was found in the house of Walawalkar connecting him with the offence under s.89 of the Prohibition Act. On 4.4.72 Rege was sent for and in pursuance of the call from the police station he reached there by about 8.30 a.m. where Gangurde was present but the accused was not there. Being totally unaware of the ingenious plan of the respondent, Ganguurde told Rege that a case under the Prohibition Act had been registered against him and he was to be prosecuted, arrested and could be released on bail on furnishing a surety. Rege sent for PW 4, Dr. V.B. Sardar, to stand surety for him so that he could be released on bail. Before Dr. Sardar came to the police station, the accused, who had reached the police station by that time, impressed upon Rege that since he had given a false complaint against Walawalkar who was a respectable man, a case had been registered against him. This seems to be the first step taken the accused for spreading the net in order to catch his prey.

On 9.4.72 while Rege had gone to play tennis he was summoned to the police station where he, accompanied by Sukhtankar, reached at about 8.00 p.m. and saw the accused there. The accused then took Rege on the road and told him that if he could pay Rs. 2000 to him he would see that he (Rege) was acquitted. It might be noticed here that PW 8 Gangurde has clearly stated that he had made a search of Walawalkar's house on 25.3.72 and recorded his statement on 28.3.72 on which date a case was registered against Rege under the oral orders of the respondent. The witness further goes on to state that he had already prepared the chargesheet against Rege and even after the complainant was sent for to come to thee
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police station and released on bail no chargesheet was submitted. Gangurde states that the chargesheet was prepared on 11.4.72 but as he wanted a clearance from the respondent for submitting the charge-sheet he was told that there was no hurry and that the papers should be kept with him till further instructions. No explanation has been given by the respondent for staying the submission of the chargesheet after it was fully ready in a case which ought to have been put up before the court immediately. This important factor intrinsically supports the case of Rege that the respondent was holding up the chargesheet in order to make his drama complete by obtaining the money demanded from him as illegal gratification. It is obvious that the respondent wanted to keep Rege within his control and allow the sword of damocles to hang over him until the deal was completely finalised.

Incidentally, we might mention that this circumstance completely demolishes the argument of Counsel for the respondent that having filed a false complaint and having made a false representation to Khamkar that the accused was demanding bribe and that a trap should be laid, the complainant succeeded in shelving the chargesheet from being filed. In view of the aforesaid admitted circumstances, the argument cannot be accepted even for a moment. In fact, this argument was made the sheet anchor of the defence of the respondent, but we feel that so splendidly was the defence

set up that even the experienced judicial eye of the learned High Court Judge was unable to pierce or penetrate through the smoke screen thrown by the respondent (to conceal his guilt) to discover the bright star of the truth concealed behind the darkness of the smoke. The trial court was wise enough to see through the game and refused to be duped by the visibly charming and beautiful picture of falsehood and convicted him of the charges as indicated above.

In fact, one of the fundamental arguments that have been advanced before us by Mr. Rana, counsel for the State, is that there is no real and meaningful discussion of the important evidence produced by the prosecution in support of its case and the High Court has merely narrated the evidence without examining its intrinsic merit and has sidetracked an issue which was not at all germane for deciding this case-an aspect with which we shall deal with a little later.

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Coming back now to the sequence of events the prosecution case was that after the first demand was made on 9.4.72 and repeated on 13.4.72, Rege was directed to see the respondent near about the police station at a place called padavi. Rege then approached PW 11 Khamkar for laying a trap, and gave twenty 100 rupee notes to PW 11 which he proposed to handover to the accused at the time of the trap. The raiding party reached padavi round about 7.00 p.m. and waited for the respondent to come who appeared on the scene at about 8.30 p.m. and on seeing Rege repeated his demand for the 3rd time and after the money had been given to the accused, PW 11, PW 3 and some others of the raiding party watched the same. Thereafter Khamkar went into the room and tried to hold the hands of the respondent who had made an attempt to take out the notes from the right side pocket of his pant but despite this the respondent succeeded in throwing out the notes. As the money thus passed had already been treated with anthracine powder, the hands and the right side pocket of the accused were put before the ultraviolet lamp and were found to be stained with the said powder. The respondent took an ingenious though improbable defence that Rege attempted to thrust the notes into his pocket in the presence of Khamkar but he gave a push and the notes fell on the ground; thereby he tried to explain the stains of the anthracine powder on his hands. While putting forward this defence the respondent seems to have forgotten that the notes had been taken out of his pocket which was also smeared with the powder and it is impossible to accept that an ordinary person like Rege would have the courage and audacity to forcibly thrust as many as twenty notes of Rs. 100 denomination each into the pocket of the respondent when he knew that the respondent was a police officer armed with a revolver. It is difficult to believe that Rege would take such a grave risk and do so in the presence of Khamkar and others. The testimony of two independent witnesses and one clerk however reveals a different story which fully corroborates the prosecution version.

PW-3 who was in no way connected with the police and was drawn from the zila parishad where he was working as a statistical officer had no axe to grind against the respondent so as to give false evidence to implicate him. As previously arranged, Raut, PW 3, witnessed the entire incident from a distance of a few feet as he was standing very near to the place where the van was parked. This witness fully supports the prosecution case and states that Rege took out the wad of notes from his pocket and the accused took those

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notes in his right hand and put them in his right hand side pocket of his pant. Immediately thereafter Rege made the settled signal by taking out his spectacles and trying to wipe the same. On seeing this signal Khamkar and other members of the party arrived there. Khamkar then disclosed his identity as an Inspector of the Anti Corruption Branch and a panchnama (Ex.51) was immediately made. We have gone through his entire cross-examination and we are unable to find any material discrepancy to discredit his evidence. The only circumstance which seems to have been taken against him is that about two years before the occurrence he was an accused in maramari case which was ultimately compromised. Merely on this account he could not be held to be an unreliable or incompetent witness. Shorn of minor contradictions or omissions, the evidence of this witness appears to contain a tinge of truth. Even PW-7, K.A. Patil, of the octoroi Department who was present in the room, has testified that the accused had taken out the notes from his pocket and then tried to throw them down, In this connection his statement may be extracted thus :

> "It also happen that accused took out the currency notes from his right side pant pocket and threw it down. It is not true that I made the first statement on account of pressure from the accused."

It is true that the statement was made after the public prosecutor was permitted to cross-examine the witness although he was not declared hostile but that does not in any way belie or weaken his evidence. He was present at the Naka where the money was paid and was, therefore, fully competent to depose to what he had actually seen. There is nothing to show from his cross-examination that he made no such statement in the earlier stages of investigation when he was examined by the Investigating Officer.

Apart from this there is the evidence of PW 11, M.S. Khamkar, an Inspector of police in the Anti-corruption Department. There is no evidence to show that he bore any animus against the respondent. He was subjected to a very searching cross-examination but nothing of any vital importance seems to have been elicited from him so as to throw doubt on his testimony. In the sessions court some insinuations were made in the course of cross-examination but in the High Court and before this Court learned defence counsel expressly abandoned the insinuations.

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The frontal attack made by the learned counsel for the respondent against the prosecution was that all the members of the raiding party were subjected to the anthracine powder test in the glow of the bulb which must have taken about 10-15 minutes and yet the star witness, viz., the complainant, did not say anything about this demonstration which was held by PW 11, Khamkar. That circumstance even if it be true is not, in our opinion, sufficient to throw the prosecution out of court. So far as Rege is concerned his test had already been taken earlier and therefore he was not interested in a second test which was taken to exclude the possibility of inter polation. Hence, if he did not see or remember the demonstration at the Naka that by itself will not be a circumstance to discredit his entire testimony particularly when it has been corroborated by two independent witnesses, viz., PW 3, 11 and also by PW 7.

The High Court seems to have devoted a major part of its judgment to the various case diaries produced before the court in order to establish that the accused was not present at the police station either on the 9th or on the 13th of April 1972 when the first two demands were made. According

to the High Court this gave a sufficient alibi to the respondent from which it could be safely inferred that if he was not present at the police station, there could be no occasion for him to make any demand for bribe from the complainant. Assuming that the recitals in the said case diaries are admissible (though we have serious doubts about it) yet it does not at all exclude the presence of the respondent at the Ambarnath police station on the 9th and 13th because he was not sent away to a place situated far from Bombay but was in some other police station within a radius of a few miles only. Even if he was deputed to some other place he was in possession of a jeep and he could visit the Ambarnath police station for a few minutes on any of these dates. It is well settled that a plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. Such, however, is not the case here. Therefore, the discussion of the case diaries, which engaged a substantial portion of the High Court judgment was really an exercise in futility.

This brings us to certain circumstances, evidence and reasons relied on by the High Court to reject the prosecution case and reverse the order of conviction passed by the trial court.

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Before approaching this problem, even at the risk of repetition, we might give a brief resume of the interesting drama starting from the demand of illegal gratification by the accused and ending with the passing of money and his subsequent arrest. The prosecution case is that Rege had filed a complaint against his tenant, Walawalkar, and the same was prima facie found to be false because on a search of Walawalkar's house no trace of distillary was found. According to the prosecution, this furnished the immediate motive and the golden opportunity for the respondent to demand money as illegal gratification from the complainant. While the investigation of the complaint was pending the respondent on 9.4.72 mada a demand of Rs. 2000 from Rege to shelve the case. This demand was repeated on 13.4.72 and ultimately the complainant had agreed to pay him Rs. 2000 as bribe. It was settled that the respondent was to receive the money at Ambarnath police station nearabout 7.30 p.m. on 14.4.772.

Being fed up with the persistent demands of the accused and the impending prosecution under s. 89 of the Prohibition Act the complainant solicited the help of PW 11, Khamkar and narrated the entire incident to him After hearing the story of the complainant, Khamkar rang up Deshmukh, DSP, Anti corruption Branch, Bombay, but as he was out he himself recorded the complaint of Rege which is Ex. 44 and sent a letter to District Health Officer to depute two persons from his office for the purpose of acting as panches. Khamkar then prepared an application, addressed it to the concerned authorities for obtaining sanction to investigate the matter. The sanction was accorded after the Magistrate had interrogated Rege. PW 11, Khamkar then returned to his office and found two persons, viz. Raut (PW3) and Karve, who had been sent to him from the Zila Parishad office. He introduced Rege to the panches and asked him to narrate his story which he did. Thereafter search of Rege was taken in the presence of the panches and besides many other articles, which are not necessary to be detailed, a sum of Rs. 2000 was found from the person of Rege and the numbers of the notes were noted in the panchnama PW 11 then handed over the notes to constable Wagh and directed him to hold

demonstration as to how those notes would appear in the usual light and in ultraviolet lamp light after the notes are treated with anthracine powder. The constable performed the said process and thereafter Rege was directed to put those notes in the left pocket of his pant. The bottle containing the anthracine powder was then sealed in order to obliterate
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the traces of the said powder. PW 11 as also the panch witnesses were then subjected to the same process before proceeding to the Ambarnath octroi Naka near the police station to which the accused was attached as sub-inspector. It was also settled that while Raut would constantly remain with Rege to witness the talk and the passing of the money, the complainant would take out his spectacles and make a show to wipe out his glasses which would amount to a signal for the raiding party that the money had been accepted by the accused and they may at once reach the spot. The panchnama containing all these facts was completed and signed by the panches and countersigned by the witnesses. This seems to be the first and the preparatory stage to lay the trap.

The raiding party was directed to take a train bound for Ambarnath and get down there at about 6.35 p.m because the complainant had informed Khamkar that the accused was not likely to come to the police station before 7.00 p.m. The second stage consists of the arrival of the raiding party near the said police station and waiting there upto 7.00 p.m. At that time Rege and Raut proceeded towards Tilak Road and after passing through the railway crossing kept waiting at a convenient place at a distance of 40-50 ft. from the gate. PW 11, Khamkar and other members of the raiding party waited at the inner side of the railway corner gate near the railway track. PW 11 further directed two constables of the raiding party to wait near the Canara restaurant which was just in front of the octroi Naka towards the east.

The third stage starts with the arrival of the police van from the side of Wimco Road, carrying the accused, which halted near the octroi Naka at about 8.40 p.m. There were no constables in the van and the only occupants appeared to be the accused himself and the driver of the van. After getting down from the van the accused came to the Naka and sat on the chair in the padavi (verandah).

The last stage of the show starts when Rege and Raut, who was introduced to the accused as one of his relations, approached the accused who asked them to sit on the two stools on the right side of the chair occupied by the accused. He further requested Raut to find out the whereabouts of the driver of the van; obviously because he did not want that Raut should hear any talk between Rege and himself. Raut thereafter went towards the van but stood in an angular fashion towards the accused and Rege so that he
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could see what was happening there. The accused made a gesture by putting his right palm and twisting his finger, indicating thereby that he was demanding the money. Thereupon Rege took out the currency notes from the left pocket of his pant and gave them to the accused, who after taking the amount inserted the same in the right side pocket of his pant. Immediately thereafter Rege gave the prearranged signal by taking out his spectacles and wiping the same with his handkerchief. On seeing the signal, PW 11, panches and other members of the raiding party rushed to the verandah of the Municipal octroi Naka where PW 11 disclosed

his identity at which the accused rose up from the chair and wanted to move about but he was caught hold of his wrist. PW 11 then informed him that since he had accepted the bribe from Rege he wanted to test his hands and clothes to ascertain whether traces of anthracine powder were there or not. Meanwhile he asked Rege to wait aside who went at the corner of the padavi. We might state here that a mountain of a mole hill appears to have been made by the learned High Court Judge of the factum of Rege being sent out to the padavi instead of remaining there or in the room where the accused was taken. Thereafter, the hand and clothes of the accused were put in the light of the ultraviolet lamp which revealed traces of anthracine powder on the handkerchief, the palm of his hands, on the right side of his pant and a portion of the bushcoat overlapping on the right side of his pant. PW 11 then asked the accused to produce the money which he had just accepted as bribe. At the request of the accused he was taken to the room of the Naka where he agreed to produce the money. On entering the room, however, the accused took out the wad of notes from his right pocket and threw them down on the ground. PW 11 stated that a Naka clerk was sitting in the room and he may have seen the throwing down of the notes by the accused. Manifestly, the accused threw down the notes in order to make out a defence that the notes were forcibly foisted on him which he resisted and in that process threw the notes on the ground without allowing the notes to enter his pocket and which also is his main defence in this case. Thereafter, the usual formalities of preparation of panchnama, etc., were completed. It may also be mentioned that the accused was armed with one country made two-barrel pistol as also a service pistol which were also recovered from him. After all this had happened, Rege was summoned and on his search all the articles which had been recovered during the day in the presence of PW 11 were recovered, except the notes of Rs. 2000 which had been passed on to the accused. PW 11 then recorded his complaint and
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forwarded it to the Ambarnath police station. Statements of PWs Gangurde, Raut, Rege and Karve were recorded by PW 11 and a challan was presented before the court after obtaining the necessary sanction.

This in brief constituted the various stages of the occurrence starting from the demand of bribe to the payment of the same and recovery from the person of the respondent-accused. In order to understand the sum and substance of the prosecution case the same may be divided into four parts - (1) the origin and genesis, (2) the first demand made by the respondent on the 9th, (3) the second demand made by the accused on the 13th, and (4) the passing of the money and its acceptance by the accused and the incidents following.

We have gone through the entire evidence led by the prosecution and, in our opinion, the prosecution case was fully proved because it has been supported by at least two independent witnesses, viz., PWs 3 and 11 and to a great extent by PW 7.

Mr. Bhisme, who was followed by Mr. Jethmalani addressed the main arguments, tried to support the judgment on various grounds but we are unable to be convinced by any reason why the evidence of PWs 3 and 11 should be discarded particularly when neither of these witnesses bore any grudge or animus against the respondent nor was any such suggestion made to any of these witnesses. In fact the learned Judge of the High Court himself had clearly held that PW 7 was a throughly independent witness but commented that he was not

made a witness to the actual passing of the money though he has fully supported the subsequent incident that the respondent took out the notes from his pocket and threw them on the ground which lends a colour of truth to the evidence of PW 1 and other members of the raiding party. Certain minor contradictions or inconsistencies have been pointed out by the counsel in the statements of PWs 1 and 3 but on close examination they do not appear to be material and, therefore, not sufficient to throw out the prosecution case. PWs 1 and 3 have fully supported the prosecution case but Mr. Jethmalani was unable to urge any cogent reason for not accepting the evidence of PW 1 even though it was fully corroborated by the direct evidence of PW 3 as also by the circumstantial evidence which consists of the various stages from which the prosecution case has emerged.

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This now brings us to examine the important circumstances and evidence relied on by the learned High Court Judge to disbelieve the prosecution version.

The learned Judge was greatly impressed by what he calls a serious lacuna in the prosecution case-that although both Rege and Khamkar, alongwith the raiding party, came to the Municipal octroi Naka the first thing which Khamkar did was to ask Rege to stand outside (padavi) where the raiding party was also present. The High Court further held from the evidence of Rege it appears that after the raiding party came there Khamkar caught hold of the hands of the accused and took him inside the room. With due respect to the learned Judge he has come to this finding on a complete misreading of the evidence of PWs 1 and 11 overlooking and ignoring the logical sequence of events starting from the morning of 14th April up to the time when the money passed. Both PWs 1 and 11 have categorically stated regarding the morning incident and the arrangements made to raid the police station for laying a trap to catch the accused while taking the money. It is not at all clear from the observations of the High Court whether he was referring to the morning incident or to the evening incident or to the last part of the incident when after the passing of the money Rege was asked by PW 11 to go aside and he stood in the padavi. The matter having been settled and pre-arranged in the morning, various parts were allotted to the members of the raiding party. Neither Khamkar nor Rege says that immediately the raiding party approached the Naka, he (Rege) was asked to go out and stand in the Padavi which would mean that he did not pass the notes to the accused, a fact which would completely destroy the very object of raiding the police station. The learned Judge overlooked that the raiding party had reached near the police station long before the arrival of the accused and when the accused arrived at 8.30 p.m. Khamkar did not go to the padavi nor did he even show his face to the accused. In fact, as narrated above, Rege and Raut together met the accused to exchange some talks and Raut was asked to look for the driver of the van and after his departure the accused demanded the money which was paid to him by PW 1. It was thereafter that the signal was given which brought Khamkar and his party for the first time at the padavi. As Rege's part to pass on the notes to the accused had been accomplished, there was no point in his remaining in the padavi. At any rate, no useful purpose would have been served if Rege was asked to be present there after the incident was over. He was, however,

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called when the demonstration was to be done and the search

taken in the presence of the panch witnesses. Perhaps the High Court was under the impression that Rege, Khamkar and other members of the raiding party arrived at the padavi as soon an the accused had come there and PW 11 caught hold of the hands of the accused and took him into the room. These observations are based on a gross misreading of the evidence of PWs 1 and 11. Even the incident of catching the hands of the accused took place after the money had passed and the notes had been put in his pocket by the accused. According to the evidence of PW 11 it was at the instance of the accused himself who in order to avoid disgrace requested him to take him (accused) inside the room where he would hand over the money. Thus, the whole argument of the learned Judge is based on a pack of cards or on circumstances which never existed.

The learned Judge also seems to have been under the impression that PW 1 was not subjected to the ultraviolet lamp light test which in fact was done and here the Judge again committed an error of record.

The next circumstance relied on by the High Court is that even after examining the notes and clothes of the accused in the ultraviolet lamp light which took place in the padavi outside the room and which must have taken about 10-15 minutes, this was not seen by PW 7, the clerk who was sitting in the room. The High Court seems to suggest that PW 7 himself being a Naka clerk and an independent witness should have been included as one of the persons to watch the demonstration which had taken 10-15 minutes. It is difficult to believe that the demonstration of a few persons who were merely exposed to the ultraviolet lamp light would take more than 5 minutes. Even so, the non-inclusion of PW 7 becomes wholly irrelevant when he himself makes a positive statement in the court that he did see the accused taking out the notes from his pocket and throwing them on the ground and, therefore, substantially supports the prosecution version.

Thereafter, on the basis of conclusions arrived at by the learned Judge in the aforesaid manner, which are purely speculative, he tries to give a sort of sermon as to what should or not have been done. It seems that the High Court did not make any attempt to scan and appreciate the intrinsic merits of the evidence of PWs 1 and 3 as
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corroborated by PW 7, which by itself was sufficient to prove the prosecution case regarding the acceptance and recovery of money. In coming to this speculative finding the learned Judge completely ignored as to what had happened previous to the raid, viz., the circumstances, the manner and the number of times which led the accused to make consistent demands from PW 1 as also the conduct of the accused in trying to delay the submission of the chargesheet despite repeated requests by PW 8 (Gangurde) to permit him to file the same. We have dealt with this aspect of the matter in an earlier part of our judgment and we do not want to repeat the same.

It is interesting to note that the learned Judge himself puts the question as to what was the reason for falsely implicating the accused when he had actually made the demands on the 9th and 13th of April 1972, yet he readily accepts respondent's argument that this was because PW 1 was a person of diabolical character and undesirable credentials in whose trap the accused easily fell. In accepting this argument the High Court failed to consider as to what motive could Rege have to falsely implicate the accused when he had not conducted the search nor was he directly connected with the chargesheet which was going to

be filed against him. Indeed, the dominant question which the Court should have put to itself would have been as to why a complaint under s.89 of the Prohibition Act was not filed against Rege even though the chargeseet was ready. If this was due to any fault or lapse on the part of Gangurde, who was a subordinate official of the accused, as an honest officer the accused should have taken him to task for trying to dillydallying the matter instead of filing the chargesheet immediately. But the evidence to Gangurde shows that he was ready to file the chargesheet but the accused directed him not to do so until the receipt of further instructions from him, as indicated by us earlier. That being the position, why did the accused ask Gangurde to delay the filing of the chargesheet? Thus question has neither been answered by the High Court nor by the accused.

The next circumstance relied on by the High Court was regarding the credibility of the evidence about the meeting on 9th and 13th between Rege and the accused. According to the prosecution the first time Rege was summoned by the accused was on the 9th and some police constable went to his house but as he was not there he told Mrs. Rege that the complainant was required at the police
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station. On coming back home, the complainant along with Sukhtankar saw the accused at the police station at 8.00 p.m. Although this part of the case has been fully proved by PW 1, Rege and Sukhtankar (PW 6) but their testimony has been disbelieved by the High Court merely on the ground that the constable who had gone to call Rege was not identified either by Mrs. Rege or by Sukhtankar. This is indeed a most extraordinary process of reasoning. Obviously, both Mrs. Rege and Sukhtankar saw the constable for a split second and were only asked to convey the message to Rege on his returning home. It was extremely difficult in such circumstance either for Mrs. Rege or Sukhtankar to have identified the constable. Nevertheless, the fact remains that PW 10, B.L. Jadhav, has testified on oath that while he was on duty at the Naka on the 9th of April 1972, the accused came to the Naka at 5.30 p.m. and directed him to go to the house of Rege and summon him to the police Station. Accordingly, he went to the house of Rege where he found Mrs. Rege to whom he conveyed the message and thereafter he informed the accused that his message has been conveyed to PW 1. Thus, the evidence of this constable who appears to be an independent witness is fully corroborated by the evidence of PWs 1 and 6. Nothing has been elucidated in his cross-examination to show as to why PW 10 should depose falsely on this important link of the case which is an intrinsic circumstance to prove that the demand was made on the 13th April when the accused came to the Naka. The only suggestion made to this witness was that the accused had sent an application to the Circle Inspector on April 20, 1972 against him, Kachela and Gangurde to the effect that these three persons were in league with bootleggers. This suggestion puts the cat out of the bag because what the learned Judge completely missed was that the application to the Circle Inspector was made by the accused six days after accepting the money from Rege, the trap was laid and a challan was about to be Submitted before the court. It is obvious that if any such belated report was made by the accused it was merely to create evidence in order to throw out the testimony of PW 10.

In these circumstances the only reasonable inference that can be drawn is that Rege and Sukhtankar met the accused on the 9th at 8.30 p. m.

Presuming that Rege was a person of diabolical character, the learned Judge without any evidence refused to believe the incident of the night in the absence of any legal warrant for the same. It seems
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to us that the approach made by the learned Judge towards the prosecution has not been independent but one with a tainted eye and an innate prejudice. It is manifest that if one wears a pair of pale glasses, everything which he sees would appear to him to be pale. In fact, the learned Judge appears to have been so much prejudiced against the prosecution that he magnified every minor detail or omission to falsify or throw even a shadow of doubt on the prosecution evidence. This is the very ante-thesis of a correct judicial approach to the evidence of witnesses in a trap case. Indeed, if such a harsh touchstone is prescribed to prove a case it will be difficult for the prosecution to establish any case at all.

During the course of discussion of the reasons given by the learned Judge we shall endeavour to show that the adverse inferences against the prosecution with respect to small matters could have been easily ignored as they did not affect the credibility of the prosecution case. The glaring instances of such a wrong approach is to be found in the criticism levelled against the prosecution by the learned Judge that PW 11 asked Rege to stand in the padavi and sought to convey the impression that Rege never came to the padavi in order to give the money to the accused or that the raiding party arrived just before the arrival of the accused. This is far from the truth as we have shown above. We have already held that the stroy unfolded by PW 1 about the incident of the 14th April was a very short and simple one and after having completed his assignment whether PW 1 was asked to stand in the padavi or was not called into the roon are matters of no consequence whatsoever so far as the acceptance of money as bribe was concerned. In fact, the High Court seems to have cased its reasons not on the evidence which was given by PW 1 on oath but merely on suggestions which were categorically denied by him from which no inference could be drawn at all.

Another serious comment to falsify the incident of raid and payment of money was that Rage did not see the throwing down of the notes. Here again, the High Court completely misdirected itself because from the evidence itself it is clear that Rege had said that the accused had a talk with him and he then paid currency notes of Rs. 2000 to him (accused) which he inserted in his pant pocket, made a signal which brought the raiding party at the verandah and thereafter he went to the padavi. Whether he witnessed the subsequent throwing down of the notes or not was
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totally irrelevant because as we have shown above this incident took place after the accused was taken by Khamkar inside the room as desired by him (accused).

Another infirmity pointed out in the protsecution was that PW 3 (Raut) was asked to stand near the van by the accused instead of going to the padavi with the raiding party, It is obvious from the evidence of PW 11 that the previous arrangement was that PW 3 should also be present when the money was to be paid to the accused so that he may be a witness to the passing of the notes. In view, however, of the direction given by the accused to Raut to find out the driver of the van it was only natural that the previous arrangement would have to undergo some change lest the accused may become cautious and suspicious which would have

led to the failure of the trap. Therefore, PW 3 had to obey the order of the accused but he did it in a very adroit manner so that while standing near the van he selected a place from where he could see the accused and the passing of the money, to which he has clearly deposed. After the money had passed he returned to the padavi because his purpose for leaving the padavi had been served.

Some comment has also been made by the High Court that the place from which PW 3, while standing near the van, witnessed the passing of the notes was so distant that he could not have witnessed the passing of the money. This is also a pure conjecture because PW 3 has clearly explained that he was at a very short distance and not at 90 ft. as the learned Judge seems to think, and in that position he could easily see the passing of the money. No suggestion appears to have been made to PW 3 that he was standing at a place from which the accused was not visible or that he would not have been in a position to see the passing of the money.

Another disturbing feature of the High Court judgment is the adverse comments made on the evidence of PW 8 (Gangurde). To disbelieve this witness the High Court has readily accepted certain facts which could not possibly be true or even if true were wholly irrelevant and were made only for castigating a truthful and an honest officer. PW 8 was a head constable who, on the complaint of Rege, was entrusted with the charge of conducting a search in the house of Walawalkar. There is no reliable evidence to show that he was in any way friendly to or connected with the complainant. If this was so, he could not have conducted the search as he did.

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The High Court seems to disbelieve this witness only on the ground that he states in his evidence that when he went to the house of Walawalkar the accused was not there although his name finds place in the panchnama. The panchnama is hurriedly prepared and a number of names may find mention. He may not have recollected whether some of the persons mentioned were there or not. In the instant case, this was a non-issue and therefore could not be considered. Furthermore, PW 8 does not appear to have shown any kind of favour to Rege but he himself reported that the allegation made by Rege was false and as a result of which Walawalkar filed a complaint (Ex.66) which was investigated by this very witness and ultimately he decided to file a chargesheet against Rege under s.89 of the Prohibition Act. If he was in any way favourably inclined towards Rege he would have shelved the complaint of Walawalkar and submitted a final report saying that no prima facie case had been made out because Rege had not made a complaint in the real sense of the term but only expressed his suspicion. Therefore, there was no justification for the learned Judge to conclude that this witness was in any way in league with Rege. In fact, what was really missed by the High Court was that PW 8 was extremely anxious to file chargesheet against Rege but it was the accused himself who directed him not to file the same and to keep the same pending till further instructions from him. If the accused, who was his superior officer, had not given this instruction there does not appear to be any explanation why the chargesheet though ready on 11.4.72 was not filed at all. If the accused was that honest or innocent he would have taken PW 8 to task for not filing the chargesheet after it was ready. This speaks volumes against the case of the respondent.

The learned Judge then drew support from some

insignificant and minor circumstances to discredit the evidence of PW 8. For instance, he observed that there were some irregularities or that PW 8 was absent without taking any leave. These are pure routine matters which happen in every office but this would not falsify the evidence of PW 8. So far as the question of remaining absent without leave is concerned. PW 8 has positively stated that he had taken leave for being absent and no attempt was made by the accused to call for the attendance register to show that the witness had absented himself without taking any leave nor was any action taken by the higher authorities for this lapse on his part. We are really baffled and amazed to find that the learned Judge went to the extent of castigating PW 8 on the basis of such frivolous and flippant
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allegations merely because the witness had stated the truth in the court, viz., that the chargesheet was ready for submission but the accused had stayed its submission.

These are the main reasons and circumstances given by the learned Judge in disbelieving the entire prosecution case which we have already found to be wholly unsustainable in law. We regret to observe that the learned Judge has rejected the vital evidence of PWs 1,3,8 and 11 on frivolous grounds and he did not make any attempt to discuss their evidence on intrinsic merits and the superficial manner in which he has dealt with the evidence and circumstances in order to demolish the prosecution case is wholly unacceptable to us and leaves much to be desired.

Mr. Jethmalani vehemently argued before us that the High Court having acquitted the accused, this Court should very rarely interfere with the judgment of the High Court and should do so only in cases where there is a grave error of law or serious miscarriage of justice and that too when the accused faced a trial for several years and had been reinstated and promoted as an Inspector.

From the reasons that we have given it is manifest that the judgment of the High Court suffers from serious and substantial errors of law and legal infirmities. This is one of those rarest of rare cases where this Court would be failing in its duty if it did not interfere with the order of acquittal and set aside the judgment of the High Court. On a full and complete discussion of the facts and circumstances of the case we are clearly of the opinion that the charges against the respondent-accused have been clearly proved and his acquittal by the High Court was wrong both on law and on facts. Once this is so, the other consideration mentioned by Mr. Jethmalani would be no answer to maintaining the acquittal of the respondent. It may be rather unfortunate but the law must take its course and the accused himself is to be blamed for having committed such a daring offence and with such dexterity that even an experienced Judge of the High Court could not see through the skilful game of the accused.

In view of the seriousness of the offence and the blatant manner in which it was committed we find it difficult to make a substantial reduction in the sentence and we are afraid, having found the respondent guilty of the offences charged against him, it is not
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possible for us to show any leniency. However, in view of the facts and circumstances of the case and having regard to the fact that the respondent would have to lose his service we would sentence him to six months' rigorous imprisonment. The result is that the appeal is allowed and the respondent is convicted under s.161, I.P.C. and s.5 (1) (a) and 5 (2)

of the Act and sentenced to six months R.I. under each count to run concurrently and a fine of Rs. 2,000 and in default of the payment of fine, further six weeks' R.I. The accused must now surrender and be taken into custody to serve out the sentence imposed.

H.S.K. Appeal allowed.

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