

## Arvindbhai Ramniklal Trivedi and Others Vs State of Gujarat

**Court:** Gujarat High Court

**Date of Decision:** June 29, 2010

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Penal Code, 1860 (IPC) â€” Section 161

Prevention of Corruption Act, 1947 â€” Section 161, 5(1), 5(2)

**Hon'ble Judges:** H.N. Devani, J

**Bench:** Single Bench

**Advocate:** KB Anandjiwala, 1 - 4, for the Appellant; YN Ravani, for the Respondent

### Judgement

H.N. Devani, J.

This Appeal is directed against the judgment and order dated 30th April 1993 passed by the learned Special Judge,

Court No. 3, Ahmedabad in Special Case No. 32 of 1986, whereby the appellant herein has been convicted for the offences punishable u/s 161

of the Indian Penal Code (IPC) and Section 5(2) of the Prevention of Corruption Act, 1947 (the P.C. Act). For the offence u/s 5(2) of the P.C.

Act he has been sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 400/-, in default to suffer rigorous imprisonment

for a period of two months and for the offence u/s 161 of the I.P.C. Act he has been sentenced to suffer rigorous imprisonment for one year and to

pay a fine of Rs. 400/-, in default to suffer rigorous imprisonment for a period of two months. Both the substantive sentences have been directed to

run concurrently. During the pendency of this appeal, the appellant-convict has expired, however, his three sons being his heirs and legal

representatives had filed an application for being brought on record and vide order dated 23.7.1998 they had been permitted to be joined as

appellants in this appeal.

2. Briefly stated, the case of the prosecution is that at the relevant time the appellant herein was working as Branch Manager, State Bank of

Saurashtra, Mota Devalia Branch, District Amreli, during the period 26.12.1984 to 17.03.1986. The appellant received a loan application from

one Rameshbhai Shamjibhai Patel, resident of village Khijadia Kotda, Taluka Babra, District Amreli, (hereinafter referred to as "the complainant")

in the month of February 1985 for Rs. 8,800/- along with quotations and other documents from the Taluka Panchayat Office, Babra. This loan

application was for the purchase of bullock-cart. Since the application was not granted, the complainant approached the appellant in the said

branch and was told that the scheme was closed and that he would be informed as and when the scheme was resumed. The complainant again met

the appellant after three months and inquired about his loan application. At that time also, he was told by the accused that he was not likely to get

the loan amount and that he would inform the complainant when the same is due. Since there was a drought in the village, the complainant had to

go to village Vav for labour work. Two months thereafter, the complainant approached the appellant and inquired about his loan and was told that

he would have to submit fresh quotations for bullock cart and tyres. The complainant collected fresh quotations of Rs. 2,500/- and gave these

quotations to Gram Sevak Shri Kantibhai Patel of his village, who in turn, sent these papers to State Bank of Saurashtra, Mota Devalia Branch.

The complainant then went to the bank on 10.03.1986 and met the appellant, who asked him to come after two days. Accordingly, the

complainant approached the appellant on 12.03.1986 when he scrutinized his ration card etc. and demanded a bribe of Rs. 400/- as a motive or

reward.

3. It is further the case of the prosecution that the appellant asked the complainant to meet Shri Sejpal, an advocate at Amreli with documents like

revenue record etc., pursuant to which, the complainant went to Amreli on 13.03.1986 and met the said advocate at about 09.00 hours. Shri

Sejpal scrutinized and verified the revenue record and returned the said papers to the complainant with instructions to file affidavit of Gigabhai and

Ranchhodbhai in token of having sanctioned the loan to him. Thereafter, the complainant met the accused and showed him the papers, at which

point of time, the accused repeated the demand for the bribe amount of Rs. 400/-, saying that unless the amount was paid, he would not sanction

the loan. The appellant asked the complainant to pay the amount to him on the next day i.e. 14.03.1986 at about 10.30 hours in the bank.

4. Since the complainant did not want to pay the bribe amount of Rs. 400/- to the appellant, he went to the office of the Anti Corruption Bureau, at

Amreli, and contacted Police Jamadar Harshadbhai Pandya, who was present in the ACB Office, Amreli. The said Police Jamadar asked the

complainant to go to the ACB Office, Rajkot and to lodge his complaint before Shri D. N. Manjaria, Police Inspector, ACB, Rajkot. On the basis

of the complaint lodged by the complainant, on 14th March, 1986, Shri D.N. Manjaria, Police Inspector, Anti-Corruption Bureau, Rajkot, laid a

trap with the help of panch witnesses Shri Vasantbhai K. Jasani and Shri Jagannath C. Pandya and caught the appellant red-handed while

demanding and accepting the bribe of Rs. 400/- from the complainant, near Ramji Mandir, situated in village Mota Devalia between 10.20 to

10.40 hours. Thus, according to the prosecution, the accused had committed the offence punishable u/s 161 IPC and u/s 5(2) read with Section

5(1) of the P.C. Act.

5. The investigation of the offence came to be entrusted to Police Inspector " M. M. Patel of CBI on 14th April, 1986. On receipt of the case

papers, the offence came to be registered as R.C. No. 6/1986. After obtaining sanction for prosecution, upon conclusion of the investigation,

charge sheet came to be filed in the Court on 16th December, 1986. Thereafter, the charge came to be framed at Exhibit 12 on 13th November,

1987. The accused pleaded not guilty to the charge and claimed to be tried.

6. During the course of trial, the prosecution examined six witnesses. The complainant, Rameshbhai Shamjibhai Patel, came to be examined as

PW-1 at Exhibit 42, Panch No. 1, Vasantrao Keshavji Jasani, came to be examined as PW-2 at Exhibit 46, Danabhai Najabhai Manjaria, Police

Inspector, ACB, Rajkot, who arranged trap, came to be examined as PW-3 at Exhibit 48, Kantilal Tulsibhai Patel, Gram Sevak, came to be

examined as PW-4 at Exhibit 54, Himansu Sudhansu Mukherji, Managing Director of State Bank of Saurashtra, who was the officer who granted

sanction to prosecute the appellant, came to be examined as PW-5 at Exhibit 57, and Mahendrakumar Mohanbhai Patel, Police Inspector, CBI

(I.C.), the Investigating Officer, came to be examined as PW-6 at Exhibit 72.

7. After recording the oral evidence led by the prosecution, incriminating material came to be put to the appellant as required u/s 313 of the Code

of Criminal Procedure, 1973 (the Code). While denying in general the accusations made against him by various prosecution witnesses, the

appellant said that he was falsely implicated in the crime. The appellant submitted a detailed further statement, Exhibit 73, in writing, running into 18

pages, which shall be referred to hereafter at an appropriate stage.

8. The learned Special Judge, after hearing the learned advocates for both the sides and appreciating the evidence on record, found that the

prosecution had established that the appellant was guilty of the offences noted hereinabove and convicted him for the same.

9. This Court has heard Mr. K.B. Anandjiwala, learned advocate for the appellant and Mr. Y.N. Ravani, learned Standing Counsel for the

respondent " C.B.I.

10. Mr. Anandjiwala, learned advocate for the appellant has taken the Court through the entire record and has referred to the evidence of the

witnesses in detail. The learned advocate for the appellant has submitted that in each and every corruption case, demand is the vital and integral

part of the prosecution story. It is strenuously argued that all aspects of evidence of the witnesses show that on no occasion, initial demand was

made by the accused. Referring to the impugned judgment and order of conviction, it is pointed out that the learned Judge has observed on page

31 of the judgment that the lack of demand is the only factor, which baffles him in the instant case. There was no demand at any stage prior to

laying the trap and therefore, the learned Judge has come to the conclusion that the demand part of the entire episode at a stage prior to laying the

trap does not assume the status of proved facts. It is pointed out that an attempt had been made to bring on record that when the complainant met

the accused about seven days prior thereto, the accused had told him to give some amount towards consideration and that the complainant had

explained his position and poverty. The accused told the complainant to contact Kantibhai and at that time, as alleged, Kantibhai had told the

complainant that he would have to pay Rs. 400/- to the accused. Kantibhai is examined in this case as PW-4, at Exhibit 54. However, he has

categorically denied having said anything about paying Rs. 400/- to the accused. It is further pointed out that the complainant has also admitted in

his evidence at various places that the accused never demanded any amount by way of illegal gratification. It is submitted that at the fag end of his

evidence, the complainant has admitted that the accused did not demand the bribe and did not talk about it to them, therefore, he lost patience and

took out the currency notes from his pocket and tried to give the same to the accused. It is submitted that in the circumstances, in the present case,

there is no demand at all, either at the initial stage or at any stage prior to and during the trap proceedings. It is submitted that in corruption cases,

so far as the offence u/s 5(1)(d) of the P.C. Act is concerned, even demand prior to acceptance is required to be established which is not

established in the present case. It is urged that the evidence of the complainant is thoroughly unreliable and on the contrary, indicates that no

demand was made, which would make the defence version that the amount was thrust into the pocket of the accused more probable. It is

submitted that the evidence of the complainant proves the defence version rather than prosecution case. Referring to the deposition of Shri

Vasantrai Keshavji Jasani, PW-2, who is the panch witness, it is submitted that there are material inconsistencies in the evidence of the complainant

and the panch, inasmuch as the complainant does not mention about any talk having taken place between him and the accused, whereas the panch

states in detail about the talk between the complainant and the accused. It is submitted that this is a material discrepancy in the evidence of the two

witnesses, which goes to the root of the matter and shakes the testimony of the witnesses. Referring to the sequence of events as stated in the

depositions of the witnesses and in the panchnama, it is pointed out that the sequence of events as narrated in the depositions and the panchnama

are different.

10.1 The learned advocate has drawn attention of the Court to the deposition of Mr. Himansu Sudhansu Mukerji, PW-5, who is the sanctioning

authority, to submit that looking to the evidence of the said witness, it is clear that he has not considered any investigation papers, hence, it

becomes clear that he must have acted on the draft sent by the CBI. It is contended that the record of the case was in Gujarati, whereas the

sanctioning authority does not know Gujarati and there is nothing on record to show that any translation had been provided to the sanctioning

authority and that after considering the material, he had come to the conclusion that sanction is required to be granted. It is submitted that, in the

circumstances, the sanction has been granted without application of mind, probably on the basis of the draft. It is submitted that sanction order is

not based on the subjective satisfaction of the officer independently, but due to influence of the draft sent by the CBI. It is, accordingly, submitted

that the sanction order suffers from the vice of non-application of mind and as such, the cognizance taken on the basis of an order of sanction,

which has been passed without application of mind, stands vitiated and as such, the entire trial stands vitiated. It is submitted that the appellant is

required to be acquitted on this count alone.

10.2 Next, it is submitted that there are various communications on record between the bank authorities, which speak volumes regarding the

situation prevailing at the relevant time. However, it appears that these communications were not placed before the sanctioning authority. If such

documents had been brought to the notice of the sanctioning authority, in all probabilities, sanction to prosecute would not have been granted.

11. It is submitted that as regards the trap proceedings, there was no demand by the accused which is clear from the evidence of the complainant

and that the evidence of the complainant is the only evidence qua the initial demand. It is submitted that the other witness who is examined in

respect of the initial demand is Kantibhai, PW-4, whose evidence is totally silent on the aspect of demand through him. It is submitted that in the

circumstances, there is no corroboration from any independent source in respect of the evidence led by the complainant. Referring to the sequence

of events, it is submitted that the complainant is a desperate person whose application made earlier prior to a year had lapsed and he had to file

another application. He used to inquire about the status of his application at intervals of two " three months whenever he came to village. It is

submitted that it is the specific case of the complainant that while at Amreli, he had visited his relatives who had advised him to go to the ACB,

there is no corroboration that he in fact had a talk with the relatives. It is submitted that it is also the case of the complainant that he had talked to

advocate Mr. Sejal about his desire to take the help of ACB; however, the said advocate is also not examined as a witness. It is contended that

the office of the ACB is situated in Amreli itself, despite which the complainant was asked to go to Rajkot. The ACB Police Inspector Mr.

Manjaria, in the midnight at 12.30 hours went in search of panchas and went to a food stall on the roadside and selected two panchas out of all the

persons present there. It is submitted that it is difficult to believe that out of all the persons present at the food stall, the investigating officer was able

to pick out two public servants as panchas from the public place. It is urged that the selection of panchas is stage managed as from several persons

standing at the food stall, two public servants were picked up and asked to come early in the morning. That the evidence which has come on

record shows that the panchas were residing in the same area as the investigating officer and that the brother of panch No. 1 was also taken as

panch on an earlier occasion. It is accordingly submitted that the panchas are not independent persons and are under the influence of the

Investigating Officer and as such the testimony of the panchas cannot be relied without other corroborating evidence.

12. Next it is submitted that the ingredient which is required to be proved by the prosecution is the demand prior to acceptance. In this context, the

conversation that has taken place is of utmost importance as regards the aspect as to whether the demand was made. It is submitted that insofar as

the question of demand prior to acceptance is concerned, the evidence of the complainant is most important. However, from the deposition of the

complainant, it is apparent that there was no demand prior to acceptance. That the complainant was desperate to give this amount by way of bribe,

that he did not wait for the accused to demand money and took out the money and handed it over to him without the demand being made. It is

submitted that out of the three ingredients, which are required to be satisfied, two of the ingredients are not established. The third ingredient

namely, acceptance, has to be considered on the totality of the circumstances as to whether the bribe was accepted or thrust into the pocket of the

accused. It is submitted that the panch is an over enthusiastic panch and has deposed what was not deposed by the complainant. Considering the

fact that the complainant was walking with the accused and the panch was following the complainant, it is doubtful as to whether the panch would

have heard the talk between the accused and the complainant. It is submitted that the complainant agreed as per his own say that at all stages till he

passed on the money, there was no demand. It is contended that the evidence of the panch is to corroborate the evidence of the complainant by

way of independent evidence. According to the complainant when no demand was made, so he became impatient, whereas in the evidence of the

panch, there is a totally different story with regard to demand and acceptance. That as per the say of the panch also, there was no demand made in

the chamber and yet at the instance of the accused, they came to the public road and he demanded money where there would be so many people.

It is submitted that such a proposition is very doubtful. It is submitted that the prosecution witness No. 3, D.N. Manjaria, who was the trap officer

does not say that the complainant took out the currency notes and gave them to the accused and hence, they have not seen the passing of the

currency notes, whereas the over enthusiastic panch wants to attribute something to the accused. It is submitted that the second part of the

evidence is also not reliable and the second demand is not established beyond reasonable doubt, hence, no reliance can be placed on this aspect.

13. As regards the third aspect, namely, acceptance, it is submitted that neither of the witnesses, namely, the complainant nor the panch, say that

the accused had counted the currency notes, whereas, under the ultraviolet light both his hands were found to be stained. Hence, in the

panchnama, story of counting was introduced. It is submitted that the complainant is silent insofar as the signs of anthracene inside the pocket and

so is the panch. This means that the currency notes have not been put in the pocket. Though the complainant has said that no demand was made,

he has not been treated as hostile and that omissions have been brought on record during the cross-examination. It is contended that when

substantive evidence is silent regarding the signs of anthracene inside the pocket, the panchnama cannot be used as evidence to find that there were

signs inside the pocket. It is submitted that the panchnama cannot be used as a substantive piece of evidence and can be used only for the purpose

of contradiction and corroboration of the evidence. In the circumstances, acceptance is not established beyond reasonable doubt.

14. The learned advocate has invited the attention of the Court to the defence version which consists of a written reply running into 18 pages, to

submit that on account of the fact that applications were being made on false demands and the applicant was being pressurized, he had stopped

processing applications which had invited the wrath of the people. It is submitted that the appellant was facing mental torture and agony to such an

extent that he had requested the authority to revert him to the post of clerk. That the people of the village had a grudge against him and the trap

was arranged only because loan application of the complainant had not been accepted. It is further submitted that from the evidence of the

complainant itself, it is evident that no demand had been made by the accused and that, therefore, the defence version that the complainant had

tried to thrust money in his pocket is the more probable version. It is submitted that the circumstances cumulatively show that the defence version is

the only probable version. Reliance is placed upon the decision of the Apex Court in the case of G.V. Nanjundiah Vs. State (Delhi

Administration), for the proposition that demand is a vital part insofar as the trap cases are concerned, and if it is not satisfied, the prosecution fails.

15. Reliance is also placed on the decision of this Court in State of Gujarat v. Trambaklal Fulshanker Trivedi 1979 (2) GLR 60 , wherein the

Court held that if there is no evidence worth the name regarding the initial passing of the currency notes from the side of the complainant to the side

of the accused accompanied by conversation in this behalf which the panch witness was specifically directed to so hear, it would be hazardous to

record a finding with regard to acceptance, simply because on the evidence of the complainant, the panch and P.S.I., it emerges that from the bush

shirt pocket of the accused, the said notes were found and that on the test being carried out, the hands of the accused and his bush shirt pocket

revealed presence of the anthracene powder. Reliance is also placed on the decision of this Court in Bharatkumar Jaymanishanker Mehta Vs.

State of Gujarat , for the proposition that totality of the evidence led at the trial must be appreciated. The Court held that the prosecution evidence

alone cannot be considered for the purpose of coming to the conclusion as to whether the accused accepted the amount or not. The evidence led

by the prosecution, the suggestions made by the defence in cross-examination of the prosecution witnesses, the version given by the defence and

the defence witnesses, if any, examined at the trial, everything is required to be considered in its totality and it is to be seen as to whether the total

effect of the entire evidence led before the Court is of a nature by which the only conclusion possible was that the accused accepted the amount. If

such a conclusion is possible then alone it can be said that the prosecution established the case beyond reasonable doubt. It is submitted that none

of the aspects which are required to be established have been established by the prosecution; that, the prosecution is not in a position to stand on



its own legs and as such, the prosecution having miserably failed to establish the charge against the appellant beyond reasonable doubt, the appeal

is required to be allowed and the appellant is required to be acquitted of all the charges.

16. Mr. Y.N. Ravani, learned standing counsel for the respondent " C.B.I. has supported the judgment and order impugned in the appeal.

Attention is invited to the deposition of the complainant, PW-1 to submit that the evidence of the complainant clearly spells out demand prior to the

trap proceedings. It is submitted that the demand may not be verbal it may be by conduct. Though the demand for a specific amount was not made

directly, the complainant was told that he would have to consider monetary aspect and as regards the specific amount, he was asked to contact

Kantibhai who told him that he would have to pay the appellant Rs. 400/- Thus the demand for specific amount was made through Kantibhai who

is an accomplice in the crime.

17. Next it is submitted that this Court is required to consider as to whether on the evidence on record, the explanation given by the accused is

believable or as to whether the prosecution story is improbable. Referring to the deposition of the complainant, the panch and the investigating

officer, it is submitted that the evidence of these three witnesses corroborate each other. It is submitted that though certain discrepancies have been

pointed out, these are minor discrepancies which are insignificant in nature and are required to be discarded. It is submitted that the incident in

question took place in the year 1986, whereas the deposition was recorded in October 1992, after a considerable gap of almost six years. The

witness do not have a photographic memory, therefore, it is but natural that there would be some discrepancies in the evidence of the witnesses. It

is submitted that though the manner in which the demand prior to acceptance as has been narrated by the panch and the complainant may be

different, there is no material contradiction in the evidence of the two witnesses. It is submitted that the discrepancies pointed out by the defence

are not of a substantial nature and as such, do not affect the prosecution case.

18. Referring to the deposition of the panch witness, it is pointed out that through the evidence of the said witness, the prosecution has proved that

there was a demand for an amount as well as an assurance that on paying the said amount, the work would be done. It is submitted that in the

circumstances, demand and acceptance are both duly proved by the prosecution beyond doubt. As regards the discrepancies in the evidence of

the witnesses, namely that the complainant has stated that he had given the signal, whereas the panch had stated that he had given the signal, it is

submitted that both could have independently given signals and it is only then that the raiding party came, therefore, there is no contradiction in that

regard. It is submitted that the discrepancies shown by the defence prima facie do not alter the case of the prosecution regarding demand,

acceptance and recovery, which are duly proved. It is submitted that a perusal of the entire judgment of the Trial Court would indicate that there is

no serious infirmity in the judgment and the findings recorded by the Trial Court.

19. Reliance is placed upon a decision of the Apex Court in *B. Noha v. State of Kerala and Anr.* (2006) 12 SCC 277, for the proposition that

once acceptance and recovery is proved, there is no need for the prosecution to prove the demand. It is submitted that in the facts of the present

case, assuming that prior demand is not established, there is a voluntary and conscious acceptance of illegal gratification on the part of the accused

and in view of the law laid down by the apex Court in the said decision, there is no burden on the prosecution to prove the demand.

20. As regards independence of the panchas, it is submitted that having relation with Mr. Sejpal, advocate for the bank, would not in any manner

affect the independence of the panchas and that the proposition canvassed on behalf of the appellant is too far-fetched to believe. It is submitted

that since the panchas were to go early in the morning, they were to be informed in advance at night, hence, despite the fact that it was late at night,

the panchas were summoned at night. It is submitted that the defence has not been able to show any personal interest on the part of the panchas

who are shown to be working at Rajkot. It is also submitted that nothing has been brought on record that there was any kind of relation between

the panch and the accused and that the panchas have not been selected at the instance of the complainant. Reliance is placed upon a decision of

the Supreme Court in *State of U.P. Vs. Zakaullah*, for the proposition that mere acquaintance with police officers would not make a witness non-

independent. Every citizen is presumed to be independent until proved to be dependent on police for any purpose whatsoever. It is, accordingly,

submitted that merely because distant relatives of the panchas are known to the trap officer, is no ground to hold that the panchas are not

independent.

21. As regards the validity of the sanction order, it is submitted that the issue of sanction has been raised by the appellant for the first time before

this Court in the present appeal by way of an afterthought, though the same had not been raised before the trial Court at any stage of the trial,

hence, the trial Court has not recorded any findings in this regard. It is contended that the public servant must show that serious prejudice is caused

by granting sanction to prosecute, whereas in the present case, no prejudice is shown. Inviting attention to the deposition of PW-5, it is pointed out

that the sanctioning officer has himself dictated the order after recording satisfaction though format may have been given by the CBI. It is submitted

that the sanction order is a detailed one which discloses application of mind. When the order itself discloses application of mind, the contention that

material particulars were not placed before the sanctioning authority is not sustainable. In support of the said submission, the learned Standing

Counsel has placed reliance on the decision of this Court in Dharmendra Kumar Mohanji Mishra Vs. State of Gujarat and Another, wherein the

Court has observed as under:

[15] The point which falls for determination in this Revision is squarely covered by the decision rendered in the case of C.S. Krishnamurthy v.

State of Karnataka reported in 2005 (4) SCC 81 wherein at paragraphs 7 and 9 of the judgment it has been held,...That the sanction order should

speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the

sanctioning authority for due application of mind. But, when the sanction order is itself eloquent enough, then in that case only formal evidence has

to be produced by the sanctioning authority or by any other evidence that the sanction was accorded by a competent person with due application

of mind. In case, the sanction speaks for itself, then the satisfaction of the sanctioning authority is apparent by reading the order. When the sanction

itself is very expressive, then in that case, the argument that particular material was not properly placed before the sanctioning authority for

according sanction and the sanctioning authority has not applied its mind becomes unsustainable.

22. Next it is contended that the conduct of the accused person is also a relevant consideration inasmuch as it is not in dispute that no explanation

whatsoever has come forth as to why the application of the complainant was kept pending for such a long time. It is submitted that the conduct of

the appellant of leaving the branch at the beginning of working hours with a view to collect bribe money from the complainant, itself shows the

character of the accused. It is further submitted that the accused has tried to give an explanation which is difficult to digest and believe. As regards

the explanation regarding pressures etc., it is submitted that in fact, no document shows that there was such pressure. In fact, the documents show

that the accused was insincere in the discharge of his duties. The explanation regarding vendetta etc. is vague and that, no enmity to any particular

person is shown by the accused.

23. Reliance is placed upon the decision of the Apex court in Shankerbhai Laljibhai Rot v. State of Gujarat (2004) 13 SCC 487 , for the

proposition that minor variance as regards the mode of demand is really of no consequence to corrode the credible and cogent evidence of

prosecution witnesses. It is submitted that the previous demand is also required to be believed. It is contended that prior demand ought not to have

been disbelieved merely on the basis of deposition of Kantibhai who was also an accomplice. It is submitted that when the complainant's

deposition is otherwise found to be trustworthy, the evidence as regards previous demand should also be believed. Reliance is placed upon a

decision of the Supreme Court in Raj Rajendra Singh Seth @ R.R.S. Seth Vs. The State of Jharkhand and Another, Reliance is also placed on the

decision of the Supreme Court in State of A.P. Vs. K. Punardana Rao, It is, accordingly, submitted that the prosecution has proved the charge

against the appellant beyond reasonable doubt. The Trial Court has upon due appreciation of the evidence led before it, recorded findings and

arrived at the conclusion regarding the guilt of the appellant and that there being no infirmity in the order of the Trial Court, there is no warrant for

this Court to take a different view, hence, the appeal deserves to be dismissed.

24. In rejoinder, Mr. K. B. Anandjiwala, learned advocate for the appellant has submitted that insofar as the validity of the sanction order is

concerned, there is no evidence on record to indicate that all the papers of investigation were placed before the sanctioning authority. The

sanctioning authority before entering the witness box has not refreshed his memory. It is contended that the decision reported in Dharmendra

Kumar Mohanji Mishra v. State of Gujarat (supra) would not be applicable to the facts of the present case. The sanctioning authority has not gone

through any investigation papers independently. The letters which form part of the evidence were not placed before the sanctioning authority and

the order granting sanction suffers from the vice of total non-application of mind. It is submitted that there is no evidence on record to show as to

whether the charge-sheet form was sent to the sanctioning authority or that the investigation papers were sent to him. As regards the contention

raised by the learned advocate for the C.B.I. that the issued regarding the validity of the sanction was being raised for the first time in appeal, the

learned advocate for the appellant has submitted that the points for determination are to be formulated by the Trial Court. It is further submitted

that in appeal, all evidence is required to be re-appreciated and any question of law can always be urged even at this stage.

25. This Court has perused the record of the case and has considered the rival submissions advanced by the learned advocates for the parties as

well as the decisions cited at the bar.

26. It is well settled that in a trap case the testimony of the complainant and the panch witness are of prime importance. In the circumstances the

evidence of these two witnesses is required to be scrutinized minutely. The complainant PW-1, Rameshbhai Shamjibhai Patel has been examined

at Exhibit 42. He has deposed that in the year 1986 he was working as a diamond polisher and was also engaged in agriculture. One year prior to

the incident he had heard that loans could be availed from the bank for the purpose of purchasing openers and bullock-carts and such loans were

being given to small farmers. He, therefore, met Kantibhai who was a Gram Sevak of the neighbouring village Devalia and obtained necessary

information from him and decided from where to buy a bullock-cart. The Gram-sevak gave him a form for getting quotations. Thereafter he had

gone out of station for diamond polishing and returned after about three months and met Kantibhai Patel and asked him as to why when all others

in the village had been granted loans, he not been granted a loan. Whereupon he was told that he should meet Trivedi Saheb at Devalia village. He,

therefore, met the accused who told him that he was late and that the scheme was closed and when the scheme is again started he would call him.

Thereafter, he again went out of station in connection with the work of diamond polishing. Two months prior to the incident he had again come

back to his village and met Kantibhai and at his instance he met the accused. The accused told him that the earlier quotation would be required to

be changed. He therefore, obtained quotations for two tyres from Gondal. The accused then told him that as and when the loan is to be disbursed

he would be called. Thereafter he again went away for diamond polishing work. He, thereafter, met Kantibhai two to three times and inquired from

him, but was told that his loan had not been sanctioned. Once again, seven days prior to the incident he went to Kantibhai and told him that if he

was not likely to get a loan, his papers should be returned to him and that he does not want a loan. Whereupon Kantibhai told him that all his

papers had been given to Trivedi Saheb, Manager of the State Bank and that he should go and meet him. He, therefore, met the accused who told

him that he had heard that he (the complainant) does not reside at Khijadia village. The complainant told him that he does reside at Khijadia,

whereupon the accused told him to bring evidence in the form of certificate of the panchayat as well as his ration card, and that after scrutinizing all

the papers he would be able to tell him whether or not he can get a loan. Thereafter on Monday, 10th March, 1986, he met the accused at the

State Bank with the ration card and certificate of the Panchayat and the accused told him to come again on Wednesday. On Wednesday when he

met the accused, he told him that he should open an account with the bank, hence he got his account opened and deposited Rs. 100/- The

accused told him that he would get a loan and that he would have to understand the dealing to which he replied that he was a poor person and it

would be nice if he shows some mercy towards him. Whereupon the appellant told him to go and meet Kantibhai. The witness met Kantibhai, who

told him that if he wanted the loan he would have to give the appellant Rs. 400/-. Thereafter the witness approached the appellant and told him that

he was ready to give Rs. 400/- but his work should be done by the next day as he already had come several times. Whereupon the appellant told

him that his work would be done. Thereafter the appellant gave him a file which contained his papers and asked him to take the file and go and

meet advocate Mr. Sejpal at Amreli. The appellant told him to get the papers checked and bring them back soon. Hence, on Thursday, 13th

March, 1986 at 9:00 a.m., the complainant met Mr. Sejpal, and gave him the papers. The advocate told him to take back the papers after an hour.

Since the witness had time on his hands, he decided to meet some relatives at Amreli and accordingly went to meet them and told them that the

Gram Sevak Kantibhai and the Bank Manager were harassing him since a year, and now that he had agreed to pay Rs. 400/- his loan was likely to

be sanctioned. He asked them what he should do in this regard. They advised him that there was an anti-corruption department there and if he

wanted the work done without having to pay any money he should go there. Hence, he went to the ACB office. At the ACB Office, two

Jamadars, namely, Chhaganbhai and Harshadbhai were present who told him that they would record his complaint when he comes there the next

time. The witness then went to meet Advocate Mr. Sejpal. He told the advocate that he did not want to pay the bribe money and that he wanted

the work to be done without paying any money. He also told him that he wanted to lodge a complaint in that regard with the Anti Corruption

Bureau. Advocate, Mr. Sejpal advised him that there was no problem in doing so and that, it could be done. Thereafter, he took the papers which

were signed by Mr. Sejpal and went to Devaliya. Mr. Sejpal had told him that he would have to obtain affidavits of his relatives Gigabhai and

Ranchhodbhai. Thereafter, he met the appellant at Devaliya with the papers, who told him to come with the affidavits of Ranchhodbhai and

Gigabhai. Thereafter, he again met Kantibhai, who told him to come on the next day at 10 o'clock in the morning with the money. He, therefore,

directly went to his village Khijadiya and arranged for Rs. 400/- and went to the ACB office at Amreli in the evening. There, Jamadars

Harshadbhai and Chhaganbhai told him that their superior was not present and that he would have to go to Rajkot. He, along with two Jamadars,

proceeded to Rajkot at night. On reaching Rajkot the superior officer was called and the complainant was told to rest on a bench. In the morning

after he woke up, Mr. Manjaria had summoned two panchas and recorded his complaint and read it over to him. Thereafter, Mr. Manjaria asked

him for Rs. 400/-, whereupon he produced four currency notes of the denomination of Rs. 100/- and the numbers of the currency notes were

noted down in the panchnama. Thereafter, a bottle and a lamp were taken out from a cupboard and procedure regarding the ultraviolet experiment

was explained to them. They were told that the bottle contained anthracene powder which could not be seen under ordinary light. Under

instructions of Mr. Manjaria, anthracene powder was smeared on both sides of the currency notes and the person who smeared the anthracene

powder on the notes thereafter washed his hands. Before washing his hands, the notes were put in the pocket of the complainant. A preliminary

panchnama was drawn and signed by the panchas. Thereafter, Mr. Manjaria instructed them that they would all be going to Devaliya. At about

8:15 in the morning, they set off in a jeep and reached Devaliya at about 10:15 hours. After alighting from the jeep, the complainant and panch No.

1 Jasanibhai went upstairs in the building of the State Bank of Saurashtra where the appellant was sitting. The appellant told him, ""Come Ramesh,

so you have come"". Whereupon he said, ""yes sir, I have come"". The appellant then told them, ""Come, let us go to Kantibhai's house"". Kantibhai's

house was on the way and there was a temple near his house and there was a corner in between. At the corner, they stopped and he gave four

currency notes of the denomination of Rs. 100/- to the appellant. Thereafter, the complainant gave the pre-arranged signal, whereupon Mr.

Manjaria and the panch and other members of the raiding party came there. Mr. Manjariya and other officers introduced themselves to the

appellant. The appellant was frightened. As it was not possible to carry out the experiment with the lamp on the road and the bank was situated

nearby they went there and the procedure was carried out and thereafter, the complainant was permitted to leave and was told that he would be

called whenever necessary. The complainant has further stated that after they went back to the bank, the panch took out the money from the left

side pocket of the bush shirt of the appellant. The ultraviolet light was thrown on the notes and pocket of the appellant and the signs of anthracene

powder could be seen on the edge of the bush shirt pocket. The complainant has further deposed that the appellant had accepted the money from

him with his right hand and put it in his pocket. During the course of his cross-examination, the complainant has admitted that when he had handed

over the documents which had been given by Sejpal to the appellant, the appellant had not said anything about the amount which should be given

to him. He has further admitted that while lodging his complaint before Mr. Manjaria, he had not said that thereafter he had met Kantibhai and

Kantibhai had told him that he should come on the next morning at 10 or 11 o'clock with the money. It has also come out in the cross-examination

that the spot where they were standing at the corner of the temple was in front of the appellant's house and that there was no talk between the

complainant and the appellant regarding money. The complainant has further admitted that since the appellant was not talking about the money and

was not demanding money, he had lost his patience and had taken out the money from his pocket.

27. The other important witness is the panch-witness. Vasantrao Keshavji Jasani, Panch No. 1, who has been examined at Exhibit 46. Insofar as

the procedure regarding application of anthracene powder and conduct of ultra violet lamp experiment as well as the manner in which the raid is

carried out at Devalia, the version given by him though more detailed, is more or less similar to the version given by the complainant. With regard

to the manner in which the incident occurred at Mota Devalia, PW-2 said that after reaching there, they went near the office of the State Bank of

Saurashtra. There they found the lower gate of the bank closed and therefore, they were loitering here and there in that area. After sometime, the

bank was opened and the Manager came there. He (PW-2) and the complainant went upstairs with the Manager. The Manager asked the

complainant whether he had come, to which the complainant replied that he had come. Further, according to PW-2, since two other persons were

present in the bank, the Manager said ""Let us go down-stairs and finish our work"", and thereafter, they proceeded in the eastern direction. After

stepping down from the bank, the accused asked the complainant who this man was, whereupon the complainant said that he was an acquaintance

and that after the work was over they wanted to go out hence, they would directly go from there. In the meanwhile they reached the corner of

Ramji Mandir. In front of the Mandir, the accused stood facing the north and the complainant was facing the south. Thereafter, the accused asked

the complainant whether he had brought with him the thing which was agreed upon between them, to which the complainant replied in the

affirmative, whereupon the accused asked the complainant to give the same to him and told him that his work would be done. The complainant,

therefore, took out four currency notes sprinkled with anthracene powder with his right hand from the left pocket of his bush-shirt and handed over



the same to the accused. The complainant further said that he was a poor and a small man and therefore, his interest should be taken care of and

his work should be done, whereupon the accused said that his work would be done; he should not worry. While this conversation was going on,

he (Panch No. 1) gave the pre-arranged signal and informed the members of the raiding party. At that time, the raiding party was at a distance of

about 7 to 8 feet from there and immediately on giving the signal, Mr. Manjaria, panch No. 2 and the Police Constables came over to the spot and

Mr. Manjaria gave his introduction to the accused and told him to keep the money as it is in his pocket. Further, according to PW-2, since this

place was a public road, it was not possible to carry out the experiment of ultraviolet lamp and therefore, all of them along with Mr. Manjaria

proceeded to the bank premises. Mr. Manjaria spoke to the accused that the complainant had complained that the accused had demanded money

for sanctioning loan and that the accused had accepted the bribe money from the complainant. Further, according to PW-2, Mr. Manjaria gave

instructions to make use of the ultraviolet lamp. On throwing the light of the ultraviolet lamp on the pocket of the accused as well as the hands of

the accused, light blue stains could be seen on the border of the pocket and on both the hands of the accused. The numbers recorded in the

panchnama were compared with the numbers of the currency notes recovered from the pocket of the accused and the same were found to be

tallying with each other. Thereafter, Mr. Manjaria seized the bush-shirt of the accused and took signature of both the panchas on the pocket of the

bush-shirt. In his cross-examination, it has come out that when they went to the bank, the complainant had not given any documents to the

appellant and there was no talk regarding documents pertaining to the loan between them. It has further come out in his cross-examination that

after carrying out ultraviolet experiment on the pocket of the accused, he had taken out the money from his pocket. That the marks of anthracene

powder on the pocket were not marked by ball pen or ink or with any other thing. That they had not signed on the pocket or on any part of the

shirt in the presence of Mr. Manjaria. He has denied the suggestion that the complainant had attempted to thrust the money in the pocket of the

appellant near Ramji Mandir.

28. Another important witness is Kantibhai Tulsibhai Patel, who at the relevant time was discharging duties as Gram Sevak at Mota Devalia, has

been examined as prosecution witness No. 4 at Exhibit 54. In his deposition, he has categorically stated that there was never any talk between him

and the complainant regarding any money to be given to the Branch Manager of the bank.

29. From the evidence of the aforesaid witnesses, it is found that according to the complainant the appellant had told him that he would get a loan

and that he would have to understand the dealing and had also told him to go and meet Kantibhai, whereupon he had met Kantibhai, who told him

that if he wanted the loan he would have to give the appellant Rs. 400/-. Thereafter the witness approached the appellant and told him that he was

ready to give Rs. 400/- but his work should be done by the next day as he already had come several times. Whereupon the appellant told him that

his work would be done. To corroborate the say of the complainant the prosecution has examined Kantibhai Patel as PW-4. However, Kantibhai

has not supported the version given by the complainant and in his examination-in-chief he has categorically stated that there was no talk between

him and the complainant as regards giving any amount to the Branch Manager of the Taluka office. Though Kantibhai has not supported the

prosecution case on this significant aspect, the prosecution has not thought it fit to declare him hostile to the prosecution case. In the circumstances,

the Court has to proceed on the footing that the prosecution does not challenge the version given by Kantibhai. Thus, on scrutiny of the evidence of

the complainant and Kantibhai it is apparent that on the question of initial demand, two conflicting versions have been brought on record by the

prosecution. One is the version of the complainant who states that the demand for Rs. 400/- had been made through Kantibhai and the other is the

version of Kantibhai who denies any such talk between him and the complainant. Thus, the say of complainant as regards initial demand is not

corroborated by the other prosecution witness. Thus, in view of the conflicting versions given by the two prosecution witnesses, it would be

hazardous to place reliance upon the evidence of the complainant qua the initial demand. In the impugned Judgment, the learned Judge has

observed that, ""The only factor which baffles us in the facts and circumstances of the case is the lack of demand by the accused at a stage prior to

laying the trap. The complainant states in his examination in-chief firstly, that after repeatedly meeting the accused, he was told by the accused that

monetary aspect would have to be understood, but the complainant did not clarify whether any amount was specified by the accused."" In the

circumstances, it is not possible for the Court to state that the initial demand has been proved beyond reasonable doubt.

30. The next ingredient which the prosecution is required to establish is the demand prior to acceptance and acceptance. In this regard, from the

evidence of the complainant, the Court finds that while describing what had happened after they came out of the bank premises the complainant

has stated that after they came down stairs from the bank premises and proceeded towards Ramji Mandir, he took out the money from his pocket

and gave it to the appellant who accepted it with his right hand and put it in his pocket. Thus, the complainant does not refer to any talk as regards

his loan application or as regards demand for money prior to his giving the money to the appellant. In his cross-examination, the complainant has

admitted that he had felt that the appellant was not talking about the money and was not demanding any money; hence, he had lost patience and

had taken out the money from his pocket. Thus, insofar as the evidence of the complainant is concerned, it is not his case that there was any

demand made by the appellant prior to the acceptance. However, there is a significant discrepancy in the version of Shri V.K. Jasani, Panch No. 1

in this regard. The said witness has testified that when they reached Ramji Mandir, the accused asked the complainant whether he had brought

what was agreed upon between them, to which the complainant replied in the affirmative, whereupon the accused asked the complainant to give

the same to him and told him that his work would be done. That the complainant took out the four currency notes and handed over the same to the

accused and further said that he was a poor and a small man and therefore, his interest should be taken care of and his work should be done,

whereupon the accused said that his work would be done and he should not worry. Thus, there are two different versions coming on record. One

of the complainant who does not refer to any conversation between him and the appellant in his examination in chief and during the course of his

cross examination the defence has been able to bring on record the fact that the appellant had not talked about the money or demanded any money

and that it was the complainant who had lost patience and taken out the money and given it to the appellant. The other version is that of the panch

who talks about conversation having taken place between the complainant and the appellant prior to handing over the currency notes regarding

demand of money by the appellant as well as assurance on the part of the appellant that the work would be done; as well as at the time of handing

over the currency notes when the complainant said that he was a poor and a small man and therefore, his interest should be taken care of and his

work should be done, whereupon the appellant said that his work would be done and he should not worry. Thus, while the testimony of the

complainant is totally silent as regards any conversation between him and the appellant as well as any demand prior to acceptance, the testimony of

the panch is otherwise, inasmuch as the same refers to conversation between the two as well as demand prior to acceptance. It may be that a

considerable time had elapsed between the date of the incident and the recording of the evidence, however, the discrepancy in the evidence of the

two witnesses certainly cannot be said to be a minor discrepancy which can be overlooked. The evidence of the panch is in the nature of

corroborative evidence, to corroborate the say of the complainant. In the facts of the present case, nothing comes out in the testimony of the

complainant, and it is only the testimony of the panch that refers to demand. Moreover, though the complainant has not supported the prosecution

case as regards demand or any conversation having taken place, he has not been declared hostile to the prosecution case. Hence, the prosecution

has brought on record two conflicting versions, neither of which is challenged by the prosecution, by subjecting the witness to cross-examination.

In the circumstances, it would be not be safe to place reliance on the evidence of the panch for the purpose of holding that there was a demand

prior to acceptance. In the impugned judgment, the learned Judge has observed that, ""Whatever happened during the trap proceedings has been

amply corroborated by the panch witness. It could, therefore, not be said in the instant case without any certainty that the evidence of the

complainant has not been corroborated in the material particulars by the panch witness."" However, from the facts noted hereinabove, it is apparent

that insofar as the evidence of the complainant is concerned, there is nothing on record to indicate that there was any demand made by the accused

whereas, the case of demand etc. only comes out in the evidence of the panch witness. In fact in the cross-examination of the complainant the

defence has successfully brought on record that there was no demand for money from the appellant and that the complainant having lost patience

took out the money and gave it to the appellant. Hence, it cannot be said that the evidence of the complainant has been corroborated by the panch

witness in material particulars. In fact, the evidence of the complainant does not make out any case of demand by the appellant, whereas it is the

evidence of the panch witness which makes out a case of demand. In the circumstances, it cannot be said that the discrepancies about the

evidences of the two witnesses are minor discrepancies which can be ignored. This infirmity in the prosecution case goes to the root of the matter

and strikes a fatal blow to the prosecution case.

31. Insofar as the aspect of acceptance is concerned, the complainant has stated that he had given the currency notes to the appellant who took

them with his right hand and put them in his pocket. It is neither the case of the complainant nor of the panch witness that the appellant had counted

the notes on the same being given to him. However, the ultra violet lamp experiment shows that signs of anthracene were found on the fingers and

palms of both the hands of the appellant. Moreover, from the evidence of the witnesses it has come on record that the currency notes were not

taken out of the pocket of the appellant on the spot but only after they went back to the Bank for the purpose of carrying out the ultraviolet lamp

experiment. It has also come on record that no marking had been made on the pocket of the appellant to indicate the signs of anthracene nor was

the same signed by the Investigating Officer or the panchas. It has been contended on behalf of the prosecution that the marked currency notes

were found from the pocket of the accused as is evident from the fact that on the anthracene powder test being carried out with the ultraviolet

lamp, powder was found on the bush shirt pocket as well as on the notes of the accused, a presumption about the acceptance of money should be

raised. Such a submission cannot be countenanced when there is no evidence worth the name regarding initial passing of the currency notes from

the side of the complainant to the side of the accused accompanied by conversation in this behalf. In these circumstances, it would be hazardous to

record a finding with regard to acceptance, simply because on the evidence of the complainant, the panch and the PSI, it emerges that from the

bush shirt pocket of the accused, the said notes were found and that on the test being carried, the hands of the accused and his bush shirt pocket

revealed presence of the anthracene powder. In such a case, it would be unsafe to rely on the oral evidence of the three witnesses in this

connection when there is a missing link with regard to the initial demand, as well as the demand prior to acceptance, when the notes are alleged to

have passed from the side of the complainant to the side of the accused. Thus, considering the aforesaid evidence in the light of the conflicting

versions as regards demand prior to acceptance, it cannot be stated that the prosecution has established acceptance of illegal gratification beyond

reasonable doubt.

32. In the light of the evidence which has come on record, it cannot be said that there is any cogent, reliable and unimpeachable evidence

establishing that the appellant-convict had received from the complainant the amount of Rs. 400/- as and by way of illegal gratification. The

question of presumption, therefore, will not arise in the present case. In the circumstances, it is not necessary to enter into a discussion as to

whether the appellant has successfully rebutted the case of the prosecution. It would be unsafe and not prudent in the facts and circumstances of

this case to record a finding of demand and acceptance solely on the evidence of the panch witness when it is not even the case of the complainant

that the appellant had demanded any money from him.

33. Insofar as the contention regarding the panchas not being independent panchas as they were known to the Investigating Officer the same does

not merit acceptance when considered in the light of the decision of the apex court in the case of State of U.P. v. Zakauallah (supra) wherein it has

been held thus:

10. The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute not for the purpose of

helping the indicated person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers

conducting the search at some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook. In a

society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not

dependent on the police for their living or liberty or for any other matter, it cannot be said that those are not independent persons. If the police in

order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police

action. The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen

of India must be presumed to be an independent person until it is proved that he was a dependant of the police or other officials for any purpose

whatsoever. [Hazari Lal v. State (Delhi Admn.).]

34. Insofar as the challenge to the validity of the sanction order is concerned the same must also fail, inasmuch as the sanctioning authority has been

examined as a witness and he has categorically deposed that he had passed the order granting sanction after being satisfied with the facts of the

case. In his cross examination, nothing has been elicited to impeach the credibility of the said witness.

35. In the light of the aforesaid discussion, in the opinion of this Court, though the facts of the case give rise to grave suspicion against the appellant,

the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. In the circumstances, the appeal must succeed and is

accordingly allowed. The impugned order dated 30th April, 1993 of conviction and sentence made by the learned Special Judge, Court No. 3,

Ahmedabad in Special Case No. 32 of 1986, is set aside and the appellant is acquitted.