IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1069 OF 2013

SHRIDHAR CHAVAN .. APPELLANT

Versus

THE STATE OF MAHARASHTRA .. RESPONDENT

Mr.Girish Kulkarni, Advocate with Mr.M.G. Shukla, Advocate for the appellant.

Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

JUDGMENT RESERVED : 11th AUGUST 2015

JUDGMENT PRONOUNCED: 13th OCTOBER 2015

JUDGMENT :

1 The appellant who was working as a Chobdar on the establishment of this Court, has appealed to this Court, challenging the judgment and order delivered by the Special Judge for Greater Mumbai appointed under Section 3 the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the P.C.Act' for the sake of convenience). By the said judgment and order, the learned Special Judge convicted the appellant of offences punishable under Section 7 and section 13(2) read with Section 13(1)(d) of

the P.C. Act, and sentenced him to suffer Rigorous Imprisonment for 1(one) year, and to pay a fine of Rs.2,000/- on each of the said two counts.

2 The case arose on a complaint lodged by one Shri Anil Bugde (PW 1), an Advocate. The appellant, at the material time, was attached to an Hon'ble Judge presiding over C.R.No.27. The case, in brief, may be stated thus :

Bugde had filed an application in this Court on behalf of one Smt.Vaishali, his client. On 8/10/2010, Bugde went to the Court Room No.27, approached the staff and inquired with them as to whether he could get urgent circulation of the Criminal Application filed by him. The accused, at that time, informed him that the Hon'ble Judge usually did not grant urgent circulations, but if urgent circulation was required, Bugde would have to pay an amount of Rs.1,000/-. Bugde handed over an amount of Rs.500/- to the appellant immediately. He, however, was actually not intending to give any bribe to the accused, and therefore, lodged a complaint with the Anti Corruption Bureau (ACB) on the same day. The complaint was recorded by Shahaji Shinde (PW 3), Assistant Commissioner of Police, the Investigating Officer.

Shinde thereafter carried out the verification of the demand allegedly made by the appellant. This verification was sought to be done by sending an independent witness – panch Rahul Shringare (PW 2) with the complainant, and by making arrangement for recording the conversation that would take place between the complainant and the appellant. In the presence of panch Rahul Shringare, the appellant repeated his demand i.e. demanded remaining amount of Rs.500/- on the same day i.e. 8/10/2010. After confirmation of the demand, the verification panchnama was prepared, and a First Information Report was registered on the basis of the complaint lodged by Bugde (hereinafter referred to as 'the complainant'). A trap was arranged by following usual procedure. The police party and the panchas decided to trap the appellant on 11/10/2010 which was the next working day. The complainant along with the panch Shringare proceeded near Court Room No.27. There, they met the appellant in the corridor. That, at that time, the appellant demanded and accepted bribe of Rs.500/- from the complainant. Immediately, the appellant was apprehended on the complainant giving a pre-determined signal. The tainted money to which *Anthracin* powder had been applied, was recovered from the possession of the appellant. Traces of *Anthracin* powder were

noticed on the hands of the appellant and also on the pant pocket of the uniform which he was wearing. The post-trap panchnama was drawn.

3 Further investigation was carried out. On completion of the investigation, a charge-sheet came to be filed against the appellant.

4 The prosecution examined four witnesses during the trial. The first one is the complainant himself. The second is the panch – Rahul Shringare. The third is Shahaji Shinde – the Investigating Officer. The fourth one is Vasant Kondvilkar, a Sheristedar working on the establishment of this Court, who was, at the material time, attached to the Court Room No.27. The appellant did not examine himself in defence. He, however, filed a written statement. He also examined one Smt.Smita Bhatkalkar, the Sheristedar who was attached to the Court Room No.6 at the material time, as a witness for the defence.

5 I have heard Mr.Girish Kulkarni, learned counsel for the appellant. I have heard Mr.Deepak Thakre, learned APP for

the State. With their assistance, I have carefully gone through the evidence adduced during the trial. I have carefully examined the entire record of the trial Court, and have studied the impugned judgment, carefully.

6 Mr.Girish Kulkarni, learned counsel for the appellant contended that the conviction of the appellant, as recorded by the learned Special Judge, is not in accordance with law. He submitted that there were a number of doubtful aspects as regards the prosecution case. He submitted that the complainant, though an Advocate, could not be termed as a reliable witness at all, and that his evidence is full of inconsistencies and contradictions. According to him, the learned Special Judge ought not to have kept any reliance on the evidence of the complainant. Mr.Kulkarni also contended that there were some basic infirmities in the prosecution case, and that the evidence adduced makes it clear that the complainant had no genuine grievance, and actually, somehow, wanted to trap *some* member of the staff of this Court. He, therefore, submitted that the appellant deserves to be acquitted.

7 Mr.Deepak Thakre, learned APP did concede that there were some basic infirmities in the case of the prosecution. He, however, submitted that, that the appellant had actually accepted an amount of Rs.500/- from the complainant on 11th October 2010 in the presence of the panch Rahul Shringare (PW 2). was satisfactorily proved. He submitted that on the basis of the proof of this fact, the Court may decide the matter in accordance with law.

8 Before going into the contentions raised by the learned counsel for the appellant, it would be proper to consider the evidence of the complainant in all the necessary details.

9 The complainant, in his evidence, stated that he had been practising as an Advocate since the year 1995, mostly on the Criminal side. That, he was practising in all Courts, including the High Court at Bombay. That, he had a client by name Smt. Vaishali, who had lodged a report against her husband and in-laws with the Agripada Police Station. After completion of investigation, charge-sheet in that case was filed in the Court of Metropolitan Magistrate at Mazgaon. However, Smt.Vaishali, at that time, was residing at Pune, was not well, and was therefore,

unable to remain present in the Court at Mazgaon, Mumbai for giving evidence. That, on her instructions, the complainant had filed in this Court, a Criminal Application bearing No.4301/2010 for transfer of the case from the Court of the Metropolitan Magistrate, Mazgaon, Mumbai to the Court of a Magistrate at Ghudegaon, Pune District. That, the said Application was filed in the month of October 2010. That, as per the procedure, after filing of the matter, it was required to be circulated for obtaining necessary orders from the Court, and that therefore, on 8th October 2010 at about 11.00 a.m, The complainant attended the High Court and went to the Court Room No.27. He made enquiries with the staff of Court Room No.27 about obtaining urgent circulation. He enquired as to whether he would have to mention the matter before the Hon'ble Judge for urgent circulation, or whether it would be posted in due course as per rotation. The appellant was in Court Room No.27 at that time, being attached to that Court as a 'Chobdar'. The complainant made enquiries with him also, regarding the circulation, when the appellant informed him that the Hon'ble Judge would not grant urgent circulation, but that urgent circulation could be managed. When the complainant asked him 'how would he be able to do this', he asked the complainant to come out of the Court hall. The complainant then

went to the corridor in front of the Court room along with the appellant. That, at that time, the appellant told him that if the complainant needed urgent circulation, he would have to pay Rs.1,000/- to the appellant. The complainant was shocked and confused because of the demand made by the appellant and enquired with him whether that was the regular procedure for obtaining circulation, whereupon the appellant told him that those who required urgent circulation were paying Rs.1,000/-, otherwise, the matter would be posted in the routine course. The complainant decided to initiate action against 'such illegal practice', and to lodge a report against the appellant. He was not aware of the name of the appellant at that time. He, however, negotiated the matter with the appellant when the appellant told him to hand over Rs.500/- to him immediately, and to pay the remaining amount of Rs.500/- afterwards. The complainant then immediately gave one currency note of Rs.500/- denomination to the appellant in the corridor in front of Court Room No.27, itself. He also handed over a praecipe (circulation slip) (Exhibit-10) to the appellant, along with the said currency note.

10 The complainant then went to the office of the Anti Corruption Bureau (ACB) at Worli, and met Mr.Kaushik,

Additional Commissioner of Police. Kaushik directed the complainant to the Director General of the ACB. The matter was discussed with him. Shahaji Shinde, Assistant Commissioner of Police (PW 3) was deputed for handling the complaint. The complainant gave his complaint in writing (Exhibit-11). ACP Shinde then explained the procedure to the complainant by saying that the cognizance of the complaint could not be taken without verifying its correctness. Two panchas – Rahul Shringare (PW 2) and Jambhulkar were called. The contents of the complaint were explained to them. Shinde explained to the complainant that to verify the correctness of his complaint, Shinde himself and both the panchas would go to the High Court building along with the complainant. Shinde also planned to record the conversation that would take place between the complainant and the appellant; and, for that purpose, produced a blank CD, recorded the introductory voice of the complainant and of both the panchas by using a Digital Recorder. Rahul Shringare was to accompany the complainant, and it was decided to introduce him as the brother of the applicant Smt.Vaishali. The complainant, the panchas and ACP Shahaji Shinde (PW 3) went to the High Court building at about 5.05 p.m. The complainant had attached the digital recorder provided to him, inside his shirt. The complainant

and the panch Shringare went to Court Room No.27. They were standing in the corridor in front of Court Room No.27. The appellant arrived there from a wooden staircase. The complainant met him, introduced Shringare to him as the brother of applicant Smt.Vaishali. The complainant reminded the appellant of his having been paid Rs.500/- in the morning and sought advice from him about the further course of action. The appellant told the complainant that it was necessary to verify from the Board Department, whereafter the complainant Rahul Shringare and the appellant, all went to the Board Department. The appellant enquired with the staff about the Criminal Application No.4301/10 when the staff informed that the matter had been fixed and placed before Court Room No.6 on 11/10/2010.

11 The complainant, the appellant and the panch then came back in the corridor in front of Court Room No.27. The appellant asked whether the complainant had brought the remaining amount of Rs.500/-. The complainant, after making a show of enquiry with panch Rahul Shringare, said 'No', and the panch Rahul Shringare, as decided, said that Rs.500/- would be given on Monday i.e. 11/10/2010.

12 The complainant and Rahul Shringare then went to the ACB office at Worli. The conversation recorded in the Digital Recorder which was provided to the complainant was heard, and a transcript and a CD thereof was prepared in the office of the ACB. The statement of the complainant was recorded, and a First Information Report was registered (Exhibit-12). It was then decided to lay a trap. The complainant and the panchas were called on 11/10/2010.

13 On 11/10/2010, when the complainant went to the office of the ACB at about 10.00 a.m, apart from ACP Shinde and some other Officers, both the panchas were also already present there. The complainant was explained the procedure of laying trap. The conversation that would take place during the trap was to be recorded by using digital voice recorder. 5(five) currency notes of Rs.100/- denomination were handed over by the complainant to ACP Shinde as the trap amount. By adopting usual procedure, the details of which are given by the complainant in his evidence, a trap was laid. *Anthracin* powder was applied to the said currency notes. The properties of the *Anthracin* powder were explained to the complainant and the panchas. The complainant was instructed not to touch the said currency notes, till the

appellant would make a demand for the amount. After handing over the amount to the appellants, the complainant was to give a signal by rolling his left hand over his head.

14 The police party and the panchas then proceeded towards the High Court building. The complainant and panch Shringare were walking together and the other members of the raiding party were following them from some distance. When the complainant and the panch reached in front of the Court Room No.27, they met the appellant who was present there. The appellant informed the complainant that the matter had been placed before the Hon'ble Judge. The appellant then said that the complainant's work had been done and demanded the remaining amount of Rs.500/-. The complainant handed over the tainted amount which the appellant accepted by his right hand and kept in his left side pant pocket. After the amount was accepted, the complainant gave pre-determined signal to the raiding party after which the appellant was apprehended. He was taken to a room situate in the High Court building used as a security office. After some inquiries were made with the complainant and panch Shringare by ACP Shinde, all proceeded towards Azad Maidan Police Station, and then to the office of the ACB.

15 The evidence of panch Rahul Shringare does show that he had accompanied the complainant on 8/10/2010, and that the appellant had informed the complainant that the work of circulation had been done, and the matter was listed on Monday (11/10/2010). According to Shringare, the appellant also showed the (cause) list to the complainant, and showed that his matter was there. That, some discussions then took place between the complainant and the appellant, and that these discussions were about listing the matter of the complainant before some other Judge, and not before the Hon'ble Judge presiding over C.R.No.6, before whom it was listed. The appellant informed that the matter had been listed through the process of computer and not manually. The appellant then demanded an amount of Rs.500/- from the complainant, on which the complainant replied that the amount would be given on Monday.

16 About the incident on 11/10/2010, Shringare does speak about going near Court Room No.27. According to him, the complainant was not present in the Court Room, but when the complainant and Shringare were waiting, he arrived there from the staircase. Shringare states about discussions about the change

of the Court again taking place between the complainant and the appellant. According to Shringare, thereafter, the appellant demanded the money paid *by a gesture*. That, when the complainant paid the money to the appellant, and when the appellant accepted it, the appellant was trapped.

17 The evidence of Shahaji Shinde (PW 3) is in accordance with the case of the prosecution. He does speak about the complainant reporting the matter to him, that the complaint being verified, a trap being laid and the appellant being trapped. In the cross-examination, certain admissions were got elicited from him, the effect of which shall be discussed at an appropriate place.

18 The fourth witness Vasant Kondvilkar, Sheristedar, who was attached to Court Room No.27, at the material time, was examined by re-opening the case that was closed for judgment. When the case had been kept for judgment, the prosecution moved an application for his examination which was permitted by the learned Special Judge. Through Kondvilkar, the Circulation Register maintained in Court Room No.27 was produced, and a page in that register, containing a particular entry – supposedly made by the appellant – was tendered in evidence and exhibited.

Incidentally, Kondvilkar was on leave on 7/10/2010 and 8/10/2010.

19 The evidence of Smt.Bhatkalkar, (DW 1) Sheristedar shows that on 7/10/2010, she was attached to the Hon'ble Judge presiding over Court Room No.6. According to her, the Hon'ble Judge had authorized her to grant circulations. When the praecipe (Exhibit-10) was shown to the witness, she said that it was forwarded to her in the Court Room No.6 on 7/10/2010, and on the same day, it was granted. The praecipe shows that she had put her signature thereon, and had also put the date below it as '7/10/2010'. Through her, the daily board was also produced. According to her, the Criminal Application No.4301/10 regarding which the praecipe was forwarded, had nothing to do with Court Room No.27, and that as per the roster, the Criminal Application was required to be dealt with by the Hon'ble Judge presiding over the Court Room No.6.

20 It can at once be noticed that there are a number of curious aspects of the matter regarding which no answers can be found from the evidence that was adduced before the learned Special Judge.

21 The first and foremost is that the transfer applications were not being dealt with by the Hon'ble Judge presiding over Court Room No.27, at all. The notification showing the roster was produced before the trial Court and was by consent, marked as 'Exhibit-32'. The roster shows that the transfer applications were to be dealt with by the Hon'ble Judge presiding over C.R.No.6. The transfer applications would not be listed before the Hon'ble Judge presiding over C.R.No.27. This is not in dispute at all. Any evidence in that regard is still felt required, the same is available in the testimony of Smt.Smita Bhatkalkar, who as aforesaid, has categorically stated that the matter mentioned for circulation, had nothing to do with the C.R.No.27, and that, the assignment of Criminal Applications for transfer, was with the Hon'ble Judge presiding over C.R.No.6.

22 The question that, therefore, arises is why did the complainant go to the C.R.No.27 at all for seeking circulation. This conduct of the complainant is mysterious, and no direct answer to this is found from the evidence. The complainant is an Advocate practicing since quite some time, and according to him, he had been practicing in the High Court also. He was, therefore,

certainly expected to be aware of the fact that the Transfer Application which had been preferred by him on behalf of his client, would be dealt with by the Hon'ble Judge presiding over C.R.No.6, and could not have been dealt with by the Hon'ble Judge presiding over C.R.No.27.

23 I have carefully examined the evidence of the complainant to see whether there exists any explanation of his conduct of approaching the staff of the C.R.No.27 for seeking circulation of a matter which pertained to the C.R.No.6. I am unable to find any. The complainant simply, and as a matter of fact, says that *on 8/10/2010 at about 11.00 am he attended the High Court and was present in C.R.No.27.* He even does not say that he, by mistake believed the matter to be pertaining to C.R.No.27, and that, in that belief, he had gone to C.R.No.27.

24 The second curious aspect of the matter is that the circulation had already been granted on 7/10/2010 itself under the signature of the Sheristedar Smt.Smita Bhatkalkar (DW 1). There is absolutely no challenge to the evidence of this witness. Moreover, the praecipe (Exhibit-10) itself shows an endorsement as follows :-

"Coram : V.M.Kanade,J

Circulation for 11/10/10.

Signed
(Smt.Smita Bhatkalkar)

7/10/2010"

The complainant has made an attempt to dispute that the praecipe was given by him on 7/10/2010, but in the light of the evidence of Smita Bhatkalkar and the endorsement made by her in the normal course of her duties on 7/10/2010, it has to be accepted that circulation of the matter was already ordered on 7/10/2010 for 11/10/2010. What, then, was the occasion to approach the appellant on 8/10/2010 ?

25 Another interesting aspect of the matter is that the Criminal Application No.4301/10 for obtaining the urgent circulation of which the whole matter arose, was actually dismissed for non-appearance. The circulation of the said application, as aforesaid, was granted and it was listed on board on 11/10/2015. The complainant did not attend the Court on that date, and even subsequently. As admitted by the complainant in his cross-examination, the said Criminal Application was dismissed *for want of prosecution* in the month of March 2011.

26 Thus, the following factors :-

(a) The complainant approached the staff of the C.R.No.27 for obtaining circulation of a matter which pertained to the C.R.No.6.

(b) The praecipe seeking circulation of the matter shows that circulation had been granted on 7/10/2010 itself, listing the matter on 11/10/2010 before the Hon'ble Judge presiding over C.R.No.6.

(c) Instead of remaining present before the Court on 11/10/2010, and attending the matter which was got circulated, the complainant at that time, remained busy in trapping the appellant; and he did not even thereafter, pursue the application, which ultimately got dismissed for non-prosecution;

make it absolutely necessary to subject the evidence of the complainant to a meticulous scrutiny not only with respect to the factual details, but with respect to his motive behind making of the complaint.

27 The complainant being an Advocate was aware of the fact that the circulation of a matter can be granted only by a Judge, and that too, with respect to the matters that pertain to him as per the roster. This circulation could also be granted by the Sheristedar attached to the concerned Court on being expressly authorized to do by the concerned Hon'ble Judge. Inspite of this, the complainant attempted to get the circulation of the matter from a Chobdar. Obviously, his intention was not to secure urgent circulation of the matter in the interest of his client, which is also clear from the fact that the said application was not at all pursued, and was very much permitted to be dismissed for non-prosecution. His intention was clearly to '*expose corruption that is going on in the High Court*'. In fact, the complainant has made no secret of what he actually intended to do. In his complaint (Exhibit-11), the complainant has mentioned the subject as '*complaint against public servants*'. The opening paragraph of his complaint addressed to the Addl. Commissioner of Police, ACB reads as under :-

> "Sir,
>
> Since 1999 I am residing at the above mentioned place and carrying on my professional work from

> the said place. I am a lawyer by profession and also provide legal services to other government agencies such as office of Commissioner of Police, Mumbai." (Emphasis supplied)

The complaint then gives the details of the application filed by him on behalf of his client Smt.Vaishali, and then states as under :-

> "On 8/10/2010 at about 11.15 p.m (it should be "a.m") when I visited the Court of xxxxx (name of Judge omitted) presiding in Court Room No.27 for the purpose of circulating the above matter for urgent orders on 15/10/2010, I was told by the Peon of the Court along with Sheristedar that xxxxxxx (Judge) does not allow short period circulation, therefore, I asked the remedies for the same. During discussion with peon, he told me that he can place my matter on 15/10/2010 with consultation with his superior and thereafter asked and demanded Rs.1,000/- as a bribe for placing my case on 15/10/2010".

28 It is clear that the complainant did know that actually the orders regarding urgent placing of matters on board were required to be obtained from the Hon'ble Judge. He was, however, not ready to mention the matter before the Hon'ble Judge, and see

whether circulation would be granted or not, obviously because as discussed earlier, he was not, in reality, interested in obtaining any circulation. Even assuming that the complainant indeed wanted urgent circulation of the matter, he ought to have mentioned the matter before the Hon'ble Judge and accepted the decision of the Hon'ble Judge, rather than making an attempt to improperly obtain circulation.

29 It is evident that basically what the complainant wanted to do is to point out/prove that such wrong things take place in the High Court. That circulation was urgently required was only an excuse put forth by him to get the things going. It is significant in this context that his complaint does not mention as being against any particular individual or individuals, but generally against public servants. The complainant has admitted in the cross-examination, that the complaint lodged by him was not only against the accused, but was also against the other staff, though he later claimed that his complaint was only against the accused. During the cross-examination, he volunteered to state that “in order to curb the illegal activities, he handed over an amount of Rs.500/- to the accused”. In the examination-in-chief itself, he has stated that he decided to initiate action against *such*

illegal practice, and evidently, his main issue was 'fighting the corruption and exposing the corrupt public servants' rather than the grievance in any particular work or matter.

30 The object of the complainant to expose corruption, is indeed laudable. However, when a person is possessed by such a desire, and when he, though has a general grievance about corrupt practices which are being adopted in any particular institution, selects targets a particular public servant to prove him to be guilty of demanding and/or accepting bribe/illegal gratification to make his point, then the evidence of such person needs to be scrutinized with more than ordinary care.

31 It will not be out of place at this stage to refer to the philosophy behind the Prevention of Corruption Act, and the appreciation of evidence relating to trap cases, as can be gathered from the authoritative pronouncements of the High Courts, and of the Supreme Court of India.

32 The cases arising under the Prevention of Corruption Act, can be broadly divided into two categories. (i) trap cases and (ii) Non-trap cases. Non-trap cases include cases of Criminal

misappropriation, obtaining of pecuniary advantages by the public servants for himself or for others, and cases involving possession of disproportionate assets. A majority of the cases coming up before the Courts are, however, trap cases. Laying of traps is a step in investigation. The propriety of laying of traps in detecting a crime has always been a matter of controversy and discussion by the Superior Courts and the Apex Court. A study of the case-law upon the subject reveals that these methods have been repeatedly deplored by the Courts, though the Courts have regretfully acknowledged the necessity of such methods, on the ground that otherwise it would be impossible, or atleast difficult, to bring to book corrupt public servants (see ***Shiv Bahadur Singh Vs. State of Vidhya Pradesh*** [1]***, State of Bihar Vs. Basawan Singh*** [2]***, Ramanlal Mohanlal Vs. State of Bombay***[3]***, Ramkrishna v. Delhi State,***[4] ***and Ramjanam Singh v. Bihar State***[5]**.**

33 In **Som Prakash Vs. State of Delhi** [6]**,** Their Lordships referred to laying of traps as a 'morally murky mechanism', and observed :

1 AIR 1954 SC 322
2 AIR 1958 SC 500
3 AIR 1960 SC 961
4 AIR 1956 SC 476
5 AIR 1956 SC 643
6 AIR 1974 S.C 989

> ".....Courts have frowned upon evidence procured by such experiments since the participants are prone to be over-anxious and under-accrupulous and the victims are caught morally unawares".

Yet, laying of traps has been held to be justified as inevitable for detecting a crime, and to collect evidence against a dishonest public servant. However, the Courts have also recognized that traps could be laid in different circumstances, and by different types of complainants. In the same case, it was observed :

> "Where you intercept the natural course of the corrupt stream by setting an invisible contraption its ethics above board. On the contrary, to test the moral fire of an officer whose reputation is suspect, if you .lay a crime mine which explodes when he, in a weak moment, walks on it the whole scheme is tainted".

34 The pronouncements of the High Courts and Supreme Court have classified the traps into 'legitimate' and 'illegitimate'. Illegitimate traps are viewed with disapproval by the Courts.

Illegitimate traps are those which arise when a public servant is deliberately tempted to accept a bribe/illegal gratification by offering to him such bribe or gratification though he never went out of his way to make any such demand. It must be understood clearly that the provisions of the P.C. Act are not designed for ascertaining whether a public servant is honest or not. Traps cannot be laid for deciding the general honesty and integrity of a public servant. Traps cannot be organized for observing whether a public servant, if offered money can be lured into doing something which he otherwise, would not have done. In **Ramjanam Singh Vs. The State of Bihar** [7], it was observed as follows:-

> "Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the Law; and more particularly by those who are guardians and keepers of the law".

In the said case, the reference as 'guardians and keepers of the law' was to the police, but the said observations are extremely relevant in the present case also where the complainant is an Advocate –

7 ***AIR 1956 SC 643***

treated as an Officer of the Court – and the appellant is an employee – a public servant working on the establishment of the High Court; and the question is whether the complainant had tempted and provoked the appellant – a Chobdar – to do something wrong for a monetary gain.

35 Judicial Pronouncements have also recognized that there are various types of complainants. The one whose complaint is not valid or justifiable, and is not in compliance with the established or accepted rules and standards, is believed to be, often having ulterior intentions in levelling corruption charges against a public servant. Courts have taken great caution in ascertaining the nature and type of the complainant, in deciding whether an accused is guilty in a given case. The one who mischievously sets bait to one or more public servants and then, traps them after they have acted on the luring of such complainant, is recognized as a 'fishing complainant'. Such traps are deprecated as practically amounting to the abetment of an offence, and artificially creating a crime. In such cases, it would be the duty of the Court to properly scrutinize the evidence of the complainant to ascertain the validity/reliability of his claims and to unmask his ulterior intentions. The appreciation of the

evidence of the complainant in a trap case, is required to be done be keeping in mind the type of the complainant.

36 In the instant case, when the complainant certainly knew that the mater did not pertain to the assignment of the Hon'ble Judge presiding over Court Room No.27, his act of attempting to take a circulation of the matter before that Hon'ble Judge, is itself suspicious. At the cost of repetition, it may be observed that it is not the case of the complainant that he, by mistake believed the matter to be pertaining to the assignment of the Hon'ble Judge presiding over that Court. He simply, and as a matter of fact, speaks of going to the Court Room No.27 for obtaining circulation of the matter. A look at the complaint made by the complainant with the ACB (Exhibit-11) shows that even that does not – like his evidence – disclose as to what prompted him to abruptly go to the Court Room No.27, and seek circulation of the matter. He did not even try to ascertain the name of the person who had demanded an amount of Rs.1000/- for securing urgent circulation. He described the appellant as a '*peon*', and not as a '*Chobdar*' which means that he did not even try to ascertain the designation, did not bother about any particular public servant and was more concerned with the fact that '*somebody from the*

employees of the High Court had made a demand'. His complaint shows that it was *generally* lodged against the High Court staff as evident from the expression "them" used by him in the concluding part of the complaint.

37 That the complainant wanted to establish that bad practices are prevailing in the High Court, and that High Court staff obtains money and/or that circulations of matters are granted irregularly, illegally and after accepting bribe, is further confirmed from the statements made by the complainant in his evidence. In the cross-examination, this is what he has said:

> "After talking with the accused as I realised that illegal procedure for granting circulation was being adopted. I, therefore, decided to take up that issue and therefore, I had not mentioned the matter before the Court".
> (Emphasis supplied)

During the course of the cross-examination, he volunteered to state that the amount of Rs.500/- was given to the appellant by him before lodging of the complaint "in order to curb the illegal activities".

38 There is another mysterious aspect of the matter. The evidence indicates that the complainant wanted the matter to be listed before the Court Room No.27 itself. The insistence for getting the matter placed before that Court when as per the roster, the matter was required to be placed before Court Room No.6, is also curious. The evidence of the complainant and also that of Shringare, shows that the complainant entered into a discussion with the appellant about listing of the matter before Court Room No.27 and expressed, after learning that it had been listed before Court Room No.6, that he did not want it to be listed there. As observed earlier, the conduct of the complainant does not show that there was any genuine desire to obtain the urgent circulation of the matter, and therefore, this insistence of the complainant was, obviously, only for further checking 'whether the illegal practices can go to the extent of placing the matter before wrong bench'. Thus, the complainant, undoubtedly, was making a survey of the working of this Court, and wanted to know to what extent illegalities can take place by paying bribe to the High Court staff.

39 When the complainant had taken upon himself such a task, and wanted to test the moral fiber of the persons working on

the establishment of the High Court, it is only natural that the complainant would be over anxious and try to ensure that his effort to expose the corruption, is successful. It is in this background that the evidence of the complainant, and that of the other prosecution witnesses, is required to be examined.

40 It is well known that in trap cases, there should be satisfactory evidence of the initial demand of illegal gratification by the public servant concerned. *The demand has been held to be the very foundation of trap cases.* It is well settled that even with respect to the offence punishable under section 13(2) of the P.C. Act read with section 13(1)(d) thereof, the necessity of there being evidence of a previous demand, cannot be done away with. It is well settled that unless the evidence of the initial demand is satisfactory, the whole evidence obtained by laying a trap is required to be viewed cautiously. Since the legal position is well settled, it is not necessary to elaborate this aspect of the matter any further.

41 In this case, according to the complainant, he paid an amount of Rs.500/- to the appellant on 8/10/2010 in the morning itself. At that stage, of course, the complainant cannot be

expected to have any corroborative evidence, and one has to decide the matter on the basis of the appreciation of the evidence of the complainant himself. Considering the peculiar aspects of the matter, as discussed earlier, it would be unsafe to rely solely on the word of the complainant in that regard. Therefore, this aspect is to be judged in the light of the other evidence i.e. of the complainant *regarding the further happenings*, of the panch and of the Investigating Officer.

42 After reporting the matter to the ACB, the complainant came back to the High Court premises at about 5.05 p.m along with panch Shringare. The fact of the complainant already having paid an amount of Rs.500/- to the appellant, was repeated in the presence of Shringare. In the presence of Shringare, the appellant is supposed to have made a demand for the remaining amount of Rs.500/-. The evidence in that regard, needs to be carefully examined.

43 According to the complainant, when he and Shringare reached the High Court, and were standing in the corridor, appellant arrived there from the wooden staircase. According to Shringare, however, the appellant was inside the

Court hall and the complainant called him outside the Court hall. Panch Shringare has categorically stated that it is on the complainant's calling him outside the Court hall that the appellant came out. Thus, the version of the complainant and that of the panch Shringare about *where* did they meet the complainant when they had gone to the High Court for verification of the demand of illegal gratification, is not uniform.

44 What happened thereafter, is also stated differently by the complainant and by Shringare. According to the complainant, he introduced Shringare to the appellant as the brother of the applicant Vaishali, then said about the appellant having been handed over Rs.500/- in the morning, and asked the appellant about what should be done thereafter. That, the appellant then said that they would have to verify from the Board Department. That, the complainant Shringare and the appellant thereafter went to the Board Department and made enquiries regarding the said Criminal Application. That, at that time, the staff in the Board Department informed them that the matter had been placed before C.R.No.6 on 11/10/2010. Shringare, however, narrates the events differently. It, may be recalled, that according to Shringare, the appellant was inside the Court hall, and came

out, when the complainant called him outside. Shringare's version is that as soon as the appellant came out, he informed the complainant that his work of circulation had been done, and the matter was listed on Monday. Shringare speaks about the appellant taking them to a room (perhaps Board Department) only thereafter, and also speaks about one list (probably cause list) being shown to the complainant in which the said application was shown. This variation in the version is not inconsequential or immaterial, inasmuch according to the complainant, even the appellant did not know as to whether the matter had been listed on board till they all went to the Board Department and verified the same, while according to Shringare, the appellant was already aware of circulation having been granted.

45 There is no uniform version even with respect to the circumstances and the manner in which the alleged demand of the remaining amount of Rs.500/- was made by the appellant. According to the complainant, after coming back from the Board Department, and while they all were standing in the corridor in front of C.R.No.27, the appellant asked him whether he had brought the remaining amount of Rs.500/- and demanded the same. The complainant, thereupon enquired with Shringare who

had been introduced as the brother of the applicant Smt.Vaishali as to whether he was having Rs.500/-. That, Shringare said that he was not having the same, and asked the complainant whether the complainant was having that much amount. That the complainant also said 'no', and thereafter, Shringare said that it would be given on Monday. That, the complainant then told the appellant that the amount would be given on Monday. Shringare, however, does not speak of any commitment made by him to give the amount on Monday. Shringare simply says that the appellant demanded the remaining amount from the complainant to which the complainant said that it would be given on Monday.

46 These variations by themselves might not have been very significant. However, there are two reasons which make these variations a factor throwing doubt on the prosecution version. The first is, as aforesaid, that he complainant was bent upon exposing the illegal practices going on in the High Court and was, therefore, likely to be over-anxious and fill in the details of the happenings as would support the theory propounded by him. Secondly, appreciation of evidence in trap cases has to be done somewhat differently from other cases where 'that the offence is likely to take place', is not previously

known to the witnesses or the victim. In trap cases, everything is previously planned. Guidance is taken from the Investigating Agency who are well experienced in such matters. The complainant has already decided to expose the culprit and he does know what is required to be established. A panch who is told about what is expected to happen, is sent with the complainant *specifically to observe the happenings, and note them carefully*. Thus, the witnesses in trap cases are specifically expected to, and are told to watch the happening of the events including the sequence thereof carefully. When the witnesses are observing the happenings carefully, so as to be able to give evidence of what was happening, the variations in their testimony would be much more significant than in other cases where the witnesses are not acting according to a pre-plan. The variations which might be justifiably ignored as not very material or significant in other cases, may not so easily be ignored in trap cases.

47 However, even these discrepancies and variations is not the crucial aspect of the matter. It may be recalled that arrangements had been made for recording the conversation that would take place between the complainant and the appellant on 8/10/2010 as also on 11/10/2010. The prosecution case is that

the conversation that took place on 8/10/2010 had been recorded, and the alleged demand made by the appellant was verified on the basis of such recording. According to the prosecution, the Digital Voice Recorder was played, a transcript of the conversation that had taken place was made, and a record thereof was also got made in a C.D. The transcripts of the conversation find place in the record of the verification panchnama dated 8/10/2010 (Exhibit-14) and the pre-trap panchnama dated 11/10/2010 (Exhibit-16). The complainant as well as the panch Shringare have given their versions of the conversations that took place between them and the appellant on both these occasions. Surprisingly, the record of either of these conversations was not tendered in evidence at all. Inspite of there being a record of the conversation which would corroborate the version of the complainant and of the panch regarding the alleged demand of bribe made by the appellant, the conversation was not played over during the trial. No transcript of the conversation was got prepared, and no attempt to tender the same before the Court was made. This is more surprising because the conversation had been recorded, obviously, as and by way of evidence to support the claim that was being made by the complainant and the panch. It was put to the complainant, panch, and also the Investigating

Officer in their respective cross-examinations that there existed no such record. That, inspite of such direct challenge given by the defence to the very existence of such recorded conversations, the relevant record was not produced, makes it all the more surprising. When the record of the conversation was available, that it should not be produced before the Court during evidence, leads to an inference that the said record, if produced, would not have been favourable to the prosecution.

48 In the light of the fact that the complainant had laid a *fishing trap* which has been frowned upon, time and again, by the Superior Courts; that the testimony of the complainant and that of the panch about the happenings in the evening of 8/10/2010; do not match regarding some particulars; and that the record of the conversation that took place between the complainant, the appellant and the panch – though said to be supporting the case of the prosecution, and though said to be available – was not produced before the trial Court, make it hazardous to accept the story of the appellant having accepted an illegal gratification of Rs.500/- in the morning of 8/10/2010, and of his having demanded an illegal gratification of Rs.500/- in the evening on the same day.

49 Since the demand of illegal gratification has not been satisfactorily proved, the whole prosecution case gets seriously affected. However, I have still examined the evidence of the acceptance of the bribe by the appellant, and I find the same also unsatisfactory.

50 The complainant has stated about the happenings on 11/10/20100 since the time he reached the Anti Corruption Bureau at about 10.00 a.m. According to him, the panchas were already present there. After speaking about the happenings that took place there, the instructions given to him and the panchas etc, he narrates what took place after he and Shringare came to the High Court. The complainant and Shringare proceeded towards the first floor near C.R.No.27 who were being followed by the team of the ACB Officers from some distance. According to the complainant, *when he and Shringare reached in front of C.R.No.27, the appellant was present*, and discussions took place between him and the appellant. Surprisingly, according to the complainant, the appellant informed him that his matter had been placed before the Hon'ble Judge – *a fact which had already been informed by the appellant to the complainant on 8/10/2010 itself, and which had*

even been verified by the complainant. According to the complainant, Shringare was again introduced as the brother of the applicant Vaishali which is also rather unusual. It is, at that time, the appellant made a demand of the remaining amount of Rs.500/-.

51 What Shringare says is however, different. Shringare does not categorically state whether when he went to the ACB office, the complainant was already present or not, but a reading of his evidence gives an impression that the complainant was already present. Shringare says that he and Jambhulkar arrived in the ACB office prior to 10.00 a.m, and that they met ACP Shinde (PW 3) *when the complainant was also present*. Regarding the happenings after reaching the High Court building, Shringare says that on going to C.R.No.27, the complainant peeped inside the Court room, *but the appellant was not there*. According to Shringare, the appellant then arrived there from the staircase. That the appellant was carrying one register in his hand at that time, and that while standing in the corridor in front of C.R.No.27, the complainant, the appellant and the panch had discussion about the circulation of the matter. Shringare says that there were also discussions about *the change of the Court*. Shringare then

states that the appellant **by gesture** (that is by rubbing his thumb over his index finger) demanded the bribe amount. Thus, apart from the minor variations, there is a major variation as to the manner in which the demand was made. According to the complainant, it was a plain and categorical demand. This is what the complainant said.

> "At that time, accused told me that my work has been done by him and he demanded remaining amount of Rs.500/-".

This cannot be construed as a demand by gesture as spoken about by Shringare.

52 Apart from this, the conflict in the version as to whether the appellant was present when complainant and Shringare arrived at C.R.No.27, is also quite significant, because the evidence does not show that any place or time was fixed for paying the remaining amount of the illegal gratification. The evidence only shows that the matter had already been listed on board on 11/10/2010, and that the complainant who was made aware of it on 8/10/2010 itself, had promised to pay the balance on Monday i.e. on 11/10/2010. When and where he was to meet the appellant, is not clear, and there is no evidence that it was at

all, decided. There is no reason to disbelieve the version of Shringare to the effect that the appellant was not present when they reached near C.R.No.27 particularly because admittedly, the appellant was also carrying a register with him when he came in contact with the complainant and Shringare. It therefore, appears that the complainant has tried to suppress the fact that *actually it was he who was looking for the appellant. The complainant could have attended the matter in C.R.No.6 and could have left without coming across the appellant.*

53 Apart from these variations, which themselves might not have been significant, there is a serious infirmity in the evidence of the complainant as regards the acceptance of the tainted amount by the appellant. The case of the prosecution, as can be gathered from the record of the panchnama (Exhibit-18) is that the appellant accepted the tainted amount by his right hand, and kept it in his right side pant pocket. The complainant's version, in that regard is varying. Initially, he said that the appellant accepted the amount by his *right hand*, and placed it in his *left side* pant pocket. Shringare said that the appellant who was holding a register in right hand, shifted it in his left armpit, and accepted the amount by his left hand. According to Shringare,

the appellant then shifted the said amount to his right hand, and kept the same in his *right side* pant pocket. When he was confronted with the relevant portion in the panchnama, he said that it was 'partly correct, and partly incorrect'. According to Shinde also, the appellant accepted the bribe amount by his left hand, then transferred the same in his right hand and then kept it in the right side pant pocket. When however, it was pointed out to him that the panchnama did not speak so, and spoke of the acceptance of the amount by right hand, and keeping the same in the right side pant pocket, he claimed that it was 'an inadvertent mistake'. He had to admit in the cross-examination that an identical '`inadvertent mistake`' had taken place also in the supplementary statement of the complainant that was recorded in the course of investigation.

54 The evidence shows that traces of *Anthracin* powder were noticed on both the hands of the appellant, the register, his mobile telephone and the right side pocket of his pant when checked under *ultra-violet rays.* The possibility of the witnesses having changed their version to explain the traces of *Anthracin powder* on both the hands of the appellant, cannot be ruled out, particularly because it has been the defence of the appellant that

the complainant forcibly tried to thrust money in his pocket, which he resisted by both his hands.

55 The doubt in that regard is magnified because of the serious infirmities in the evidence of the complainant regarding the actual acceptance of bribe by the appellant. As aforesaid, the complainant initially said that the appellant accepted the tainted amount by his right hand, and then kept it in his left side pant pocket. The complainant then voluntarily stated before the Court, as is reflected in the note made by the Court which is worth reproducing here :

> "witness narrated that he is lefty therefore he slight confused about the hand by which accused accepted the amount and about the pant pocket whether it was left or right"

That a lefty person will not be able to understand the difference between right and left, and that he would not be able to distinguish between right hand and left hand, is difficult to digest. The same is not supported by any scientific data or research. Anyway, the complainant then said that he did not remember

precisely whether the amount was accepted by the appellant by his left hand or right hand, and whether it had been kept by him in the right pocket or left pocket. In his further examination-in-chief, when he was asked about the recording of his supplementary statement on 14/10/2010, he abruptly stated before the Court about his 'confused state of the mind', about *by which hand* the tainted amount had been accepted by the appellant. The learned Special Judge has made a note in that regard which is worth reproducing here :

> "At this stage witness narrated that as he is performing his all acts by left hand which are normally performed by right hand,he is still in confused stated of mind about the pant pocket where the amount was kept by accused. He further submitted that in order to refresh his memory he be permitted to read his previous writing. Ld. Adv. Juvekar, holding for Adv.Kulkarni, strongly objected for permitting the witness to refresh his memory.
>
> Considering that as it is explained by the witness he is lefty such sort of confusion can be there, therefore there is no harm in permitting the witness to

> go through his previous writing to refresh his memory. The defence has right to cross examined the witness on this point. The supplementary statement of complainant is provided to the complainant for reading".

This is indeed shocking. In the first place, the view of the learned Special Judge that since the witness is lefty, that sort of confusion could be there, is baseless without any scientific data or research. Further, allowing a witness to read his supplementary statement recorded by the police in the course of investigation, for refreshing his memory, is in express violation of the provisions of section 162 of the Code. Apart from this, there was no question of 'refreshing memory', as memory can be refreshed only in the circumstances mentioned in section 159 of the Evidence Act, and there was no evidence that the conditions requisite for permitting the complainant to refer to his supplementary statement recorded by the police had been fulfilled. This is apart from the express bar created by section 162 of the Code, which would over-ride the provisions of section 159 of the Evidence Act. The learned Special Judge, thereafter, recorded the evidence of the complainant as to the happenings, whereupon the complainant stated that the appellant was holding one register in his left hand, he kept the

said register in his right arm-pit, then accepted the said amount by his left hand, and transferred the same in his right hand, and then by his right hand, kept the said amount in his right pant pocket. However, surprisingly, this version, which he advanced supposedly after refreshing his memory on reading his supplementary statement, is not in consonance with his supplementary statement.

56 According to the complainant, as soon as the tainted amount was delivered to the appellant, he gave the pre-determined signal to the raiding party. He has specifically used the word 'immediately' in describing the happening. However, Shringare states that after the amount was handed over, conversation took place between the complainant and the appellant. Shringare has even stated as to what the conversation was viz. that the complainant enquired with the appellant as to whether the appellant would keep the amount of Rs.1,000/- for himself, or whether he would be giving it to some other persons; and that the appellant then gave the names of 2 – 3 persons, including the name of the Sheristedar, and other staff members.

57 The evidence shows that after the tainted amount was handed over to the appellant, appellant received a telephone call,

and was talking on his mobile telephone. However, whether this was before or after giving a pre-determined signal, is not very clear. The complainant does not refer to any such telephone conversation, at all. According to him, as soon as the amount was paid, the signal was given, and immediately, the appellant was apprehended. Shringare says that after the signal was given, the telephone call was received by the appellant, and that, he was talking on the mobile. Shinde says that after the amount was given to the appellant, the appellant had been talking on the mobile telephone and also with the complainant, and that, the pre-determined signal was given by the complainant after this conversation was over.

58 There is also one more aspect of the matter. The evidence clearly shows that Shinde and the members of the raiding party were at a short distance from the complainant and Shringare. The happenings were clearly being seen by them. In fact, the suggestion specifically given in the cross-examination 'that due to the 'L' shape of the corridor, the complainant and Shringare were not visible to the raiding party', was denied by Shinde. His evidence even otherwise makes it clear that he had been observing the happenings. Thus, when he could see that the

amount had been actually paid by the appellant to the complainant, where was the question of waiting for the pre-determined signal to be given by the complainant ? All this shows that the evidence has been given in a mechanical manner, and as per the happenings that take place usually in trap cases, and therefore, may not be reflecting the actual happenings. At any rate, it is too artificial.

59 The defence of the appellant, as is categorically taken by him by filing a written statement, is that he had neither demanded nor accepted any amount from the complainant. That, he had not met the appellant on 8/10/2010 at all. According to him, that the complainant had come to C.R.No.27 on 7/10/2010, but the Hon'ble Judge presiding over that Court, was not available on that date. That, the complainant then asked the appellant to take the circulation praecipe, and give circulation when the appellant told him that the Hon'ble Court did not give any circulation, except in urgent matters, and that the matter would have to be mentioned to the Court, and then, depending on the urgency, the Court may grant or refuse circulation. According to the appellant, complainant was still repeatedly insisting that circulation should be given, and therefore, he told the

complainant that he was an Advocate, and should understand these things, whereupon the complainant got angry, and threatened that 'he would show him'. That, on 11/10/2010, the complainant met him outside C.R.No.27 when the appellant was busy in his work. That, the complainant stopped him and told him that he had got the circulation. That, he received a telephone call in the mean time, and while he was speaking on the phone, suddenly the complainant was noticed being putting something in the appellant's pocket. The appellant resisted the same by his both hands, and at that moment, two persons apprehended him. The appellant categorically stated that he never demanded any money, and he never accepted money, and that he had been falsely implicated.

60 Considering the nature of the evidence on record, the prosecution case cannot be held to have been satisfactorily proved. The question is not whether the defence of the appellant is true, but whether upon considering the matters before it, the Court, entertains a rational and reasonable doubt about the truth of the prosecution case. Such a doubt can arise even when the defence theory cannot be fully accepted. In the background of the fact that the complainant was on the lookout for trapping corrupt public

servants, (although with all good intentions) the possibility of his having targeted the appellant *to see whether he could be lured into acceptance of illegal gratification, can certainly not be ruled out.*

61 The evidence of Vasant Kondvilkar (PW 4), who as aforesaid, was examined after the case was fixed for judgment, shows that it was the appellant who had carried the praecipe given by the complainant to the Board department. This is based not on the personal knowledge of Kondvilkar, but on the basis of the fact that the number of the said application i.e. '4301/10', as written in the circulation register, is in the handwriting of the appellant. Kondvilkar has said that the figure '4301' has been written by the appellant, and this he said from his acquaintance with the writing of the appellant. Kondvilkar, however, also admitted that he was not certain about it. However, assuming that the praecipe – which had already been placed before C.R.No.6, and on the basis of which order granting circulation had already been passed on 7/10/2010 – was actually transmitted to the Board Department from the circulation register maintained in C.R.No.27, it does not indicate that the appellant had demanded and/or accepted a bribe in respect of an official act. In any case, it does not establish that the prosecution version is true and correct. The investigation in

the matter has been far from satisfactory. *The Investigating Officer even did not ascertain whether the matter, the circulation of which was sought, indeed pertained to the assignment of the Hon'ble Judge presiding over C.R.No.27.* Shinde did not bother to question the complainant as to *how* his praecipe had an endorsement dated 7/10/2010, and that, in that case, what was the reason for him to have approached the staff of C.R.No.27 on 8/10/2010. Shinde also did not verify as to who had taken the praecipe to the Board Department. Shinde also did not ascertain whether there was any other praceipe that had been given by the complainant to the appellant, inasmuch as the complainant did speak of a praecipe given to the appellant on 8/10/2010. That the circulation was granted, is evident from the fact that the matter was actually listed on board on 11/10/2010, and this was known on 8/10/2010 itself.

62 When the investigation was carried out in such a perfunctory manner, and when the evidence adduced by the prosecution is not satisfactory, either with respect to the demand of bribe, or the acceptance thereof – it was not possible to hold the appellant guilty of the alleged offences. The prosecution evidence had inherent weaknesses in it, and the very foundation of the

prosecution case was based on facts which could be termed as mysterious. The appreciation of evidence, as done by the learned Special Judge, was not in accordance with the well accepted parameters, experience and logic.

63 There is one aspect of the matter which needs a mention. It is that no permission for laying a trap in the premises of this Court was obtained from the Hon'ble The Chief Justice. This is indeed shocking. According to the Investigating Officer Shinde (PW 3), he gave a letter in a sealed envelope to Police Constable Shri Chandanshive with a direction to hand over the same to the P.A. of the Hon'ble The Chief Justice, and further instructed him to inform Shinde immediately on Shinde's mobile telephone about the handing over of the said letter. It is nobody's case that any permission of the Hon'ble The Chief Justice was obtained by the Investigating Agency before laying the trap, but whether even the intimation had actually been to the Hon'ble the Chief Justice before laying the trap, is also not clear. The only evidence in that regard is that a letter *giving intimation* addressed to the Hon'ble The Chief Justice was handed over by a police constable to the Personal Assistant of the Hon'ble The Chief Justice. The Investigating Officer did not contact the Registrar of

this Court – or even the Principal Secretary or the Secretary to the Hon'ble The Chief Justice for that matter – and such contact was done by a Police Constable by simply delivering the letter. This is highly objectionable.

64 The propriety of arranging and laying traps in the Court premises, without the permission of the Judge in-charge Judge of the administration of the Court concerned, or the Principal District Judge, or the High Court, needs to be seriously considered. To my knowledge, '*whether a trap can be laid in the court premises without the permission of the Judge in-charge of the administration of that court, or the District court, or the High Court,*' has not been dealt with directly in any decisions of the Supreme court of India. The Manual of Instructions issued by the '*Maharashtra State Anti Corruption and Prohibition Intelligence Bureau*', Government of Maharashtra, deals with this and prohibits only the laying of a trap in a court room, while the court is in session. The instructions in the Manual do not contemplate raiding or laying a trap in the premises of the High Court which is the highest court in the State and has been conferred with constitutional jurisdiction. The instructions deal with the laying of traps in subordinate courts and lay down that such traps should be

laid after giving information to the District Judge or to the senior most Judicial Officer in the station about the proposed trap, *before it is actually laid*. Whether giving of information would be sufficient, or whether a previous permission would be necessary needs consideration and a second look at the instructions in the Manual by the concerned authorities, appears to be essential. In this case, the appellant who was to be trapped was attached to an Hon'ble Judge of this Court. The Hon'ble Judge was very much present in the Court premises discharging judicial functions. The staff attached to a Judge discharges duties under the instructions of the Judge. If Police Officers whose subordination to the Judicial Officers – even of the lowest rung – is evident from the provisions of the Code of Criminal Procedure, and who frequently visit the Courts as representing a party i.e. the State, or as witnesses, are allowed to raid the Court premises without permission of the Presiding Officer of the Court, or the Principal District Judge or the High Court, there is every possibility of a serious threat to the administration of justice and independence of judiciary being posed. This would apply even to the subordinate Courts, but laying a trap in the High Court premises without the permission of the Hon'ble the Chief Justice, is all the more serious.

65 Norms of propriety were not followed in this case by the Investigating Agency, as is evident from a number of factors. The appellant was apprehended and taken away after the trap was said to have been successful without bothering about the effect thereof on the working of the Court. As a matter of curiosity, I have examined the letter written to the Hon'ble the Chief Justice, which, as aforesaid, was transmitted by a Constable to the Secretary to the Chief Justice. This letter has been signed by the Investigating Officer himself. The Investigating Officer who was of a rank of Assistant Commissioner of Police, ought not to have addressed a letter to the Hon'ble the Chief Justice, who is a high constitutional functionary. Writing of such letter under the signature of the Assistant Commissioner of Police, is not in accordance with the norms observed in government correspondence. The letter is impolite. It curtly mentions that '*in respect of C.R.No.53/10 regarding the offences punishable under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, a trap is being arranged in the High Court campus on 11/10/2010*'. It doesn't even mention that 'a note of the same may kindly be taken' – leave apart seeking even a formal permission.

66 In my opinion, traps in the premises of the Court on working days, cannot be organized without the permission of the Judge who is in-charge of the administration of such Court, or the Principal District Judge, or the High Court. The working of the courts of law is distinguishable from the offices of the government departments. In the court premises, there is presence of advocates and advocates' clerks, who, quite often – lawfully and for lawful purposes – receive amounts in cash from the litigants or their representatives. No receipts regarding such amounts are passed – atleast not at that time. The members of the staff of the court, are quite often required to assist the litigants or the advocates, and to provide answers to their queries. Implicating a member of the court staff falsely, with respect to the accusation of his having demanded and/or accepted illegal gratification is easier than implicating public servants working in other departments. If the police are permitted to lay traps without such permission, it can indeed pose a serious threat to the administration of justice and independence of judiciary. On the contrary, no harm can possibly be suffered by seeking the permission of the concerned Judge or his superior, or the High Court. The impermissibility of laying such traps was considered by the Allahabad High Court in

Surendra Sahai and Ors. Vs. State of U.P[8] and it was held that such traps ought not to be organised. In my opinion, it was absolutely improper in this case on the part of the Investigating Agency to have laid a trap without seeking a previous permission of the Hon'ble The Chief Justice.

67 The learned Special Judge appears to have departed from the normal and usual approach towards the matter, as is evident from the impugned judgment; and this could be due to a number of reasons, including the pressure put on the learned Judge by the attitude and conduct of the complainant. Since the matter is of considerable general importance, apart from being relevant for appreciating the evidence of the complainant and understanding the approach of the trial Court towards the matter, the same needs to be mentioned here in necessary details. It appears that on one date, – i.e. 24/6/2013, – when the case was fixed for recording of the evidence before the trial Court, the complainant was absent. The learned Special Judge, therefore, issued a bailable warrant in the sum of Rs.2,000/- against him so as to procure his presence. The roznama of 24/6/2013 reflects that the Court felt the necessity of issuing a bailable warrant, as

8 1997 Cr.L.J 1670,

the programme of the case had already been fixed, and on the next date, the panch witness had been called. *It appears that the complainant flared up because of the issuance of a bailable warrant against him.* He made an application to the trial Court on the next date casting aspersions on the trial Court for an action which was perfectly in accordance with law. In this application (Exhibit-8), he proclaimed himself to be an '*activist lawyer*' and '*making himself responsible for eradicating the corrupt practices committed by the public servants in the institutionalized public sector areas*'. It would be appropriate to reproduce certain parts of the said application.

> "I say that I am an Activist Lawyer and making myself responsible for eradicating the corrupt practices committed by the public servants in the institutionalized public sector areas and towards the said goal *I made an effort to clean up the judicial system as some of the court staffs are deeply involved into the corrupt practices* and thereby the above accused who was working as Chopdar in the Hon'ble High Court in the Court of Justice xxxxx (name

> omitted), above accused was caught red handed by accepting illegal bribe amount from me and therefore the above case was registered against him". (Emphasis supplied)

In the later paragraphs, the complainant expressed his anguish over the issuance of bailable warrant against him, and a bare reading of the application gives an impression that the complainant expected to be treated not as an ordinary witness, but as a highly privileged person by the trial Court. It would be appropriate to reproduce paragraph nos.8 and 9 of the said application here :

> "I say that now in view of the approach adopted by this Hon'ble Court as above to cause me mental stress while deposing before this Hon'ble Court which I am deposing *for the interest of general public* and due to such serious order of issuance of warrant against the complainant *the interest of public to expose corruption in public sector* is got seriously jeopardized and hence I am not in a position to depose my statement before this Hon'ble Court in the above matter.

I, therefore, request to this Hon'ble Court the above matter may be redirected for assignment before the office of Principal Judge.

For the interest of natural justice the complainant as above prays that :
a) The Bailable Warrant issued by this Hon'ble Court on 24/06/2013 against the complainant may be stayed or in alternatively may be cancelled if this Hon'ble Court may deem fit proper.
b) That for the interest of justice the above case may be redirect for assignment for hearing in the office of Ld. Principal Judge, City Civil and Sessions Court, Gr. Bombay.
(Emphasis supplied)

68 It is worth making a reference to the roznama of 25/6/2013. The learned Judge observed that the application (referred to earlier) had not been signed by the complainant though it had been filed. This is what the Court has observed in the roznama about the conduct of the complainant :

"He argue much and informed this court that, he has fixed appointment with Hon'ble Chief Justice, he also

submitted that this court has prosecuted prosecution witnesses and the rate of conviction is only 7% he being vigilant citizen, does not want to proceed with this matter before this Court.

The complainant try to pressurized this court by threating and not talking in proper manner.

Considering his submission this matter is adjd to 7.8.2013, for further instruction and steps." (Emphasis supplied)

Later, on the same day, the complainant submitted that he did not intend 'to raise the issues', and that he wanted to proceed with the matter. He, however, did not give evidence on that day though was present in the Court, and got the matter adjourned to 27/6/2013. The conduct of the complainant was undoubtedly such as to have a tendency to affect the normal, fair and objective assessment of the matter by the learned Special Judge. The mention of the 'low conviction rate' and referring to his appointment with the Hon'ble the Chief Justice was absolutely uncalled for, unjust and improper.

69 A perusal of the impugned judgment shows that the learned Special Judge, in her judgment referred to a number of decisions which were not cited by either of the parties. Though, principally, there cannot be any objection to refer to the judgments not cited by, or relied upon by parties – provided opportunity is given to the party affected by the ratio of the judgment to reply thereto – in the present case, the judgments relied upon by the learned Special Judge are totally irrelevant. The learned Special Judge cited the case of ***R.S. Nayak Vs. A.R. Antulay***[9] and reproduced a passage from the judgment in the said case which emphasizes the necessity of adopting a construction that would advance the object underlying the act i.e. to make effective provision for prevention of bribery, and corruption, and at any rate, not defeat it'. The impugned judgment does not show that any dispute or necessity regarding the construction of any particular provision in the Act, had arisen before the learned Special Judge. The observations made by their Lordships of the Supreme Court, which the learned Special Judge went on to reproduce in the impugned judgment, were in the context of the following question which had fallen for the consideration of their Lordships i.e. ***What is the relevant date with reference to which***

9 **1984(2) SCC 183,**

a valid sanction is a pre-requisite for the prosecution of a public servant for offences enumerated in Section 6 of the 1947 Act (now section 19 of the present P.C. Act) ? There was simply no occasion to reproduce the said observations. The learned Special Judge also referred to the decision of this Court in ***Dattatraya Krishnaji Joshi Vs. State of Maharashtra***[10] and quoted the following from the judgment.

> "There appears to be no such precedent and what has to be appreciated is that the making of the demand has to be a matter of understanding not between the accused and any third person but the person who demands and the person who proceeds to pay or who is pay."

In that case, the question that had arisen was whether the words 'as to what had happened to his work' as uttered by the accused, could be treated as evidence of demand of illegal gratification. This Court held that the demand need not be so crude and express such as "have you brought the amount, give it to me", and the observation reproduced above, were made in that context. In this

10 **1991 (2) BomCR 49,**

case, there was absolutely no occasion to consider whether any particular words used by the accused amounted to demand of illegal gratification or not.

70 The learned Special Judge also referred to four more judgments, reproducing passages therefrom which deal with certain general legal principles/propositions. The learned Special Judge felt the necessity of reproducing the observations made by the Superior Courts and the Apex Court, as a justification for ignoring the discrepancies and infirmities in the evidence, and still convicting an accused 'as a means to eradicate corruption'. *None of those observations can be understood to mean that 'even where there would be no satisfactory evidence, it is desirable to convict a person, as corruption is admittedly on increase; and convicting a person accused of an offence punishable under the P.C.Act, would help eradicating the corruption, whether or not, he was actually guilty of the alleged offences'. Such an approach was entirely unjustified and contrary to law.*

71 The appreciation of evidence as done by the learned Special Judge, and the conclusion arrived at by her, is not in accordance with law. This was a case where the prosecution case

had not been satisfactorily proved. The appellant was therefore, entitled to be acquitted.

72 The Appeal is allowed.

73 The impugned judgment and order is set aside.

74 The appellant is acquitted.

75 His bail bonds are discharged.

76 Fine, if paid, be refunded to him.

(ABHAY M. THIPSAY, J)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.