Maha Singh vs State (Delhi Administration(1) on 8 January, 1976

Equivalent citations: 1976 AIR 449, 1976 SCR (3) 119, AIR 1976 SUPREME COURT 449, (1976) 1 SCC 644, 1976 SCC(CRI) 135, 1976 SC CRI R 128, 1976 3 SCR 119, 1976 CRI APP R (SC) 94

Author: P.K. Goswami

Bench: P.K. Goswami, P.N. Shingal

PETITIONER:
MAHA SINGH

Vs.

RESPONDENT:
STATE (DELHI ADMINISTRATION(1)

DATE OF JUDGMENT08/01/1976

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
SHINGAL, P.N.

CITATION:
1976 AIR 449 1976 SCR (3) 119
1976 SCC (1) 644

ACT:
Criminal Procedure Code (Act V) 1898-Sec. 367 contents of judgment- Verdict of guilty-Duty of the Court to exercise caution.

Criminal Procedure Code (Act V) 1898-Sections 222, 223 and 225- When evidence is led to prove a charge and the accused is fully aware of the charge and made no mistake in taking a definite defence omission of a name in the charge is not "material prejudicial" to the accused -

Plea of defence in Prevention of Corruption Act cases- Plea of planting of incriminating object without the knowledge or acquiescence of the accused is valid.

"Participes criminis" -Whether an unwilling and a forced bribe given an accomplice-Indian Evidence Act (Act 1) 1872, S. 133.

Indian Evidence Act (Act 1) 1872- Sec. 3 read with s. 133 evidentiary value of a trap witness in a pre- arranged raid-Trap witness is neither an accomplice per se nor an interested witness-Appreciation of such evidence.

Criminal Procedure Code .(Act 5), 1,898-Sections 4, 161 and 162- Steps taken by the Inspector of the Anti-Corruption Department to detect the accused in a case under the Prevention of Corruption Act, 1947 is "investigation" within the meaning of s. 4) Sending complaint of the investigation for formal registration does not take away the character of "investigation".- Statement made by the accused in such an "investigation" admitting to have received the incriminating object is a statement under s. 161, Cr. P.C. and hence inadmissible under s. 162, Cr. P.C.

Indian Evidence Act (Act 1) 1872-Sec. 8 relevancy of the conduct of the accused in prosecution for offence of bribery under Prevention of Corruption Act.

HEADNOTE:

After recording a complaint dated 7-4-1969 by one "SDM" that the-accused appellant, a head constable, demanded a sum of Rs. 10/- for not putting up a challan on 8-4-1969 before the SDM, Delhi in a case pending against him, (the said sum being payable by 3.00 p.m. On 7-4-1969 and also a sum of Rs. 50/- For not challenging him in future, the Anti-Corruption Department arranged a raid to detect the accused, as his name was not known to the complainant. On a signal from the complainant, after the receipt of the G.C. Note of Rs. 10/ (the number of which was already noted by the Anti-Corruption Department by the accused, the raid party including the trap witnesses surrounded the accused, recovered the G.C. note of Rs. 10/- which tallied with the number already noted besides a further sum of Rs. 51/- and two challans referred to in the complaint of "SDM". The statement of the accused duly signed by him and witnessed by the trap witnesses and also a search memo duly signed by the accused and the trap witnesses, were produced as documentary evidence at the ", trial. The accused was charged under s, 161, I.P.C. read with s. 5(2)read with s. (5) (d) of the Prevention of Corruption Act, 1947, found guilty, convicted and sentenced to one year rigorous imprisonment besides fine. On appeal the High Court affirmed the conviction and the sentence.

Dismissing the appeal by special leave, the Court,

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HELD: (1) In a case under s. 161 I.P.C. and s. 5(2) read with s.(5)(d) of the Prevention of Corruption Act, 1947, where there was a clinching factor that a particular already marked currency note was recovered from the left side front pocket of the shirt of the accused that too immediately after its receipt from the complainant and which fact is corroborated by the seizure memo duly signed by the accused about the state of its recovery duly witnessed and also by 9-L390SCI/76

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the oral evidence, the defence story of the complainant giving a ten rupee note wrapped inside the "purchee" is absolutely false. When such a conclusive proot is found with regard to this part of the case, viz. "seizure of the currency note; deficiency of corroboration with regard to the negotiation of the accused with the complainant pales into insignificance. [126 A-F]

(2) When witnesses swear home through a two inch board and sometimes quantitatively the defence musters up a number of witnesses, the court has to be extremely cautious and careful to enter a verdict of guilty only if the complainant's version is supported by some clinching circumstance of such character and quality as may reasonably assure the judicial mind about the truth of the real position against the accused. [126 G-H]

(3) A defence plea of planting any incriminating object, in answer to a . charge, to be successful must be or at any rate should reasonably appear to have been made without the knowledge or acquiesence of the accused.

Ram Prakash Arora v. State of Punjab [1972] 3 S.C.C. 652, distinguished.

(4) When, in a trial against a head constable for not challaning, evidence was clearly led regarding the said challan, which had been handed over to the accused by the complainant along with the currency note, and the accused was fully aware of the charge, he had to meet and made no mistake in taking a defence, a particular mention of the challan against the complainant instead of Charan Dass in the charge, does not result in any "material prejudice" to the accused. [127 A-B]

(5) Where the complainant comes from a class of poor hawkers who some how eke out their living, unable to pay the demanded bribe for purchasing immunity from being challaned by the accused head constable, and out of desperation, takes recourse to public authorities against such illegal proposals he is an unwilling or forced bribe-giver. Such an unwilling or forced bribe-giver may not even be stagmatised as an accomplice in the strict sense of the term of "participes criminis". [127 D-F]

(6) There is no rule of law that even if a witness is otherwise reliable and independent his association in a pre-arranged raid about which he had become acquainted makes him an accomplice or a partisan witness. In the absence of anything to warrant a contrary conclusion, conviction is not untenable merely because it is based on the testimony of such a witness. Every witness of a raiding party cannot be dubbed as an accomplice per se or even as an interested witness in total absence of materials justifying such an inference. [128 A-13]

(7) In a case, where on a complaint made to the Inspector of the Anti-Corruption Department he recorded the same, arranged for the raid by noting each step taken, thereafter in a regular manner, the steps taken by him in

order to detect the accused while taking the bribe comes within the term "investigation" under s. 4 of the Criminal Procedure Code, 1898. The fact that he, had also later on forwarded the complaint for formal registration of the case at the police station having the jurisdiction did not do away with the character of the "investigation" already commenced, by the Inspector on recording the Complainant's statement disclosing a cognizable offence. [128 F-H]

Therefore, any statement made by the accused in answer to questions put by the Inspector is inadmissible under s. 162, Criminal Procedure Code and neither the prosecution nor the accused can take advantage of these answers. [129 A]

(8) For an offence under the Prevention of Corruption Act, 1947, the conduct of the accused would be relevant under s. 8 of the evidence Act, if his Immediate reactions to the illegal overture of the complainant or his action in inserting unwanted something in his pocket were revealed in the form of acts accompanied then and there or immediately thereafter by words or gestures reliably established. In the present case, there is no evidence to support an innocent Piece of conduct of the accused. [129 B-C]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 209 of 1971.

Appeal by special leave from the judgement and order dated the 19th January, 1971 of the Delhi High Court at New Delhi in Criminal Appeal No. 71 of 1970.

Frank Anthony, K. B. Rohtagi and V. K. Jain, for the appellant.

S. N. Anand and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by Goswami, J.-The complainant Shiv Darshan Nath, (PW 1) was an unlicensed hawker selling oranges and fruits in what is described as a 'chabba' around Novelty Cinema area in Delhi. The locality is within the jurisdiction of the Lahori Gate Police Station. C The accused Maha Singh was enrolled as a Constable in the Delhi Police in July 1957 and was promoted as Head Constable (Havaldar) in August 1963. He was posted to the Lahori Gate Police Station on November 21, 1967 and had since been serving there in that capacity until his suspension in connection with the present case.

During April 1969 the accused was deputed for prosecuting unauthorised squatters and persons indulging in petty offences within the area of the said Police Station. The accused in performance of these duties was required to and did maintain a petty offences Register and he had "to do pervi of these cases challenged by him in the court."

The complainant approached the Anti-Corruption Inspector Delhi, Bal Krishan (PW 7) on April 7, 1969 at about 11.00 a.m. and made a complaint to him. This complaint was recorded by the Inspector (PW1/A). The material allegations disclosed therein were:-

> "…. Now, for some days a new Havaldar of P.S. Lahori Gate, has been coming there for challaning under , section 33, Bombay Police Act, and he has been harassing people unlawfully. He has challaned me also a number of times. He drew up one challan (against me) on 3-4-69, which stands fixed for hearing on 8-4-69, in the Court of Shri O. P. Yadav, SDM. This Havaldar says that he will not put up this challan in case I pay him Rs. 10/-, and that in case I give him Rs. 50/- p.m. I will not be challaned in future. I am poor man and unable to meet his said desire. On 5-4-69, the Havaldar aforesaid came to me, and said that he would come again on 7-5-69 about 3.00 p.m. and that in case rupees ten were not paid, the challan would be put in Court. Since the Havaldar of Lahori Gate Police Station has demanded Rs. 10/- from me as bribe, I have come for report. Suitable action may be taken.. ".

The words "against me" in parentheses in the above extract are not to be found in the original statement recorded in the Urdu language. his has to be mentioned as Mr. Frank Anthony appearing on behalf of the accused strenuously submitted that since there had been no challan against the complainant the entire edifice of the case was destroyed. We felt some doubt about the translation in the paper book and, therefore, looked into the original document and we are satisfied that the words "against me"

> are not to be found therein.
>
> Now following the sequence, the Inspector decided to arrange a raid and summoned two witnesses from the Deputy Commissioner's J office (PWs 3 and 4) and recorded in a raid memo the number of the d only ten rupee note (P-1) which the complainant had with him. The Inspector proceeded to state that-
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> "The said G.C. note was later returned to the complainant with a direction to pass it on to the accused within the sight of the panch witnesses having such talk with the accused as to indicate the said G.C. note had been passed on to the accused by way of bribe. Both the panch witnesses were also instructed to remain close to the complainant and the accused, hear their talk, see the passing of the bribe money and on ascertaining that the same had been passed to the accused by way of bribe, Ved Prakash was further instructed to give the agreed signal".

The Inspector and the party with the complainant were in the area of the Novelty Cinema from about 2.10 p.m. The accused was not to be seen in the area till 5.45 p.m. when, however, he was located in plain clothes in a three-wheeler scooter sitting in the rear seat with Babu Ram (P.W. 6) a constable of the Lahori Gate Police Station on duty, in uniform.

In addition to the complainant, Sohan Singh (PW 3) stated that " .... somebody came and called the complainant. He took him along with him." This has to be particularly noted as the High Court put great reliance upon this piece of evidence of PW 3 as will be noticed later.

The complainant approaching the accused sat in the driver's seat inside the scooter. According to the complainant-

> "The accused then asked me that if I had to get the challan cancelled, I should pay Rs. 10/- and that if further challan were not desired, a sum of Rs. 50/- on my behalf and on behalf of my brother should be paid to him. I handed over Rs. 10/- G.C. note P-l and the challan P-2 to the accused. The accused put these in his front pocket of r the shirt."

As arranged the signal was given to the Inspector by PW 4 (Ved Parkash) and the Inspector and the party, who were at an eye-shot, reached the place immediately. The Inspector recovered the G.C. note P-1 from the pocket of the accused's shirt and comparing the - number of the G.C. note found it to tally with the one already recorded by him. On further search of the person of the accused a sum or Rs. Sl/- alongwith carbon copies of two challans were also recovered. According to the Inspector when challenged by him the accused "replied that he had taken a ten rupee G.C. note which he had put in A the front pocket of his shirt. On his search one G.C. note of Rs. 10/- was recovered from the front pocket of his shirt and fater comparing its number with the raid report which was found to tally and it was taken into possession vide memo. PW l/C. Besides, the two challans P-2 and P-3 and a sum of Rs. 51/- were also recovered and were taken into possession vide memo PW l/D".

Although PWs 3 and 4 were requisitioned for help in the arranged raid, as stated above, they did not come upto full expectations. According to PW3 "I heard no talk between the complainant and the accused, nor could I see the passing of the money". He stated that he was standing at quite a distance whereas Ved Parkash was nearer to the scooter". He also stated that on the accused being challenged by the Inspector "if he had taken the bribe money", the accused replied "that he had taken one challan 'purchee' P-2 and one G.C. note P-l of Rs. 10/-" and "on being searched G.C. note Ex. P-l was recovered from the front pocket of the shirt of the accused which he was wearing." He further stated that "from the personal search of the accused 51 currency notes and two challan purchees P-2 and P-3 were also recovered and the same were taken into possession vide memo PW1/D".

P.W. 4, on the other hand, stated that-

> "the complainant handed over a ten rupee G.C. note major portion of which was wrapped in a white paper to the accused Maha Singh present in court and told the accused that my challan may be got corrected (mera challan theek kara dena). The accused took the G.C. note with the white paper and put the same in his front shirt pocket. I gave the signal. Inspector Bal Krishan reached the spot. He disclosed his identity and secured the accused. I told the Inspector that G.C. note has been put by the accused in his shirt pocket. The same was recovered by Inspector Bal Krishan

vide memo PW 1/C. Two challans P-2 and p P-3 were also recovered besides Rs. 51/- from the accused vide memo PW 1/D".

P.W. 4, however, stated that "the accused denied having taken any bribe when challenged by Inspector Bal Krishan."

It may be mentioned here that P-2 is the challan relating to the complainant's brother, Charan Dass. It appears from P-2 that the case against Charan Dass was fixed in the court of Shri O. P. Yadav, Sub-Divisional Magistrate, on April 8, 1969. P-3 related to Mangal Sain (DW 5) showing that he was to attend his case in the same court on the same date, April 8, 1969. Both the cases were under section 33/13/131 Bombay Police Act (obstruction of public passage) and P-2 and P-3 are personal recognizance bonds.

The case was investigated by the Anti-Corruption Department and the charge-sheet was submitted after obtaining sanction from the Superintendent of Police, North District, Delhi (PW 5).

The accused stands charged under section 161 I.P.C. and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act (briefly the Act). His defence is that the case was concocted against him by the complainant and the money was planted in his pocket as he "had casually told him also not to obstruct the public way once earlier." He further stated in his examination under section 342, Code of Criminal Procedure "in fact the complainant hastened to put something in the challan in my pocket against my wishes and I was trying to know what it was about when I was surrounded by the Inspector. I told the Inspector also that I had not done anything and might not be harassed unnecessarily".

From the above, the version of the prosecution and that of the accused are clear. While according to the prosecution the accused had earlier negotiated for a bribe and later on accepted the same from the complainant, according to the accused he had made no negotiation with the complainant nor did he voluntarily accept any money from the complainant. On the other hand, the complainant planted the currency note of Rs. 10/- in to his pocket against his wishes when he was all of a sudden surrounded by the Inspector and the raiding party.

The trial court accepted the prosecution case and convicted the accused under both the sections and sentenced him to rigorous imprisonment for one year on both the counts running concurrently and to a fine of Rs. 100/- in addition, in default one month's imprisonment. The High Court affirmed the conviction and the sentence. Hence this appeal by special leave.

Mr. Frank Anthony submitted that since the prosecution failed to establish that there was any case instituted by the accused against the complainant which might furnish an occasion for offering a bribe the entire story of the complainant should stand discredited. He also submitted that the complainant's brother, Charan Dass, was not even examined by the police nor in the court. Mangal Sain was not examined by the prosecution but had been examined by the accused. He further emphasised that the story of the complainant with regard to the negotiation for the bribe stood on his solitary uncorroborated testimony and he was not such an absolutely independent witness whose

testimony was worthy of credit for the purpose of basing a conviction. Counsel further emphasised that while the prosecution sought to prove that the accused voluntarily accepted the bribe and himself put the currency note in his pocket, this story did not find corroboration from any independent source.

PW 3, of course, does not state about the passing of the money nor about any conversation. P.W. 4, however, supported the complaint in his examination-in-chief although he added that "the accused denied having taken any bribe when challenged by Inspector Bal Krishan". In the course of his cross-examination, however, he stated that "he did not hear the talk between the complainant and the accused." Constable Babu Ram (PW 6), who was sitting with the accused in the scooter, deposed that his attention was more towards the road than towards the complainant and the accused. He completely threw overboard the complainant's version and stated "I saw the complainant Shiv Darshan Nath putting a purchee with a note in the pocket of the accused." He further stated that "I did not hear the accused telling the Inspector that he had taken no bribe and should not be harassed."

The High Court accepted the version of the complainant and found that the prosecution case stood established beyond any doubt. The learned Judge observed:

> "To me it appears an admission that the appellant allow ed PW 1 to put something in his pocket. If that was against his wishes he should have thrown it out".

The High Court also accepted the testimony of PW 3 corroborating the complainant in that a person had called PW 1 to the scooter where the accused was sitting. From this the High Court concluded-

> "Why at all was PW 1 sent for if there were no prior negotiations and if the accused was not sure that in fulfillment thereof he will be receiving the money from PW 1".

Nothing has been elicited against PW 3 as to why he should be disbelieved. He has not gone to the entire length of supporting every detail of the prosecution case. It is, therefore, not possible to hold that the High Court was absolutely wrong in accepting his statement that the complainant had been sent for by the accused to the scooter through some persons who could not be later identified for the purpose of examination in court. It was not possible in such a situation to recognise and locate the messenger. E The trial court does not seem to have relied upon the evidence of PW 4. From the evidence of the defence witnesses (DWs 1, 2, 3, 4 and 7) it is clear that the witness is not an independent person, nor a very reliable one. There was a case against him under section 161 IPC and section 5(2) of the Act. His services were terminated for massing of certain records although he was later on re-employed in July 1968. He was a raid witness for the police in several anti- corruption cases. The High Court also has not relied upon his evidence.

In view of the defence of the accused which is supported by PW 4, PW6, DW5 and DW6 with regard to the fact of the complainant putting the currency note wrapped inside 'purchee' P-2 into the pocket of the accused, the recovery of the note by the Inspector from the , accused's pocket is absolutely inconsequential says Mr. Frank Anthony. There are, however, more things than meet the eye.

There were two persons, DW 5, Mangal Sain and Charan Dass (complainant's brother), who has been sent up by the accused on April 3, 1969, under the Bombay Police Act for prosecution in Court. It is understandable that while performing these duties policeman may clash with H the shopkeepers. There is also equal possibility of patching up with concerned offenders. In this situation it is extremely important for the court to find by unerring and cogent evidence whether the accused had committed the offence.

In our view there is a clinching factor. If the accused's version is true, the recovery of the note would have been inside 'purchee' P-2 since the accused and his four supporting witnesses had deposed to that effect. If this version is even prima facie reliable, the accused will be entitled to the benefit of doubt. We are however, unable to hold so. The seizure memo PW l/C about `which there has been no cross-examination shows that a currency note of Rs. 10/- bearing number C-67-090721 was recovered from the left side front pocket of the shirt worn by the accused. There is nothing to show that this currency not was recovered from his pocket being wrapped inside the particular 'Purchee' or for the matter of that inside "another white paper". This fact of recovery is proved by the Police Inspector as well as by PW3 and the complainant who had signed the memo. Even Ved Prakash (PW 4) had signed this memo. Similarly, we have the seizure memo. PW l/d which is prepared by the Inspector and signed by the complainant and PWs 3 and 4. This seizure memo shows that the currency notes of Rs. 51/-, a carbon copy of challan of Charan Dass (P-2) and another carbon copy of challan of Mangal Sain (P-3) admittedly received by the accused a short while ago were recovered from the left side front pocket of the shirt.

From the above it is clear that the defence story of the complainant giving a ten rupee note wrapped inside the 'purchee' relating to Charan Dass is absolutely false. If, as stated by the accused, the Inspector arrived immediately after the money was put inside his pocket, namely, wrapped inside a 'purchee', the seizure memo (PW 1/C) would have shown the recovery in that state. We do not find it to be so. The evidence of the complainant is corroborated by the Inspector and PW 3 and also corroborated by the documentary evidence, PW 1/c, coupled with the manner of the recovery of the note. When we find such a conclusive proof with regard to this part of the case, deficiency of evidence of corroboration with regard to the negotiation of the accused with the complainant pales into insignificance.

Further, one of the witnesses, who deposed with regard to the recovery of the note as per PW l/C was cross-examined to the effect that the note was recovered wrapped in the 'purchee' (P-2). Even the evidence of PW4, PW 6, DW5, and DW 6 called in aid to support the accused's plea of planting the currency notes, is belied by the lone recovery of the marked currency note of Rs. 10/- by itself detached from the 'purchee' in which it was said to be more or less concealed from external view.' When witness swear home through a two inch board and sometimes quantitatively the defence musters up a number of witnesses, the court has to be extremely cautious and careful to enter a verdict of guilty only if the complainant's version is supported by some clinching circumstance of such character and quality as may reasonably assure the judicial mind about the truth of the real position against the accused. This we have been able to find in this case as noted above.

It was also argued at the stage that the charge being with reference A to favour shown to the complainant in person, with regard to his own case, the accused was entitled to an acquittal as the case in court was that it related to his brother Charan Dass. We do not think that a particular mention of the challan against the complainant instead of against Charan Dass, in the charge, has resulted in any material prejudice to the accused in the present trial. Evidence was clearly led regarding the challan against Charan Dass and it was his 'purchee' which had been handed over to the accused by the complainant alongwith the currency note. The accused was fully aware of the charge he had to meet and made no mistake in taking a definite defence although, unfortunately, the same could not be established. even the grievance of non-examination of Charan Dass as a prosecution witness in presence of admitted 'purchee' is not of any consequence.

A defence plea of planting of any incriminating object in answer to a charge, to be successful must be or, at any rate, should reasonably appear to have been, made without the knowledge or acquiescence of the accused. The case in hand is not such a case. The learned counsel strenuously relied upon Ram Prakash Arora v. State of Punjab(1) where notwithstanding recovery of the two marked ten rupee currency notes the accused was acquitted in a bribery charge. But in that case recovery of the currency notes which was denied by the accused, assumed great importance and the fact that the same could not be established by reliable and independent search witnesses was considered by this Court as one of the serious infirmities.

The class from which the complainant comes is one of poor hawkers who somehow eke out their living. Nothing is known whether they just deliberately avoid payment of licence fees for hawking, which may not even be exorbitant, or they avoid being tucked to a particular place being subject to a licence in absence of which they may squat at any place of their choice and convenience. It is, however, manifest that such encroachment of public place will be a continuing offence and, if repeated, will be committed every day afresh. In that view a demand of Rs. 10/- for clearing one single day's offence and Rs. 50/- for purchasing immunity for the whole month may drive such a person to desperation prompting recourse to public authorities against such illegal proposals. In this view of the matter, an unwilling or forced bribe-giver, as in the case at hand, may not even be stigmatised as an accomplice in the strict sense of the term of particeps criminis.

Even so we will adopt a cautious line in following the dictate of prudence to seek for some material corroboration even in this case to assure the judicial mind about the truthfulness of the crux of the matter in respect of the offence charged and of the nexus of the crime with the criminal.

The matter will be different when a person himself abets the offences of bribery under section 161 and section 165 IPC which is an independent offence under section 165A equivalent earlier to section 161 read with section 109 or section 116 IPC.

(1) [1972] 3 S.C.C.. 652.

This also leads to the question whether all witnesses, who are cal led upon to assist detection of a bribery case by laying a trap, should be considered unreliable as accomplices or at any rate partisan witnesses. There is no rule of law that even if a witness is otherwise reliable and independent, his

association in a pre-arranged raid about which he has become acquainted, makes him an accomplice of a partisan witness. In absence of anything to. warrant a contrary conclusion, conviction in not untenable merely because it is based on the testimony of such a witness.

We are also not prepared to dub every witness of a raiding party to be an accomplice per se or even as an interested witness in total absence of materials justifying such an inference. While PW 4 will be highly partisan witness in this case in his own interest to oblige the police, nothing was shown against PW 3. P.W. 7, the Inspector, can not be considered as an absolutely partisan witness because he is a Police officer who took immediate action on the complaint. Nothing unusual is suggested against him. We have no hesitation in accepting the testimony of PW 3 and PW 7 on their own. They do corroborate the complainant.

As demonstrated above, it is not a case where conviction of the accused by the High Court is based only on the uncorroborated testimony of the bribe-giver.

Even three or four days' time taken by the complainant after the accused's demand of the bribe for the purpose of reporting the matter to the Anti-Corruption Department is not such as to efface the offence when it was actually committed on the very day of the report which was faithfully recorded by the Inspector then and there without loss r r of time.

A question arose whether the statement of the accused before the Inspector admitting to have received the bribe was admissible in evidence. It is apparent from the evidence of the Inspector that these cases are investigated by the Anti-Corruption Department which carries on its work on its own. On a complaint made to the Inspector he recorded the same and arranged the raid by noting each step taken thereafter in a regular manner. What has been done by the Inspector in this case in order to detect the accused while taking the bribe comes within the term 'investigation' under section 4(1) of the . Code of Criminal Procedure, 1898. The moment the Inspector had recorded the complaint with a view to take action to track the offended whose name was not even known at that stage, and in this case proceeded to achieve the object, visited the locality, questioned the accused, searched his person, seized the note and other documents, turns the entire process into an investigation under the Code. Indeed the Inspector himself stated that he examined the witnesses under section 161 Cr. P.C. and completed the investigation. The fact that he had also later on forwarded the complaint for formal registration of the case at Lahori Gate Police Station does not do`away with the character of the investigation already commenced by the Inspector On recording the complainant's statement disclosing a cognizable offence.

Therefore, any statement made by the accused in answer to questions put by the Inspector is inadmissible under section 162 Cr. P.C. and neither the prosecution nor the accused can take advantage of these answers. These are, therefore, excluded from consideration in this case by us.

But all the same the conduct of the accused would be relevant under section 8 of the Evidence Act if his immediate reactions lo the illegal overture of the complainant or his action in inserting unwanted something in his pocket were revealed in the form of acts accompanied then and there or immediately thereafter by words or gestures reliably established. There is no evidence to support an

innocent piece of conduct. In the entire circumstances of the case we agree with the High Court that it was not against the wishes of the accused that the money passed from the hands of the complainant into his pocket.

The High Court and the trial court cannot, therefore, be said to have made any gross error of law in appreciating the evidence and coming to the conclusion that the charges against the accused were fully established.

In the result the appeal fails and is dismissed. The accused shall surrender to his bail to serve the sentence.

S.R. Appeal dismissed.