

**Shri A.D. Shah, learned Counsel appearing for the appellant, has taken me through the versions of three main prosecution witnesses examined by the prosecution, whose versions have been found reliable by the learned trial Judge i.e. PW-1-complainant, Ex. 6; PW-2 Panch Witness Ex. 24; and PW-4-Vinod Vyas, Investigating Officer and Police Inspector of Anti-Corruption Bureau (hereinafter referred to as 'the ACB'), Ex. 35. Of course the learned trial Judge has also discussed the version of PW-3-Mayur A. Shah Ex. 29. According to Shri A.D. Shah, the learned trial Judge has not considered the very important aspects and other facts relevant to such aspects at all which have come on record during the course of cross-examination of all the aforesaid four prosecution witnesses. The material contradictions have not been considered either important or relevant to the probabilities placed by the defence. In the same way, the conflict in the evidence of the complainant and the panch No. 1 and the infirmities in the evidence to prove demand in a bribery case also have not been considered in its true and legal perspective. According to Shri A.D. Shah, the finding of guilt recorded by the learned trial Judge is based on erroneous and illegal appreciation of evidence and, therefore, the judgment and order of conviction and sentence is not sustainable in the eye of law. While developing his arguments Shri Shah has also read over to the Court, the complaint Ex. 8 and one other vital document i.e. panchnama Ex. 25. In the present case, the appellant has examined one witness Mohamadbhai Kasambhai Mansuri as defence witness vide Ex. 39 and he has proved and tendered one document in evidence at Ex. 40 and according to Shri Shah, this document along with signatures on the document dated 16th June 1988 is important from various angles because the appellant is supposed to show the probability of his innocence. The material conflict in the evidence of the complainant and panch witness needs consideration because the prosecution, in a bribery case, is supposed to lead full proof evidence and our Courts have always expected the most transparent evidence in a bribery case. The prosecution was supposed to prove beyond reasonable doubt the initial demand of illegal gratification made by the appellant as the same has been pleaded specifically with cogent and reliable evidence and so also the demand, if any made immediately prior to the acceptance of the bribe amount from the complainant. If it is the case of the prosecution that prior to or during acceptance of the bribe amount, the appellant has conversed with the complainant in any manner in presence of shadow witness i.e. panch No. 1, the prosecution should bring such evidence and if the evidence of this part of story of the prosecution is found hazy or doubtful then the case as to the demand of illegal gratification should not be believed, is the trend of various decisions of this Court as well as the Apex Court. The prosecution is also supposed to prove the acceptance of the bribe amount and it also should prove that the amount tendered by the complainant**

**to the appellant has been witnessed by the panch No. 1, if pleaded specifically. The bribe amount was given against the demand or any consequences thereof; and the same was accepted as Page 1277 illegal gratification. It is settled legal position that mere acceptance of amount or mere recovery of the muddamal amount from the appellant is not sufficient to link the appellant with the crime.**