

Kanu Ambu Vish vs The State Of Maharashtra on 1 February, 1971

Equivalent citations: AIR1971SC2256, 1971CRILJ1547, (1971)1SCC503, AIR 1971 SUPREME COURT 2256

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Bench: S.M. Sikri, P. Jaganmohan Reddy, I.D. Dua

JUDGMENT

P. Jaganmohan Reddy, J.

1. This appeal is by Special Leave against the Judgment of the Bombay High Court which reversed the order of acquittal of the Appellant passed by the Special Judge, Thana and convicted him of an offence under Section 161 I.P.C. as also under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act for demanding and accepting illegal gratification of Rupees 25/-.

2. The Complainant Bommayya Bondayya Dhanpilley, P.W. 1 was running a Hotel at Bhiwandi, where he would prepare and serve customers meals and tea for which a Hotel licence was obtained by him under the Public Entertainment Rules made under the Bombay Police Act. The licence was current for the year January 1, 1965 to December 31, 1965. According to P.W. 1 he entered into an agreement with his friend one Sidhu Korga Shetty P.W. 10 on the 18th January, 1965 Ex. 9 under which P.W. 10 agreed to take the Hotel on rent for 11 months from 11-1-65 at Rs. 100/-per month and to pay an advance of Rs. 1,000/-. It also appears that under Rule 5 of the Public Entertainment Rules a licence granted under Rule 3 was not transferable but was for the benefit only of the person to whom it was granted, so that even on the death of such person, it was deemed to have been revoked at once. Further under Rule 8 no person keeping a place of public entertainment shall be absent without the previous permission of the District Magistrate and no such person shall at any time permit any other person to act for Mm in the management of such place without the like permission similarly endorsed.

3. The case of the prosecution is that on 17-1-65 the Appellant who in the beginning of 1965 was working as Head Constable at Bhiwandi Police Station visited the Complainant's Hotel at about 6 p.m. where he found the Complainant at the Galla and Shetty standing by his side. The Appellant enquired whether Shetty's name was shown in the licence. The complainant then told the Appellant that Shetty was his friend so that he helps him in the Hotel affairs. The Appellant however, was not satisfied with this explanation and told the Complainant that he would file a case because Shetty was working as a Manager at the Galla though his name was not shown in the licence. It is further the

case of the prosecution that after some discussion the Appellant said that if he would pay Rs. 30/-per month until the name of Shetty was entered in the licence, he would be satisfied. The Complainant pleaded that his business was not such as to permit him to pay the amount demanded. On hearing this the Appellant went away. The next day P.W. 1 and P.W. 10 had gone to the Mamlatdar's office, gave an application for Sugar and were returning when the Appellant met them. He called the Complainant and informed him that he had filed a case against him and that he the Complainant should deposit Rs. 5/-as security for his appearance. Though at first the complainant pleaded that he had no money he, however, paid this amount and obtained a receipt in the name of Shetty. On 6-2-65 at about 4 p.m. P.W. 1 met the Appellant at Kalyan Naka when he was told by the Appellant that another case would be filed against him and his licence would be cancelled. P.W. 1 said that he was a poor man and could not pay so much but the Appellant insisted that Rs. 30/-should be paid. However the demand was reduced to Rs. 25/-p.m. which P.W. 1 promised to pay the next day. When the Appellant enquired when he should come to collect the money P.W. 1 replied that he should come on the 8th either in the morning or in the evening and the amount would be paid to him in the shop, after which they parted. P.W. 1 thereafter decided to inform the Anti-corruption authorities at Thana; so he came by Bus on 7-2-65 and narrated the incident to the Anti-corruption Officer who recorded his First Information Report as per Ex. 10. The Complainant P.W. 1 was asked to come the next morning and after he had come there as directed at 8 a.m. the Complainant narrated to the two Panchas, Harishchandra Katkar P.W. 3 and Pralhad Vishnu Patil P.W. 5 about the incident. He was then searched after which he produced 2 notes of Rs. 10/-and one note of Rs. 5/-before them, and a demonstration was given under ultra violet light before the anthracene powder was smeared and after. It appears that this anthracene powder glows a bluish colour under an ultra violet light. A Panchnama was prepared of what transpired. All the members of the raiding party washed their hands. After telling the Complainant that if the Appellant demanded the amount, it should be given and if he accepted the amount the Complainant was to inform the Anti-Corruption Officers in respect of this, the raiding party went to Bhiwandi. On reaching Bhiwandi the Complainant along with the two Panchas, P.W. 3 and P.W. 5 went ahead and sat in his Hotel, while the other members of the raiding party went inside the house of a relative of the Complainant. It is alleged that the Complainant and the two Panchas sat in the Hotel from 10 a.m. till 5 p.m. when the Appellant came to the Hotel, and sat there. The Appellant then asked the complainant if he had given the application for getting the name of P.W. 10 added in the licence to which the Complainant replied that he had. The Appellant then told the Complainant that he would be getting the application and said that when there is work for getting a licence people approach him and when the licence is given nobody cares or approaches the Police Officers. On his demanding the bribe of Rs. 25/-the Complainant took the notes and wanted to give to Appellant but the Appellant put forward an envelope which he was holding and told the complainant that he should put the amount in it. Accordingly the Complainant put inside Rs. 25/-through the mouth of the envelope which was opened by the Appellant but it appears that the upper portion of the notes were getting out so the Appellant who was holding the envelope in his right hand tapped them inside the envelope with his left hand, after which he kept the envelope on the table, took out his uniform cap with the left hand and put it on the envelope. It is claimed by P.W. 3 and P.W. 5 that they had seen everything that had transpired between the Appellant and the Complainant. Immediately after the Appellant kept his cap on, the envelope the Complainant went out and called the Anti-corruption Officers informing them that the Appellant had demanded the money and he had paid the amount

to him. The members of the raiding party led by P. S. I. Parab P.W. 12 then came there and it is said that the hands of the Appellant were examined under the ultra violet light when a thin line of white powder was seen on the three fore-fingers of the left hand of the Appellant. When the envelope was searched it contained Rs. 25/-, two ten Rupee Notes and one of Five Rupee note, which when examined showed anthracene powder. The envelope was examined and it also showed evidence of anthracene powder but when the cap of the Appellant was examined no powder was found on it. The Complainant P.W. 1's hands were also examined and it was found that there was powder on his right hand and also on his hip pocket. Panchanamas were drawn up in respect of these matters and other formalities completed such as the taking of the statements from Bhondu Bhiku Aire P. W. 11 who was present there and who was asked to write it in his own hand which he did. Supplementary statements also were taken from P.W. 1 and P.W. 5 by about 7.15 p.m. while other statements were completed round about 9.30 p.m. after which the members of the raiding party returned to Thana and there found that the bottle containing the Anthracene powder with the seal was in tact. The statement of Panch Katkar P.W. 3 was recorded that night while that of Panch Patil P.W. 5 was recorded the next day and of the Head Constable Tukaram Jangam and the Clerk, Lax-man Rokade on 15-2-65.

4. The Appellant denied the story of the prosecution and according to him he was falsely implicated by the Complainant P.W. 1 and P.W. 5 and their common friend Shiddu Korga Shetty and Pappa Shetty all of whom have enmity with him. The Appellant's version is that on 17-1-65 while he was patrolling in Section 1 from 4 p.m. to 8 p.m. he went to P.W. 1's Hotel to check up. At that time he found Shetty P.W. 10 at Galla but P.W. 1 was absent. When Appellant asked and obtained from Shetty the licence with a view to verifying whether Shetty's name was there in the licence he found that Shetty's name was not written in it as the Manager of the Hotel. The Appellant asked Shetty to accompany him to the Police Station as a case has to be filed against him but Shetty said that as there was none else to manage the Hotel he would come next morning. A note to this effect was made by the Appellant in his diary. On the next day i.e. 18-1-65 at 2 P. M. Shetty came to the Police Station, the Appellant prepared the Report, as per Ex. 39 and he produced Shetty before the Thana Amaldar Tukaram Jangam P.W. 9 who took Rs. 5/- as security for Shetty's presence at the Police Station for which a receipt Ex. 41 was also issued in the name of Shetty. Orders were also given to the Appellant as per Ex. 39A by the Thana Amaldar, who required him to fill a form which was complied with on the same day. The Appellant has further stated that on 8-2-65 roundabout 4.30 and 4.45 p.m. when the Appellant came to the Hotel of the Complainant who was at the Galla asked him in Marathi to come in whereupon the Appellant went in, and was then requested to take tea but the Appellant refused and told him that he wanted water. He placed the envelope Ex. 11 which contained some arrest warrants and other official papers on the table and kept his cap over it and came out to wash his face. When he was washing his face he saw constable Aire, who told him that he wanted to take tea and went in and sat on the chair. The Appellant also went and sat on the chair by his side. In the meantime the Complainant went outside and P. S. I. Parab and 2 Panchas and other members of the raiding party came in. Parab caught hold of the Appellant by his hand and told him that he has accepted the money and would see his hands. Parab then saw the hands of the Appellant under ultra violet light but there was no powder on his hands and fingers nor was there any powder on his clothes or on any part of his body. Parab searched the Appellant but no bribe amount was found on him, he then said that the bribe amount is in the envelope but the Appellant

said that he knew nothing about it. He was then asked to sit outside the Hotel when Parab started preparing the Panchnama inside the Hotel. Statement of the Appellant was then recorded and a copy of the Panchnama was given to him at 9 p.m. The Appellant also says that the statement of Aire was not recorded by Parab in the Appellant's presence. However, he took Aire with him. According to the Appellant one Waman Kashinath had given an application against Papa Shetty and when the Appellant was investigating, he was asked by Complainant P.W. 1 and Sidhu Korga Shetty P.W. 10 to give a report in favour of Papa Shetty but he told them that he would write the true facts. After making enquiry the appellant gave report against Papa Shetty as per Ex. 51. In view of this Report both P.W. 1 and P.W. 10 were against him. Because of this also he had filed a case against Shetty P.W. 10 and so they became inimical to him and have concocted a false case against him through Anti-corruption Department. It is further alleged that the Complainant took advantage of the Appellant going out to wash his face outside the hotel, trapped and planted the currency notes in the envelope.

5. The Special Judge held that the story told by the Complainant was not established that while one of the Panchas P.W. 3 said there was no powder on the Appellant's hands, the other Panch P.W. 5 could not be relied upon and that there was no evidence of anthracene powder on the cap of the Appellant which he removed by his left hand with which he is said to have tapped the protruding notes inside the envelope. After considering these and other matters alleged against the Appellant in detail he was of the view that prosecution had not established that the Appellant demanded Rs. 25/-or accepted it and consequently acquitted him. Against this acquittal the State appealed to the High Court which as we have stated earlier reversed and set aside the order of the Special Judge and sentenced him to Rigorous Imprisonment for one year and a fine of Rs. 200/-and in default a further term of rigorous imprisonment for 3 months. The High Court in its judgment while recognising that Panch Harishchandra P.W. 3 has not supported the case of the prosecution thought that the Sessions Judge did not give a finding as to which of the two Panchas has to be believed in the light of the Panchnama, relied on the conversation which is alleged to have taken place between Appellant and Complainant on 6th February and also on the evidence of Panch Patil, Police Constable Aire and the Examination-in-chief of Panch Harishchandra that anthracene powder was found on the hands of the Appellant.

6. The learned Advocate for the Appellant submits that the High Court was in error in holding that the thin line said to have been found on Appellant's left hand fingers was a line of anthracene because none of the witnesses who deposed before the Special Judge ever said that there was a glow of blue light or even a glow of light. He further submits that no proper consideration was given to another important fact namely that according to the Complainant the Appellant had removed his cap with the left hand with which he had tapped the protruding notes inside the envelope which hand is supposed to have had a thin streak of anthracene powder. The learned Advocate therefore contends that if the streak of thin powder on the fingers was anthracene powder then when the Appellant removed the cap and placed it on the envelope in which the bribe money was kept then the cap would have shown evidence of anthracene powder on it The Panchnama Ex. 24 as well as the evidence of P. S. I. Parab clearly shows that though the cap was examined no anthracene powder was noticed. Apart from these 2 infirmities in the evidence of the Complainant P.W. 1 and the other witnesses bristles with contradiction and ought not to be relied upon to convict the Appellant. Even

on the probabilities of the case the learned Advocate submits that there was no reason for the Complainant to agree to pay a bribe or for the Appellant to demand a bribe because according to the case of the prosecution the Appellant had on the 17th January 1965 itself when he found that Shetty P.W. 10 did not have permission to manage the Hotel endorsed on the licence filed a complaint against him and on the 18th he had even made him deposit Rs. 5/- as security for his appearance. The meeting said to have taken place on 6-2-65 between the Appellant and the Complainant at which he is alleged to have demanded a bribe is also improbable because by that time namely on 1-2-65 itself P.W. 1 had filed an application along with Challan, for permission for entering the name of Shetty in the licence as the Manager of his Hotel. In these circumstances the learned Advocate says that there was no occasion for demanding Rupees 30/- per month as bribe or for the Complainant to agree to pay him Rs. 25/- p.m. At the most the Appellant could only favour the Complainant by giving a favourable report in which case the complainant would get the permission to allow P.W. 10 to act as a Manager endorsed on the licence which is all that was required to conform to the Rules. If so it is difficult to understand how anyone could ask for a monthly remuneration or would have accepted to pay it. It would be possible to comprehend a lumpsum bribe being asked in a situation of that nature. The Appellant's version, it is submitted is more probable and that the Complainant along with his friend had concocted a case against him because of enmity with him.

7. The learned Advocate for the Respondents on the other hand says that the approach of the Sessions Judge was erroneous as he has not taken into consideration the evidence of the Complainant, P. S. I. Parab and Aire and has merely taken into account what was stated by the Panch witnesses to disbelieve the prosecution case. Secondly he contends that the thin streak of powder was anthracene powder as according to him the witnesses had spoken to having seen a white line which could only be seen in ultra violet light, if it was anthracene powder and not any other. Thirdly the Appellant's case itself shows that the prosecution version is "probable and in fact is established because the Appellant says that when he went to wash his face he saw Aire coming in but no question was asked about the Appellant washing his face. On the other hand Aire says when he went in he saw Appellant sitting in the Hotel on a chair and he went and sat by his side in a chair. The learned Advocate therefore submits that the High Court was justified on the evidence in disagreeing with the conclusion arrived at by the Sessions Judge who acquitted the Appellant.

8. It appears to us that one important and salient piece of evidence has not been given due weight nor even considered by the High Court namely that according to the evidence of the Complainant P.W. 1 the Appellant had taken off his cap by the very same hand with which he had tapped the notes namely by the left hand which is said to have contained a thin line of anthracene on the finger tips. If so it is impossible not to detect anthracene on the cap. There is no way in which you could hold the cap with the left hand without any of the fingers of that hand coming into contact with the cap. The Appellant is entitled to complain that this very relevant and crucial evidence would have taken note of in considering his defence. We think there is force in this contention. While, the High Court did refer to the fact that the presence of anthracene powder was not noticed either on the cap or on any other part of the envelope it says that that is a circumstance which supports the Complainant but while saying so it merely examines the implication of the finding that no anthracene powder was noticed on the envelope Ex. 11 except at the opening, and does not anywhere

consider the significance of anthracene powder not being found on the cap which was a circumstance in favour of the Appellant. In fact in the Panchnama Ex. 24 it is recorded that the Appellant had denied even at that very stage when asked to produce the amount of bribe that he had accepted the money. It is pointed out that while the Panchnama says that the shining of the note and of envelope was faint blue, none of the witnesses in their deposition say that there was a glow or a shining blue. It is stated in the Panchnama that the Complainant put one folded ten Rupee note in the envelope with his right hand and when a little portion of the fold of the note could be seen outside, the Havaladar pushed it inside with his left hand, kept the envelope on the table and placed the cap on his head with his right hand over the envelope. The Complainant P.W. 1 however says in his deposition in the Cross-examination that the Appellant took out his cap with his left hand and placed it on the envelope which he had placed on the table. There is therefore an indication that when no powder was discovered on the cap in the Panchnama a statement that the Appellant had placed his cap on the envelope with his right hand has been made. It may also be noticed that Panchnama speaks only of one note of Rs. 10/-being put in the envelope and no other notes, while the case of the prosecution is that there were two notes of Rs. 10/-and one of Rs. 5/-that were placed by the complainant in the envelope. Some of these statements in the Panchnama which contradict the evidence of the Panch witnesses and the complainant were not put to them as such no notice can be taken of these contradictions.

9. The evidence of the Panch P.W. 3 is that he went to the Hotel along with the other Panch P.W. 5 and both of them were simply sitting in the Hotel during all that period namely from 10 a.m. to 5 p.m. He further said that when the Appellant came he was wearing a uniform cap and was having a cover Ex. 11 in his hands. There were papers in this envelope. The Appellant kept it on the table when he sat in the Hotel. The witness was sitting in the Hotel so also the other Panch till the end. Parab opened the cover Ex. 11 in his presence and asked him to open the envelope and when he did so he found Rs. 25/-inside the envelope and two warrants. He further says that Parab showed their hands in ultra violet light and there was no powder on their hands. Parab also showed his hands in ultra violet light and nothing was found. The hands of the Appellant were also seen under ultra violet light and there was nothing found even on them though witness says that there was powder found on the warrants Annexures 2 and 2A and also on Ex. 11. In cross-examination he admits that one other Constable was sitting by the side of the Appellant when Parab came. The Appellant was washing his face outside the Hotel when Parab came. At that time Appellant was neither wearing a cap nor he had envelope in his hand. When the Appellant was washing his face outside the Hotel the Complainant was inside the Hotel. The Complainant went to call Parab. He and the other Panch were both on the road when the Appellant was washing his face outside the Hotel. It was suggested to him that he came on the road from the room of Lingaya which suggestion he denied. It may be noted that this witness did not support the prosecution case even in the Examination-in-chief and yet no attempt was made by the prosecution for permission to cross-examine him.

10. The other Panch P.W. 5 does not know on what power the lamp under which the hands were seen for anthracene powder was working but is certain that it was not with electric current. He says that it is not correct that bluish colour would be noticed if hand is brought close to that light. The powder was white, but prior to this he had no occasion to see hands under that light, though it is the case of the prosecution that on the 8th January before they set out for Bhiwandi, at Thana both

Panchas were shown their hands under the light before and after the anthracene powder was dubbed on their hands and that the same glowed and gave a bluish light when anthracene powder was put on them. The witness at first stated that the Appellant did not ask the Complainant if he had sent the Hotel licence, though when confronted with the statement in the Panchnama he sought to resile from the original statement. If as a matter of fact the two Panchas and the Complainant were sitting in the hotel from 10 a.m. to 5 p.m. notice will certainly be taken of them by all those present in the Hotel which is comparatively a small one. Nor is it comprehensible that the Appellant would converse in this small area, with the Complainant when two persons one on either side was watching him as indeed according to one of them P.W. 5 the Appellant was looking at them all the time. The High Court thought that the learned Special Judge had compared the evidence of the two Panch witnesses but did not say whether Panch Harishchandra (P.W. 3) is a witness of truth or Panch Patil. This conclusion cannot be justified on the assumption implicit in the observation that "when the contents of such a document (the Panchnama) are proved and the evidence of Panch Harishchandra has gone counter to that document it was necessary for the learned Judge to consider in the first instance whether Harishchandra is a witness of truth or Panch Patil is a witness of truth". It may be pointed out that any statement made in the Panchnama cannot be used in evidence except for the purposes of contradicting the witness whose statement is contained in Panchnama but if it is intended to contradict him by the writing his attention must be drawn to the writing before the writing can be proved, be called to those parts of it which are to be used for contradicting him. This is what is required under Section 145 of the Evidence Act but even where a witness is confronted by his previous statement and given an opportunity to explain, that part of the statement that is put to him does not constitute substantive evidence. We think the High Court was not justified in its comment on the appreciation of the evidence of these witnesses by the learned Special Judge even though it observed that the better course would have been to seek permission to cross-examine Panch Harishchandra.

11. Then there is the evidence of Aire who admittedly came to the Hotel later and whose statement also was recorded, not on that day but the next day. It was suggested to him that Parab threatened him that unless he gave a statement as per his instructions he would also involve him in the case, which suggestion however was denied.

12. Sub-Inspector Parab who was conducting investigation says that the colour of the powder used in this case was whitish in colour, the fluorescein of the powder was light bluish. He also says natural oils and fats fluoresce in fingers and look whitish under violet light. It may also be noted that the witness says he does not remember whether all the lights were switched off when the hands of the Appellant were examined under it. One of the Panch witness P.W. 5 says that they created darkness by their own shadow, which implies that the lights were not switched off. On this aspect the comment of the learned Advocate for the Appellant was that without darkness anthracene powder cannot be seen under the ultra violet rays. We had already referred to Parab's statement that he does not remember whether he had switched off the lights. He also says that ultra violet lamp worked on electricity is more powerful than the one which he used. In these circumstances the Special Judge was not unjustified in his conclusion that it is doubtful whether there was a thin line on the three fingers indicating anthracene powder or that it was difficult to believe Panch Patil and the informant that with these fingers the Appellant put the notes inside the envelope Ex. 11. This conclusion of the Special Judge is further reinforced firstly by the evidence of Parab that natural oil

and fats fluoresce on fingers and look whitish under ultra violet lights; so that if a white line was seen it does not necessarily imply that it was anthracene powder marks, secondly by the omission to find any traces of anthracene on the cap which as we have said, must necessarily be found if it was removed by the hand which had on its fingers anthracene powder. In any case according to Parab when the hands were being inspected he knew where the amount was kept, that he knew that it was kept in the envelope but says he had not taken charge of the envelope as soon as he entered the Hotel or before he examined the hands of the Appellant. This statement would be consistent with the case of the prosecution as well as the defence because any prior knowledge of the notes being in the envelope could only come to him from the complainant.

13. The evidence of Aire was not relied on by the Special Judge on the ground that contrary to the provisions of Section 162 instead of his statement being recorded by Parab he was made to write it out in his own hand so that he may not at any time thereafter resile from it. The High Court however, did not consider this aspect and though it accepted the evidence of Aire in respect of his statement that anthracene was found on the fingers of the Appellant it rejected his evidence relating to the movements of the Appellant on 4th February between 4 to 8 p.m. which made the statement of the complainant that he had met the Appellant on that day at 4 p.m. as unreliable. The Special Judge came to the conclusion that the evidence of Aire on this aspect was reliable and believed the story that he and the Appellant were together on that day as such the Complainant could not have met the Appellant There were also many infirmities in the story of the Complainant about the conversation he is said to have had with the Appellant and the Appellant's demanding a bribe all of which were adverted to in great detail but have not been taken into consideration by the High Court. It appears to us that the story of the Complainant in some of the important aspects is not credible. The fact that the receipt for Rs. 5/- as security for appearance was given to Shetty and is in his name lends weight to the Appellant's version that on the 17th January he had not met the Complainant but had only met Shetty on the Galla. If the Complainant was on the Galla as stated by him there was no occasion for the Appellant to lodge a complaint against him merely because Shetty was standing near the Complainant. Again after the complainant had applied for per mission on the 1st February 1965 there was no occasion for the Appellant to come to the Complainant on the 6th February and threaten to prosecute him that too after he ascertained that the application for permission had been given, nor is the version that the Appellant demanded monthly remuneration believable. We cannot accept the contention of the learned Advocate for the Respondent that there is nothing incongruous in the Appellant demanding the amount because it would take some time before permission could be given and in the meanwhile the Complainant would be contravening the Rules. The simple answer to it is that the Complainant could easily have said that he will not permit Shetty to act as Manager till then. It was in the power of the Complainant to make the necessary adjustments with Shetty rather than plead poverty or agree to pay the bribe. There is nothing in the evidence to show that either the Complainant or Shetty showed the agreement of the 18th to the Appellant at any time, because for one thing on the 17th there was no agreement executed by the parties and for another no occasion arose subsequent to that date to show the Agreement. The High Court no doubt while accepting the case of the Appellant that Shetty was in-charge of the cash counter and was conducting the business on the 17th January 1965 none-the-less inferred that the Complainant must have also been there. It observed: "The accused denies the presence of the Complainant. As the complainant had admitted in the evidence before the Court that possession was delivered on

January 11, 1965, we have no doubt that Shetty must be at the counter but it is not impossible that the complainant would also be present. Both of them knew that a person has no right to sit at the counter and usually must be in-charge of the shop only when his name appears in the licence. They had applied to the Collector on January 18, 1965 and were awaiting the disposal of their application. It is therefore more natural that the Complainant would be formally present in the tea stall so that in case the presence of S. K. Shetty is challenged the Complainant would still be there to wriggle out of the situation. . The Appellant admits having paid a visit to the tea stall in the evening of January 17 and further alleges that he actually filed a criminal prosecution".

14. Now it may be mentioned that the learned Judges came to conclusion that the Complainant was present at the counter on the 17th January on a wrong premise namely that the application for permission was made on the 18th January while in fact it was not made till the 1st February. Again they hold that though It is not possible to explain how the entry regarding the application for sugar quota dated the 13th January was made on the 19th January in the Mamlatdar's office, they are satisfied in spite of this discrepancy that both the complainant and Shetty were present in the Mamlatdar's office and conclude that the association of the Complainant at every stage until legal transfer of the name, therefore, must be inevitable.

15. On a consideration of the evidence, we think that the reversal of the order of acquittal by the High Court was not warranted. Though the High Court has power on a review of the evidence to reverse the order of acquittal, yet in doing so it should not only consider all matters on record including the reasons given by the Trial Court in respect of the order of acquittal, but should particularly consider those aspects which are in favour of the accused and ought not also to act on conjectures or surmises nor on inferences which do not arise on the evidence in the case. In the view we have taken, the Appeal is allowed, the judgment of the High Court reversed and the Appellant acquitted. The Appellant being on bail, his bail bond is cancelled.