The State of Karnataka Vs. Shivappa

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Court : Karnataka

Decided On : Jan-14-1992

Reported in : 1992CriLJ3264; 1992(3)KarLJ49

Judge : A.B. Murgod and ;P.K. Shyamsundar, JJ.

Appeal No. : Criminal Appeal No. 283 of 1989

Appellant : The State of Karnataka

Respondent : Shivappa

Advocate for Def. : A.B. Patil, Adv.

Advocate for Pet/Ap. : P.P.

Judgement :

Shyam Sunder, J.

1. This appeal by the State is directed against the judgment of the learned Special Judge, Gulbarga, in Special Case No. 9/1987, dated 26-12-88. By the said judgment, the learned Special Judge, acquitted one Shivappa, who was indicated before him on a charge of having committed an offence punishable under section 161 of the I.P.C. r/w. Section 5 of the Prevention of Corruption Act, 1947. Aggrieved by the same the State challenges the acquittal of the accused therein who is the respondent-accused before us represented by Sri A. B. Patil, and seeks

a reversal of the same.

2. The learned Additional State Public Prosecutor who appears in support of the appeal maintains that the learned Judge committed a serious volte face in completely derailing after having held that all evidence clearly establishes that the accused (we refer respondent as accused during the course of the judgment) accepted the money from complainant P.W. 1 on the date of occurrence and that was illegal gratification for doing the official work. In arriving at the conclusion the learned Judge has no hesitation in rejecting the explanation offered by the accused/respondent in the statement of accused under section 313, Cr.P.C. The above observations are noticed in para 16 of the impugned judgment and is to the following effect :

'For the aforesaid reasons I am clearly of opinion that what (M.Os. 3 and 4) the accused took from P.W. 1 was intended to be illegal gratification for doing the official work. The explanation of the accused in his examination under section 313, Cr.P.C. cannot be accepted.'

3. Normally, regard being had to the above observations, legitimate expectation of any one would have been the case resulted in conviction of the accused for the alleged offence followed by a mandatory sentence of imprisonment and fine as enjoined under the provisions of Section 5 of the Prevention of Corruption Act. But as good fortune would have it for the accused, at any rate that result did not follow but instead according to the prosecution it was a largesse by recording a total exoneration to the accused for the aforesaid offences ending in his acquittal. The learned Judge gave reasons as to why he thought the accused is entitled for acquittal instead of conviction. The reasons are fairly elaborate and it would be considered apposite to extract the same as under :

'18. The learned Counsel for the accused has made available to this Court the xerox copy of the judgment passed by our Hon'ble High Court on 21-1-1987 in Criminal Appeal No. 143/84 (E. Hampanna v. The State of Karnataka). I have carefully and respectfully gone through the judgment of our Hon'ble High Court. It is clear from para 7 of the judgment of our Hon'ble High Court that, before an accused is convicted in such a case, the prosecution has to show that the trap was

a legitimate trap. In the instant case, the trap is admitted. This Court has to see, bearing in mind the law laid down by our Hon'ble High Court, whether the trap was legitimate.

19. The prosecution case is that the accused was the Secretary of the Ravoor Village Panchayat and it was his official duty to effect mutation and to effect mutation he demanded bribe from P.W. 1 Siddanna and accepted it. The court has to see whether it was the official duty or function of the accused who was a public servant, namely, Secretary of the Village Panchayat, to effect mutation, if immovable property was transferred. This is the rub in this case.

20. The learned Public Prosecutor has relied on Rule 14 of the Rules framed by the Government in exercise of the powers conferred by Section 210 of the Mysore Village Panchayats and Local Boards Act, 1959. This Rule 14 relied on by the learned Public Prosecutor says :-

'14. The Secretary shall perform all the administrative and other duties which may be entrusted to him by the Panchayat. He shall also perform such other duties as the State Government may direct him to perform in connection with the developmental functions of the Panchayats and Taluk Boards.' What this Rule says is that the Secretary shall perform all the administrative and other duties which may be entrusted to him by the Panchayat. But then the prosecution has not produced a scrap of paper to show that the duty of effecting mutation, if immovable properties were transferred, was entrusted to the Secretary. Nor any resolution passed by the Village Panchayat entrusting the duty of effecting mutations to the Secretary has been produced. No competent officer from the Revenue Department has been examined to establish that it was the function of the Secretary of the Village Panchayat to effect mutation. No doubt, the Deputy Commissioner has given permission for the accused being prosecuted. But that does not means that the accused was entrusted with the duty or function of effecting mutations.

21. The voluntary say of P.W. 4 R. R. Patil, Police Inspector, Lok Lokayukta (I.O.) in his evidence that he has seen the Mutation Register and that the accused has made entries in all the mutations will not take the edge off the contention on behalf

of the accused that it was not the official duty or function of the accused to effect mutation. In the same breath the I.O.P.W. 4 has admitted that he has not collected any records to show that the accused was to effect mutations and that it was to be approved by the Administrator.'

4. The conclusions of the learned Judge as aforesaid the assailed with great vigour by Public Prosecutor as totally imbalanced and unstable. He points out that the learned Judge having come to the conclusion that the accused was found guilty of the offence for which he stood charged could have found no option except to convict him for aforesaid offences, but instead he has taken recourse to some unavailable exists in the law to allow the accused to get away without paying for the crime he had committed. The submissions of the learned Public Prosecutor as aforesaid are really formidable and we will now go to ascertain whether they are substantiated as well.

5. We may in this connection make a brief reference to the facts and circumstances relating to this appeal. As pointed out earlier we are concerned herein with indictment of Shivappa, respondent herein for the alleged offence of accepting illegal gratification which is punishable under section 161, I.P.C. and Section 5 of the Prevention of Corruption Act. The facts not in dispute are, the said Shivappa at the relevant time was the Secretary of the Village Panchayat of Ravoor and according to his own say as also the prosecution case, it is his duty, among other things, to ensure collection and appropriation of taxes and other levies due to the Panchayat which in turn had to be invested for carrying out works beneficial to the community at large. The trump person in this case is complaint P.W. 1 Siddappa. It is common ground that his father one Saibanna has purchased a house at Ravoor and had applied for mutation of Khatha to his name from that of his vendor. Even as that application was pending and Saibanna having passed away his son Siddappa P.W. 1 took it upon himself to pursue the matter and for that purpose he filed a fresh application on his own behalf seeking the transfer of Khatha in his name. It transpires that the application by late Saibanna seeking transfer of Khatha was made way back in 1978 and it remained undisposed of till he died in 1984. A further application in that behalf seeking transfer in the name of Siddappa P.W. 1 came to be made on 31-5-84. The facts

disclose that after having made that application Siddappa was in continuous touch with the accused who was all times Secretary of Ravoor Village Panchayat, in the records of which these mutations had to be made and we are told today by Mr. A. B. Patil, the accused still continues to be Secretary in the Mandal Panchayat, Afzalpur.

6. Be that as it may, it appears that ableit innumerable trips were made by the P.W. 1 to the office of the accused to induce him to make necessary orders, all the trips were of no avail and with the resultant sheer frustration he sought to sanctify the law which he did by proceeding to the Lokayukta, Gulbarga, to whom he made a complaint Ex. P.4 wherein amongst other things he has adverted to the aggressive attitude of the accused who wanted a consideration to be paid to him for doing the needful and although Rs. 100/- had been paid to that (him), the accused was demanding balance of Rs. 200/- in spite of being told that the complainant cannot afford so much. Complainant also states that on the previous day he has met with the accused and paid him Rs. 100/- and the accused asked him to get back to him the next day with remaining Rs. 100/-, so that his job can be done. The complainant says that he is not willing to pay the bribe. He has approached the Vigilance Cell for action being taken on this behalf. P.W. 4 Investigating Officer, registered complaint under Section 161, I.P.C. and sent the F.I.R. Ex. P.7 to the Court, then laid a trap on the same day with the help of Panchas one of whom has been examined as P.W. 2 Shamrao, an official working in Housing Board at Gulbarga. What happened next is of utmost importance. Late that evening long after office hours almost at dusk time the complainant met with the accused walking in the village outskirts, gave him Rs. 100/-, being part of the bribe money and that it was done in the presence of P.W. 2 Shamrao even before whom accused had little compunction in asking the complainant to get back the balance money next morning if he wanted his job done. Immediately thereafter the Raiding Party consisting of Investigating Officer having accosted the accused for having received Rs. 100/- from the complainant, one of the explanations for receipt of money was that it was not illegal gratification but towards payment of house tax, fee for mutation transfer @ 2%. Thus, the accused denied acceptance of the money was for a tainted purpose; on the other hand it was for legitimate reason.

7. After the conclusion of investigation, the charge-sheet came to be filed against the accused in the Special Court under Section 161, I.P.C., but the learned Judge not only framed a charge under section 161, I.P.C. but also under section 5(d) r/w. Section 5(2) of Prevention of Corruption Act, the two charges framed against him read thus :

'1. That you accused being a public servant, namely, Secretary of Village Panchayat, Ravoor, in the Revenue Department on 17-9-1984 at about 6.30 p.m. in your house at Ravoor Village accepted from CW-1 Siddanna a sum of Rs. 100/-, a gratification other than legal remuneration, as a motive for effecting mutation of the House Nos. 2/35 and 2/36 in the name of CW-1 Siddanna, an official act and you thereby committed an offence punishable under section 161, I.P.C. and within my cognizance.

2. That you accused on the aforesaid date, time and place, being a public servant, committed the offence of criminal misconduct by accepting illegal gratification of Rs. 100/- from CW-1 Siddanna and you thereby committed an offence punishable under section 5(d) read with S. 5(2) of the Prevention of Corruption Act, 1947 and within my cognizance.'

The accused pleaded no guilty, prosecution went to trial, examined series of witness and produced documents Exs. P.1 to P. 21, and in defence the accused ventured to offer an explanation in Statement under section 313, Cr.P.C. as under :

(Matter in Vernacular omitted)

8. He did not examine any defence witness. The matter stood in that fashion, the learned Judge as mentioned earlier finding that the charges against the accused had been established, none the less chose to acquit him. That precisely is a question arising for consideration in this appeal, whether the acquittal in those circumstances can be accepted.

9. Learned Counsel Sri A. B. Patil, who appears for the accused in this case in the very beginning submitted this is an appeal from the acquittal wherein the Court of

Appeal although has powers to review the evidence, as unlimited as in any other case, still exhibits considerable amount of reluctance in reversing the order of acquittal which as a matter of fact is reinforced by a presumption of innocence. He also points out that the learned Judge had the benefit of recording the evidence and was in a more advantageous position than ourselves in the matter of apprising of evidence. That notwithstanding all the faults to which he has invited our attention, and states that the accused still deserves an acquittal, and that we should not upset the same. As an alternative, Counsel submitted, in case we come to a conclusion, the acquittal of the accused was unwarranted and he deserved conviction we could at least consider extending accused benefits of Probation of Offenders Act and without imposing on him any sentence and simply subjecting him to supervision by a Probation Officer. The above submission cannot be accepted at all, since an offence of accepting a bribe is an offence against moral turpitude. That apart it is mainly punishable under section 5(d) r/w. Section 5(2) of the Prevention of Corruption Act. Therefore, there will be no room for considering application of Probation of Offenders Act. That is more so in the case of the accused because he was a responsible officer of Village Panchayat, an educated person who by the date of occurrence had already put in more than a decade of service and he was aged more than 40 years, and if he has committed the crime alleged against him we think it is more improper on our part to be disposed towards him in the manner in which one never expects, that is to be lenient to apply provisions of Probation of Offenders Act. We think the very purpose of invoking P.O. act to a situation like the one which we are presently confronted is so alien to our thoughts that, we cannot do anything except to express our dissent against accepting a plea of leniency by invoking provisions of P.O. Act.

10. As for the other aspects we have certain limitations to exercise our jurisdiction in an appeal arising from an order of acquittal, but we think even within the limitations spelled-out as aforesaid there is ample room to interfere in this case. If we decide so, and we now propose to say that we have decided to interfere in this matter for the reasons to be stated hereinafter. We must also observe that the manner of approach by learned Judge in the final-leg of his judgment that led in to record an order of acquittal, that itself be sufficient to invoke our powers in this case to interfere with the same. As pointed out the learned Judge clearly

concluded that the money which the accused accepted form P.W. 1 was by way of bribe or illegal gratification and that conclusion reached by the learned Judge for the offence under section 5(1)(d) of the Prevention of Corruption Act which reads as follows :

'5(1)(d) A public servant is said to commit offence of criminal misconduct, if he, by corrupt or illegal means or by otherwise abusing his position as public servant obtains for himself or for any other person any valuable thing or pecuniary advantage.'

11. As a matter of fact this is the second charge framed by learned Judge. Therefore, once he recorded a finding with reference to the aforesaid charge under section 5(1)(d) (supra) anyone as a matter of fact could have thought in the common course of events that should be followed, was conviction of the accused for the aforesaid offence.

12. We may in this connection also draw attention to the prosecution evidence and conclusion of the learned Judge which is as under :

'13. The complainant P.W. 1 Siddanna has stated in his evidence in examination-in-chief that the accused demanded money from him stating that he had to credit the amount to Government to effect mutation and except for this reason he did not give any other reason for demanding money from him. On the strength of this say, it is argued by the learned Counsel for the accused that the amount was not intended to be bribe amount. P.W. 1 has clearly stated that the accused demanded money from him for the purpose of effecting mutation. It is obvious that what the accused intended was bribe money. It would not be proper to do hair-splitting while appreciating the evidence of a villager and LTM man like P.W. 1 Siddanna.

14. In cross-examination P.W. 1 Siddanna has stated that he got irritated because the accused made him to wander 10 to 15 times and because of this irritation he came to Gulbarga and gave the complaint Ex. P.4. On the basis of this evidence also it is argued that there was no intention on the part of the accused to accept bribe. This argument also does not in the least appeal to me.

15. The Panch witness P.W. 2 Shamrao, who was working as FDC, Accounts, in Karnataka Housing Board Office at Gulbarga, has stated in his evidence in cross-examination that when P.W. 1 Siddanna asked the accused whether the work of mutation was over, without any hesitation accused said that P.W. 1 should give him money and then only he would effect mutation. P.W. 2 Shamrao has stated in the same breath that P.W. 1 Siddanna gave him M.Os. 3 and 4 currency notes and the accused accepted M.Os. 3 and 4 without any hesitation. On the strength of this evidence it is argued that if M.Os. 3 and 4 were intended to be bribe money, the accused would not have accepted them without hesitation and therefore the conduct of the accused shows that the intention to take money from the complainant was not as bribe amount but was intended towards mutation charges and house tax. Sometimes power intoxicated hot heads do not care for anything. They will not care for the consequences because they will be so arrogant and bold, the fact that the accused accepted M.Os. 3 and 4 without hesitation does not mean that the accused did not demand and accept bribe from P.W. 1 Siddanna.

16. For the aforesaid reasons I am clearly of opinion that what (M.Os. 3 and 4) the accused took from P.W. 1 was intended to be illegal gratification for doing the official work. The explanation of the accused in his examination under section 313, Cr.P.C. cannot be accepted.'

13. We have already set out the conclusion of the learned Judge at para 16 of the judgment in which he sums-up his finding regarding acceptance of money in question as improper for doing official work and secondly he proceeded to reject the explanation offered by the accused under section 313, Cr.P.C. The very same argument is placed by Sri A. B. Patil in this Court, we regret our inability to agree with him. The Counsel says, that the prosecution case is that house-tax was due, mutation fee @ 2% was due. In this connection he draws our attention to the evidence of Investigating Officer, P.W. 4, wherein during the course of his cross-examination he states, the house tax of Rs. 41.66 ps. in respect of this property and the mutation charges of 2% had not been credited in the accounts. On the basis of the said version and the documents produced at Ex. P-17, a letter written by BDO to Investigating Officer stating that some money towards house-tax was due and fee for transfer of mutation had also be paid, it is argued with great

fervour that what the accused did was innocently receiving Rs. 100/- from the complainant which was due towards valid levy under the law towards house-tax, mutation transfer fee. He also points out that the petitions for transfer on levy of house tax in the name of complainant was pending in the Panchayat since 1984 and in those circumstances he has argued that it is unjust to charge the accused for having taken that money as bribe when all that he did was to accept payments towards the money due from the complainant to the Panchayat. He relies on a citation on page-16, bye-laws 10 and 12 of the Panchayat, wherein among other things it conferred powers on the Secretary to take steps to collect revenues and invest the same for developmental works. The accused took Rs. 100/- from the complainant on that day, it was only to exercise the rights and not bribe. It is again alleged that all said and done if the case of accused stands up and contends against the prosecution case and therefore he should at least be entitled to the benefit of doubt touching the charge under section 5(1)(d) of P.C. Act. Added to that in that event it would suffice to sustain the order of acquittal although it may rest on different ground. Counsel for the respondent in this connection relied on the decision of Supreme Court in Man Singh v. Delhi Administration, : 1979 CriLJ1118 , reference made to Head Note :

'It is sufficient if accused offers probable explanation or defence - Strict standard of proof - Not necessary.'

14. We are unable to rely on the dicta recorded by Supreme Court as aforesaid and we are sure that in coming to a conclusion contrary to that of the learned Sessions Judge, in this case we will have done to violence to the dicta of the Supreme Court which says no more than stating that if the accused puts-up a competing case against prosecution and the case improbabilises his involvement in the guilt and in such a situation it is the duty of the Court to record an acquittal holding the case of the prosecution not proved. But then as we have already pointed out each case must rest on its own facts, and that is very much true in a criminal case which must rest on its own facts. The guilt of the accused herein cannot rest on the facts in that case and there is little use in appealing to precedents. But the principle that in a criminal case an accused has tenable defence which will lead inevitably to his acquittal is something of an exception and

we are sure that in this case even if we were to take different view from the one taken by learned Judge in the Court below, we would not be, as mentioned earlier, deviating from unescapable principle.

15. Mr. A. B. Patil, tried to persuade us to hold that the man being frustrated with the circumstances in attempting to get the house transferred to his name and although endeavours made by him ever since he made application in 1984 and also though trips were made from pillar to post 10 to 15 times accused was not budging. Counsel says those averments in the complaint would show that frustrated with the inaction and lethargic attitude of the accused, he has decided to set-out deliberate trap for the accused. We shall decide this matter carefully later. But we will point out that the defence explanation which had been rightly rejected by the learned Judge does not merit acceptance at our hands as urged by the learned Counsel. Again we have to recall that Rs. 100/- admittedly received by the accused on the date of the occurrence is according to him accepted towards house tax dues and mutation transfer fee. But we must point out that there is nothing in the record or in the evidence, to indicate that complainant had been at any time made aware as to the factum of house-tax being due, when the application was made towards transfer of Katha. It is not even suggested to him at cross-examination that all those mandatory payments having not been made transfer of Katha was still hanging in the Panchayat. Although on the date of the offence i.e., in 1984 the application had been pending for quite some time, what is more it was in continuation of the application made by late father of the applicant in the year 1979. The Panchayat appears to have not issued endorsements etc., to the complainant stating that house tax, transfer fee is due and on making payments towards those items his application for transfer will be granted. Under the circumstances to impute the complainant had the knowledge of those payments being outstanding so as to stretch it to the length of linking the payment made to the accused towards those payments on the date of the occurrence we think it is too far even to be accepted by any mind capable of reasonable and rational thinking. We are clear those explanations were ingeniously invoked to meet the case of the prosecution and must be treated as totally bereft of truth. The other circumstances we mention to fortify our conclusion being the time and place of making the payment in question.

16. It should not be forgotten for a moment that the accused is an official of the Village Panchayat and official transactions pertaining to payments made towards Panchayat funds, should necessarily take place in the Panchayat office during the working hours, no one perhaps is better aware of that practice than the accused himself. Instead he has accepted money in a street in the village long after office hours and we need not elaborate the same, for if P.W. 1 solicited him to accept the money, we think it would be the conduct of a bona fide official to ask him to report to him next day during the office hours. The fact that the Secretary may be responsible in investing the revenues of the Panchayat realised and made safe, does not mean that he can accept payments made outside the office and go to the extent of suggesting that even accepting payment in the street should be connected to a legitimate exercise of statutory duties enjoined on him under the bye-laws of the Panchayat. If any body were to make such a naive suggestion and expect the Court to accept it, then it would be taxing the gullibility of the Court and making it appear totally incredulous. Circumstances under which money was paid and accepted by the accused leaves no doubt that he was accepting it as a bribe and not towards any legitimate payment that had to be made, by the complainant to the Panchayat. This would suffice to uphold the findings of the learned Judge that the charge under section 5(1)(d) had been established to the hilt. We must now proceed further as pointed out earlier, on such a conclusion that was arrived at by the learned Judge was he not duty bound to convict the accused of aforesaid offence and impose a sentence appropriately under the law both under S. 5(1)(d) of the Prevention of Corruption Act

17. The learned Judge did not follow that course at all the says that it should not be done. We cannot accept his reasons and therefore find it difficult to accept them. On the facts and circumstances of the case he had no doubts whatsoever at all of the guilt of the accused. But the learned Special Judge however thought an unreported decision of this Court rendered by our brother M. S. Patil, J. in Criminal Appeal No. 143/1984 supported his ultimate conclusion recording an acquittal. We note from para 18 of the Judgment the following observation :

'The learned counsel for the accused has made available to this Court the Xerox copy of the Judgment passed by our Hon'ble Court on 21-1-1987 in Criminal

Appeal No. 143/84 (E. Hampanna v. The State of Karnataka). I have carefully and respectfully gone through the Judgment of our Hon'ble High court. It is clear from para 7 of the Judgment of our Hon'ble High Court that, before an accused is convicted in such a case, the prosecution has to show that the trap was a legitimate trap. In the instant case, the trap is admitted. This Court has to see, bearing in mind the law laid down by our Hon'ble High Court, whether the trap was legitimate.'

18. The reading of the above excerpt does not at any rate indicate, what was the dictum of this Court which the learned Judge purported to follow. The facts of the case are not set out and the ratio laid down in that decision has not seen set out. In that situation the learned Judge could not rest by simply making platitudinous observations that he has read that Judgment and was following it. If the decision of this Court was really attracted to the facts and circumstances of the instant case as a surrogate of this Court learned Judge was bound to follow it. A learned Judge following a precedent of this Court or any other Court, should as a matter of fact set out the dictum laid down by the decision followed after furnishing a short background of the factual context. Without doing that if a blank statement is made stating that the Judge was following some decision said to be relevant we are put to the necessity of countermanding such a propensity which would further impose on us a duty of ascertaining whether anything in that Judgment could possibly assist in the disposal of the case. We do hope that the learned Judge and may be other learned Judges would as well take note of these observations and would in future resort to making ample reference to decisions cited before them and relied on by them, so that the Appellant Court would be in a position to apprise itself of what the Court below has done in that behalf.

19. Before going to the decision of Patil J., in E. Hampanna v. The State of Karnataka, referred to supra we must say the conclusion of the learned Judge in para 22 of his order that although the money had been received by the accused from P.W. 1, Siddanna as an incentive or reward for doing an official act which he was empowered to do but the prosecution failed to prove that the accused was empowered to do the official act i.e., of effecting mutations in respect of properties transferred the observation to this effect we feel in the result of misreading of

positive evidence touching the duties and functions of Secretary of Panchayat and also of arbitrary rejection of the voluntary statement of the Investigating Officer in that behalf on the ground that no competent officers were examined to prove the Secretary's function of effecting mutation. We think these observations are unwarranted. If the accused did not have the power or jurisdiction to transfer the Katha but he had still persuaded P.W. 1 to part with some money for that purpose, anybody would have thought that the conduct of the accused was totally fraudulent replete with the intention of duping somebody deliberately. In such a case the position of the accused would be wholly indefensible and that circumstance could not have been made a plus point to free him from obvious conviction as has happened in this case. We are satisfied that the learned Judge utterly misconceived the position both in law and on facts in recording an acquittal while on his own showing a conviction was called for. It seems to us any negation of this position would be an act of total judicial bankruptcy in the serious task of judging persons charged with the commission of grave offences. The view point of the learned Special Judge that a conviction was for some reason not merited despite a finding to the contrary by him, indicates a tendency to run away from responsibility and we would say of a duty that rested on him in dealing with white collar culprits. We do hope that he learned Judge will not be guilty of such remissness again.

20. We would now deal with the Judgment of our brother Patil J., in E. Hampanna v. The State of karnataka. That was a case in which the accused had been charged with the offence punishable under Section 161, IPC read with Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act as in the instant case, entire case rested on a trap laid by the Police to catch the accused. Patil, J. however, thought that the Investigating Officer was not justified in setting a trap to catch the accused after recording a complaint under Section 161, IPC, on the basis of which he had started an investigation by sending FIR to Court. His Lordship observed :

'7. It appears, there is force in each one of the contentions urged by Mr. Appa Rao. If, as stated by PW-2 himself during the course of evidence as also narrated in the complaint as per Ex. P-2, he had been released on bail on his agreeing to pay Rs. 200/- as bribe, then he was as much guilty of the offence under Section 161, IPC

as the accused. The bribe giver, as provided under Section 165-A of IPC, who agrees or promises to bribe to have a favour from a public servant is guilty of the offence of abetment. In other words, he was, on his own admission, guilty of abetment of the offence under S. 161 and as such is an accomplice. That apart, when PW-10 had, as stated by him in the course of the evidence, registered a case and issued FIR to the court for the offence under S. 161, IPC, it was his duty to collect evidence as to the truth or otherwise of the allegations made in the complaint. He, instead of doing so, had thought of laying a trap. Such a trap cannot be said to be a legitimate trap, because it was the duty of a Police Officer, as provided under Section 149, Cr.P.C., to prevent commission of the offence to the best of his ability by interposing for the purpose of preventing the commission of such cognizable offence. Instead he had thought of arranging a trap. therefore, he was also as much guilty of the offence as PW-2. At any rate, PW-10 was no better than an accomplice, and independent corroboration was therefore necessary and it appears in the case on hand such corroboration is wanting. With what representation PW-2 had passed on the money to the accused is not free from doubt. When specifically questioned, PW-5 was unable to say as to what was the talk that took place between PW-2 and the accused. PW 10 admittedly did not know, because, as stated by him, only after PW-2 went out of the house of the accused and signalled of his having passed on the money to the accused by wiping of his face by means of a kerchief, he and PW-10 went. Though it is the case of the prosecution that PW-2 had passed on the money as bribe, but accused denied as having received it as bribe. Not only there is a suggestion consistently in the cross-examination of PWs-10 and 11 that he had received the money as being sent back by the Dalpathy, but the accused has also entered the witness box and affirmed the same on oath. PW-5 in fact, when cross-examined, admitted that when he had enquired the accused, he told that he had received the amount in respect of jowar sent by the Dalpathy. He did not support the say of PW-10 as to the facts narrated in Ex. P-13. Besides, the facts stated in Ex. P-13 are not admissible in evidence, PW 5 did not also speak to the same. The say of the accused, in these circumstances, that he had received the money as being sent by Dalpathy cannot also be said to be altogether false or baseless in as much as DW-2, who is admittedly Dalpathy of the village, has stated in his evidence that

on 3-12-1982, when the PSI had come to the village, he had given him the money of Rs. 200/- for purchasing jowar and since jowar was not available and since he came to know that PW-2 was going to Manna Ekhalli Police Station, he sent the money with him to return the same to the P.S.I. The learned Special Judge disbelieved his evidence on the ground that DW-2 has stated in the course of the evidence that he had gone to the garden land and returned to his house at about 7 or 7.30 p.m. and he had also stated at another stage that P.S.I. who had come to the village had left the village by about 5 p.m., and therefore there was no question of the meeting the P.S.I. and the P.S.I. giving him the amount; nonetheless he has also stated that when he was in the village the P.S.I. had given money to him. There is every possibility of DW-2 again going to the garden land and returning back by about 7 PM. Therefore, the Special Judge was wholly in error in rejecting the say of the accused and placing reliance on the evidence of the prosecution witnesses who, by their own showing are no better than accomplices.'

21. With great respect to His Lordship and with great reluctance, we are to express our dissent with His views as aforesaid. His Lordship appears to think that setting of a trap to investigate a person after registering a complaint in that behalf and sending an FIR to the Court discredits the investigation. Granting all that had been done, we are not able to fathom how the same affects the probity of the investigation that followed subsequent to the recording of the complaint in pursuance of which a trap was laid successfully. The view of Patil, J. in E. Hampanna v. State of Karnataka case is opposed to the decision of the Supreme Court in Rao Shiv Bahadur Singh v. State of Vindh P. : 1954 CriLJ910 . Head Notes E & G deal with this aspect and make the position clear as follows.

'Head Note : E :- It may be that the detection of corruption may some times call for the laying of traps, but there is no justification for the Police authorities to bring about the taking of a bribe by supplying the bribe money to the bribe giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the Police authorities to prevent crimes being committed. It is no part of their business to provide the instruments of the offence.'

'Head Note : G - Witnesses not willing party to giving of bribe to accused but only actuated with the motive of trapping the accused. Their evidence cannot be treated as the evidence of accomplices. Their evidence is nevertheless the evidence of partisan witnesses who were out to entrap the accused. The evidence cannot be relied upon without independent corroboration.'

22. We notice from the facts of the said case that the trap was set after a compliant was recorded and the FIR was sent to the Court. This is to be noticed at para 23 page Nos. 332 & 333.

'The investigation into the offence had already started immediately on the FIR being registered by the Police authorities and Pandit Dhanraj himself admitted in his evidence that the investigation into the offence had thus started before the raid actually took place.'

The Supreme Court did not in that case discredit the trap evidence on the ground that it had ensured after the complaint touching the demand of a bribe had been registered and the FIR sent to the Court. As pointed out earlier the Court said that in many of these cases, trap would be an essential step to the investigation but that the Police should not themselves take a lead in that behalf by supplying bribe money as well, in order to trap the accused. The Court also said that the evidence of trap witnesses cannot be treated as that of accomplices but it nevertheless being partisan in character can therefore be accepted if there was some independent corroboration of such evidence.

23. We are not concerned with these aspects in this case as the evidence of the prosecution does not present any difficulty in its acceptance and as a matter of fact the defence itself does not deny the truth of the allegation that the complainant had paid Rs. 100/- to the accused on that day, the only question is, was it by way of bribe or towards some dues the accused owed to the Panchayat. An assessment of the evidence by the Court below and the conclusion following thereupon is that the money paid to and received by the accused was illegal gratification. We have no hesitation to affirm the said finding. The judgment rendered by Patil, J. in E. Hampanna's case referred to supra, must on the authority of the Supreme Court in Rao Shiv Bahadur Singh v. State of Vindh P., :

1954 CriLJ910 must be held to be not good law. The view of Patil, J. that where a trap is laid and the victim is caught red handed in pursuance of a complaint the investigation has to be discredited is wholly inept and we overrule the same. In the light of foregoing it becomes evident that the acquittal recorded by learned Special Judge acquitting the accused of the offences punishable under S. 5(1)(d) of the Prevention of Corruption Act is clear unmerited and has therefore got to be reversed. Accordingly, we accept this appeal and allow the same which would in turn result in reversal of the judgment of the learned Special Judge, in Criminal Case No. 9/1987 and in lieu thereof convict the accused/respondent for the offence punishable under S. 5(2) of the Prevention of Corruption Act r/w Section 161, IPC.

24. We now reach the most difficult part in this case viz., sentencing the accused. We have already adverted to the submissions of Sri Patil, Counsel for the accused asking us to extend the benefit of the Probation of Offenders Act. For the reasons mentioned before we have stated that the same is not possible or permissible. The law under S. 5(2) enjoins imposing a mandatory sentence of imprisonment which should be not less then one year but which may extend to seven years and shall also be liable to fine. It also gives us the liberty and latitude to record a lesser sentence for the reasons to be recorded in that behalf. In this context we are not unmindful of the situation that the occurrence itself has taken place in 1984 and the accused is called to account, eight years later during which period it is quite likely more so in virtue of the acquittal, he had come to look upon himself as free from the consequences of the prosecution instituted against him. Mr. Patil, says that accused still continues to hold the position of a Secretary of Mandal Panchayat, Afzalpur. He also states that the accused belongs to the Scheduled Caste which of course is a matter that we cannot put into the scales while considering the appropriate sentence to be imposed on the accused. But we must and do take into consideration the fact that nearly nine years have passed since all this started, the fact that this man is now aged 50 years, we presume he has a family to take care of, but those considerations notwithstanding regard being had to his conviction, he must undergo a prison sentence which is mandatory to be followed by a fine as well. We must in this connection invite attention to a very appropriate quotation adumbrated by our Brother Rama Jois, J., in Dharmapala v.

Hon'ble the Chief Justice, 1988 ILR Kar 297 : 1988 Lab IC 1324 :

'In this context, it is appropriate to refer to the necessity of strict observance of law by those in the highest echelons of administration as stated by Chandrapida, a King of Kashmir (680-688 AD) while making a suo moto order stopping the act of his officers to demolish a hut belonging to a Charmakara (Cobbler), for construction of a temple (vide Rajatarangini, Chapter IV, verse-60).

'If we, who are the Judges of what is right and what is not right, act unlawfully who then would abide by law.'

Greatly fortified by the above quotation from Dharmapala's case pointing out the duty of a Judge consisting in the observance of what is right as opposed to what is not right etc., we think if we were to do the right thing in this case, we must impose a proper sentence on the accused. After considerable deliberation we have come to the conclusion that a sentence of one month simple imprisonment and a fine of Rs. 200/-, in default to undergo a further sentence of 2 weeks would in the facts of this case meet the ends of justice.

25. The accused will now undergo the sentence imposed as aforesaid which we hope will to some extent serve as a measure of reprieve.

26. We make it clear that the very light sentence which we have imposed in this case should not be treated as paving the way for imposition of similar sentence in other cases where a more severe sentence is called for. But for the time lag and the circumstances that the accused herein is a man with a family we would have imposed a more severe sentence than what we have now imposed.

27. Let a copy of this Judgment be sent to the learned Special Judge wherever he is.

28. Order accordingly.