BOMBAY HIGH COURT

Ramchand Tolaram Khatri

Vs.

State. (Bombay)

Criminal Appeal No. 652 of 1955 with original Appeal No. 671 of 1955

(Dixit and Vyas, JJ.)

13.10.1955

JUDGMENT

Vyas, J.

1. These are two appeals filed from a judgment of the learned Special Judge, Greater Bombay. Appeal No. 652 of 1955 is by Ramchand Tolaram Khatri who was originally accused 2 and Appeal No. 671 of 1955 is filed by Mr. Rijumal Kripalani who was originally accused 1. The learned Special Judge, Greater Bombay, has convicted both these appellants of an offence under Section 161 read with Section 34, Penal Code and has sentenced the appellant in Appeal No. 671 of 1955 to suffer one year's rigorous imprisonment and to pay a fine of Rs. 500/- or in default to suffer one month's further rigorous imprisonment. The learned Judge has sentenced the appellant an Appeal No. 652 of 1955 to suffer 9 months' rigorous imprisonment and to pay a fine of Rs. 300/- or in default to suffer 15 days' further rigorous imprisonment. Both the appellants, as I have said, have been convicted of an offence under Section 161 read with Section 34, Penal Code.

2. The charge against these appellants, who were originally accused 1 and 2, was that accused 1 being a District Officer for Industrial Co-operatives, and Village Industries and accused 2 being a Supervisor in the office of the Assistant Registrar of Co-operative Societies, Bombay, were public servants and that they, in furtherance of their common intention to obtain illegal gratification as a motive or reward for doing or forbearing to do an official act or for showing favour or forbearing to do disfavor to the Society in the exercise of their official functions, on various occasions during the months of October and November 1954 at Greater Bombay, attempted to obtain for themselves from the Modern Tanners' Co-operative Society Ltd., Bombay, and did, on 19-11-1954, obtain from Shri Abdul Rehman, a member of the Managing Committee of the above said Society, gratification other than legal remuneration to the tune of Rs. 2,500/-. The charge stated that the common intention of the appellants was to attempt to obtain from the above mentioned Society gratification other than legal remuneration at the rate of

Rs. 50/- permonth since the inception of the Society, that is Rs. 3,000/- in all, or at the rate of half a percent on the turnover of the Society. As I just said, the charge alleged that on 19-11-1954 at Dharavi, Greater Bombay, the appellants did accept from Sri Abdul Rehman an amount of Rs. 2,500/- in twenty-five currency notes of Rs. 100/- each as illegal gratification.

3. Now, the facts of the case as contended by the prosecution and which laid to the prosecution of the present appellants may be briefly stated. The Modern Tanners' Co-operative society at Dharavi is a Society which was registered in the year 1949 under the Co-operative Societies Act. Mr. Rajderkar, who is one of the prosecution witnesses in this case, was the chairman of the managing committee of this Society at the material time.

Abdul Rehman, Bhagwat and Basu were the members of the managing committee of this Society. Mr. Bhagwat in addition was also a Secretary of the Society. Accused 1, in his capacity as a District Officer for Industrial Co-operatives and Village Industries, was an ex-officio member of the Society. Abdul Rehman used to attend to the purchase of the materials for the Society. He also used to attend to the sale of the finished goods of the Society. He used to handle the cash of the Society and make payments on behalf of the Society. Mr. Basu was a salesman and he used to look to the sale of the finished products manufactured by the Society. He (Mr. Basu) used to be given a commission of 2 percent on the orders which were booked by him including the orders from Government, pursuant to which orders sales were effected. It is to be noted that accused 2 had upon one occasion orally conveyed to the managing committee of this Society an objection in regard to the payment of the 2 percent commission to Basu. The Joint Registrar of the Co-operative Societies visited the Society on 18-8-1954 and he made his report on 23-8-1954 in which report a pointed reference was made to the commission of 2 percent, which was paid to Basu on orders which were received by the Society even from Government. When the Joint Registrar visited the Society on 18-8-1954, he was accompanied by accused 1.

The Society had been given a loan of Rs. 73,925/- by the Government of Bombay. This loan was repayable with interest in five annual installments. Subsequently, there was a rectification in the terms of repayment and it is to be noted that a sum of Rs. 2184-8-0 had become payable by the Society to Government. There was an audit memo covering the period 1-7-1951 to 31-12-1952. It was submitted by the auditor of the Co-operative Societies on 23-7-1954. On 21-10-1954, says the prosecution, both the accused visited the premises of the Society in the morning. Accused 2, whose name is Khatri, inspected the accounts of the Society and signed the cash memo in token of his having inspected the accounts. After doing this, he (accused 2) took Abdul Rehman aside and told him that since other co-operative societies were paying them (the term 'them' obviously referred not only to accused 2, but also to accused 1) money, this particular Society also should pay them money. Accused 2 told Abdul Rehman on that occasion that he was communicating this to him under instruction from Mr. Kripalani, that is accused 1. When this suggestion was made by accused 2 to Abdul Rehman, Abdul Rehman said that he would have to consult the Secretary and other members of the managing committee. He said he would let accused 2 know subsequently about it. Thereafter both the accused left the premises of the Society. This happened on 21-10-1954. At about 11 o'clock in the morning there was a telephone ring from accused 1

and Abdul Rehman was called to the telephone. Abdul Rehman was told on that occasion by accused 1 on telephone that the talk which accused 3 had with him on the previous day must be taken to be a talk on his (accused 1's) behalf also. Abdul Rehman told accused 1 that he had had no talk with Mr. Bhagwat and that he would talk to him later during the course of that day. After this telephone conversation, which Abdul Rehman had with accused 1 on 22-10-1954, Abdul Rehman communicated the purport of that talk to Bhagwat and Basu.

On the next clay, the 23rd October, there was a telephone ring for Bhagwat from accused 1. Accused 1 enquired from Bhagwat whether Abdul Rehman had communicated to Bhagwat the talk which he (accused 1) had with Abdul Rehman. Bhagwat, evidently disgusted, told accused 1 that he could not talk such things on telephone and that accused 1 should better go down to the Society and meet them. The next day was the 24th October 1954. On that day, in the morning, Bhagwat went to Surat and he was in Surat on the 24th and 25th October. On the 24th October, however, in the morning, both accused 1 and 2 went to the Society. This was about 9 o'clock. Both the accused enquired from Abdul Rehman as to whether the monies were ready according to the telephonic conversation which had been carried on with Mr. Bhagwat. Abdul Rehman told accused 1 and 2 that Mr. Bhagwat had gone to Surat and the matter could only be decided after his arrival back to Bombay. Accused 1 thereupon told Abdul Rehman that he desired that a suit case should be prepared for him obviously suggesting that the leather for the suit case should be supplied by the Society. Accused 1 further told Abdul Rehman that his man would go to the Society and the Society should supply him with the leather. Before leaving the Society, both the accused told Abdul Rehman that upon Mr. Bhagwat's return to Bombay from Surat, they should be informed of what decision had been taken in the matter of paying them money. It may be noted that the Chairman of the Society, Mr. Rajderkar, was not in Bombay between the 25th and the 28th October 1954. When Rajderkar returned to Bombay on the 28th October, he was informed of the conversation which accused 1 and accused 2 had with Abdul Rehman. He was also informed of the telephonic talks which had been taking place between accused 1 and the members of the managing committee of the Society. Rajderkar said that the best the Society might do might be to supply accused 1 with a piece of leather; but Mr. Rajderkar clearly stated that no money could be paid either to accused 1 or to accused 2. On 31-10-1954, Gadre, one of the prosecution witnesses in this case, went to the Society's office and asked for leather for a suit case to be prepared for accused 1. Mr. Gadre selected the leather, but did not take it away on that day. That was because the leather was not dry. He went again to the Society on 1-11-1954 and took the leather on that day. On 12-11-1954, one Yeshwant Khandekar, a peon in the Co-operative Department who was working under accused 2, went to the premises of the Society. He went there under instructions of accused 1. On that day, however, Khandekar could not contact Bhagwat. He met Abdul Rehman instead and enquired from Abdul Rehman, under instructions from accused 1, as to what had happened "to the matter of the day" (o dinka kya huva), Abdul Rehman replied that accused 1 should personally go to the factory and then they would talk about the matter. This happened on 12-11-1954 as I just said. On the next day, the 13th November, both the accused went to the factory at about 8-30 in the morning. At that time, Abdul Rehman, Bhagwat and Basu were in the office. Accused 1 and 2 took Abdul Rehman and

Bhagwat aside and made a definite proposal about the payment of illegal gratification. When I say that they made a definite proposal, I mean that it was for the first time on that date 13-11-1954 that the amount of the illegal gratification was specified by the accused. Both the accused said that the Society should pay them Rs. 5000/- or half a percent on the turnover. There was a certain amount of haggling and the amount of Rs. 5000/- was reduced to Rs. 3000/- on the basis of Rs. 50 per month from the inception of the Society. The Society had then been in existence for about five years and Rs. 50/- a month or Rs. 600/- a year would come to Rs. 3000/- for five yea Rs. Both the accused told Abdul Rehman and Bhagwat that, if they did not pay Illegal gratification as mentioned above, they would have to report adversely on the affairs of the Society.

On that day, 13-11-1954, accused 2 admired the wrist watch which Abdul Rehman had on his wrist. He spoke in appreciative terms about that watch, how nice it looked and how splendid it would appear on the wrist of a supervisor. He said that although he was a supervisor, and therefore an officer, he had not been fortunate enough to possess a wrist watch like it. So saying, he took the wrist watch from Abdul Rehman. Then he took a letter paper of the Society, wrote out a receipt in the amount of Rs. 40/-, took a revenue stamp of one anna from the Accountant of the Society and affixed it on the paper. In this manner, the paper purported to be a receipt for Rs. 40/- and an appearance was created as though the sum of Rs. 40/- was paid by accused 2 to Abdul Rehman in the matter of that wrist watch. The prosecution contends that in fact no amount was paid by accused 2 to Abdul Rehman for that watch. Rajderkar returned from Delhi to Bombay on 16th November 1954. Bhagwat and Basu apprised him with the insistent demand of both the accused for illegal gratification. It was then that Rajderkar gave instructions for filing a complaint with the Anti-Corruption Branch. On 17-11-1954, Abdul Rehman approached the Anti-Corruption Branch of the police. His statement was recorded by Sub-Inspector Patil on that day in the evening. In the morning of 18-11-1954, Bhagwat endeavoured to contact accused 1 and 2 on telephone; but he could not contact them. On the same day (18-11-1954), Bhagwat received a telephone call from accused 1 in which accused 1 enquired from Bhagwat whether the Society had decided to pay illegal gratification to him. Bhagwat told accused 1 that he and accused 2 should go to the factory the next morning which would be the morning of 19-11-1954. It may be noted that on that day, 18-11-1954, Basu went to the cabin of accused 1. At that time accused 2 and Gadre were sitting with accused 1 in the cabin of accused 1. At that time, accused 1 informed Basu that he had already telephoned to Bhagwat that they were going to the factory the next morning. Basu, being thus assured of a visit by the accused to the factory in the morning of 19-11-1954, went to the office of the Anti-Corruption Branch of the Police Department and made a statement. It may be noted that in the meantime on 17th November Gadre, who had already prepared a suitcase for accused 1, had delivered it at the residential address given to him by accused 1. The Anti-Corruption Branch of the Police Department decided to lay a trap on 19-11-1954. This was consequent upon a statement made to them by Basu in the afternoon of 18-11-1954. On 19-11-1954 in the morning Inspector Sawant of the Anti-Corruption Branch, three Sub-Inspectors, Majigoad, Desai and Patil, photographer Raje, two panchas and half a dozen constables went to the Society. Originally, the plan was that the trap should take place inside the

Society premises, but as we shall presently see, the accused were too clever for that sort of a thing being done. Abdul Rehman's person was searched and thirty currency notes each of the value of Rs. 100/- were given to him. He was then instructed that he might not pay the entire amount to the accused, but might pay some lesser amount so that it might occasion a certain amount of conversation between him (Abdul Rehman) and the accused. The instruction to Abdul Rehman was that the amount was to be paid to the accused in the factory. The two panchas were asked to keep themselves near Abdul Rehman and they were told to see and hear what happened. Photographer Raje was sent with a movie camera and he was instructed to take a movie picture of the incident as it happened. It was about 9-45 in the morning. So it must be remembered that I am referring to the incident of 19-11-1954. At 9-45 in the morning, both the accused went near the entrance of the Society building. Inspector Sawant and a Sub-Inspector were sitting inside the office of the Society. Abdul Rehman, the two panchas, Laxman and Ravji, some constables and Sub-Inspector Desai were sitting inside the factory. Two constables, one of whom was Bhaskar Kulkarni were standing on the road outside the office. Basu was in the office. The accused made enquiries from Basu as to who were the persons who were sitting in the office. I have just said that Inspector Sawant and a Sub-Inspector were sitting in the office. They were introduced to the accused as a trader and a typist respectively. As I mentioned above, accused Nos. 1 and 2 were too clever to enter the factory. They said that they would not enter the office, but Abdul Rehman should be called outside. So Abdul Rehman had to go outside the office. He told the accused that everything was ready, that the payment would be made to them and that they should enter the office and take their seats. But the accused would not do so. They said they would not enter the office. So Abdul Rehman went in and informed Bhagwat and the police officers, who were inside the building, of what the accused were saying. This resulted in the panchas, the constables and the police photographer being sent out of the factory building one after the other. In the meantime, the accused had left the factory and had gone a distance of 25 or 30 feet from the office of the factory and had stood on the road. In a few minutes' time, Abdul Rehman went there and joined them. At that stage, the accused made a suggestion to Abdul Rehman that they might go to Sion. Abdul Rehman declined to accompany them as far as Sion. He suggested in his own turn that they might all go to a hotel. Although the accused were insisting that they should go to a distant place, they ultimately yielded to the suggestion of Abdul Rehman that they might go to a hotel. Ultimately, Abdul Rehman and accused 2 went inside the hotel known as the Goverdhan Hindu Hotel. At the time when accused 2 entered the Goverdhan Hindu Hotel, he had a newspaper in his hand. Accused 1, clever as he was, did not enter the hotel. He stood outside the hotel at the entrance with his one foot on the top step of the hotel and the other foot on the step below. The two panchas went inside the hotel. One of them took up a position at a table near the counter and the other one stood behind accused 2 and a little towards the left of accused 2. Abdul Rehman was facing the entrance to the hotel. So far as accused 2 is concerned, his back was towards the entrance. As I just said, one of the panchas took up his position behind accused 2 and a little to his left. When Abdul Rehman and accused 2 were in that position inside the hotel with one of the panchas sitting at a table near the counter and the other panch being a little behind accused 2 and a little to his left, accused 2 made a demand for money from Abdul Rehman.

Abdul Rehman signaled to accused 1 who was standing outside near the entrance that he too might go in. But accused 1 indicated by a signal that he would not go in. Thereafter, Abdul Rehman kept back five currency notes each of the value of Rs. 100/- each and gave the rest of the notes to accused 2. Accused 2 noticing that only Rs. 2500/-were being paid to him enquired as to why a smaller amount than Rs. 3,000/- was being paid. Abdul Rehman told him that he should be satisfied with that much. He also requested accused 1 that no adverse report against the Society should be made. When the bundle of currency notes (25 currency notes of Rs. 100 each) was given into the hand of accused 2 by Abdul Rehman, accused 2 put the currency notes in the fold of the newspaper which he was carrying in his hand. After putting the currency notes in the fold of the newspaper, he went up to accused 1 and gave the said newspaper to him. In other words, the newspaper in the folds of which there were 25 currency notes of Rs. 100/- each was passed on by accused 2 to accused 1. Accused 1 opened the fold, satisfied himself that the currency notes were there and then he started to move towards the pan shop which adjoined the Goverdhan Hindu Hotel. At the pan shop, accused 1 placed an order for three pans to be made. The panwalla concerned was Ramnarayan. Ramnarayan was asked by accused 1 to prepare the pans quickly which he did. A packet of three pans was given by Ramnarayan to accused 1. It may be noted that, after accused 2 had handed over the newspaper containing the currency notes to accused 1, he (accused 2) had moved a little on the other side of the hotel and within a minute or two Abdul Rehman also went outside the hotel and gave a pre-arranged signal and the signal was to be given by pulling up his socks. It may be noted that, when accused 1 was waiting outside the hotel on the flight of steps leading into the hotel, constable Bhaskar Kulkarni was also standing nearby at a distance of less then half a dozen paces from accused 1. As soon as Abdul Rehman gave a signal, Constable Bhaskar caught hold of both the hands of accused 1 from behind. With each hand of his he caught hold of each hand of the accused 1. The moment accused 1 realized that he was caught, he dropped the newspaper containing the currency notes in its fold. He threw it away from him and the thrown newspaper fell on the platform of the pan shop. Accused 2 also was held by a policeman. A panchnama of the platform of the pan shop was made and the newspaper, in the folds of which there were 25 currency notes of Rs. 100/- each, was attached from there. These shortly stated are the facts of the case for the proceedings upon which the accused were sent up for trial for an offence under Section 161 read with Section 34, Penal Code, before the Court of the learned Special Judge, Greater Bombay, and as I have stated above, on the evidence placed by the prosecution before him, the learned Special Judge convicted both the accused under Section 161 read with Section 34, Penal Code.

4. The charge against the accused was resisted by both of them upon a contention that they were not guilty of the offence with which they were charged. According to them, the accusation against them was untrue and the evidence which was led by the prosecution against them was false. According to them, the prosecution case was highly improbable. They contended that it was not possible to believe that such a "fabulous demand" for money would be made by them from the Society. So far as 21-10-1954 is concerned, both the accused admitted having gone to the Society's premises. Accused 2 said that he had gone there for inspection of the Society's

accounts, whereas accused 1 alleged that he had gone there to discuss with the members of the managing committee of the Society a question whether the Society would take over the assets of the Rajputana Khalmeshi Sahakari Utpadak Mandali which had gone into liquidation. Both the accused denied having had any talk with any member of the managing committee of the Society on that day in the matter of any illegal gratification. So far as 24-10-1954 is concerned, both the accused denied altogether having visited the premises of the Society on that day. It was admitted by accused 1 that on 1-11-1954 Gadre had received a piece of leather from the Society; but he denied having sent peon Yeshwant Khandekar to the Society on 12-11-1954 or on any other date in the matter of making enquiries from any member of the managing committee regarding illegal gratification. So far as 13-11-1954 is concerned, accused 1 denied having gone to the office of the Society on that day. But so far as accused 2 is concerned, he admitted having visited the Society's building on 13-11-1954, but he said that he had gone there to discuss the question of a meeting which was to be held that noon. So far as the question of the wrist watch is concerned, the contention of accused 2 was that he had purchased the watch from Abdul Rehman after paying the price of Rs. 40/- to Abdul Rehman. Accused 1 went on to contend, while resisting the charge against him, that on 18-11-1954 he had received a telephone message from Bhagwat reminding him about the meeting of the managing committee of the Society which was to be held on 20-11-1954, and requesting him to go over to the Society a day previous, that is to say on 19-11-1954, to discuss the items on the agenda of that meeting.

Referring next to the date, 19-11-1954, accused 1 contended, while denying the charge against him, that when he arrived at the office of the Society, he did not find either Abdul Rehman or Bhagwat in the office. Basu was present and Basu said that Bhagwat was busy in the factory. Basu invited accused 1 to go the factory. According to the contention of accused 1, accused 2 was with him at that time and Basu requested both of them that they should go to the factory. Accused 1 contended that it was false to suggest that, after they left the Society premises, they waited on the road for Abdul Rehman to arrive. According to accused 1, both he and accused 2 wanted to go in the direction of Sion to finish a certain amount of work which was to be done there. They were walking in the direction of Sion. They had walked in the direction of Sion about half of furlong, but in the meantime Abdul Rehman arrived there and asked them to go to a hotel to discuss some matters there. Accused 1 declined the invitation to go to a hotel, but Abdul Rehman persisted. In the words of accused 1, Abdul Rehman "continued to pester" them to go to the hotel. Ultimately, accused 2 yielded to the persuasions of Abdul Rehman; but so far as accused 1 is concerned, his contention was that as it was a "cheap and dirty" hotel, he refused to enter the hotel. However, he (accused 1) said, while resisting the charge against him, that he continued to stand at the entrance of the hotel while Abdul Rehman and accused 2 went inside the hotel. Accused 1 contended that it was altogether false to suggest that he was waiting outside the hotel so that accused 2, who had gone inside the hotel with Abdul Rehman, should receive the amount, of illegal gratification from Abdul Rehman. Accused 1 finally denied that any newspaper was delivered to him by accused 2 or that he (accused 1) had looked into the newspaper and had seen the currency notes in the folds of the newspaper. He also denied having dropped the newspaper at the pan shop or anywhere else. In regard to the evidence given against

him by Abdul Rehman, the panch witnesses. Constable Bhaskar, the hotel boy Muttu and the joint owner of the pan shop Ramnarayan, accused 1 alleged that all that evidence was false. This shortly stated is the gist of the defense which was taken up by accused 1 while resisting the charge against him.

5. So far as accused 2 is concerned, he also stoutly denied the charge against him and contended that, on 19-11-1954, after he and accused 1 went to the premises of the Society, accused 1 told him that he wanted to see Mr. Gadre. Thereupon both he and accused 1 began to walk in the direction of Sion. Abdul Rehman arrived from behind and stated that he also was going in the same direction. So saying Abdul Rehman also began to walk with them. On the way Abdul Rehman suggested that they might have a cup of tea and a request was made by him that they should go to a hotel. The Goverdhan Hindu Hotel was nearby. After a certain amount of hesitation, accused 2 agreed to go into the hotel with Abdul Rehman, but accused 1 declined to enter the hotel. Accused 1 stood outside near the entrance of the hotel. After a time accused 1 called accused 2 outside and suggested that, if accused 2 was in need of tea, he should go to a better hotel. Accused 2 went on to contend that he fell in with the suggestion of accused 1. He did not enter the hotel again for finishing the cup of tea, but started to walk along with accused 1 in the direction of Sion. In the meantime, said accused 2, he was surrounded by some people and was held. According to accused 2, it was false that the newspaper Ex. I was with him at any time. According to him, he did not have it when he went into the hotel. His contention was that it was altogether false that Abdul Rehman had given him a wad of currency notes.
A positive stand taken up by accused 2, while resisting the charge against him, was that he did not receive any money from Abdul Rehman on 19-11-1954, that he did not put any money in the folds of the newspaper and that he did not pass any newspaper containing any monies on to accused 1. This is the gist of the defense taken up by accused 2 while resisting the charge against him.

6. In our judgment, we propose to refrain generally from referring to the background of this case, i.e. to events prior to 19-11-1954. The events regarding the suit case and the wrist watch, to Which I have referred while setting out the prosecution case, do not in terms find place in the charge. When the charge states that the accused attempted to obtain illegal gratification from the Modern Tanners' Co-operative Society Ltd. on various occasions in October and November 1954, it refers only to the attempts to obtain a bribe of Rs. 3000/-. Had the prosecution intended to charge the accused in the matters of the suit case and the wrist watch, an express mention thereof would have been made in the charge. But that is not the case. Indeed, the concluding words of the charge, viz, "thus committed 'an offence' under Section 161, Penal Code read with Section 34, Penal Code" would show that the charge which was framed by the learned Special Judge, and that must have been done after due deliberation, was only in regard to 'one offence' and that clearly was the offence alleged to have been committed on 19-11-1954. It would appear that, when the prosecution thought that the attempts made by the accused on various occasions in October and November 1954 culminated in the actual obtaining by them of an illegal

gratification from the Society on 19-11-1954, they decided to charge the accused only with the one main offence, namely the offence of accepting the bribe. The learned Judge would not have used the expression "an offence under Section 161", an expression in singular, if the charge had been intended to relate to offences more than one, namely, the offences of attempting to obtain and obtaining the illegal gratification.

In our view, there is considerable sense in what the prosecution did. If a person attempts to obtain a bribe, say, of Rs. 1000/- and succeeds in, obtaining it, technically he commits two offences under Section 161. But for meeting out justice to him, it is unnecessary to charge him with the offence of having made an attempt when the said offence merged into what one might call a bigger offence of the attempt having been successfully made, viz., the offence of actual acceptance of the bribe. It is in these circumstances that we have decided to refrain generally from adverting to the incidents prior to 19-11-1954 while dealing with the evidence in the case. In our view, it is unnecessary to refer to the prior events. If, upon a consideration of the evidence regarding the incident of 19-11-1954, we hold the incident not proved, the prosecution must fail and it would be unnecessary to refer to the prior events. If, on the other hand, we are satisfied that the evidence in respect of the incident of 19-11-1954 is good evidence, discrepant evidence regarding prior events would be of little consequence. In short, the prosecution having charged the accused with only one offence, which obviously was what we may call the main incident of 19-11-1954, the result of the case would depend upon the appreciation of evidence in regard to the happenings of 19-11-1954. If, upon a searching and careful examination and meticulous scrutiny of the evidence of witnesses whom the prosecution have examined in regard to the events of 19-11-1954, if upon applying our minds anxiously to the consideration of that evidence and if upon testing as best as we can whether the story of these witnesses is natural and probable or fantastic, unnatural and improbable, we come to the conclusion that their evidence is cogent and convincing, reliable and satisfactory, and that there is no reason to reject it, it would be unnecessary to see whether the evidence in regard to the prior attempts by the accused to obtain bribe is discrepant or harmonious.

7. Now, in regard to the prosecution case that the accused committed an offence under Section 161 read with Section 34, Penal Code by accepting the illegal gratification of Rs. 2500/- from Abdul Rehman on 19-11-1954, the prosecution has examined six witnesses. They are Abdul Rehman, panch witnesses Laxman and Ravji, the hotel boy Muttu Poojari, Ramnarayan the joint owner of the pan shop and constable Bhaskar Kulkarni. (After discussing their evidence, the judgment proceeded :)

8. The learned Counsel Mr. Somjee for accused 1 (appellant in Appeal No. 671 of 1955) has referred us to a decision of the Supreme Court in- *'Shiv Bahadur Singh v. State of V.P[1].',* in which the learned Judges of the Supreme Court said that where witnesses were not willing parties to the giving of bribe to the accused, but were only actuated with the motive of trapping the accused, their evidence could not be treated as the evidence of accomplices. In the view of their Lordships, their evidence was nevertheless the evidence of partisan witnesses who were put to

entrap the accused and that being so their evidence could not be relied upon without independent corroboration. In the present case, Abdul Rehman was not a willing bribe-giver. Both the accused compelled the Society to give a bribe to them which was given by Abdul Rehman. The Society was threatened with an adverse report. Dues to the tune of Rs. 2184-8-0 which were due from the Society to the State on April 1954 had not been paid by the Society. A demand in that connection had been made on the Society on 1-7-1954. The Joint Registrar who had visited the Society on 18-8-1954 had drawn the attention of the Society to it. In the same connection, a letter had been received by the Society from the Assistant Registrar on 5-10-1954. Thereafter, though the Society promised to pay off the amount, it was not paid promptly. Even at the date, 19-11-1954, the above mentioned amount of Rs. 2184-8-0 had remained unpaid by the Society. The Joint Registrar in his inspection notes had raised an objection regarding the payment by the Society to Mr. Basu, a member of the managing committee of the Society, of a commission of two percent on orders booked by him. The drawbacks pointed out by the Joint Registrar had to be rectified before 5-9-1954. Accused 1 had been asked to sec to the implementation of the inspection report of the Joint Registrar. The Joint Registrar had also wanted to know the Society's turnover during the last two or three yeaRs. Both the accused in these circumstances compelled the Society, through Abdul Rehman, a member of the managing committee of the Society, to pay a bribe to them on the threat of adverse report. Accordingly, in our view, Abdul Rehman was not an accomplice. He was not a willing and guilty participator in the crime. He was a partisan witness in terms of the judgment in the above mentioned Supreme Court case. His evidence would, therefore, not be tainted evidence, but it would be interested evidence which would require independent corroboration before acceptance. When we say that Abdul Rehman's evidence would not be tainted evidence, we mean that it is not tainted evidence in the sense that it is not evidence of a person who had tarnished his hands by the commission of an offence. It is interested evidence or partisan evidence of a person who wanted that the trap laid by the police upon his information should succeed. Not being tainted evidence, it would not suffer from the disability of being unworthy of acceptance without independent corroboration. But being interested evidence, caution requires that there should be corroboration from an independent source before its

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acceptance. To convict an accused on the tainted evidence of an accomplice is not illegal, but it is imprudent. To convict an accused upon the partisan evidence of a person at whose instance a trap is laid by the police is neither illegal nor imprudent, but inadvisable. To convict an accused on accomplice evidence is imprudent, because it is just possible that in some cases an accomplice may give evidence because he may have a feeling in his own mind that it is a condition of his pardon to give that evidence. No such consideration obtains in the case of the evidence of a person who is not a guilty associate in crime, but who invites the police to lay a trap. All the same, as the person who lodges information with the Anti-Corruption Branch of the Police for the purpose of laying a trap for another, is a partisan witness interested in seeing that the trap succeeds, it would be necessary and advisable to look for corroboration to his evidence before accepting it. The degree of corroboration, however, in the case of tainted evidence of an

accomplice would be higher than that in the case of a partisan witness, such as Abdul Rehman was in this case. There can be no rigid rule as to what degree of corroboration would be necessary for partisan evidence before it could be accepted. The degree of corroboration requisite in each case would depend on its own facts. I shall point out when I go to the question of corroboration that Abdul Rehman's evidence is strongly and independently corroborated.

9. The panch witness Lawman and Ravji were neither accomplices nor could they be called partisan witnesses. They were not members of a raiding party. Mr. Somjee for accused 1 has invited our attention to certain observations of their Lordships of the Supreme Court in the above mentioned Supreme Court case and has argued that these observations would show that in their Lordships' view, if the panchas were taken by the police with themselves before the raid, they would be members of a raiding party and would, therefore, be partisan witnesses. The observations relevant on this point are to be found in paragraph 12 at page 328 of the Supreme Court judgment and they are

> "No such criticism could however be levelled against the evidence of Gadkari and Parulakar, who were absolutely independent witnesses brought into the bedroom of the appellant 1 after the raid was over. They had nothing to do with the affairs of the syndicate nor with the intention of Nagindas or the police authorities to trap appellant 1".

Now, it is undoubtedly true that since Gadkari and Parulakar had arrived on the spot after the raid was over, they could not be called members of a raiding party; but it would not be correct in our view to deduce a reverse proposition by inference from the above observations of their Lordships that they wanted to lay down a rule that, if the police took the panchas with themselves, before the raid, the panchas would become members of the raiding party and should, therefore, be looked upon as partisan witnesses. Nowhere in the judgment of their Lordships do we find a positive proposition laid down that the panchas, in whose presence the raid is effected, are members of a raiding party and, therefore, partisan witnesses. In our view, the panchas whom the police take with themselves before going for a raid cannot be called members of a raiding party. The panchas have nothing to do with the raid or the operations of the raid. They are not participators in the act of raiding. The decision to effect a raid is the decision of the police. The panchas are not parties to that decision nor do they subsequently become parties to it at any stage of the raid. The raid is decided upon the information supplied by the informant who is generally the complainant and the panchas have nothing to do with that decision or the result of it, viz., the actual raid. Unless the panchas are sharers in the police intention to raid, we fail to see how they can be characterized as components of a raiding party. The intention to raid comes into existence first in the mind of the police and then they collect the panchas. So the panchas are no parties to that intention nor do they subsequently become parties to it by any conduct on their part. At no stage of the raid does the conduct of the panchas become the conduct of persons actively interested in the result of the raid. The police, who are a raiding party, carry out the raid and wish that the raid should succeed. The informant who really initiates the police decision to make a raid

would also like that the raid should succeed. Therefore, he too is a member of the raiding party. He is really responsible for bringing about the raid. He would accordingly be a partisan witness, unless he is a willing participator in the crime in which case he would even be an accomplice. But the panchas who are taken to accompany the police have nothing to do with the raid or the result of the raid. They are indifferent about it. It matters nothing to them whether the raid succeeds or fails. They have no partisan interest in the raid or its result. The police do not take them with themselves in order that they should take any part in the raid itself. They are taken merely to see and hear what takes place during the raid which is carried out by the police with the help of the informant. They dispassionately see what takes place during the raid and record what they see and hear and the record is the panchanama. To put the matter in a nutshell, the police take the panchas with themselves so that they should watch what happens. They are not interested in what happens nor are they parties to the trap. The law of the land requires that certain things should be done by the police in the presence of independent, respectable persons so that the presence of the said persons may put the particular transaction beyond the pale of suspicion. In these circumstances to construe the conduct of independent and respectable people, who accompany the police at the asking of the police to serve as panchas, as being the conduct of partisan persons would be grossly unfair to these people. The panchas who accompany the police at the invitation of the police are doing a civic duty, a duty to the society, a duty to the administration of law and justice and if the reward of it is that their evidence becomes dubbed as partisan evidence and, therefore, weak or suspect evidence in the absence of corroboration and they themselves become dubbed as members of a raiding party and lose their independent and respectable character, then it is time that the revision of the provisions of the Criminal Procedure Code on the subject is seriously considered.

For it is a serious matter indeed if the panchas who accompany the police as independent, impartial people to do a duty of helping the course of administration of justice lose in the bargain for doing their duty, their independent character and acquire a stigma of being partisan witnesses. Take for instance an extreme case in which a highly respectable and educated person of status is required by the police to accompany them when they go for a raid. Are we to take it that the evidence of that witness becomes partisan evidence and would be unworthy of acceptance unless it is independently corroborated ? The answer to this question could only be an answer in the negative.

10. In our view, these panch witnesses Laxman and Ravji with whose evidence I have already dealt in details, are neither accomplice witnesses nor partisan witnesses. They are independent witnesses and their evidence is good evidence and requires no corroboration before acceptance. This is our considered conclusion. Although the evidence of these witnesses requires no corroboration, there is a good, strong and independent corroboration to the story stated by them and that corroboration is afforded by the evidence of the hotel boy Muttu and the pan shop owner Ramnarayan with which evidence also I have already dealt. (After discussing the evidence the judgment proceeded :)

11. Next we proceed to another important aspect of this case. Mr. Somjee for accused 1 and Mr. Ghaswala for accused 2 contended before us that we should see a movie picture taken by a police photographer outside the entrance of the Goverdhan Hindu Hotel and near the pan shop of Ramnarayan. We have considered it unnecessary to see the picture. When a request was made to us by Mr. Somjee and Mr. Ghaswala that we should look at this picture, we told them that we would certainly look into it provided we found it necessary to do so for the determination of this case. However, we have considered it unnecessary to see the picture. We wish to emphasise that it is not that we are refusing to see the picture although it may throw useful light on the case. The fact is that, in view of the evidence and circumstances on the record of the case, we are of the opinion that the seeing of the picture cannot assist us in any manner in the determination of the case, in order to ascertain what the picture contains and what it does not contain, in order to see what part, if any, was played by the accused or either of them and in what manner and from what positions, the learned Special Judge saw the picture in company of the learned Public Prosecutor, the learned Advocates for accused 1 and 2 and both the accused themselves. Mr. Jethmalani was the Advocate for accused 1 and Mr. Nagrani was the Advocate for accused 2 in the Court of the learned Special Judge. Mr. Sonpar was also an Advocate for accused 1 in the trial Court. The learned Special Judge, the learned Public Prosecutor, Mr. Jethmalani, Mr. Sonpar and Mr. Nagrani saw the picture together. After the picture was seen as stated above, the learned Judge made a written record of what the picture showed. This record was shown to the learned Advocates for both the accused. That record was captioned "Notes of Inspection" and is a part of the record of the case. It embodies the result of what the picture showed to the learned Judge, the learned Public Prosecutor and the learned Advocates appearing for the accused in the Court of the learned Special Judge. Now, there is no doubt that, if any feature of the incident as shown in the picture was not recorded or was recorded incorrectly or inaccurately in his "Notes of Inspection" by the learned Special Judge, which might adversely affect the interests of the accused, the learned Advocates Mr. Jethmalani and Mr. Nagrani would have objected to the record as made by the learned Judge and would have sought its rectification. If a detail of the incident which should have come out in the picture if the prosecution case were true was missing and if the missing detail, if it had not been missed, would have been to the advantage of the accused or if some detail which had come out had not faithfully come out and that circumstance was likely to operate adversely against the accused, Mr. Jethmalani and Mr. Nagrani would have promptly brought it to the notice of the learned Judge even as the picture was being shown or certainly after the "Notes of Inspection" were shown to them and were read by them. But that was not done and this must assure us and should also assure the learned counsel Mr. Somjee and Mr. Ghaswala that the picture was a true representation, as far as it went, of the events as they occurred and in so far as they could be photographed. During the hearing of this appeal, Mr. Jethamalani was sitting all the time with Mr. Somjee and at the bar Mr. Somjee was instructed by Mr. Jethmalani to say that the "Notes of Inspection" were shown by the learned Judge to him (Mr. Jethmalani) and that he did not object to any portion thereof as being incorrect or inaccurate. Mr. Ghaswala also tells us that the "Notes of Inspection" were shown to Mr. Nagrani also and he too had raised no objection to it on the ground that any part of it was incorrect. Regarding

accused 2, it may be remembered that he does not figure in the picture at all, so far as the inside of the hotel is concerned. All the picture showed in respect of accused 2 was that he was held by the police near the entrance of the hotel and this fact is not disputed or denied by accused 2, as I have pointed out by referring to his written statement. Thus, as far as accused 2 is concerned, we cannot easily appreciate the request made to us on his behalf that we should see the picture. As to accused 1 also at the bar before us Mr. Somjee under instructions from Mr. Jethmalani agreed that the movie picture showed accused 1 in a standing position near the entrance of the Goverdhan Hindu Hotel with one foot of his on the top step leading into the hotel. He also agreed that the picture showed that accused 1 was held presumably by the police in front of the pan shop. Mr. Somjee further agreed under instructions from Mr. Jethmalani that the picture showed that a folded paper was lying on the platform of the pan shop and that the currency notes were visible from the fold of the said paper. It is clear, therefore, that in so far as the picture showed the above mentioned three points in respect of accused 1, it is an agreed position - a common ground - between the prosecution and the defense. It is also a common ground between the prosecution and the defense that Abdul Rehman does not appear in the picture, that the panch witnesses do not figure in the picture and that the picture does not show that at any time the newspaper containing the currency notes was in the hand of accused 1. It is also an agreed ground between the parties that the picture does not show accused 2 handing over a newspaper to accused 1. The point is that there is no dispute between the parties, that is, between the prosecution and the defense, as to what the picture shows and what it does not show.

It is in these circumstances, that we have come to the conclusion that it is not necessary to look at the picture for the fair and just determination of this case. Since on all important points in respect of accused 1 and 2 there is complete accord and no contest between the prosecution and the defense for the reasons pointed out in details by me above, we think it would have been nothing more than a piece of an entertainment to look at the picture in the Court. Had we considered it at all necessary to look at the picture to understand some aspect of the case in respect of accused 1 and 2, however apparently unimportant and minor the aspect be, we would not have hesitated to look at the picture. In these circumstances, we wish to emphasize again that this is not a case in which we are refusing to look at the picture. We have not looked at it because we have considered it unnecessary to look at it for the determination of this case. It may be noted before parting with this point that just a few hours before this case was due to be taken up a request was made to us by the learned counsel appearing for the accused that they wanted to see the picture themselves. It was a request made at a very late stage, although the appeals had been on the board for some considerable time. The case was likely to be taken up almost at any time on that day and that being so we were reluctantly compelled to tell the learned counsel that we were not prepared to part with any part of the record of the case.

12. We proceed next to deal with the remaining points which were pressed before us by Mr. Somjee and those are law points. I have already dealt with one of the important points raised by Mr. Somjee on the authority of the Supreme Court decision in AIR 1954 Supreme Court 322, and that was a point regarding value to be attached to the evidence of the panch witnesses and

also to the evidence of Abdul Rehman who was the informant in this case. Mr. Somjee has next contended before us that the charge which was framed by the learned Special Judge against the accused in this case suffered from the defect of a misjoinder. Mr. Somjee says that the charge as it stands is in respect of several offences of attempts having been made by the accused to take a bribe from the society during October and November 1954 and also in respect of the incident which took place on 19-11-1954. In other words, Mr. Somjee's contention is that the charge is in respect of offences more than one. Mr. Somjee concedes that, if all these offences occurred in the course of the same transaction, they could be joined in one charge under Sub-Section (1) of Section 235. Then Mr. Somjee says that the charge as it stands involves more accused than one and he concedes that this could be done under clause (a) of Section 239, Criminal Procedure Code. But Mr. Somjee contends that both the exceptions, namely exception under Sub-Section (1) of Section 235 and the exception under clause (a) of Section 239 could not be simultaneously availed of by the prosecution and for showing this Mr. Somjee has invited our attention to a decision of this Court in - *'D.K. Chandra v. The State[2]',* Mr. Somjee's contention must fail at once because, as I have said, this is not a charge in respect of offences more than one. It is a charge in respect of only one offence, namely the acceptance of illegal gratification by accused 1 and 2 on 19-11-1954 at the Goverdhan Hindu Hotel from Abdul Rehman, a member of the managing committee of the Society. In the charge, there is no reference to the incident of the suit case. There is also no reference to the incident of the wrist watch. It is impossible to conceive that, if the learned Special Judge had intended to charge the accused also in the matter of the suit case and the wrist watch, he would not have made a specific mention of the suit case and the wrist watch. It is no doubt true that a reference is made in the charge to the attempts alleged to have been made by the accused on various occasions in October and November 1954. But that reference was obviously made by way of a background to this case. The prosecution evidently did not want the learned Judge to charge the accused or either of them separately in respect of the attempts made by them in October and November 1954. The reason for this is obvious and the reason is that the attempt really succeeded on 19-11-1954. Since the attempt actually succeeded on 19-11-1954, it was but right that the learned Special Judge decided to charge the accused only in respect of one offence, namely the incident which took place on 19-11-1954. The charge being only in respect of one offence, there is no doubt that persons more than one could be charged with it under clause (a) of Section 239, Criminal Procedure Code. There is, therefore, no substance in Mr. Somjee's contention that the charge is bad for reason of misjoinder.

13. The next point which is pressed before us by Mr. Somjee is that the charge is vague in that it says :

> "You ..... did accept for yourselves from Shri Abdul Rehman Sayeed, a member of the managing committee of the said Society, a sum of Rs. 2500/- as gratification other than legal remuneration as a motive or reward for doing or for forbearing to do an official act or for showing or forbearing to show, in exercise of your official functions, favor or disfavor to the Society and its members, or for rendering or attempting to render service

to the said Society and its members etc. etc."

Mr. Somjee has contended that from this charge it could not be understood by the accused whether what they were said to have done was alleged to have been done as a motive or reward for doing or for forbearing to do a particular thing or for showing or forbearing to show a particular favor and so on. It is for this reason that Mr. Somjee has contended before us that the charge is suffering from a defect of vagueness. We do not see any substance in this contention at all.

[2] AIR 1952 Bom 177

From the manner in which the cross-examination of the prosecution witnesses was carried out by the learned Advocates appearing for the accused in this case and from the manner in which pertinent questions were put by the learned Advocates to the prosecution witnesses, it is amply evident to us that the accused themselves and their learned Advocates had thoroughly understood what the charge, which was made against the accused, was. A careful perusal of the written statements submitted by accused 1 and 2 in this case would also point to the same conclusion, namely, that neither of the accused was in any difficulty of understanding what precisely he was charged with. Each one of them understood it amply that he had to meet the case of acceptance of illegal gratification from Abdul Rehman to the tune of Rs. 2500/- at the Goverdhan Hindu Hotel on 19-11-1954. That being so, we are of the view that the charge does not suffer from any infirmity such as vagueness.

14. The next point which was pressed before us by Mr. Somjee was the point about sanction. Mr. Somjee said that the sanction which we find at Ex. A in this case was not properly proved and that, therefore, we should hold that there was no proper sanction. The sanction was given by Mr. F.N. Rana, who was the Registrar of Co-operative Societies in the State of Bombay at the material time. It is no doubt true that Mr. Rana did not go into the witness-box to depose that it was he who had issued the sanction. Mr. Desai however, a head clerk in the office of the Registrar of Co-operative Societies, has been examined as a witness. He is fully familiar with the signature of Mr. Rana and he has deposed in no mistakable terms that the signature which is to be found at the foot of the sanction is the signature of Mr. Rana. The sanction says that Mr. Rana had read the papers relating to the investigation Into C. R. No. 75/54 of the Anti-Corruption Branch of the C.I.D., Bombay. A perusal of the sanction has left no doubt in our minds that Mr. Rana has fully understood what the facts which were alleged at the stage of investigation against the accused were. For that purpose, we have only to refer to para 2 of the sanction.

Unless Mr. Rana had carefully applied his mind to the facts which were put before him, i.e. the facts which ultimately become the subject-matter of the prosecution, he would not have given the sanction which he did. In our opinion, therefore, there is no substance in the contention of Mr. Somjee that the sanction is not properly proved.

15. Mr. Somjee invited our attention to a decision of the Privy Council in - *'Gokulchand Dwarkadas v. The King*[3]*',* In that case it was pointed out by the Privy Council that it was

desirable that the facts upon which the accused was sought to be prosecuted and in respect of which a sanction was sought to be got should be referred to on the face of the sanction. As pointed out by the Privy Council in this case, if the facts constituting the offence charged were not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority.

Their Lordships observed that the sanction to prosecute was an important matter. It constituted a condition precedent to the institution of the prosecution and the Government had an absolute discretion to grant or withhold their sanction. In the present case, there is no doubt that the facts in respect of which the accused were sought to be prosecuted after the completion of investigation against them were stated in the sanction itself. This is not a case where the facts upon which the accused were eventually prosecuted were not apparent on the face of the sanction. That being so, the case cited before us would not assist Mr. Somjee's contention in any manner.

[3] AIR 1948 PC 82

16. Our attention is invited by the learned Assistant Government Pleader to a decision of the Supreme Court in - *'Biswabhusan Naik v. State of Orissa*[4]*',* It was a case of a prosecution for an offence under Section 5, Sub-Section (1), Prevention of Corruption Act. Now, Section 5, Sub-Section (1) consists of clauses more than one and in the sanction it was not stated as to in respect of which clause the accused was sought to be prosecuted. The only thing which was mentioned was Section 5, Sub-Section (1). It was pointed out by the learned Judges of the Supreme Court in that case that it was not necessary for the sanction under the Prevention of Corruption Act to be in any particular form or in the writing or for it to set out the facts in respect of which it was given. The desirability of such a course was obvious, because when the facts were not set out in the sanction, proof had to be given aliunde that sanction was given in respect of the facts constituting the offence charged. Their Lordships pointed out however that an omission to do so was not fatal so long as the facts could be, and were, proved in some other way. In that case, it was evident from the evidence that the facts placed before the Government could only relate to offences under Section 161, Penal Code and clause (a) of Section 5, Sub-Section (1), Prevention of Corruption Act. It was evident that the facts placed before the Government could not relate to clause (b) or clause (c) of Section 5(1). In the case before us also, from the facts which were placed before the Registrar of Cooperative Societies, it was evident to him that, the accused were sought to be prosecuted under Section 161, Penal Code. Therefore, in our view, the sanction does not suffer from any such infirmity as pointed out by the learned counsel Mr. Somjee.

17. The next contention of Mr. Somjee was that in this case the order of the Presidency Magistrate as contemplated by Section 5-A, Prevention of Corruption Act was not on the record, that therefore the investigation was bad and that therefore, whatever was done in the investigation including the raid at the Goverdhan Hindu Hotel was also bad. In this connection, it is only necessary to turn to the evidence of the Police Sub-Inspector Mr. Patil and Mr. Patil has said that he had obtained permission from the Presidency Magistrate, 19th Court, to investigate into the case, as he had wanted to lay a trap. We have no reason whatever to doubt this statement of Mr.

Patil. We accept the statement and come to the conclusion that the requisite order from the Presidency Magistrate, 19th, Court, for the investigation into this case was obtained by the police before the investigation was started by them. It is true that the order of the Magistrate itself is not on the record. But that in our view constitutes no infirmity. In this connection, it is pertinent to note that, although there were two learned Advocates defending the accused in the trial Court, one learned Advocate appearing for one accused and, the other learned Advocate appearing for the other accused, Mr. Patil's statement that he had obtained permission from the Presidency Magistrate, 19th Court, to investigate into the case was not challenged. In our view, it is too late a stage now to contend that the order of the Presidency Magistrate is not on the record, the suggestion obviously being that no such permission was obtained at all. In this connection, it would not be out of place to refer to a decision of the Supreme Court in - *'N.N. Rishbud v. State of Delhi*[5]*',* In this case, it was pointed out by their Lordships that, if cognizance was in fact taken on a police report vitiated by the breach of a mandatory provision relating to investigation, there could be no doubt that the result of the trial which followed could not be set aside unless the illegality in the investigation could be shown to have brought about a miscarriage of

[4] AIR 1954 SC 359

[5] AIR 1955 SC 196

justice. That an illegality committed in the course of, investigation did not affect the competence and the jurisdiction of the Court for trial was well settled. Their Lordships pointed out that, where the cognizance of the case had in fact been taken and the case had proceeded to termination, the invalidity of the precedent investigation did not vitiate the result, unless miscarriage of justice had been caused thereby. There is nothing whatever to show in this case that the slightest miscarriage of justice had been occasioned either to accused 1 or to accused 2 simply by reason of the fact that the order of the Magistrate under Section 5-A, Prevention of Corruption Act was not brought on the record. There is no doubt that such an order was in fact obtained by Sub-Inspector Patil before he started the investigation.

18. I now come to the next point which was pressed before us by Mr. Somjee and that point was that the statements which were recorded of the accused under Section 342, Criminal Procedure Code were not proper statements in that questions worded in compound and complex sentences were put to the accused. In this connection, we have only to turn to certain decisions to see that, if no prejudice is caused to the accused as a result of improper questioning of the accused, the trial would not be vitiated. The first case which we may refer to in this connection is the case of - *'Tara Singh v. The State*[6]*',* In the body of his judgment in this case, it was observed by Bose, J. :

> "In any event, the Code directs that the accused shall be afforded these opportunities and an omission to do so vitiated the trial if prejudice occurs or is likely to occur .....

I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities.

Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342, Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice." The ratio of this decision, therefore, is quite clear and it is that every, error or omission in the matter of recording a statement of an accused under Section 342, irrespective of the degree of the error or the likelihood of the error causing prejudice to the accused, cannot be a ground for holding that the trial is vitiated.

19. The next case to which our attention was invited was the case of - *'Ajmer Singh v. State of Punjab*[7]*',* In this case, the decision just referred to above by me was cited and relied upon. It was pointed out by the learned Judge (Mahajan, J.) who delivered the judgment of the Bench that it was well settled that every error or omission in complying with Section 342 did not necessarily vitiate the trial. Errors of this type fell within the category of curable irregularities and the question whether the trial had been vitiated depended in each case upon the degree of error and upon whether prejudice had been or was likely to have been caused to the accused.

[6] AIR 1951 SC 441
[7] AIR 1953 SC 76

20. Our attention was also invited to an unreported decision of this Court in Cri. Rev. Appln. No. 313 of 1952 (Bom) (H) which was decided by the learned Chief Justice Chagla on 20-6-1952. What had happened in that case and where the learned Magistrate had gone wrong in that case was that, after the prosecution witnesses had been examined and before the accused had entered on their defense, they had filed a written statement. The written statement dealt with all the points and contained a detailed reply to all the allegations made by the prosecution. The Magistrate took the view that, as the accused had stated on the 11th July that they had wanted to put in a written statement and as the written statement had been put in before the accused were called on for the defense, the provisions of Section 342 were satisfied. It was held by the learned Chief Justice that in that case the provisions of Section 342 were not satisfied as the learned Magistrate should have expressly asked the accused whether they had anything to say about the evidence recorded against them at the stage indicated in Section 342. In the body of his judgment, the learned Chief Justice observed thus,

> "If there had been no written statement, undoubtedly the position might have been different. But when the case of the accused is fully set out in the written statement, any examination held under Section 343 would have been purely superfluous. I have not the slightest doubt that if the Magistrate had examined the accused under Section 342 at the stage at which he should have examined them, the short answer would have been the same as it was before, viz. that they would rather put in a written statement than answer questions put to them by the Magistrate. Therefore, as there is no prejudice ensued to the accused in the present case, I do not propose to set aside the conviction merely because the learned Magistrate has failed to comply with the provisions of Section 342."

The present case is not a case where the statements of the accused were not recorded under Section 342. After the prosecution evidence had closed, the accused were asked what they had to say in respect of the evidence against them and several questions were put to them and this was done under Section 342, Criminal Procedure Code. They were detailed questions. The accused answered these questions and also stated that, in addition, they would put in their written statements. Those written statements have been dealt with by me in considerable details. In these written statements, the accused have answered every allegation made against them by the prosecution. We are of the view that, simply because complex and compound questions were sometimes put to the accused while recording their statements under Section 342, Criminal Procedure Code, no prejudice was caused to the accused. That being so, there is no substance in this contention of Mr. Somjee either.

21. I proceed now to the last contention which was pressed before us by Mr. Somjee. Mr. Somjee says that since upon the view which we have taken of the charge in this case, the offence with which the accused were charged was only one lot of evidence which was led in this case by the prosecution would be inadmissible evidence. In our view, it could not be said that the evidence which was led by the prosecution in the trial Court in respect of the incidents of the 21st October, 24th October and 13th November was irrelevant. Of course, as the offence with which the accused were charged was one offence, we have considered it unnecessary to go into the evidence in respect of events prior to 19-11-1954. But the leading of that evidence could not be said to be irrelevant. That evidence was relevant on the point of common intention. Whether it was reliable evidence or not is a different matter; but it could not be said that it was inadmissible evidence. As we have refrained from going into that evidence, we will not consider it even on the point of common intention. We shall ignore it. But the prosecution could not be accused of leading inadmissible evidence if they considered that it had relevance on the point of common intention. If the prosecution contended that on 21st October both the accused together went to the Society when accused 2 made a demand for money on behalf of both of them, if they further contended that on the 24th October both the accused went again to the Society premises for the same purpose . .and if, according to the prosecution, on 13-11 1954 both the accused repeated their visit to the Society premises for the same purpose, it could not be said that the evidence which the prosecution led was inadmissible. It would be admissible on the point of common intention. In this connection, I may refer to the provisions of Section 14, Evidence Act and the Section says :

> "Pacts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant." Then there is Section 6, Evidence Act which lays down :
> "Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at

different times and places."

That being so, we have no doubt that the evidence which the prosecution led in respect of the events prior to 19-11-1954 was admissible on the point of common intention. However, as I have just said, we shall decide the question of common intention independently of the evidence which the prosecution has led in regard to the incidents of the 21st October, 24th October and 13th November.

22. On the point of common intention, it would be of advantage to refer to a decision of the Privy Council in - *'Mahbub Shah v. Emperor*[8]*',* It was pointed out by their Lord-ships of the Privy Council in this case that common intention within the meaning of the Section (the section referred to was Section 34, Penal Code) implied a pre-arranged plan, and to convict the accused of an offence applying this Section, it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. Their Lordships pointed out that it was difficult, if not impossible, to procure direct evidence to prove the intention of an individual and that in most cases the intention had to be inferred from, his act or conduct or other relevant circumstances of the case. Now, in this particular case, the fact that both the accused went to the Goverdhan Hindu Hotel on 19-11-1954 where they had no ostensible reason to go, the 'fact' that accused 2 went inside the hotel with Abdul Rehman, the 'fact' that accused 1 kept waiting outside near the entrance where he stood with one foot on the top step leading into the hotel and the other foot on the next step leading into the hotel and the other foot on the step next below, the 'fact' that accused 2 accepted currency notes from Abdul Rehman and after acceptance concealed them in the folds of the newspaper, the 'fact' that accused 2 had a newspaper with him at that material and psychological time, the 'fact' that after accepting the currency notes and

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concealing the notes in the folds of the newspaper accused 2 passed on the newspaper to accused 1 and the 'fact' that immediately thereafter accused 1, upon looking into the newspaper and satisfying himself that there were currency notes in the folds of the newspaper, moved on quickly in the direction of the panshop and accused 2 also moved away in the direction of Mahim would show beyond a shadow of doubt that both the accused were acting in pursuance of a pre-arranged plan. There was a concert between them pursuant whereto they, accompanied by Abdul Rehman, had gone to the Goverdhan Hindu Hotel. It was a part of the plan that to start with, accused 1 should have a newspaper with him, that at some stage he should pass it on to accused 2. It was a part of the plan that accused 2 should use it for hiding the currency notes which were expected to be given to him by Abdul Rehman. It was a part of the plan that, after accepting the currency notes and hiding them in the newspaper, accused 2 should pass on the newspaper with the currency notes to accused 1. It was a part of the plan on the part of accused 1 and 2 not to enter the factory premises or the factory office. It was a part of the plan to go as far away from the factory premises as possible and ultimately, as Abdul Rehman refused to go to Sion, they went to the Goverdhan Hindu Hotel. All these facts - and I have enumerated several of them - in respect of the incident of 19-11-1954 and all the above mentioned conduct of the accused must establish

beyond a shadow of doubt that on 19-11-1954 they were acting together pursuant to a pre-arranged concert and a pre-arranged plan. In these circumstances, we have no doubt that there was common intention on the part of both the accused to obtain a bribe to the tune of Rs. 3000/- (actually the amount paid was Rs. 2500/-) from Abdul Rehman on 19-11-1954.

23. This finishes all the points which were pressed before us by Mr. Somjee for accused 1. Mr. Ghaswala generally supported Mr. Somjee in these points so far as the points concerned accused 2. He had no further law points to press before us on behalf of his client and said that he supported the arguments made before us by Mr. Somjee in respect of the law points and other points, and added that Mr. Kale, the leather expert, was not examined as a prosecution witness to show that on 21-10-1954 accused 2 had taken Abdul Rehman aside. In our view, nobody would be expected to notice such a small and minor incident as one person taking another person aside and nobody would have any reason to remember such a small incident. A point was made by Mr. Ghaswala that in presence of Mr. Kale, a superior officer of accused 2, accused 2 would not have moved away and would not have taken Abdul Rehman aside. In the first place, there is nothing to show that Mr. Kale was a superior officer of accused 2. Accused 2 is a supervisor whose duty was to inspect the accounts of the Society and to sign the cash book. Mr. Kale was a leather expert. Mr. Kale did not hold any office in the Department under the Registrar of Co-operative Societies. He had no administration control over accused 2. That being so, we do not see any force in Mr. Ghaswala's contention that Mr. Kale, being a superior officer of accused 2, accused 2 would not have taken Abdul Rehman aside.

24. Mr. Ghaswala next contended before us that Abdul Rehman did not make any complaint to Mr. Kale that accused 2 was demanding illegal gratification from the Society. In our view, we see nothing strange about it. Mr. Kale was not a superior officer, as I have just said, of accused 2. Besides, Abdul Rehman on his own behalf could not decide whether to complain about it or not. He must have been taken by surprise when accused 2 made a demand.
In the ordinary course of things, he would like to consult his colleagues. He would also like to consult the Chairman. At any rate, since we have refrained from going into the evidence in respect of incidents prior to 19-11-1954, the comments made by Mr. Ghaswala in respect of the incidents prior to 19-11-1954 would have no effect one way or the other.

25. Mr. Ghaswala has also referred us to certain telephonic conversations between accused 1 and Abdul Rehman or accused 1 and Bhagwat on the 22nd and 23rd October. It is unnecessary to go into these telephonic conversations, because we have not taken these telephonic conversations into consideration in arriving at a decision in this case. We have arrived at the decision quite independently of the evidence relating to the period prior to 19-11-1954. In respect of the movie picture, I have already dealt with Mr. Ghaswala's submission that we should see the picture. I have pointed out with detailed reasons that if we had found it necessary in the interest of justice to see the picture, we would certainly have seen it. We are, however, of the view for the reasons stated by us that it is unnecessary for us to do so.

26. This finishes all the comments which were made before us by the learned Counsel appearing for the accused.

27. In the result, we come to the conclusion that the order of the learned Special Judge, Greater Bombay, finding both the appellants guilty of an offence under Section 161 read with Section 34, Penal Code and sentencing accused 1 to one year's rigorous imprisonment and to pay a fine of Rs. 500/- and sentencing accused 2 to nine months' rigorous imprisonment and to pay a fine of Rs. 300/- must be confirmed. Their appeals are accordingly dismissed. Both the accused to surrender to their bail.
Appeals dismissed. .