

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 21.05.2026

Pronounced on: 30.06.2026

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*Whether the operative part
or full judgment is
pronounced: **Full***

CrlA(S) No.01/2020

FALIL UR REHMAN

... APPELLANT(S)

*Through: - Mr. M. Y. Bhat, Sr. Advocate, with
Mr. Sajid, Advocate.*

Vs.

UT OF J&K

...RESPONDENT(S)

*Through: - Mr. Haaris Khan, Assisting Counsel, vice
Mr. Mohsin S. Qadiri, Sr. AAG.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The present appeal is directed against judgment dated 12.02.2020 passed by the learned Special Judge Anticorruption, Kashmir, Srinagar (hereinafter referred to as the trial court) whereby the appellant has been convicted of offences under Section 5(1)(d) read Section 5(2) of J&K Prevention of Corruption Act [for short "the PC Act"] and Section 161 of RPC. Vide the impugned judgment, the appellant has been sentenced to undergo simple imprisonment for a period of one year and to pay a fine of

Rs.10,000/ in proof of offence under Section 5(1)(d) read with Section 5(2) of the PC Act. In proof of offence under Section 161 of RPC, the appellant has been sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.2000/. In default of payment of fine, the appellant has been sentenced to undergo simple imprisonment for a further period of six months. Both the sentences have been directed to run concurrently.

2) As per the prosecution case, on 03.03.2008, complainant-PW Ab. Rashid Wani, lodged a written complaint before the Vigilance Organization, Kashmir, alleging therein that he had submitted an application to State Forest Corporation, Srinagar, for sanction of 50 CFT timber about five months back and on 12.11.2007, the sanction order was issued in his favour. It was alleged in the complaint that when the complainant approached Range Officer SFC, Rajbagh, Srinagar, he was told that as soon as the stock of timber will become available at PC Depot, Parimpora, Srinagar, the allotted timber will be issued in his favour. The complainant further alleged that when he approached In-charge PC Depot, Parimpora, the appellant herein, he demanded Rs.7500 as bribe for issuance of sanctioned timber. It was further alleged in the complaint

that after great persuasion, the deal relating to payment of bribe was settled at Rs.4000, which was to be paid to the appellant on 03.03.2008. According to the complainant, he was reluctant to pay bribe, as such, he approached Vigilance Organization, Kashmir, along with an amount of Rs.4000 and prayed for legal action against the appellant.

3) On the basis of aforesaid complaint, FIR No.8/2008 for offences under Section 5(1)(d) read with Section 5(2) of the PC Act and Section 161 of RPC came to be registered with Police Station Vigilance Organization, Kashmir (VOK) and investigation was commenced. A trap team comprising officers/officials of VOK was constituted for laying trap against the appellant/ accused. Services of one independent witness, PW-Prince Ahmad Khan, Senior Assistant, Commercial Tax Department, Srinagar, were also requisitioned and he was associated in the trap proceedings. The complainant is stated to have produced Rs.4000/ comprising three currency notes, each of Rs.1000/ denomination and ten currency notes of Rs.100/ denomination before the members of the trap team.

4) After conducting pre-trap demonstration, the complainant along with other members of the trap team proceeded to PC Depot, Parimpora. On reaching there, the

complainant and the independent witness approached the appellant in his office and after some time, the appellant and the complainant came out of the office and they went to a tea stall outside the office premises and the independent witness followed them. It is further alleged that the appellant/accused demanded and accepted Rs.4000/ as bribe from the complainant and kept the same in the left back pocket of his trouser, whereafter he came out of the tea stall. The whole transaction was watched by the independent witness. Thereafter a pre-fixed signal was given by the complainant to other members of the trap team who rushed to the spot and apprehended the appellant/accused. Upon search of left back pocket of his trouser, the tainted money was recovered from his possession which was seized on spot. Thereafter the appellant/accused was made to wash his hands in the solution of Sodium Carbonate which turned pink. Similarly, left back pocket of trouser of the appellant/accused was also washed in Sodium Carbonate solution and the same also turned pink. These solutions were put in bottles and the same were sealed on spot. Thereafter the appellant/accused was arrested and during his personal search, his identity card, a mobile phone and an amount of Rs.2400/ were recovered and seized. The

investigating agency also seized the sanction order bearing No.833063 dated 12.11.2007 and GR No.1277 dated 08.11.2007 produced by the complainant. The statement of the complainant PW-Ab. Rashid Wani under Section 164A Cr.P.C was recorded before the Judicial Magistrate, 1st Class, and the statements of other witnesses conversant with the facts of the case were recorded under Section 161 of the Cr.P.C. After investigation of the case, offences under Section 5(1)(d) read with Section 5(2) of PC Act and Section 161 of RPC were found established against the appellant/accused and the challan was laid before the trial court.

5) Vide order dated 25.04.2011, the learned trial court framed charges for offences under Section 5(1)(d) read with Section 5(2) of the PC Act and Section 161 of RPC against the appellant/accused, who denied the charges and claimed to be tried. Accordingly, the prosecution was directed to lead evidence in support of the charges. In order to prove the charges, the prosecution besides examining complainant PW Ab. Rashid Wani, and shadow witness PW Prince Ahmad Khan, also examined members of the trap team, namely, Inspector Mohammad Rafi, Inspector Bashir Ahmad Mir and Constable Abdul Rashid Khan as witnesses in support of

their case. PW Abdul Majid Khan was examined to prove investigation whereas PW Ghulam Hassan Bhat was examined to prove registration of FIR. Besides this, Scientific Officer, PW Shabir Ahmad Yesvi, PW Zahoor Ahmad Mir, Field Worker, SFC, Parimpora, and PW Abdul Rashid, Divisional Manager, JKSFC, were also examined by the prosecution.

6) After completion of the prosecution evidence, the incriminating circumstances appearing in the prosecution evidence were put to the appellant/accused for seeking his explanation and, accordingly, his statement under Section 342 of J&K Cr. P. C. was recorded on 22.11.2018. In his statement the appellant/accused put up a defence that the complainant is an interested witness and that there was no occasion for him to make any demand of bribe as there was no release order in favour of the complainant nor any document was marked to him. The appellant expressed his ignorance about the trap proceedings. He termed the evidence with regard to recovery of tainted money from his possession as biased, inconsistent and contradictory.

7) Though the appellant sought time to lead evidence yet no witness was produced by him in defence and he made a statement before the trial court that he does not want to

produce any witness in defence. The case was, accordingly, set down for final arguments.

8) The learned trial court vide the impugned judgment dated 12.02.2020 framed the following four points for determination:

a) Whether complainant approached State Forest Corporation for sanction of 50 Cft of timber and sanction order was accordingly issued in his favour;

b) Whether complainant approached PC Depot Parimpora Srinagar for allotment of sanctioned timber where accused Falil-ul-Rehman met him who demanded Rs.7500/- as bribe for issuance of sanction timber and bribe money was settled to an amount of Rs.4000/-;

c) Whether complainant paid the bribe money of Rs.4000/- to the accused on the day of trap who accepted the same and was subsequently recovered from the pocket of the pent that the accused was wearing by trap team;

d) Whether positive hand wash and pocket wash confirmed that accused handled the bribe money;

9) After analysing the evidence on record, the learned trial court vide the impugned judgment came to the conclusion that the complainant had approached State Forest Corporation for sanction of 50 CFT of timber and the same was sanctioned in his favour. The learned trial court further recorded a finding that the prosecution has succeeded in proving the initial demand of illegal gratification made by the appellant/accused from the complainant. The learned trial

court also came to the conclusion that the prosecution has succeeded in proving the demand and payment of illegal gratification to the appellant/accused during the trap proceedings, pursuant where to, an amount of Rs.4000/ was paid by the complainant to the appellant/accused who accepted it and put the same in left back pocket of his trouser, wherefrom the same was recovered. It was also concluded that chemical tests carried out on spot confirmed that the appellant/accused had handled the tainted currency notes. On the basis of these findings, the learned trial court recorded the impugned judgment of conviction and sentence against the appellant/accused which is under challenge in the present appeal.

10) The appellant has challenged the impugned judgement on the grounds that the sanction for prosecution against him has not been proved in the present case as only Xerox copy of the sanction order has been placed on record of the challan. It has been contended that the appellant/accused was not competent to issue timber in favour of the complainant because the order relating to sanction of timber was not endorsed to him and, therefore, there was no occasion for the appellant/accused to demand bribe from the complainant. It has been contended by the appellant that

the impugned judgment is against the facts and the legal position. It has been further contended that the shadow witness has clearly stated that there was no conversation about bribe between the complainant and the accused and that the bribe money was not tendered by the complainant to the accused. It has been contended that PW Zahoor Ahmad Mir, who was present on spot, has clearly stated that the complainant forcibly tried to tender bribe money to the accused but he returned the same twice. According to the appellant, there are grave contradictions in the statements of prosecution witnesses. It has been contended that the impugned judgment has been passed without appreciating the evidence and the material on record and that the findings recorded by the learned trial court are perverse. It has been also contended that without proof of demand and acceptance of illegal gratification, mere recovery of the tainted money from the possession of the appellant/accused would not be enough to record judgment of conviction against him.

11) I have heard learned counsel for the parties and perused the impugned judgment, the grounds of appeal, evidence on record and record of the trial court.

12) As already stated, the charge against the appellant/accused, which was subject matter of trial before

the learned trial court, is that he, in his capacity as Incharge PC Depot, SFC, Parimpora, had demanded illegal gratification from the complainant, PW Ab. Rashid Wani, for release of timber that was sanctioned in his favour in terms of sanction order dated 12.11.2007, regarding which he had also deposited the requisite amount vide GR dated 08.11.2007. It is the case of the prosecution that when the trap was laid by the sleuths of VOK on 03.03.2008, the appellant/accused had demanded and accepted tainted currency notes amounting to Rs.4000/ which were later on recovered from the left side back pocket of his trouser.

13) The first contention that has been raised by learned Senior Counsel appearing for the appellant is that in the present case sanction for prosecuting the appellant/accused has not been proved, inasmuch as the original order according sanction for prosecution against the appellant/accused was not placed on record of the challan. On this ground it is being contended that the very cognizance of the offences against the appellant/accused is vitiated and, as such, he deserves to be acquitted of the charges.

14) In the above context, if we have a look at the trial court record, it does appear that a copy of the original sanction

order bearing SFC order No.848 of 2010 dated 27.12.2010, endorsed to the Vigilance Organization, is available on the record. The learned trial court, while dealing with this aspect of the matter, has observed that since copy of the original sanction order is on record, as such, contention of the accused is not tenable. However, the accused/appellant did not raise the issue with regard to validity of the sanction order until final hearing before the trial court. The authenticity of the sanction order has not been disputed by the appellant either during cross-examination of the prosecution witnesses including the investigating officer or while making statement under Section 342 of J&K Cr. P. C. The question arises as to whether it is legally permissible for the appellant/accused to raise this issue before the Appellate Court.

15) In the above context, it would be apt to notice the provisions contained in clause (a) of sub-section (3) of Section 6 of the PC Act. It reads as under:

(3) Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989 –

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of any error, omission or irregularities in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact occasioned thereby.

From a perusal of the aforesaid provision, it becomes clear that a finding, sentence or order passed by a Special

Judge cannot be reversed or altered by a court in an appeal etc. on the ground of any error, omission or irregularity in the sanction for prosecution of the accused mandated in terms of sub-section (1) of Section 6 of the PC Act unless it is shown that it has resulted in failure of justice.

16) Thus, unless it is shown by the appellant/accused that because of omission on the part of the prosecution to place on record the original sanction order before the trial court failure of justice has occasioned, such omissions will not lead to reversal of finding of guilt recorded by the learned trial court against the appellant/accused.

17) In my aforesaid view, I am supported by the judgment of the Supreme Court delivered in the case of **Central Bureau of Investigation v. V.K. Sehgal and another**, (1999) 8 SCC 501. While dealing with a similar issue, the Supreme Court has, in the said case, after noticing the provisions contained in Section 465 of the Code of Criminal Procedure (Central), which are somewhat similar to the provisions contained in sub-section (3) of Section 6 of the J&K PC Act, observed as under:

11. In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very

purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure.

18) The Supreme Court in the aforesaid case, after noticing the provisions contained in Section 19(3) of the Prevention of Corruption Act, 1988 (Central Act), which is in *pari-materia* with the provisions contained in Section 6(3) of the J&K PC Act, held that no conviction and sentence can be altered or reversed merely on the ground of absence of sanction, much less on the ground of want of competency of the authority who granted the sanction.

19) Turning to the facts of the present case, as already stated, the appellant/accused did not raise the objection with regard to admissibility in evidence of the order of sanction during the trial of the case. Thus, no question of failure of justice in the present case would arise. Once the allegations against the appellant/accused have been subjected to full dressed trial by the trial court, the purpose of initial sanction for prosecution gets fulfilled. It has been observed by the Supreme Court in **V. K. Sehgal's** case (supra), that the purpose of precondition of sanction for

launching a prosecution against a public servant is to filter frivolous complaints against the public servant and to safeguard him from vindictive prosecution, but once he has waived his right to raise an objection relating to absence/irregularity of sanction and the allegations levelled against him have been subjected to full-dressed trial, the insistence upon the sanction for prosecution would be unnecessary. In this view of the matter, the contention raised by the appellant/accused does not have any force.

20) The learned Senior Counsel appearing for the appellant has laid much emphasis on the contention that in the present case, demand of illegal gratification by the appellant/accused from the complainant at the time of trap proceedings is not established. It has been contended that shadow witness PW Prince Ahmad Khan has categorically stated that while he was watching the accused and the complainant, there was no conversation between them with regard to demand of bribe nor there was any transaction of bribe money. He has also referred to the statement of PW Zahoor Ahmad Ahmad Mir, who, as per the prosecution case, was also present on spot at the time of alleged transaction of bribe money between complainant and the accused. It has been submitted that the said witness has

categorically stated that the complainant tried to tender bribe money to the accused twice but he refused to take the same.

21) According to the learned Senior Counsel, in the absence of corroboration to the statement of the complainant as regards the demand and acceptance of tainted money by the accused during trap proceedings, the same cannot be relied upon. It has been contended that the complainant in a trap case has to be treated as an accomplice and his uncorroborated testimony cannot be relied upon. According to the learned Senior Counsel, the essential ingredients of demand and acceptance of tainted money by the appellant/accused during the trap proceedings have not been established and, therefore, mere recovery of tainted money from the possession of the appellant/accused would not be enough to record conviction against him.

22) There is no dispute to the legal position that in order to prove an offence under Section 5(2) of the J&K PC Act read with Section 161 of RPC, it is incumbent upon the prosecution to prove with cogent and convincing evidence that the accused made the demand of illegal gratification, that pursuant to the said demand the illegal gratification was paid to the accused and the same was recovered from

him. Unless all the aforesaid three aspects of the case are proved beyond reasonable doubt, the legal presumption arising out of Section 4 of the J&K PC Act does not get attracted. The question that is required to be determined in the instant case is whether in the absence of corroboration to the statement of the complainant, PW Ab. Rashid Wani, to demand and acceptance of illegal gratification by the appellant/accused during the trap proceedings by the shadow witness, PW Prince Ahmad Khan, it can be stated that the said essential ingredient of offence under Section 5(2) of PC Act read with Section 161 of RPC is established.

23) In order to find an answer to the aforesaid question, it would be apt to survey legal position regarding the reliability of uncorroborated testimony of a trap witness that has emanated from various precedents handed down by the Supreme Court from time to time.

24) The Supreme Court has, in the case of **Prakash Chand vs. State Delhi Administration**, (1979) 3 SCC 90, while dealing with the issue as to whether conviction can be based on uncorroborated testimony of a trap witness, held that a trap witness may perhaps be considered as a person interested in the success of trap and that may entitle a Court to view his evidence as that of an interested witness. The

Court further held that where the circumstances justify it, a Court may refuse to act upon the uncorroborated testimony of a trap witness but on the other hand, a court may well be justified in acting upon the uncorroborated testimony of a trap witness if the court is satisfied from the facts and circumstances of the case that the witness is a witness of truth.

25) In **M. O. Shamsudhin vs. State of Kerala**, (1995) 3 SCC 351, the Supreme Court has, while dealing with the argument that statement of a bribe giver being in the nature of an accomplice cannot be relied upon without corroboration, explained the legal position on the issue in the following manner:

11. Since this is an argument which is frequently put forward in all cases of bribery, we would like to examine the scope, nature and extent of corroboration that is necessary in such cases. The word 'accomplice' is not defined in the Evidence Act. However, it is accepted that the word is used in its ordinary sense which means and signifies a guilty partner or associate in a crime. Illustration (b) to Section 114 in a way cautions the court to bear in mind the presumption that an accomplice is not worthy of credit unless he is corroborated in material particulars. Section 133 of the Act, however, declares that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice. The relation between Section 133 which is a rule of law and Illustration (b) to Section 114 which is a rule of prudence has been the

subject of comment in a large number of decisions. However, it has emerged that a conviction based on the uncorroborated testimony of an accomplice is not illegal though an accomplice may be unworthy of credit for several reasons. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together, the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused. The reasons for requiring corroboration of the testimony of an accomplice are that an accomplice is likely to swear falsely in order to shift the guilt from himself and that he is an immoral person being a participator in the crime who may not have any regard to any sanction of the oath and in the case of an approver, on his own admission, he is a criminal who gives evidence under a promise of pardon and supports the prosecution with the hope of getting his own freedom.

12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous tests which are generally applied to a case of an approver. Though bribe-givers are generally treated to be in the nature of accomplices but among them there are various types and gradations. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving the trap cannot succeed. When there is such a demand by the public servant from a person who is unwilling, and if to do public good approaches the authorities and lodges a complaint, then in order that the trap succeeds he

has to give the money. There could be another type of bribe-giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is a *particeps criminis* in respect of the crime committed and thus is an accomplice. Thus, there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of 'accomplices' by reason of their being bribe-givers, in the first instance, the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances.

13. The word 'corroboration' means not mere evidence tending to confirm other evidence. In *DPP v. Hester* , Lord Morris said:

"The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible; and corroborative evidence will only fill its role if it itself is completely credible...."

In *DPP v. Kilbourne* , it was observed thus:

"There is nothing technical in the idea of corroboration. When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements or circumstances relating to the particular matter; the better it fits in the more one is inclined to believe it. The doubted statement is corroborated to a greater or lesser extent by the other

statements or circumstances with which it fits in.”

14. *In R. v. Baskerville* , which is a leading case on this aspect, Lord Reading said:

“There is no doubt that the uncorroborated evidence of an accomplice is admissible in law.... But it has long been a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices, and, in the discretion of the judge, to advise them not to convict upon such evidence; but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence.... This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal Act, 1907, came into operation this Court has held that, in the absence of such a warning by the judge, the conviction must be quashed.... If after the proper caution by the judge the jury nevertheless convicts the prisoner, this Court will not quash the conviction merely upon the ground that the testimony of the accomplice was uncorroborated.”

15. *In Rameshwar v. State of Rajasthan*, Bose, J., after referring to the rule laid down in *Baskerville* case with regard to the admissibility of the uncorroborated testimony of an accomplice, held thus:

“That, in my opinion, is exactly the law in India so far as accomplices are concerned and it is certainly not any higher in the case of sexual offences. The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a judge without the aid of a jury. In these cases it is necessary that the judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why

he considers it safe to convict without corroboration in that particular case.”

Justice Bose in the same judgment further observed thus:

“I turn next to the nature and extent of the corroboration required when it is not considered safe to dispense with it. Here, again, the rules are lucidly expounded by Lord Reading in Baskerville case at pages 664 to 669. It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent the rules are clear.

First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says —

‘Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony.’

All that is required is that there must be ‘some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it’.

Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence. Again, all

that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that —

‘a man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all.... It would not at all tend to show that the party accused participated in it.’

Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, ‘many crimes which are usually committed between accomplices in secret, such as incest, offences with females’ (or unnatural offences) ‘could never be brought to justice’. ”

16. *We shall now refer to some of the judgments wherein the rule of corroboration has been considered in respect of the bribery cases. In Rao Shiv Bahadur Singh v. State of Vindhya Pradesh there are observations to the effect that the evidence of the trap witnesses cannot be taken on its face value thereby indicating that their evidence cannot be relied upon without independent corroboration. In State of Bihar v. Basawan Singh a Bench of five Judges considered this “corroboration requirement” and after referring to the observations made in Rao*

Shiv Bahadur Singh case explained them in the following manner:

“If the witnesses are not accomplices, what then is their position? In Shiv Bahadur Singh case (A) it was observed, with regard to Nagindas and Pannalal, that they were partisan witnesses who were out to entrap the appellant in that case, and it was further observed: ‘A perusal of the evidence ... leaves in the mind the impression that they were not witnesses whose evidence could be taken as its face value.’ We have taken the observations quoted above from a full report of the decision, as the authorised report does not contain the discussion with regard to evidence. It is thus clear that the decision did not lay down any universal or inflexible rule of rejection even with regard to the evidence of witnesses who may be called partisan or interested witnesses. It is plain and obvious that no such rule can be laid down; for the value of the testimony of a witness depends on diverse factors, such as, the character of the witness, to what extent and in what manner he is interested, how he has fared in cross-examination etc. There is no doubt that the testimony of partisan or interested witnesses must be scrutinised with care and there may be cases, as in Shiv Bahadur Singh case (A), where the Court will as a matter of prudence look for independent corroboration. It is wrong, however, to deduce from that decision any universal or inflexible rule that the evidence of the witnesses of the raiding party must be discarded, unless independent corroboration is available.”

This Court in the above case concluded thus:

“The correct rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who

are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in proper case, the Court may even look for independent corroboration before convicting the accused person.”

It was further concluded thus:

“As was observed by Lord Reading in Baskerville (C) even in respect of the evidence of an accomplice, all that is required is that there must be ‘some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it’. In Rameshwar at p. 385 (B), to which we have referred in an earlier paragraph, the nature and extent of corroboration required, when it is not considered safe to dispense with it, have been clearly explained and it is merely necessary to reiterate that corroboration need not be direct evidence that the accused committed the crime; it is sufficient even though it is merely circumstantial evidence of his connection with the crime.”

17. In a later case namely Major E.G. Barsay v. State of Bombay it was held by this Court that though a trap witness is not an approver he is certainly an interested witness in that he is interested to see that the trap laid by him succeeds and he could at the most be equated with the partisan witnesses which needs corroboration. Relying on the ratio laid down in Basawan Singh case a Bench of three Judges in Bhanuprasad Hariprasad Dave v. State of Gujarat held thus:

“Now coming back to the contention that the appellants could not have been convicted solely on the basis of the evidence of Ramanlal and the police witnesses, we are of opinion that it is an untenable contention. The utmost that can be said against Ramanlal, the Dy SP, Erulker and Santramji is that they are

partisan witnesses as they were interested in the success of the trap laid by them. It cannot be said — and it was not said — that they were accomplices. Therefore, the law does not require that their evidence should be corroborated before being accepted as sufficient to found a conviction. This position is placed beyond controversy by the decision of this Court in State of Bihar v. Basawan Singh wherein this Court laid down, overruling the decision in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh that where the witnesses are not accomplices but are merely partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in the same way as any other interested evidence is tested and in a proper case, the court may look for independent corroboration before convicting the accused person. We are unable to agree that any different rule was laid down in E.G. Barsay v. State of Bombay. It must be remembered that the decision in Basawan Singh case was given by a Bench of five Judges and that decision was binding on the Bench that decided Barsay case. Some of the observations in Barsay case no doubt support the contention of the appellants. But those observations must be confined to the peculiar facts of that case. It is now well settled by a series of decisions of this Court that while in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is corroborated in material particulars but as regards the evidence of a partisan witness it is open to a court to convict an accused person solely on the basis of that evidence, if it is satisfied that that evidence is reliable. But it may in appropriate case look for corroboration. In the instant case, the trial court and the High Court have fully accepted the evidence of Ramanlal, the Dy SP, Erulker and Santramji. That being so, it was open to them to convict the appellants solely on the basis of their evidence. That

apart, their evidence is substantially corroborated by the evidence of Dahyabhai, Sanghvi and Sendhalal. In the case of partisan witnesses, the corroboration that may be looked for is corroboration in a general way and not material corroboration as in the case of the evidence of accomplices.”

18. *In Dalpat Singh v. State of Rajasthan*, this Court after referring to Basawan Singh case observed thus:

“We are unable to accept the contention of the learned counsel for the appellants that PWs 1, 2, 3, 4 and 17 and other prosecution witnesses to whose evidence we shall presently refer, should be considered as accomplices and therefore their evidence is required to be corroborated in material particulars before being accepted. On the proved facts, even those who gave illegal gratification to the appellants cannot be considered as accomplices as the same was extorted from them. Though PWs 1, 2, 4 and 17 can be considered as interested witnesses as regards their evidence relating to trap, as a matter of law, it is not correct to say that their evidence cannot be accepted without corroboration. See State of Bihar v. Basawan Singh.”

19. *In Maha Singh v. State (Delhi Admn.)* this Court held thus: (SCC p. 652, paras 33 and 34)

“This also leads to the question whether all witnesses, who are called upon to assist detection of a bribery case by laying a trap, should be considered unreliable as accomplices or at any rate partisan witnesses. There is no rule of law that even if a witness is otherwise reliable and independent, his association in a pre-arranged raid about which he had become acquainted makes him an accomplice or a partisan witness. In absence of anything to warrant a contrary conclusion, conviction is not untenable merely because it is based on the testimony of such a witness.

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

20. *In Hazari Lal v. State (Delhi Admn.), Chinnappa Reddy, J. speaking for the Bench while repelling the contention that the evidence of trap witness namely the police officer should not be accepted unless corroborated observed thus: (SCC p. 395, para 9)*

“We, however, wish to say that the evidence of PW 8 is entirely trustworthy and there is no need to seek any corroboration. We are not prepared to accept the submission of Shri Frank Anthony that he is the very police officer who laid the trap should be sufficient for us to insist upon corroboration. We do wish to say that there is no rule of prudence which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case the Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential

guidance. We are forced to say this because of late we have come across several judgments of Courts of Session and sometimes even of High Courts where reference is made to decisions of this Court on matters of appreciation of evidence and decisions of pure question of fact.”

21. *From the above resume of various decisions, the following principles are deducible. Section 133 of the Evidence Act lays down that an accomplice is a competent witness against an accused person. The conviction based on such evidence is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, there is a rider in Illustration (b) to Section 114 of the Act which provides that the court may presume that the accomplice is unworthy of credit unless he is corroborated in material particulars. This presumption is in the nature of a precautionary provision incorporating the rule of prudence which is ingrained in the appreciation of accomplice's evidence. Therefore, the courts should be guarded before accepting the accomplice's evidence and look for corroborating evidence. The discretion of the court upon which the rule of corroboration rests must be exercised in a sound and reasonable manner. Normally the courts may not act on an uncorroborated testimony of an accomplice but whether in a particular case it has to be accepted without corroboration or not would depend on an overall consideration of the accomplice's evidence and the facts and circumstances. However, if on being so satisfied the court considers that the sole testimony of the accomplice is safe to be acted upon, the conviction can be based thereon. Even if corroboration as a matter of prudence is needed it is not for curing any defect in the testimony of the accomplice or to give validity to it but it is only in the nature of supporting evidence making the other evidence more probable to enable the court to satisfy itself to act upon it.*

22. *Now coming to the witnesses in trap cases, as held in Basawan Singh case by a Bench of five Judges, if any of the witnesses are accomplices who are particeps criminis in respect of the actual*

crime charge, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices in that sense but are only partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested which may vary from case to case and the corroboration in the case of such interested witnesses can be in a general way and not as one required in material particulars as in the case of an approver. Therefore, in seeking corroboration for the evidence of trap witnesses a distinction has to be drawn where participation of an individual in a crime is not voluntary but is the result of pressure. In such a case the element of mens rea to commit the crime is not apparent and (sic) cannot strictly be classified as an accomplice and at any rate he cannot be treated as being on the same footing. Where a bribe has already been demanded from a man and if without giving the bribe he goes to the police or magistrate and brings them to witness the payment it will be a legitimate trap and in such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the court depending upon the facts and circumstances of each case. However, as a rule of prudence, the court has to scrutinise the evidence of such interested witnesses carefully.

23. Now coming to the nature of corroborating evidence that is required, it is well-settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The court should weigh the evidence and then see whether corroboration is necessary. Therefore, as a rule of law, it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary

and if so to what extent and what should be its nature depends upon the facts and circumstances of each case. In a case of bribe, the person who pays the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about the bribe and it is not possible to get absolutely independent evidence about the payment of bribe. However, it is cautioned that the evidence of a bribe-giver has to be scrutinised very carefully and it is for the court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon it or not in those given circumstances.”

26) The aforesaid ratio has been followed by the Supreme Court in the case of **Ramesh Kumar Gupta vs. State of MP**, (1995) 5 SCC 320.

27) Recently, a Constitution Bench of the Supreme Court in the case of **Neeraj Dutta vs. State (Govt. of N.C.T of Delhi)**, (2023) 4 SCC 731, while answering the question as to whether in the absence of direct or primary evidence of demand of illegal gratification, is it not permissible to draw an inferential deduction of culpability/ guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution, surveyed the legal precedents on the issue laid down by the Supreme Court in previous past and summarized the legal position in the following manner:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by

the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the

bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.

28) From the foregoing analysis of the legal position on the subject, it emerges that there is no abstract rule that uncorroborated testimony of a bribe giver should not be accepted. It is also clear that a bribe giver can be termed as a partisan witness who is interested in the success of trap and his statement has to be analysed and scrutinized in the same manner in which the statement of any other partisan witness is to be analysed and scrutinized before placing reliance upon it. It is further beyond any cavil that corroboration to the statement of a complainant can be by way of direct evidence or by way of circumstantial evidence and it is not necessary that corroboration to his statement has to be by direct evidence only. The quantum of evidence corroborating the testimony of a trap witness would depend upon its own facts and circumstances which would include nature of the crime and the character of the trap witness. The Court, on the basis of the facts and circumstances of each case, will have to weigh the evidence and see whether corroboration is necessary.

29) In the face of aforesaid legal position, let us now advert to the facts of the present case. Complainant, PW Ab. Rashid Wani, has, in his examination-in-chief, stated that after taking tea in the nearby hotel, he told the accused that he

has brought Rs.4000/ with him, to which the accused replied that he had asked for Rs.7500/, whereafter he asked the complainant to pay an amount of Rs.4000/ for the time being. The complainant has further stated that he tendered Rs.4000/to the accused and the other person who was accompanying the accused, namely, PW Zahoor Ahmad, asked about his share, to which the complainant replied that had he been told about it, he would have brought Rs.1000/ for him also, whereafter said Zahoor Ahmad told him that he should bring an amount of Rs.1500/for him along with the balance amount.

30) There is no cross-examination of the complainant by the defence on the aspect of tendering of amount of Rs.4000/ by him to the accused, nor there is any cross-examination on the aspect of demand. In fact, the defence has not even given a suggestion to the complainant that he had forcibly tried to tender tainted currency notes to the accused. There is no suggestion by the defence that the complainant was having any grudge or previous enmity with the appellant/accused that could have been a motive for him to falsely implicate the accused. The only cross-examination by the defence on this aspect of the matter is about the location of the hotel where the transaction took place.

31) It is correct that shadow witness, PW Prince Ahmad Khan, has not supported the complainant on the aforesaid aspect of the case as, according to him, he could not overhear the conversation between the complainant and the accused. At one place during his cross-examination, he has stated that the accused demanded an amount of Rs.4000/ from the complainant in his presence but later on, he stated that he as well as accused along with the complainant were sitting in front of each other and he was able to watch their activities. He went on to state that during that period there was no conversation between the accused and the complainant with regard to demand of bribe nor the bribe money was tendered during the said period.

32) When the statement of the shadow witness is read as a whole, it appears that he has neither overheard the conversation that had taken place between complainant and the accused nor has he seen the transaction of tainted money taking place. Merely because the shadow witness has not been able to overhear the conversation between complainant and the accused and that he did not watch the transaction of tainted money when it took place, the statement of the complainant on this aspect of the matter cannot be discredited, particularly in the absence of any

cross-examination of the complainant on this aspect of the matter. Just because the complainant happens to be the bribe giver, his statement cannot be discarded, once it is shown that the defence has been unable to impeach the credit of the complainant during his cross-examination.

33) So far as statement of PW Zahoor Ahmad Mir, an employee of SFC, who was also present on spot at the relevant time, is concerned, he has been declared hostile by the prosecution as he has not supported the prosecution case. According to him, the complainant tried to tender bribe money to the accused on two occasions but he refused to accept the same. When the said witness was cross-examined, he stated that in his presence neither the accused demanded bribe from the complainant nor he accepted the same. He also stated that the amount of bribe was not recovered in his presence. However, he admitted his signatures on the memo of recovery, EXTP-1/5 and he also admitted that in his presence the accused was subjected to search by the sleuths of VOK. He further admitted that the tainted money was recovered from the pocket of the accused when he was subjected to search on the roadside near the hotel.

34) PW Zahoor Ahmad Mir is a colleague of the appellant/accused and for obvious reason, he has decided not to support the prosecution case so as to save his colleague. Hence his statement that the appellant/accused refused to take money from the complainant on two occasions, cannot be relied upon, particularly when the accused has not taken such a defence, either in his statement under Section 342 of J&K Cr. P. C or while cross-examining any of the prosecution witnesses.

35) The statement of the complainant, PW Ab. Rashid Wani, so far as it relates to demand and acceptance of bribe money and consequent recovery of the same from the left side back pocket of trouser of the accused finds corroboration from other circumstances proved on record. All the members of the trap team which includes shadow witness PW-Prince Ahmad Khan and even hostile witness PW Zahoor Ahmad Mir, have categorically stated that during the post trap proceedings, hand wash of the appellant/accused was conducted and the solution of Sodium Carbonate turned pink. They have also stated that upon search of the appellant/accused, the tainted money was recovered from left side back pocket of his trouser and when the pocket of the trouser was subjected to wash in

Sodium Carbonate, the solution turned pink. There are no major contradictions in the statements of prosecution witnesses on this aspect of the matter. Thus, it has been proved that the appellant/accused has fiddled with the currency notes with his hands and it is also established that he put these currency notes in his pocket wherefrom the same were recovered by the member of the trap team. This circumstance corroborates the statement of the complainant that the appellant/accused had demanded and accepted the tainted money which was recovered from his possession. The positive Sodium Carbonate test vis-à-vis hands of the appellant/accused and left-side back pocket of his trouser goes on to show that he had voluntarily accepted the bribe. Thus, there is evidence of demand of illegal gratification and voluntary acceptance thereof.

36) It has been contended by the appellant/accused that having regard to his designation, he was neither competent nor was it his duty to deal with matter relating to release of timber in favour of the complainant and, therefore, there was no occasion for him to demand bribe from the complainant. This aspect of the matter has been dealt with by the learned trial court and it has been observed that being Incharge of PC Depot, Parimpora, there was a representation on behalf

of the accused to the complainant that he will release the sanctioned timber. It has been observed that the accused was capable of showing official favour being in charge of the PC Depot. The said observation of the learned trial court is perfectly in accordance with law because even if it is assumed that the accused was not competent to actually release the timber in favour of the complainant, still then he was definitely in a position to make a representation to the complainant that he is in a position to release the sanctioned timber and, thus, had the occasion to demand bribe from the complainant.

37) For what has been discussed hereinbefore, I do not find any ground to interfere in the well-reasoned and lucid judgment passed by the learned trial court. Accordingly, the impugned judgment of conviction and sentence passed by the trial court is upheld and the appeal shall stand dismissed. The bail and surety bonds of the appellant/accused are cancelled and he is directed to surrender before the learned trial court within a period of three weeks from the date of this judgment. Upon surrender by the appellant, the learned trial court shall send him to jail for serving the balance sentence. In case the appellant/accused does not surrender before the trial court within the

aforesaid period, coercive measures shall be taken for securing his presence before the said court.

38) The trial court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

Srinagar,
30.06.2026
“Bhat Altaf-Secretary”

Whether the **judgment** is reportable: **YES**

