

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal No. 1085-SB of 2004

Date of Decision : 20.01.2015

Sardari Lal

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. S.S.Dinarpur, Advocate
learned counsel for the appellant.

Mr.Deepak Bura, learned Public Prosecutor
for the State of Haryana.

1. **Whether Reporters of Local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 08.05.2004 passed by the learned Special Judge, Yamuna Nagar at Jagadhri, vide which the appellant Sardari Lal has been held guilty and convicted for the offence punishable under Section 7 and Section 13 (1) (d)

of the Prevention of Corruption Act, 1988 (hereinafter called 'Act') and the order of sentence of the even date vide which the appellant was sentenced to undergo rigorous imprisonment for a period of two years along with fine of Rs. 1000/- for the offence punishable under Section 7 of the Act in default of payment of fine he was to further undergo rigorous imprisonment for a period of six months. He was further sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 13 (i)(d) of the Act. Both the sentences were ordered to run concurrently.

2. The brief facts of the prosecution case are that Veena daughter of complainant Inderjit was married with Anil Kumar resident of Jagadhri on 06.05.1990. She was killed by causing burn injuries by her in-laws on 16.04.1991. Complainant Inderjit got registered a case against them. The said criminal case was decided by the Court of learned Additional Sessions Judge, Jagadhari, wherein three accused were acquitted. The present accused was posted as a Naib Court and his co-accused Raj Pal Viz was posted as District Attorney/Public Prosecutor in Jagadhri Courts at that time. Complainant Inderjit met them for the purpose of getting an appeal filed against the

judgment of acquittal along with PW-8 Balwant Singh. The matter was discussed. Co-accused Raj Pal Viz demanded a bribe of Rs. 2000/- and the present appellant demanded a bribe of Rs. 500/- from the complainant for that purpose. On the next day, complainant Inderjit moved an application Ex.PD to PW-13 Mohammad Akil, the then A.S.P, Jagadhri. On the basis of which the present case was registered.

3. PW-7 complainant Inderjit produced five notes of Rs. 100/- denomination and four notes of Rs. 500/- denomination. Those currency notes were taken into possession vide memo Ex.PG. Mohd. Akil, the Trap Laying Officer (for short T.L.O) called PW-9 Vivek Joshi, Additional Deputy Commissioner, Yamuna Nagar (for short A.D.C) and Jagwant Lamba, D.S.P, Headquarter, Yamuna Nagar to be joined in the raid. Complainant disclosed all the facts to them. The currency notes were initialed by the T.L.O and the A.D.C. The number of the currency notes were recorded in the memo Ex.PG. The phenol-pthalein powder was applied on all the currency notes and were handed over to the complainant vide memo Ex.PH with a direction to hand over the same to Raj Pal Viz as well as the present appellant Sardari Lal on their demand. Balwant Singh was appointed as a

shadow witness and was instructed to give signal to the police party with the help of white paper in his hand after the transaction is over. The raiding party reached to the appointed place i.e. crossing from where one road goes to Tehsil Office and another goes to the Courts. Complainant Inderjit Singh, Balwant Singh, the shadow witness along with Sardari Lal started taking tea on the Dhaba. After some time co-accused Raj Pal Viz, District Attorney/ Public Prosecutor came in a Maruti Car from Ambala side which was being driven by his son. The car was taken near the Dhaba where the complainant etc were taking tea. Mr. Viz came out of the car after seeing them and also came near them. They had some conversation. Then, on the demand of Raj Pal Viz Rs.2000/- was paid to him and Rs. 500/- was paid to the present accused Sardari Lal. The shadow witness gave the signal to the police party, which reached at the spot. The appellant and his co-accused Raj Pal Viz were apprehended. The tainted currency notes of Rs. 500/- were recovered from the pocket of the shirt of the appellant. The hand wash, currency notes wash and pocket wash of the appellant was taken in the solution of the sodium carbonate which turned pink in colour. The said solution was stored in

separate sealed nips (2 nips of each solution) and were taken into possession. The T.L.O prepared the site plan of the place of occurrence Ex.PQ. The car of the co-accused Raj Pal Viz was also taken into possession vide memo Ex.PK. The accused were arrested. After completing the necessary formalities of the investigation, the report under Section 173 Cr.P.C was presented in the Court of learned Special Judge for trial.

4. Initially, the present appellant was discharged by the learned Special Judge vide order dated 26.03.1997 for non-compliance of the Provisions of Rule 16.38 of the Punjab Police Rules. The State of Haryana preferred the revision against the said order passed by the learned Special Judge, which was set aside by this Court vide order dated 05.02.2003 passed in Criminal Revision No. 769 of 1997. Thereafter, the trial of the appellant started.

5. The appellant was charge sheeted for the offences punishable under Section 7 and 13 (i)(d) of the Act by the learned Special Judge, Jagadhri vide order dated 20.03.2003 to which the appellant pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution examined as many as thirteen witnesses.

Learned Public Prosecutor also tendered in evidence the report of Forensic Science Laboratory Ex.PM.

7. When examined under Section 313 Cr.P.C, the appellant pleaded that on the day of occurrence he was proceeding to the market from his house. When he reached on T-point Tehsil Office, number of persons had collected there. Mohd. Akil, A.S.P, Vivek Joshi, A.D.C and some other police officials were present there. They were taking Mr. Raj Pal Viz to the Office of A.S.P. On seeing them, he stopped there. He was asked by the A.S.P to accompany them to his office. The A.S.P asked him to sign some documents as a witness, but he refused to do so on the plea that nothing has happened in his presence and he is not going to sign those papers. At this, A.S.P asked his subordinates to arrest him in this case. He never demanded any bribe from the complainant nor the alleged amount of Rs. 500/- was recovered from his possession. He has no concern with the filing of the criminal appeal and has been falsely implicated.

8. Appellant did not adduce any evidence in his defence.

9. Appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned Special Judge, Jagadhri held guilty and

convicted the appellant for the offence punishable under Section 7 and 13 (i)(d) of the Act vide impugned judgment dated 08.05.2004 and was awarded the sentence as mentioned in the upper part of the judgment.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11. I have heard Mr. S.S.Dinarpur, Advocate learned counsel for the appellant and Mr. Deepak Bura, learned Public Prosecutor for the State of Haryana and have meticulously examined the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that demand of the bribe by the appellant from complainant Inderjit is not established. Even, as per the statement of complainant Inderjit and shadow witness Balwant Singh the demand was made by co-accused Raj Pal Viz and no demand was made by the present appellant. In the absence of any evidence regarding the demand of bribe by the appellant, the ingredients of offence are not established. It was sine qua non for the prosecution to establish the demand of bribe by the appellant for which there is no evidence. So, no

offence is made out against the appellant. To support his contentions he has relied upon cases **Suresh Kumar Vs. State of Haryana 2009(4) R.C.R (Criminal) 608, State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede 2009(4) R.C.R (Criminal) 217, C.M. Girish Babu vs. CBI, Cochin, High Court of Kerela 2009(2) R.C.R (Criminal) 134, A.Subair Vs. State of Kerela 2009(3) R.C.R (Criminal) 370, B. Jayaraj Vs. State of A.P 2014(2) R.C.R (Criminal) 410, State of Punjab Vs. Madan Mohan Lal Verma (2013) ACR 817and Karnail Singh Vs. State of Punjab 2009(1) R.C.R (Criminal) 403.**

13. He further contended that appellant was only appointed as a Naib Court. He was attached with the Court and not with the District Attorney. The prosecution witnesses have admitted that he was not competent to recommend or prefer any appeal. So, there was no question of his demanding any bribe. To support his contentions he relied upon case **State of Haryana Vs. Vinod Goel 2004(1) R.C.R (Criminal) 361.**

14. He further contended that the prosecution witnesses have stated that complainant Inderjit and Balwant Singh had met Sardari Lal at the tea shop

and even took tea together there. If the appellant would have demanded any bribe, he could have received the bribe at that very place. There is no explanation as to why the money was not paid to him, then and there. It also negates the allegations of the demand of bribe.

15. He further contended that there is no independent corroboration to the trap proceedings. The complainant was declared hostile. PW-8 Balwant Singh, the shadow witness is the close associate of the complainant. The trap is alleged to have been conducted at a public place. Only the official and interested witnesses have been associated. Non joining of the independent witnesses also renders the prosecution case doubtful.

16. Learned counsel for the appellant further contended that the sanction order is totally defective. Sh. K.K.Mishra, the then S.P, Jagadhri, who accorded the sanction for prosecution of appellant has appeared as PW-12. He has not brought the relevant file at the time of his testimony. He admitted that draft was prepared. It shows that he has only signed the draft already prepared. No date has been mentioned in the sanction order. The offence has been mentioned to be of the Indian Penal Code

instead of the Act, which shows that there was total non application of the mind by the Sanctioning Authority and the sanction is invalid.

17. He further contended that the T.L.O has not offered his own search to the accused before conducting their search, which also renders the prosecution case doubtful. To support his contentions he relied upon cases **Suresh Kumar Vs. State of Haryana (Supra)** and **Karnail Singh Vs. State of Punjab (Supra)**. Thus, he contended that appellant has falsely implicated simply on the ground that he has refused to sign some documents at the direction of the T.L.O against co-accused Raj Pal Viz. He has nothing to do with the filing of the appeal against acquittal. There is no evidence on record to show any nexus between the appellant and Raj Pal Viz, the District Attorney. Mere recovery of some currency notes is not sufficient to establish the offence. To support his contentions he relied upon cases **State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede (Supra)**, **C.M. Girish Babu vs. CBI, Cochin, High Court of Kerela (Supra)** and **B. Jayaraj Vs. State of A.P 2014(2) (Supra)**. Thus, he pleaded that the conviction of the appellant has been wrongly recorded by the learned trial Court.

18. On the other hand, learned Public Prosecutor for the State of Haryana contended that it is an admitted fact that the Naib Courts appointed in the Courts renders the assistance to the Public Prosecutor. They maintained the files of the Public Prosecutor, obtains the copy of judgments and supply the police files. So, it can not be stated that the appellant had no connection with the filing of the appeal. He was to assist the District Attorney. He further contended that as the appellant was working with the District Attorney, so they had the nexus. Appellant Sardari Lal was also present at the time of demand and acceptance, which establish the demand of bribe on his part. He further contended that the tainted currency notes have been recovered from his possession. He has not given any explanation as to how these currency notes came in his shirt pocket. His hand wash and pocket wash turned pink in colour, which shows that he has handled and accepted the bribe money. He further contended that minor clerical mistakes/ omissions in the Sanction Order can not establish the non application of mind on the part of the Sanctioning Authority. The Sanctioning Authority PW-12 has appeared in the witness box and proved the sanction order. He

further contended that presumption under Section 20 of the Act rises against the appellant. Thus, he pleaded that there is no legal infirmity in the conviction of the appellant recorded by the learned trial Court.

19. I have duly considered the aforesaid contentions.

20. There is no dispute with the proposition of law that in order to establish the ingredients of the offence in a corruption case, the prosecution is required to establish the demand, acceptance and recovery of the tainted currency notes. It is not necessary that demand of bribe must be established by the direct evidence. The demand can be proved even by the indirect and circumstantial evidence. Sometime even the conduct of the accused establishes the demand of bribe on his part.

21. In the instant case, it is not disputed that appellant Sardari Lal, at the relevant point of time, was posted as a Naib Court in the Court concerned, which decided the dowry death case relating to the death of the daughter of the complainant. His co-accused Raj Pal Viz was the District Attorney at that time and had conducted the case as a Public Prosecutor, which is evident from the certified copy of

the judgment dated 09.11.1993 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri.

22. It is a fact of common knowledge that though the Naib Courts are appointed in the Court, but their function is to assist the Public Prosecutor. They supply the files, maintain the records, obtain the copies of the statements of the witnesses etc. Thus, it can not be stated that the appellant had no connection at all with the criminal cases pending in the Court, where he was deputed as a Naib Court. As the Naib Court assist the Public Prosecutor, so apparently they worked with each other and nexus between them is natural. Moreover, mere this fact that appellant Sardari Lal being only a Naib Court was himself was not competent to recommend or file an appeal against acquittal is itself no ground to discard the prosecution case. As he being the Naib Court was virtually assisting the Public Prosecutor in conduct of the criminal cases in exercise of his official functions and certainly he had occasion to abuse his official position.

23. The Hon'ble Kerela High Court in case **Dr.**

V. Sebastian Versus The State 1988 Criminal Law

Journal 1150 has laid down as under:-

“The language used in Section 161 of the Indian Penal Code does not justify the narrowing down of the scope of the words “official act”. A public servant may have power to do certain official acts by virtue of the rank he holds as a public servant. He may get other powers by virtue of the office which he holds. When he exercises either of the powers, his act is official. No line of distinction can be made as between the acts in exercise of a particular office and acts in exercise of his position as a public servant. If the act is done in his official capacity, as distinguished from his purely private capacity, it amounts to official act. Even if it does not come within the scope of the functions of his office, the act does not seem to become official act.”

24. In case **Girija Prasad (dead) by Lrs versus**

State of Madhya Pradesh 2007 IV AD (Cr.) (SC) 433

the allegations were that the complainant was asked to pay the bribe amount of Rs. 500/- or to face the suspension for absence from duty. The Hon'ble Apex Court held that it is immaterial that whether the appellant was or was not in a position to oblige the complainant by preventing or delaying his suspension. Our Hon'ble High Court also in case

Pargat Singh versus State of Punjab 2006(2) RCR

(Criminal) 711 has laid down that it is not necessary

for the prosecution to prove whether or not the

accused public servant was capable of doing or intending to do the official act.

25. In view of the consistent rule of law laid down in the cases noted above, it is immaterial as to whether appellant himself was not competent to recommend or file an appeal against acquittal. But, from the evidence on record, it appears that by abusing his capacity as a Naib Court, as he was working with co-accused Raj Pal Viz, the Public Prosecutor had obtained the illegal gratification.

26. There is enough evidence on record to establish the demand of bribe by the appellant. PW-7 complainant Inderjit has stated that he wanted to file an appeal in the High Court against acquittal of three accused. In that connection he met Raj Pal Viz, Public Prosecutor. He demanded Rs. 25,00/- as bribe for filing the appeal. Out of that amount, he demanded Rs. 2000/- for himself and Rs.500/- for Sardari Lal, the present appellant posted as a Naib Court. He further contended that he had met Raj Pal Viz on 20.11.1993. He moved application Ex. PD on the same day i.e. 20.11.1993. The raid was conducted on 21.11.1993. Raj Pal Viz came there in a car from Ambala side. He stopped the car at the crossing. He and Balwant Singh accompanied by

Sardari Lal accused went to the car to meet Raj Pal Viz. He gave Rs. 2000/- to Raj Pal Viz and Rs. 500/- to Sardari Lal accused. PW-8 Balwant Singh, the shadow witness has categorically deposed that Raj Pal Viz demanded Rs. 2000/- for himself and Rs. 500/- for Sardari Lal accused. He further deposed that at the time of trap he and Inderjit reached crossing near old Court complex. Sardari Lal accused also reached there after five minutes of their arrival. After about twenty minutes Raj Pal Viz came in a Maruti Car from Ambala side and stopped the car by the side of road. He along with Inderjit and Sardari Lal went near the car, then on the demand of Raj Pal Viz, Rs. 2000/- were paid to him and Rs. 500/- were paid to Sardari Lal accused present in the Court.

27. The aforesaid evidence shows that it was the present appellant, who first met the complainant and the shadow witness. On the arrival of co-accused Raj Pal Viz, he accompanied them to meet him. In the presence of the present appellant, Raj Pal Viz demanded the bribe of Rs. 2000/- for himself and Rs. 500/- for the present appellant. The presence of the appellant along with co-accused Raj Pal at the spot is also established from the testimonies of PW-9 Vivek Joshi, A.D.C, the witness of trap and Mohd. Akil, the

T.L.O. Raj Pal Viz has demanded the bribe for the appellant in his presence and the appellant accepted the bribe of Rs. 500/- paid to him by the complainant in pursuance of the demand raised by the co-accused. All these circumstances clearly establishes the implied demand of bribe on the part of the present appellant. If he was not interested in the demand of bribe, he would not accepted the bribe money. The conduct of the appellant in not raising any objection to his co-accused for the demand of bribe of Rs. 500/- for him and then to accept that money clearly establishes the implied demand of bribe on his part as already mentioned. The appellant was working as a Naib Court and assisting Raj Pal Viz, the Public Prosecutor in the conduct of criminal cases. So, apparently there was nexus between them and both the accused were acting in unison. Thus, the demand of bribe on the part of the appellant is clearly established.

28. Mere this fact that the money was not paid to the appellant at the first instance when he met to the complainant and the shadow witness is also no ground to doubt the prosecution version as the main player in this case was the Public Prosecutor. The appellant, complainant and the shadow witness were

waiting the arrival of co-accused Raj Pal Viz, the Public Prosecutor. So, naturally there was no occasion for the complainant to handover the bribe money to appellant Sardari Lal before the arrival of co-accused Raj Pal Viz.

29. There is no dispute that the trap has been laid at a public place and the presence of the independent witness at such a place can not be ruled out. But, the trap in bribe cases are laid in a planted manner. The witnesses are already assigned their roles. The laying of the trap has also to be kept as a secret affair, otherwise there are the chances of the failure of the trap. Mere this fact that the independent witnesses have not been associated is itself no ground to out-rightly reject the prosecution case. In such eventuality, at the most the Court is required to scrutinize the prosecution evidence minutely. Learned counsel for the appellant has not been able to point out any material contradiction in the statements of the prosecution witnesses. PW-9 Vivek Joshi, the witness of the trap was a senior officer and posted as A.D.C, Yamuna Nagar at Jagadhri at the relevant time. It is not expected that such a senior officer will act under the pressure of the police officers and will support their version just

for the false implication of the accused. There is no reason not to consider PW-9 Vivek Joshi, the A.D.C as an independent and impartial witness as he had no motive for the false implication of the accused. He also had no enmity with the complainant. In these circumstances, the non association of the public witness is no ground to create any dent in the veracity of the prosecution case.

30. As per the statement of PW-9 Vivek Joshi, the A.D.C, both the accused on being nabbed by the raiding party were directed to hand over the notes, which they have taken from complainant to A.S.P and they accordingly brought out the notes from their pockets and handed over the same to the A.S.P. So, the appellant has himself taken out the currency notes from the pocket of his shirt and handed over the same to the T.L.O. In these circumstances, even if the T.L.O has not offered his own search to the accused, the same is inconsequential. Moreover, there is the scientific evidence in corroboration to the ocular evidence that the appellant has handled and accepted the bribe money. As per the statement of the prosecution witnesses, the pocket wash and the hand wash of appellant was taken after his apprehension by the raiding party. All the prosecution witnesses

have consistently deposed that the hand wash and pocket wash of the appellant taken in the solution of the sodium carbonate has turned pink in colour. These solutions were kept in the sealed parcels and were sent to F.S.L for examination. The report of F.S.L is Ex.PM, which shows that the phenol-pthalein powder was found in the pocket wash of the appellant, which shows that after receiving the money, the same was kept in the pocket of his shirt by the appellant. This evidence establishes acceptance of the bribe money by the appellant.

31. From the consistent testimonies of PW-7 complainant Inderjit, PW-8 Balwant Singh, the shadow witness, PW-9 Vivek Joshi, A.D.C, the trap witness and PW-13 Mohd. Akil, the T.L.O, it is established that the tainted currency notes were recovered from the possession of the appellant.

32. I do not find any substance in the contentions raised by the learned counsel for appellant that the sanction order has been issued by PW-13 K.K.Mishra without application of the mind. Mr. K.K.Mishra, the then Superintendent of Police, Yamuna Nagar has appeared as PW-12 and has categorically deposed that after going through the case of F.I.R no. 368 dated 21.11.1993 for offence

under Section 7 and 13 of the Act, he accorded the sanction Ex.PO to prosecute Sardari Lal, UGC-516, Yamuna Nagar, who was posted as a Naib Court w.e.f. 23.07.1993 in the Court of Additional Sessions Judge, Jagadhri. In the sanction order Ex.PO, PW-12 K.K.Mishra has categorically mentioned that he has carefully perused the police file, challan, statements of the witnesses produced before him and having been satisfied, he issued the sanction order. No doubt, there are some clerical mistakes in the sanction order. Instead of the Prevention of Corruption Act, the I.P.C has been mentioned The Sections have been correctly mentioned in the sanction order. It is only a clerical mistake which might have escaped the notice of the Sanctioning Authority. The non-mentioning of the date under the signatures of the Sanctioning Authority is only an omission and can not render the sanction order invalid. Mere this fact that the draft of the sanction was prepared before preparing the actual sanction order is also no ground to show the non application of the mind on the part of the Sanctioning Authority. In case **Rakesh Dixit versus State of Punjab 1991** **(2) Recent Criminal Reports 85,** this Court has laid down that submission of the draft is only for the

assistance of the officer and no one can insist that every officer must draft all the orders by himself without obtaining aid of his juniors. In this authority, it has been further laid down that where the draft for sanction is sent by the police and the same is signed by the competent authority, this does not show that the authority did not apply his mind while granting the sanction. In case **State of Tamil Nadu versus Damodaran 1993 Supp. (1) Supreme Court Cases 221**, the Director of Vigilance and Anti Corruption has enclosed the model sanction order so as to enable the Revenue Divisional Officer to draft the sanction on those lines. The Hon'ble High Court held that the Sanctioning Authority has accorded the sanction without application of mind in a mechanical manner, but Hon'ble Apex Court held that as all the relevant material was placed before the Sanctioning Authority and he granted the sanction after fully applying his mind, so the Hon'ble High Court was not justified in reaching the conclusion that Sanctioning Authority granted the sanction mechanically and without application of mind and the Hon'ble Apex Court found no infirmity in the sanction order. The same legal position has been reiterated in case **K. Nachimuthu versus State, 1994 Cri.L.J. 2760**.

Thus, I do not find any illegality in the sanction order Ex.PO.

33. Once it is established that the accused had demanded and accepted the bribe money, the statutory presumption provided under Section 20 of the Act becomes applicable and the Court is under legal compulsion to presume that such gratification was paid and accepted as a motive or reward for doing the official work. This view is fully supported from the consistent rule of law laid down by the Hon'ble Apex Court in cases **Madhukar Bhaskarrao Joshi Versus State of Maharashtra 2000 (4) RCR Criminal 705; State of A.P Versus Vasudeva Rao 2003(4) RCR Criminal 917 SC and Krishna Ram Versus State of Rajasthan 2009(2) RCR Criminal 538 (SC)**. Due to the application of statutory presumption against the accused the burden had shifted upon him to establish as to how and under that circumstances the tainted currency notes came in his pocket which were sometime before in the possession of the complainant.

34. In order to dislodge the presumption of Section 20 of the Act, the accused-appellant has taken the plea that the T.L.O has asked him to sign some documents as a witness against Raj Pal Viz, the

District Attorney. He refused to do so and he was falsely implicated. This plea raised by the appellant carries no substance at all. There was absolutely no necessity for the T.L.O to pressurize the appellant to become a witness when the senior officers like the A.D.C and Deputy Superintendent of Police were already associated in the raiding party. So, the appellant has not been able to rebut the presumption under Section 20 of the Act.

35. Cases relied upon by learned counsel for the appellant are quite distinguishable on facts. In case **Suresh Kumar Vs. State of Haryana(Supra)**, the shadow witness was standing at such a distance from where he could not hear the demand. In case **State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede (Supra)**, the witness in whose presence the demand was made had died and was not examined. In case **C.M. Girish Babu vs. CBI, Cochin, High Court of Kerela (Supra)**, the demand of bribe on the part of the accused was not proved and the accused was able to show that the amount was paid to him towards repayment of the loan taken by the complainant. In case **A.Subair Vs. State of Kerela (Supra)**, the complainant was not examined to prove the demand of bribe. In case **B. Jayaraj Vs.**

State of A.P (Supra), the complainant has turned hostile and disowned the complaint. The prosecution has not examined any other witness to prove the demand. In case **State of Punjab Vs. Madan Mohan Lal Verma (Supra)**, the Hon'ble Apex Court has laid down that mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable. In case **Karnail Singh Vs. State of Punjab 2009 (Supra)**, the allegations regarding demand were not proved, but in this case the demand of bribe on the part of the appellant is fully established. He has voluntarily accepted the bribe money and put the tainted currency notes in the pocket of his shirt, which were recovered from his possession. Consequently, the prosecution has been able to establish its case beyond shadow of reasonable doubt.

36. Learned counsel for the appellant has also pleaded that the appellant was a police official of the lower rank. Now, he is more than 75 years of age. He was not a previous convict nor involved in any criminal activity after this case. The sentence awarded to him by the learned trial Court is disproportionate. I found substance in the aforesaid contentions of learned counsel for the appellant on

the quantum of sentence. The learned trial Court has sentenced the appellant to undergo rigorous imprisonment for a period of two years along with a fine of Rs. 1000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of six months for the offence punishable under Section 7 of the Act. He has also been sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 13 (i)(d) of the Act. Both the sentences have been ordered to run concurrently. It is pertinent to mention that his co-accused Raj Pal Viz, the Public Prosecutor/ District Attorney was tried separately and vide judgment dated 11.07.2000, he was held guilty and convicted for the offence punishable under Section 7 of the Act and was ordered to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 10,000/-.

37. There is no denial to the fact that the appellant is now an old man of about 75 years of age. He is also not a previous convict. There is also no material on record to establish that he indulged in any criminal activity after this case. The occurrence has taken place on 21.11.1993. The appellant has been facing the agony of this litigation for the last

about 21 years. Thus, keeping in view the antecedents of the appellant, the facts and circumstances of the case, the appellant deserves reduction in the matter of sentence for the offence punishable under Section 7 of the Act.

38. Thus, keeping in view my aforesaid discussion, the conviction of the appellant does not suffer from any legal infirmity or impropriety. The same is hereby affirmed. The sentence awarded to the appellant for offence punishable under Section 7 of the Act is hereby reduced to rigorous imprisonment for a period of one year. The sentence of fine shall remain as it is. Further in default of payment of fine the appellant will further undergo rigorous imprisonment for a period of two months. The remaining part of sentence shall remain intact. With this modification in the order of sentence, the present appeal having no merits and the same is hereby dismissed. The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Yamuna Nagar, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Yamuna Nagar, shall take the

coercive steps to secure his presence and send him to
jail to undergo the remaining part of the sentence.

(DARSHAN SINGH)
JUDGE

January 20, 2015
s.khan