

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

CRA No.S-191-SB of 2004

Date of decision: 21.01.2015.

Chamkaur Singh

..... Appellant

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the 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

Present: Mr.Angel Sharma, Advocate for
Mr.D.D. Sharma, Advocate
learned counsel for the appellant.

Ms.Shivali, Assistant Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction and order of sentence dated 20.12.2003, passed by the learned Special Judge, Ludhiana, vide which accused-appellant Chamkaur Singh has been held guilty and convicted for the offences punishable under Section 7 read with Section 13(1)(d)(2) [*it should be Section 13(1) (d) read with Section 13(2)*] of the Prevention of Corruption Act 1988 (here-in-after called the Act) and was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine

of Rs.500/-, in default of payment of fine to undergo further rigorous imprisonment for one month, for the offence punishable under Section 7 of the Act. He was further sentenced to undergo rigorous imprisonment for a period of 1 ½ years and to pay a fine of Rs.1000/-, in default of payment of fine to undergo further rigorous imprisonment for a period of one month, for the offence punishable under Section 13 (i) (d) (2) of the Act. The aforesaid sentences were ordered to run concurrently.

2- The brief facts giving rise to this prosecution are that PW4 complainant Rakesh Sharma made the statement Ex.PD before PW11 Pinder Singh, the then Deputy Superintendent of Police, Vigilance Bureau Unit, Ludhiana alleging therein that he and his elder brother Jatinder Sharma are living joint in New Shakti Nagar. His brother Jatinder Sharma has moved an application for installation of the electric meter in their house and had deposited the necessary charges on 20.3.1998. On 27.8.1998 at 09:30 a.m. appellant Chamkaur Singh, the employee of the Electricity Board, having a file and the electric meter, came to their house and asked that the electric meter is to be installed in their house. The complainant asked him to do so. At this, the accused asked where is Jatinder Sharma. Complainant replied that today he has gone to the relatives and he is his younger brother. He should tell to him. Appellant Chamkaur Singh asked him to show the receipt for deposit of security, etc. At this, the complainant showed him both the receipts. Appellant asked that if he will pay him Rs.800/- as bribe, he will install the meter. The complainant pleaded that they are poor persons and cannot

afford to pay so much amount. Then Jatinder Kumar son of Janak Raj, resident of Mohalla Harbanspura, who was also present along with the complainant, asked the appellant that they are poor person and they will not able to pay so much amount as bribe. Then appellant asked the complainant to pay Rs.600/- as bribe and he will just now install the meter. He raised the pretext that he was not having the money. Then the appellant asked him that he will come afternoon and he should arrange the sum of Rs.600/- to be paid as bribe to him. Thereafter, the appellant left the place along with electric meter, file and receipts. On the statement of the complainant, FIR Ex.PD/2 was registered.

3- Complainant handed over six currency notes of the denomination of Rs.100/- each to PW11 Pinder Singh, DSP. The said currency notes were treated with phenolphthalein powder and returned to the complainant with the direction to hand over the same to the complainant on demand. Jatinder Kumar was joined as shadow witness. He was directed to follow the complainant to hear the conversation between the accused and complainant and to give the signal to the raiding party by raising his hand on his head as and when accused accepts the bribe amount. The number of the currency notes were recorded in the memo Ex.PE. The Investigating Officer gave the demonstration of solution of sodium carbonate. The raiding party was constituted. Harjinder Singh was associated in the raiding party from the Office of Animal Husbandry, Ludhiana, who was introduced with the members of the raiding party. The raiding party went to the house of the complainant,

situated in New Shakti Nagar, Ludhiana. Complainant Rakesh Sharma and Jatinder Kumar, the shadow witness, were sent to the house of the complainant to hand over the bribe money to the accused as per the directions. Accused appellant Chamkaur Singh was already present in the house of the complainant. He told him that he was waiting for him. In the meanwhile, two officials of the Vigilance Department also reached there in civil dress. The accused demanded the bribe amount from complainant. The complainant handed over the tainted currency notes to the accused. Accused put those currency notes in the left front pocket of his shirt. Shadow witness Jatinder Kumar gave the signal to the raiding party, which reached at the spot. DSP Pinder Singh apprehended the accused from his arms, while he was installing the meter. DSP Pinder Singh disclosed his identity to the accused. The hand wash of the accused was taken in the solution of the sodium carbonate, which turned pink in colour. The said solution was stored in a sealed nip, which was taken into possession vide memo Ex.PF. Thereafter, on the search of the accused, the tainted currency notes were recovered from the front pocket of his shirt. The number of those notes were tallied with the numbers mentioned in the memo Ex.PE. The wash of the pocket of the shirt of the accused was also taken in the solution of the sodium carbonate, which also turned in pink colour. The shirt of the accused was sealed. The solution was also stored in the sealed nips and was taken into possession vide memo Ex.PG. The connection file and the meter bearing No.210207 was taken into possession vide memo Ex.PJ. The accused took the raiding

party to the shop of Balbir Singh, who was also joined in the investigation and got recovered the meter No.391681, which was allotted to be installed at the house of the complainant. The meter was also taken into possession vide memo Ex.PH. The accused was arrested. After completing the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called Cr.P.C.) was presented in the Court.

4- After compliance of the provisions of Section 207 Cr.P.C. the appellant was charge sheeted for the offence punishable under Section 7 read with Section 13(1)(d)(2) of the Prevention of Corruption Act, 1988 vide order dated 04.11.1999, to which the appellant pleaded not guilty and claimed trial.

5- In order to establish its case, prosecution examined as many as eleven witness.

6- When examined under Section 313 Cr.P.C. accused pleaded false implication and further pleaded that he was working as daily wager basis in the P.S.E.B. Neither he was competent nor he was entitled to do any work like installing meters independently. He only worked under the direct supervision and control of the J.E. of the concerned area. The case has been foisted upon him in order to save the concerned official.

7- No evidence was adduced by the accused in his defence.

8- On appreciating the evidence on record and contentions raised by learned counsel for the parties, the appellant was held guilty

and convicted for the offence punishable under Section 7 read with Section 13(1)(d)(2) of the Act and was sentenced to undergo imprisonment as mentioned in the upper part of the judgment.

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

10- I have heard Mr.Angel Sharma, Advocate for Mr.D.D. Sharma, Advocate, learned counsel for the appellant, Ms.Shivali, learned Assistant Advocate General for the State of Punjab and have meticulously examined the record of the case.

11- Learned counsel for the appellant have also placed on file the written submissions.

12- Initiating the arguments, learned counsel for the appellant contended that the Investigating Officer has adopted the defective procedure for conducting the trap. PW11 DSP Pinder Singh, the Investigating Officer has not himself offered for the search before taking the search of the appellant. Thus, the search of the accused taken by the Investigating Officer is illegal and render the case of the prosecution doubtful. To support his contentions, learned counsel for the appellant relied upon cases **Malkiat Singh Vs. State of Punjab 2010(4) RCR (Criminal) 958**, **Sanjiv Kumar Vs. State of Haryana 2010(4) RCR (Criminal) 891** and **State of Punjab Vs. Kushal Singh Pathania 2004 (4) RCR (Criminal) 498**. He further contended that the currency notes allegedly recovered from the accused were not subjected to any powder treatment and were also not washed in the solution of the sodium

carbonate. No explanation is forthcoming about this omission, which is again fatal to the prosecution case. To support his contention he relied upon cases **Sanjiv Kumar Vs. State of Haryana** (supra) and **Khilli Ram Vs. State of Rajasthan 1985(1) RCR (Criminal) 66 (SC)**.

13- He further contended that there are various material contradictions in the statements of the prosecution witnesses. PW7 Harjinder Singh has stated that he was summoned in the Office of the Vigilance Bureau, Ludhiana, whereas PW1 DSP Pinder Singh stated that they joined Harjinder Singh as a member of raiding party from the Office of the Animal Husbandry, Ludhiana. This material contraction in the statements of the prosecution witnesses casts serious doubt and goes to the root of the matter.

14- Learned counsel for the appellant further contended that there are various other contradictions in the statement of the prosecution witnesses. He pointed out that PW4 Rakesh Kumar complainant has stated that when the appellant was apprehended, DSP Pinder Singh procured a plane glass of water and put the powder in it. Then the fingers of his father were washed in the said solution. Whereas, PW7 Harjinder Singh and PW11 DSP Pinder Singh have not stated anything regarding the dipping of the fingers of the father of the complainant in the solution. He contended that the testimonies of PW4 Rakesh Kumar, PW11 DSP Pinder Singh and PW7 Harjinder Singh are discrepant as to who had apprehended the appellant. They are also discrepant about the location of the shadow witness and the raiding party. PW4 complainant Rakesh

Kumar has stated that the currency notes were not sealed at the spot. PW7 Harjinder Singh could not tell as to whom the seal was handed over after use. PW9 Jatinder Kumar the shadow witness has stated that the currency notes were not recovered in his presence and writing work was done, while sitting in the Office of the Vigilance Department and his signatures were obtained there.

15- He further contended that PW4 Rakesh Sharma deposed that appellant was apprehended by DSP Pinder Singh from his arms, while he was installing the meter. On the other hand PW7 Harjinder Singh stated that the appellant was apprehended by the raiding party from his arms. He and Pinder Singh were standing at a distance of 40 yards. PW7 has also stated that at that time the appellant was not having the connection file or electric meter with him and as those were lying near the stairs where the meter was to be installed. PW11 DSP Pinder Singh has stated that the meter was already installed on the wall of the house of the complainant. He further pointed out that as per the site plan Ex.PL, the position of the shadow witness has been shown at point 'C'. It is further shown that he has given the signal from point 'D'. PW4 Rakesh Kumar stated that the place where appellant and he was standing was visible to the raiding party. PW7 Harjinder Singh has also stated that police party was visible from the gate where the handing over the money took place. If that was so, there was no occasion for the shadow witness to go to point 'D' and then to give signal. He could have given the signal even from the point 'C'.

16- He further contended that the demand of the bribe is also not established. PW9 Jitneder Kumar, the shadow witness, has not supported the prosecution version and was declared hostile. PW7 Harjinder Singh has also stated that no talk took place between Rakesh Sharma and the appellant. There is no independent corroboration to the trap proceedings. From the material discrepancies pointed out above in their statements, the demand and acceptance of the bribe on the part of the appellant is not established. To support his contentions, he relied upon cases **Malkiat Singh Vs. State of Punjab (supra)**, **Sanjiv Kumar Vs. State of Haryana (supra)** and **Kuldip Rai Vs. State of Punjab 2002(2) RCR (Criminal) 781**.

17- He further contended that the meter recovered from the spot does not tally with the meter which was allotted to be installed at the house of the complainant. DSP Pinder Singh has stated that the meter which was to be installed at the house of the complainant was recovered from the shop of one Balbir Singh, which was taken into possession vide memo Ex.PH which was signed by Balbir Singh and Inderpal Singh but both of them have not been examined.

18- He further contended that the appellant was not competent to instal any electric meter in any premises. Appellant was merely a daily wager. Only the J.E. was competent to install the meter and if the meter was to be installed by a lineman, it should be under the supervision of the Junior Engineer. PW2 Jawahar Lal has categorically stated that the appellant was not competent to instal the meter. The duty

of the appellant was only to dig the pits or to install the poles. So, the appellant has no occasion to raise the demand of bribe.

19- He further contended that as the appellant was only a daily wager, so he does not fall within the definition of public servant and provision of the Act were not applicable to him. To support his contention, he relied upon case **Vijay Kumar Ojha Vs. Superintendent of Police (C.B.I.), Jabalpur, 2001(4) RCR (Criminal) 638.**

20- Thus, he contended that the conviction of the appellant has been wrongly recorded by the learned trial Court.

21- On the other hand, learned State counsel contended that the appellant was in the service of Punjab State Electricity Board, a Government Undertaking. He was getting the pay/wages from the Board, so he falls within the definition of Public Servant. She further contended that as per the statement of PW10 Chur Singh, J.E., the appellant was authorised to install the electric meter in the premises of the complainant. So, he had every occasion to demand the bribe.

22- She further contended that demand of bribe is fully established from the statement of PW4 complainant Rakesh Kumar, which is also corroborated on material particulars from the testimony of PW9 Jatinder Kumar. The acceptance of the bribe by the appellant is also established from their testimonies. She contended that tainted currency notes were recovered from the pocket of the shirt of the accused. The minor discrepancies in the statements of the witnesses are bound to occur with the passage of time. Mere this fact that Investigating Officer

has not offered his search before taking the search of the appellant cannot be a ground to throw away the entire prosecution case when it is otherwise established. Thus, she contended that the conviction and sentence of the appellant is well founded.

23- I have duly considered the aforesaid contentions.

24- The plea raised by learned counsel for the appellant that the appellant does not fall within the definition of the public servant and provisions of the Act are not applicable to him, is totally devoid of the merits. Public Servant has been defined in Section 2 Sub Section (c) of the Act. The relevant clauses of Section 2(c) of the Act reads as under:

(c) "public servant" means-

- (i) xx xx xx xx xx xx xx;
- (ii) *any person in the service or pay of a local authority;*
- (iii) *any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;*

25- As per the aforesaid provisions, any person in the service or pay of the local authority or in the service or pay of the Corporation established by a Central, Provincial or State Act, or any authority or a body owned or controlled or aided by the Government, shall come within the purview of the public servant.

26- From the statement of PW2 Jawahar Lal Consumer Clerk, it comes out that the appellant was working as a daily wager with the Punjab State Electricity Board. Even the sanction order Ex.PA depicts

that the appellant was working as a daily wager with the Punjab State Electricity Board and was posted at Focal Point Unit No.3, Ludhiana. From the aforesaid evidence, it comes out that the appellant was getting pay/wages from the Punjab State Electricity Board, a Government undertaking/Board. So, in view of Section 2 Sub Section (c) Clause (ii) & (iii), the appellant falls within the definition of a public servant. Case **Vijay Kumar Ojha Vs. Superintendent of Police (C.B.I.), Jabalpur** (supra), relied upon by learned counsel for the appellant, is quite distinguishable on facts because in that case the appellant was only an agent and not in the service or pay of the Life Insurance Corporation of India.

27- PW10 Chur Chand, J.E. has categorically deposed that in May 1998, he was Incharge of Shakti Nagar area. Accused was working under him as a daily wages worker. He further deposed that the service connection order was passed by the then S.D.O. A.S. Grewal to install a new connection at the house of Jatinder Sharma. He further deposed that he handed over the service connection order and meter No.39168 to appellant Chamkaur Singh with a direction to install in the house of Jitneder Sharma. No doubt PW2 Jawahar Lal, the Consumer Clerk, has stated in the cross examination that only J.E. is competent person to install the new electric meter. The J.E. can get the work from the daily wager like digging of pits or installing the poles but herein in this case, the appellant was duly authorised by the J.E. incharge to install the new electric connection at the house of the brother of the complainant. In

view of the aforesaid evidence, appellant had every opportunity to raise the demand of bribe.

28- Moreover, mere this fact that the appellant was not competent to install the new connection is not a ground to reject the prosecution case when there is no denial to the fact that the appellant was posted as a daily wager with the relevant office at the time of occurrence and was acting in discharge of the official duties. As per the prosecution allegations, he has demanded and accepted the bribe for installation of electric meter i.e. for performing the official function. The Hon'ble Apex Court in case **Chaturdas Bhagwandas Patel Versus State of Gujarat, AIR 1976 SC 1497** has laid down as under :

“To constitute an offence under Section 161 it is enough if the public servant who accepts the gratification, takes it by inducing a bribe or by holding out that he would render assistance to give “with any other public servant” and the giver gives the gratification under that belief. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour of forbearance which he holds himself out as capable of doing.

When a public servant, being a police officer, is charged under Section 161, Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, the question whether there was any offence against the giver of the gratification which the accused could have investigated or not is not material for that purpose. If he has used his official position to extract illegal gratification, the requirement of the law is satisfied. It is not necessary in such a case for the Court to consider

whether or not the public servant was capable of doing or intended to do any official act of favour or disfavour.”

29- In case **Pargat Singh Versus State of Pubjab, 2006(2) RCR (Criminal) 711** this Court has also laid down that it is not necessary for the prosecution to prove whether or not the accused public servant was capable of doing or intended to do such an act. Similar ratio of law has been reiterated by this Court in case **Harcharan Singh Bhalla Versus State of Punjab and another, 2009(3) RCR (Criminal) 296**.

30- Thus, in view of the consistent rule of law laid down in the cases referred above it is immaterial that the public servant receiving the gratification is or is not in a position to do the official act, favour or disfavour to the bribe giver in order to attract the offence. It is enough if he has used his official position to extract the illegal gratification.

31- In the instant case also, it is established from the evidence on record that the appellant has abused his official position as a daily wager employee of the Punjab State Electricity Board to extract the illegal gratification.

32- No doubt, PW11 DSP Pinder Singh and the other prosecution witnesses have nowhere mentioned that the Investigating Officer has offered his own search to the accused before taking the search of the accused-appellant. But this sole lapse on the part of the Investigating Officer cannot be made a ground to throw away the entire case of the prosecution. If the testimonies of the prosecution witnesses are cogent and reliable on the point of the demand, acceptance of the

bribe and the recovery of the tainted currency notes from the possession of the appellant. This sole ground that Investigating Officer has not offered his own search, cannot be made a ground to acquit the appellant. In the cases relied upon by learned counsel for the appellant, mere non-offering his own search by the Investigating Officer was not the sole ground for acquittal. There were various other infirmities in the prosecution case and this lapse was only taken as an additional ground in aid of the other glaring infirmities in the prosecution case to record the acquittal.

33- The plea raised by learned counsel for the appellant that the currency notes were not treated with phenolphthalein powder is totally against the record. PW4 complainant Rakesh Kumar, PW9 Jitneder Kumar, the shadow witness and PW11 Pinder Singh DSP have categorically stated that the currency notes offered by the complainant to be used as bribe money, were smeared with phenolphthalein powder. Learned counsel for the appellant has not been able to point out any statutory provision or rule that these currency notes should also have been subjected to the wash in the solution of the sodium carbonate. Both the cases relied upon by learned counsel for the appellant on this aspect also does not support his contentions. In case **Sanjiv Kumar Vs. State of Haryana** (supra), the currency notes were not treated with phenolphthalein powder and this lapse remained unexplained. Similarly, in case **Khilli Ram Vs. State of Rajasthan** (supra), the Hon'bel Supreme Court has laid down that without powder treatment, for the absence of

which, no explanation has been advanced, the prosecution story become liable to be rejected. But in the instant case, as already discussed, from the oral as well as documentary evidence, it comes out that the currency notes were duly treated with phenolphthalein powder. This fact is also established from the scientific evidence. As per the statement of PW4 complainant Rakesh Sharma, PW7 Harjinder Singh the witness of the trap and PW11 DSP Pinder Singh after the apprehension of the accused his hand wash and shirt pocket wash was taken in the solution of the sodium carbonate, which turned pink in colour. That solution was sealed in separate nips and was sent to the FSL Punjab, Chandigarh for examination. The report of the FSL Ex.PX shows that the hand wash and pocket wash of the appellant contains sodium carbonate and phenolphthalein powder. As per the prosecution case, supported by the statements of the witnesses, the appellant has received the bribe money with his hand and put it in the left front pocket of his shirt. Meaning thereby, the appellant has handled the currency notes with his hand and kept the same in his left front pocket of his shirt. The phenolphthalein powder has been detected in the solution of the hand wash and pocket wash which confirms that the currency notes were treated with the phenolphthalein powder.

34- No doubt, PW9 Jatinder Kumar the shadow witness has not supported the prosecution version on certain minor procedural steps of the trap. He was declared hostile and cross examined by the learned Public Prosecutor. It is well settled principle of law that the testimony of

a hostile witness is not totally washed away from the record. That portion of the testimony of such a witness which corroborates the prosecution version can still be taken into consideration. In the instant case PW9 Jatinder Kumar has supported the prosecution version on almost all the ingredients of the offence. He categorically deposed that he accompanied complainant Rakesh Sharma to the Vigilance Office, Ludhiana, where DSP Pinder Singh met them. He further deposed that Rakesh Sharma told about the demand of bribe by the appellant to the DSP. He further stated that the complainant Rakesh Kumar supplied the currency notes to the DSP and the DSP smeared the said currency notes with some powder. The notes were then handed over to the complainant by the DSP with a direction to the complainant that on demand of the accused, he should pay the tainted currency notes to him. He was directed to give signal when the accused receives the money. He further deposed that the number of currency notes were noted down in the memo Ex.PE, which was signed by him. He also corroborated the prosecution version about joining of PW7 Harjinder Singh, the trap witness. He further deposed that he along with complainant went to the house of the accused (*it should be complainant*) and raiding party remains behind. Accused Chamkaur Singh also came there and he demanded money and complainant paid currency notes to him. Accused put the same in the pocket of his shirt and started installing the meter. He further deposed that he gave the signal and raiding party came and DSP apprehended the accused. His hand wash was taken which turned pinkish in colour. He also deposed

that the currency notes were recovered in his presence. The numbers of the currency notes were tallied with the same mentioned in the memo Ex.PE. Thus, this witness has corroborated the prosecution version almost on all the aspects of the case.

35- PW4 complainant Rakesh Sharma has categorically deposed that on 27.08.1998 at about 09:30/10:00 a.m., accused Chamkaur Singh having one file and electric meter with him, came to his house. The other person, who was accompanied with the accused was Balbir Singh. Thereafter, he deposed that accused demanded Rs.1000/- from him for installing the electric meter. He did not pay the same. Accused left the house without installing the meter and again came back after 15 minutes. He demanded of Rs.800/- as illegal gratification from him for installing the connection. He requested that he is unable to pay such a huge amount. Accused threatened him that he will send the file to Patiala, then he agreed for Rs.600/- as illegal gratification. He further stated that he obtained two hours time for passing the amount and accused went back. Thereafter, he deposed that he along with PW Jatinder Kumar went to the Office of the Vigilance Bureau, Ludhiana and made the statement Ex.PD. Thereafter, he deposed about the trap proceedings. He further categorically deposed that he and shadow witness Jatinder Kumar reached their house. Accused Chamkaur Singh was also present in their house. He told that he was waiting for him. Thereafter, he deposed that accused demanded the bribe amount from him. He handed over the same tainted currency notes to the accused. Accused put the same in the left

front pocket of his shirt. Jatinder Kumar shadow witness gave the signal to the raiding party. DSP and other persons reached at the spot. DSP Pinder Singh apprehended the accused from his arms, while he was installing the meter. Thereafter, he deposed about the hand wash of the accused and recovery of the tainted currency notes from the left front pocket of the shirt of the accused and then about taking the pocket wash. PW7 Harjinder Singh has also corroborated the version of the complainant with respect to the trap proceedings and recovery of the tainted currency notes from the possession of the appellant. PW9 Jatinder Kumar, as already discussed, has also corroborated the prosecution version on two material aspects of the case. PW11 Pinder Singh the then DSP the trap lying officer has deposed in detail about the trap proceedings and recovery of the tainted currency notes from the possession of the accused. Thus, from the aforesaid evidence adduced by the prosecution the demand, acceptance and recovery of the tainted currency notes from the possession of the accused is well established.

36- Learned counsel for the appellant has pointed out certain discrepancies in the statements of the prosecution witnesses. The occurrence has taken place on 27.08.1998. The cross examination of PW4 Rakesh Kumar has been recorded on 29.05.2003 after about five years. The statement of PW7 Harjinder Singh has been recorded on 11.09.2001 i.e. after about three years. The statement of PW9 Jatinder Kumar, the shadow witness, has been recorded on 29.05.2003 i.e. after about five years and the statement of PW11 Pinder Singh, the trap lying officer, has

been recorded on 24.11.2003 i.e. after more than five years. With the lapse of so much time, such discrepancies are bound to occur even in the statements of the truthful witnesses as the human memory fades with the lapse of time. The Hon'ble Supreme Court in case **Pargan Singh Vs. State of Punjab 2014(4) RCR (Criminal) 165 (SC)** has laid down that the memory does not work like a video recorder. Memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. The memory possessed by the witnesses at some later point for example when the witness testifies in the Court can be quite different from the memory that witness originally formed at the time of the occurrence. The Hon'ble Apex Court in case **Krishna Mochi and others Vs. State of Bihar etc. 2002(2) RCR (Criminla) 567** has laid down that the minor discrepancies are liable to be ignored. The material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. In the instant case, most of the discrepancies pointed out by the learned counsel for the appellant are on the minor aspects of the trap. He has not been able to point out any material discrepancy with respect to the demand and acceptance of the bribe and recovery of the tainted currency notes from the possession of the accused. So, the discrepancies pointed out by the learned counsel for the appellant are also no ground to doubt the veracity of the testimonies of the prosecution witnesses.

37- Mere this fact that the meter actually allotted to be installed in the premises of the complainant was found to have been installed in the shop of Balbir Singh will also not adversely affect the merits of the case as this has also resulted due to wrong action on the part of the employees of the Punjab State Electricity Board and accused cannot take any benefit thereof. Balbir Singh from whose shop the said meter has been recovered and Inderpal the witness to that recovery are not at all the material witness with respect to the trap proceedings and their non examination is totally immaterial.

38- Thus, keeping in view my aforesaid discussion from the cogent, consistent and reliable evidence brought on record by the prosecution, it is established beyond shadow of reasonable doubt that appellant Chamkaur Singh demanded and accepted a bribe of Rs.600/- from complainant Rakesh Kumar for installing the electricity meter/connection in their house. The tainted currency notes of Rs.600/- were also recovered from his possession. Once these ingredients are established, the presumption under Section 20 of the Act arises against the appellant.

39- Consequently, I do not find any illegality in the conviction of the appellant recorded by the learned trial Court. Resultantly, the present appeal has no merits and 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, Ludhiana, who shall send him to jail to

undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Ludhiana, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 21.01.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**