

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

CRA No.S-2123-SB of 2009

Date of decision: 10.08.2015

Dhyan Singh

..... Appellant

Versus

State of Haryana

...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. R.S. Rai, Senior Advocate with
Mr. G.S. Sidhu and
Mr. Dilpreet Singh, Advocates for appellant.

Mr. Chetan Sharma, AAG for respondent-State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 24.08.2009, passed by learned Special Judge, Sirsa, vide which appellant Dhyan Singh has been held guilty and convicted for the offences punishable under Sections 7 and 13 (1) (d) of the Prevention of Corruption Act, 1988 (here-in-after called the 'Act') and the order on the quantum of sentence dated 24.08.2009, vide which appellant has been sentenced to undergo rigorous imprisonment for a period of one year and

to pay a fine of Rs.1000/-, in default of payment of fine to further undergo imprisonment for two months, under Section 7 of the Act and to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1500/-, in default of payment to fine to further undergo imprisonment for three months under Section 3(1) (d) of the Act. Both these sentences were ordered to run concurrently.

2- The sequence of the events leading to this prosecution are that on 16.06.2006 PW11 complainant Ved Parkash, a driver of the Haryana Roadways, Sirsa Depot, Sirsa presented a written application Ex.P14 to PW12 Inspector Kharaiti Lal, Vigilance Sub Unit, Sirsa alleging therein that accused-appellant Dhyan Singh, Duty Inspector deposes the conductors and drivers on duty by charging the bribe. Those conductors/drivers, who do not pay him the money, are harassed by him and their duty is changed. He has been harassing the complainant in this manner and in the last month he paid Rs.500/- to him. This month he is demanding Rs.1000/- to retain his duty of Sangaria - Sirsa route. He wanted to extract the bribe amount by threatening that he will change his duty.

3- On this application Ex.P14, PW12 Inspector Kharaiti Lal formed the raiding party. He moved the application Ex.P29 to the Deputy Commissioner, Sirsa for deputing some gazetted officer to join the raid. PW5 Atam Parkash D.H.O. was deputed to join the raid and he came present in the Vigilance Office. Complainant Ved Parkash handed over two currency notes of denomination of Rs.500/- each to the Investigating

Officer. The list of currency notes Ex.P11 was prepared. The said currency notes were signed by Inspector Kharaiti Lal and PW5 Atam Parkash. Thereafter, the phenolphthalein powder was applied on both the currency notes and were handed over to complainant vide memo Ex.P12 with a direction to hand over the said tainted currency notes to the accused on his demand. PW4 Inspector Subhash Chander was appointed as a shadow witness. The Investigating Officer also gave the demonstration of reaction of phenolphthalein powder and the solution of the sodium carbonate, which was kept in a sealed parcel and taken into possession vide memo Ex.P13. Thereafter, the Investigating Officer sent application Ex.P14 after making endorsement Ex.P15 to the Police Station, State Vigilance Bureau, Hisar. On the basis of which, the formal FIR Ex.P16 was registered. The raiding party consisting of Inspector Kharaiti Lal, Atam Parkash DHO, complainant Ved Parkash, Inspector Subhash Chander the shadow witness, reached near Bus Stand Sirsa. Complainant Ved Parkash and Inspector Subhash Chander were sent to perform their respective roles. The Investigating Officer along with his staff and Atam Parkash DHO positioned themselves outside the Bus Stand. After about 10 minutes on receiving the signal from the shadow witness, the Investigating Officer reached the office of accused Dhyan Singh, who was sitting on his chair. Complainant told that he had handed over the tainted currency notes to the accused. The Investigating Officer conducted the search of the accused. The tainted currency notes were recovered from the front pocket of his shirts. On checking, both the

currency notes were found to be the same which were initialed by him and PW5 Atam Parkash. The said notes were kept in a sealed parcel. Thereafter, the hand wash and pocket wash of the accused were taken and the solution was separately stored in sealed parcels and was taken into possession vide separate recovery memos. The Investigating Officer completed the formalities of the investigation at the spot and accused-appellant was arrested. The articles of the case property were deposited with the MHC of the Police Station, State Vigilance Bureau, Hisar. The statement of complainant Ved Parkash was also got recorded under Section 164 of the Code of Criminal Procedure (here-in-after called the 'Cr.P.C.') and on completion of the formalities of the investigation, the report under Section 173 Cr.P.C. was presented in the Court.

4- The accused-appellant was charge sheeted for the offences punishable under Section 7 read with Section 13 of the Act by the then learned Additional Sessions Judge, Sirsa vide order dated 27.10.2006, to which the accused pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as 12 witnesses.

6- When examined under Section 313 Cr.P.C., accused pleaded that he had never demanded any bribe nor any bribe was paid to him by the complainant. The incriminating currency notes were not recovered from him. He has been falsely implicated in this case due to party fraction amongst the employees. He has not changed the duty of Ved Parkash and was very much on duty on that very day. He has handed

over his duty to Bakhat Rai out of his own with *mala fide* intention and got conducted the raid. Dalip Singh Duty Clerk was involved. He was taken by Vigilance Staff with them but later on, he was left being the old friend and class fellow of Inspector Kharaiti Lal, the Investigating Officer of the case.

7- In the defence evidence, accused examined Banwari Lal Traffic Inspector as DW1 and Bhag Mal Clerk Haryana Roadway appeared as DW2. Accused also tendered in evidence the report of Tehsildar to Deputy Commissioner, Sirsa in case State Vs. Ram Karan as Ex.D3, the certified copy of judgment dated 29.01.2009 as Ex.D4, the copy of the report under Section 173 Cr.P.C. as Ex.D5, certified copy of statement of Inspector Kharaiti Lal as Ex.D6, certified copy of statement of Rishi Raj Tehsildar as Ex.D7 recorded in case State Vs. Ram Karan bearing FIR No.43 dated 03.08.2006 under Section 7 of the Act.

8- On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted the appellant for the offence punishable under Section 7 and 13 (1) (d) of the Act. He was awarded the sentence 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. R.S. Rai, learned Senior Advocate assisted by Mr. G.S. Sidhu and Mr. Dilpreet Singh, Advocates, learned counsel for the appellant and Mr. Chetan Sharma, learned Assistant

Advocate General for the State of Haryana and have meticulously examined the record of the case.

11- Initiating the arguments, learned Senior Advocate for the appellant contended that in order to establish the charges, the prosecution was required to establish the demand and acceptance of the bribe as well as recovery of the tainted currency notes. He further contended that the entire case of the prosecution is based on the testimonies of the official witnesses. Even though the raid is alleged to have been conducted at Bus Stand Sirsa, a busy place, but no independent witness has been associated. He contended that corruption cases are to be treated on a different footing as far as appreciation of evidence is concerned. To support his contentions, he relied upon case *Amrik Singh Vs. State of Punjab 2005(4) RCR (Criminal) 310*.

12- He further contended that in the instant case, there was only one witness on the point of the demand and acceptance of the bribe. He was PW11 complainant Ved Parkash but he has not supported the prosecution case, rather he has stated that the bribe money was demanded by the Duty Clerk and not by the present accused. He has also stated that he had placed the currency notes on the table in the office. Thus, he has not deposed with respect to the essential ingredients of the offence i.e. the demand of bribe and acceptance thereof by the accused. PW4 Subhash Chander, the shadow witness, was standing outside the room at a distance of more than 30 feet. So, he was not able to see the passing over of the currency notes. He has also not stated anywhere in his statement that he

had heard any conversation between the complainant and the accused. So, the demand and acceptance of bribe is not proved at all.

13- He further contended that from the statement of PW2 Mahavir Parshad, Chief Inspector, it comes out that the Investigating Officer has also taken away Dalip Singh, Duty Clerk, but as per the admissions of Inspector Kharaiti Lal in the cross-examination, he belongs to his village and was his classmate. Due to this reason, he was let off. He was the real culprit, even as per the statement of the complainant Ved Parkash. Thus, he contended that it is a clear case of false implication.

14- He further contended that even the presence of PW5 Atam Parkash is extremely doubtful at the spot in view of the material contradictions in their statements. So, even the recovery of bribe money from the possession of the accused is not established.

15- He further contended that moreover, mere recovery of the bribe money will not establish the ingredients of the offence. To support his contentions, he relied upon cases *C.M. Girish Babu Vs. C.B.I., Cochin, High Court of Kerala 2009(2) RCR (Criminal) 134 (SC)*, *Banarsi Dass Vs. State of Haryana 2010(2) RCR (Criminal) 553*, *Rakesh Kapoor Vs. State of Himachal Pradesh 2013(2) RCR (Criminal) 211* and *B. Jayaraj Vs. State of A.P. 2014(2) RCR (Criminal) 410*.

16- He further contended that mere positive test of phenolphthalein powder is also not a ground to establish the guilt. To support his contentions, he relied upon cases *Anand Parkash Vs. State of*

Haryana, 2008(2) RCR (Criminal) 335 and *Raghu Nath Bansal Vs. State of Punjab 2010(2) RCR (Criminal) 445*. Moreover, he contended that in this case as per the admission of the Investigating Officer, same container was used for demonstration and for taking the hand wash and pocket wash. There is no evidence that said utensil was cleaned after demonstration.

17- He further contended that when the demand and acceptance of bribe is not established, the presumption under Section 20 of the Act cannot be drawn. To support his contentions he relied upon cases State of *State of Rajasthan Vs. Mohan Lal 2009(2) RCR (Criminal) 812* and *Union of India through Inspector, CBI Vs. Purnandu Biswas 2005(4) RCR (Criminal) 517*.

18- He further contended that the fair investigation has not been conducted in this case. In the cross examination, Inspector Kharaiti Lal has admitted that Dalip Singh Duty Clerk belongs to his village and was his schoolmate. The complainant has categorically stated that the bribe was demanded by the Duty Clerk. Dalip Singh Duty Clerk was also taken to the office of the Vigilance Bureau but he was let off and the appellant was falsely implicated, just because he happens to be the Duty Inspector.

19- He further contended that the copy of the attendance register shows that the complainant was very much on duty on 16.06.2006 on the same route whereas PW9 Bakhat Ram was on rest and was not deputed in his place. He further contended that there is also no

evidence on record to show that accused-appellant only at his own level was competent to change the route of the drivers/conductors.

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 in the application Ex.P14, there are clear allegations with respect to the demand of bribe by the appellant. He contended that appellant was the Duty Inspector and was dealing with deputing the drivers on different routes. So, he had an opportunity to seek bribe for this purpose.

22- He further contended that from the statement of PW4 Subhash Chander, the shadow witness, PW5 Atam Parkash and PW12 Inspector Kharaiti Lal it is established that the tainted currency notes were recovered from the pocket of the shirt of the appellant. His hand wash and pocket wash has also turned pink in colour. So, there can be no doubt about the recovery of tainted currency notes from the possession of the appellant.

23- He further contended that once the recovery of the tainted currency notes from appellant is established, the presumption under Section 20 of the Act arises against the appellant that he has accepted the bribe. To support his contentions, he relied upon case ***B. Hanumantha Rao Vs. State of Andhra Pradesh, 1992(3) Recent Criminal Reports 188***. He further contended that accused has not been able to rebut this presumption.

24- I have given my thoughtful consideration to the aforesaid

contentions.

25- There is no dispute that the conviction of a public servant on the charge of corruption is a serious matter, which deprives the concerned public servant of his livelihood and service benefits in addition to the detention in jail. In case *Amrik Singh Vs. State of Punjab* (supra), this Court observed as under : -

“11. It is appropriate to note that in a criminal trial the prosecution has to prove its case beyond shadow of any reasonable doubt. This Court in the case of *Kuldip Rai v. State of Punjab, 2002(2) RCR (Criminal) 781*, held that these types of cases are to be treated on different footing so far as the appreciation of evidence is concerned and if conviction takes place in these cases, not only the accused goes to jail but he also loses his livelihood and earns ignominy. Therefore, while appreciating the evidence in these cases, the Court has to be careful and circumspect keeping always in view that if two views are possible, that view should be adopted which is favourable to the accused. Therefore, it is beyond doubt that the evidence in a criminal case has to be appreciated and the guilt of an accused is to be proved beyond shadow of reasonable doubt after appreciation of evidence on record.”

26- Thus, in view of the aforesaid ratio of law, while appreciating the evidence in corruption cases, the Court has to be careful and circumspect keeping always in view that if two views are possible that view should be adopted which is favourable to the accused. The prosecution is also to establish its case beyond shadow of reasonable doubt that too in the manner alleged by it.

27- In order to bring home the guilt under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act, it is the bounded duty of the prosecution to establish the basic ingredients i.e. the demand of bribe on the part of the accused, the acceptance thereof by the accused and the recovery of tainted currency notes from his possession.

28- In the instant case, as per the prosecution allegations accused appellant Dhyan Singh was demanding the bribe of Rs.1000/- from the complainant in order to retain the duty of complainant Ved Parkash driver at Sirsa - Sangaria route. He wanted to extort the bribe amount by threatening to change his route. So, we are to see as to whether from the evidence on record, the prosecution has been able to establish the demand of bribe by the accused appellant, as alleged by the prosecution.

29- There is the single witness of the prosecution on the point of the demand of bribe. Though PW4 Subhash Chander was deputed as a shadow witness, but his testimony is of no help to the prosecution on these aspects. PW4 Subhash Chander has stated that the raiding party went to Bus Stand Sirsa to raid upon the accused. The accused was present in a room existed in the side of workshop of the Haryana Roadways, Sirsa, existed in the Bus Stand. Complainant Ved Parkash handed over the above mentioned currency notes to accused Dhyan Singh and gave the arranged signal to him. He passed the arranged signal to the Inspector. So, he has nowhere deposed that he had heard any conversation between the accused-appellant and complainant Ved

Parkash with respect to the demand of bribe by the appellant and passing over of the bribe money by the complainant to the accused appellant on demand. Moreover, from the perusal of the site plan Ex.P26, it comes out that accused was sitting at point 'A' inside the office room. PW4 Subhash Chander, the shadow witness, was present outside at point 'C'. The distance between the door of the office room and point where Subhash Chander shadow witness was standing, is 30 feet. So, it is not practically possible that a person standing outside the room at a distance of 30 feet, can hear any conversation with respect to the demand of bribe and acceptance thereof. As per the points shown in the site plan, even the appellant may not be visible to the shadow witness, keeping in view the location shown in the site plan Ex.P26. So, there remains the sole statement of PW11 Ved Parkash complainant with respect to the demand and acceptance of the bribe.

30- PW11 Ved Parkash complainant has stated that on 16.06.2006, he was on duty from Sirsa to Suratgarh. Some other driver was deputed in his place on this route. He was told by the Duty Clerk in this behalf and he asked him to do the job as asked. A demand of Rs.1000/- was being made from him by the Duty Clerk. Thereafter, he deposed about moving of the application Ex.P14 to the Inspector Vigilance and the pre-trap proceedings. Then he stated that thereafter, he went to the office of the Duty Inspector and placed the tainted amount on the table in the office and gave the arranged signal to the shadow witness. Thus, in his entire testimony he has not stated anywhere that any bribe

was demanded from him by the present accused. Even at the time of trap, he has not deposed that accused had demanded any bribe amount from him, rather he has stated that he kept the tainted amount on a table in the office. The allegations of the demand of bribe has been levelled by him against the Duty Clerk. The accused was working as a Duty Inspector and other officials were posted as Duty Clerks. PW2 Mahavir Parshad, the then Chief Inspector Haryana Roadways Sirsa Depot, Sirsa has deposed that at that time there were three Duty Clerks namely Dalip Singh, Shyam Sunder and Harbans Lal, who were assisting the Duty Inspector. Thus, in his testimony the complainant has attributed the demand of bribe to some other official i.e. the Duty Clerk and not to the present appellant who was posted as a Duty Inspector. He has also not deposed anything about the acceptance of the bribe from him by the present appellant. Rather, he has stated that he had placed the tainted currency notes on a table lying in the office. Thus, complainant Ved Parkash has not supported the prosecution version about the demand and acceptance of the bribe by the present appellant. As already mentioned, except the statement of Ved Parkash complainant, there is no witness of the prosecution on the point of demand and acceptance of the bribe.

31- In the application Ex.P14, it has been mentioned that some other driver has been deputed in his place, so that he may bring the bribe money for payment to the appellant. But this version is contradicted from the documentary evidence. PW2 Mahavir Parshad, the Chief Inspector, has proved the copies of the duty roster Ex.P3,

attendance register Ex.P4 and Ex.P5. He has further deposed that Ved Parkash complainant driver No.323 was deputed on Sirsa–Suratgarh route. As per the allegations mentioned in the application Ex.P14, the bribe was demanded to retain the duty of the complainant on Sirsa–Sangaria route. The duty roster Ex.P3 shows that on 16.06.2006, he was deputed on Sirsa–Suratgarh route and not on Sirsa–Sangaria route. The prosecution has not brought on record any documentary evidence to show that prior to 16.06.2006, the complainant was deputed on Sirsa–Sangaria route. When this fact is not proved then the version of the prosecution that the bribe was being demanded by the appellant from the complainant to retain his duty on Sirsa–Sangaria route is not substantiated. Rather, as per duty roster Ex.P3, some other driver No.127 was deputed on this route.

32- The copies of attendance register Ex.P4 and Ex.P5 show that complainant Ved Parkash was present on duty on 16.06.2006 and PW9 Bakhat Ram was on rest. PW9 Bakhat Ram deposed that the appellant deputed him to drive bus No. HR-57-943 from Sirsa to Suratgarh. As per attendance register he was on rest. The prosecution has not placed on record any documentary evidence to establish that PW9 Bakhat Ram was deputed by the present appellant on bus No. HR-57-943 to drive that bus on Sirsa–Suratgarh route, whereas, as per record PW11 Ved Parkash was present on duty on 16.06.2006 and was deputed to drive this bus on Sirsa–Suratgarh route. From the duty roster Ex.P3, it comes out that the written duty roster of the drivers is prepared. If accused-

appellant would had deputed PW7 Bakhat Ram in place of present complainant Ved Parkash on Sirsa–Suratgarh route, there must have been some office order/duty roster. But no such evidence has been produced. In absence thereof, it cannot be said that accused deputed PW9 Bakhat Ram driver in place of complainant Ved Parkash on that day to drive the bus on that route, which adversely affects the credibility of the prosecution case.

33- There is no dispute with the proposition of law that even if the complainant or shadow witness turns hostile, the demand and acceptance of bribe can still be proved by other evidence but in the instant case, there are the peculiar circumstances. Here the complainant is attributing the demand of bribe to some other official i.e. the Duty Clerk and not the appellant. That Duty Clerk is not non-existent because as per the statement of PW2 Mahavir Parshad, Chief Inspector, on that day three Duty Clerks namely Dalip Singh, Shyam Sunder and Harbans Lal were on duty. Another material fact has also come in the cross examination of PW2 Mahavir Parshad. He has stated that he came to know that police has taken away Dhyan Singh Duty Inspector and Dalip Singh Duty Clerk to the Vigilance Office at Sirsa. This version of PW2 Mahavir Parshad has not been challenged at all by the prosecution. So, as per his statement, Dalip Singh Duty Clerk was also taken to the Vigilance Office after the raid. The taking away of Dalip Singh Duty Clerk corroborates the version of the complainant with respect to the demand of bribe by the Duty Clerk. It is not known as to under what circumstances

said Duty Clerk was let off. The specific defence plea has been raised by the appellant in his statement under Section 313 Cr.P.C. that Dalip Singh Duty Clerk was involved and he was taken by Vigilance Staff with them but later on he was allowed to go being old friend and class fellow of Inspector Kharaiti Lal, the Investigating Officer. PW12 Inspector Kharaiti Lal has admitted in the cross-examination that Dalip Singh belongs to his village and was one class ahead in the school. Thus, said Dalip Singh Duty Clerk, who was taken to the Vigilance Office along with the appellant, belongs to the native village of Inspector Kharaiti Lal, the Investigating Officer of the case and was even his school mate. He has flatly refused that Dalip Singh was taken to his office from Bus Stand and his this version stands falsified from the statement of PW2 Mahavir Parshad, the Chief Inspector. Thus, it comes out that Investigating Officer Kharaiti Lal is concealing the facts and it is not known due to what reason and under what circumstances, Dalip Singh Duty Clerk was let off. This fact also raises doubt about the fair and impartial investigation of this crime.

34- The learned Special Judge in order to arrive at the conclusion with respect to the demand of bribe by the appellant has mentioned that the inference can be drawn that the demand was made by the accused as the accused was the Duty Inspector at the relevant time and that complainant had kept the tainted amount on the table. But this approach of learned Special Judge appears to be erroneous as complainant Ved Parkash has categorically attributed the demand of bribe

to the Duty Clerk and not the Duty Inspector. He has simply stated that he kept the tainted currency notes on a table of the office. He has not specifically stated that the tainted currency notes were kept on the table of the accused-appellant. The Investigating Officer has categorically admitted in the cross-examination that there were 3/4 other seats in that room for the employees to work. So, certainly other tables were also available in that office room. Further, the learned Special Judge has observed that even if it is taken that ingredients of demand is not proved even then the presumption under Section 20 of the Act arises due to the recovery of the tainted currency notes from the possession of the accused. So, even the learned Special Judge was not fully convinced about the demand of bribe by the accused and has based his findings simply on the inferences and presumption.

35- As already mentioned, PW11 Ved Parkash has nowhere stated that the bribe money was accepted by the present appellant. He has simply stated that he kept the currency notes on a table in the office. PW4 Subhash Chander, the shadow witness, was not in a position, in view of his location, to witness the acceptance of the bribe money.

36- Thus, the prosecution has not been able to establish the demand of bribe by the appellant from PW11 complainant Ved Parkash and acceptance thereof. Thus, both these basic ingredients of the offence are lacking.

37- On the point of recovery of the bribe money from the front pocket of the shirt of the accused-appellant, the prosecution is

relying upon the statement of PW4 Inspector Subhash Chander the shadow witness, PW5 Atam Parkash DHO and PW12 Inspector Kharaiti Lal, the Investigating Officer of the case as well as the result of the hand wash and pocket wash. As already discussed, there is a serious doubt about the fair and impartial investigation having been conducted by Inspector Kharaiti Lal. PW4 Inspector Subhash Chander happens to be a Vigilance Officer. It is not known as to why Inspector Kharaiti Lal preferred him to depute as a shadow witness when he could have easily associated any other witness except the police/vigilance officer because the raid was conducted at a public place i.e. Bus Stand, Sirsa. PW4 Subhash Chander, who was supposed to play the impartial role being the shadow witness, has taken the active part even in recording the proceedings. He has stated in the cross-examination that the endorsement Ex.P15 was written by him. The endorsement Ex.P15 is on the back on the application Ex.P14. The endorsement Ex.P15 relates to the entire pre-trap proceedings and sending the application to the police station for registration of the case on finding the commission of the cognizable offence, so that was very important and material endorsement, which has been reduced into writing by PW4 Subhash Chander which showed his interestedness in the present case. The testimony of such interested police official always needs some independent corroboration before being acted upon.

38- PW5 Atam Parkash DHO has been associated as a witness of trap. No doubt he has deposed about the trap proceedings and

the recovery of tainted currency notes from the possession of the appellant but even his version is discrepant on material particulars. He has deposed that the complaint Ex.P14 was written either by Kharaiti Lal or by Subhash Chander in the office in his presence, whereas, PW12 Kharaiti Lal and PW4 Subhash Chander have stated that the said complaint was already written. He is also discrepant with respect to mode of travelling to the place of raid. PW12 Kharaiti Lal Inspector deposed that they all went to Bus Stand, Sirsa in his government vehicle together, whereas, PW5 Atam Parkash deposed that Ved Parkash and Inspector Subhash Chander went to Bus Stand, Sirsa on a motorcycle and they left about 5/7 minutes prior to them. The rest of the raiding party reached to Bus Stand in the vehicle of the Vigilance Department. PW5 deposed that accused was accompanied by one or two officials of the roadways or the public person when they conducted the raid inside the room of the accused and Inspector Kharaiti Lal did not enquire the names and address of those persons but PW12 Kharaiti Lal and PW4 Subhash Chander have denied the presence of any other person in the office of the appellant. PW12 deposed that the hand wash of the accused was taken in a steel trembler whereas PW5 Atam Parkash deposed that the hand wash of the accused was taken in a glass jar. PW5 Atam Parkash deposed that the accused was taken from the Bus Stand without any shirt, however, he was wearing a vest (*Banian*) at that time but PW12 Kharaiti Lal deposed that another shirt was already arranged, which was brought by some conductor and, thereafter, the shirt of the accused was got removed.

PW4 Subhash Chander deposed that the relatives of the accused had arrived at the spot and they had arranged the other shirt of the accused. As per the prosecution version, list Ex.P11, the memo Ex.P12 with respect to handing over the tainted currency notes to the complainant, the memo with respect to taking into possession the demonstration wash Ex.P13 were prepared before the trap in the office of the vigilance but PW5 Atam Parkash deposed that his signatures were obtained by the police on 2/3 documents after the raid in the office of the accused. He could not deposed as to who was the scribe of the documents prepared at the spot. In view of the cumulative effect of all these discrepancies in the prosecution evidence, it is not safe to rely upon prosecution evidence with respect to the recovery of the tainted amount from the possession of the appellant.

39- Mere presence of the phenolphthalein powder in the hand wash and pocket wash is not sufficient to establish the ingredients of the offence. The Investigating Officer has deposed that the solution at the time demonstration was prepared in the steel trembler and that very steel trembler was used to obtain the hand wash of the accused. He has nowhere deposed that the said steel trembler was properly washed after the demonstration and before taking the hand wash of the accused. In these circumstances, the presence of the phenolphthalein powder in the hand wash and pocket wash will not advance the case of the prosecution. Moreover, in case *Anand Parkash Vs. State of Haryana* (supra) this Court has laid down that positive result of phenolphthalein test is not

enough to establish the guilt of the accused. The same ratio of law has been reiterated by Hon'ble Apex Court in case ***Meena W/o of Balwant Hemke Vs. State of Maharashtra 2000(2) RCR (Criminal) 661.***

40- As discussed above, the prosecution has literally failed to establish the demand and acceptance of the bribe by the appellant from complainant Ved Parkash. When the demand and acceptance of the bribe is not established, mere recovery of the tainted currency notes from the possession of accused will not attract the ingredients of the offence. In case ***Union of India through Inspector, CBI Vs. Purnandu Biswas*** (supra) the Hon'ble Supreme Court has laid down that it is not enough that some currency notes were handed over to the public servant to make it as acceptance of gratification. Prosecution has a further duty to prove that what was paid amounted to gratification. In case ***T. Subramanian Vs. State of Tamil Nadu 2006 Criminal Law Journal 804***, the Hon'ble Apex Court laid down that when the evidence of demand and acceptance is missing the recovery of bribe cannot establish the offence. In case ***C.M. Girish Babu Vs. C.B.I., Cochin, High Court of Kerala*** (supra) the Hon'ble Apex Court categorically held that mere recovery of the tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused. In case ***Banarsi Dass Vs. State of Himachal Pradesh*** (supra) also the currency notes were recovered from the pocket of the accused. The complainant has stated that the money was paid without any demand. The Hon'ble Apex Court held that when demand and acceptance of the bribe is not established mere recovery by

itself cannot prove the charge. Again in case ***Rakesh Kapoor Vs. State of Himachal Pradesh*** (supra), Rs.10,000/- were recovered from the pocket of the accused but the demand and acceptance of the bribe money was not proved. So, the conviction was set aside. In case ***B. Jayaraj Vs. State of A.P.*** (supra) as a result of trap, the bribe amount was recovered from the pocket of the accused. The Hon'ble Apex Court held that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence as demand of illegal gratification is *sine quo non* to constitute the offence under Section 7 of the Act. The same ratio of law has been reiterated by the Hon'ble Apex Court in case ***Satvir Singh Vs. State of Delhi through CBI 2014(4) RCR (Criminal) 40.***

41- Thus, in view of the consistent ratio of law laid down in the cases referred above, mere recovery of tainted currency notes will not attract the ingredients of the offence.

42- In order to attract the presumption under Section 20 of the Act also, the demand should be proved. In case ***V. Venkata Subbarao Vs. State represented by Inspector of Police, A.P. 2007(1) RCR (Criminal) 519*** the Hon'ble Apex Court has laid down that in the absence of proof of demand the question of raising the presumption would not arise and the conviction was set aside. The same ratio of law has been reiterated by the Hon'ble Apex Court in cases ***Om Parkash Vs. State of Haryana 2006 (1) RCR (Criminal) 820, Union of India through Inspector, CBI Vs. Purnandu Biswas*** (supra) and ***Satvir Singh***

Vs. State of Delhi through CBI (supra). Thus, presumption under Section 20 of the Act also does not arise against the appellant.

43- Thus, keeping in view my aforesaid discussion, as the prosecution has failed to establish the demand and acceptance of the bribe by the accused-appellant and even the recovery of the tainted currency notes from his possession is not free from doubt. So, the prosecution has not able to establish the charges beyond shadow of reasonable doubt. Thus, the conviction of the appellant recorded by the learned trial Court under Sections 7 and 13 (1) (d) of the Act cannot be sustained.

44- Resultantly, the present appeal is hereby allowed. The conviction and sentence of the appellant as recorded by the learned trial Court is hereby set aside. By affording the benefit of doubt the accused-appellant is hereby acquitted of the charges.

Dated: 10.08.2015
sunil yadav

(DARSHAN SINGH)
JUDGE