

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

CRA No.S-285-SB of 2004

Date of decision: 08.04.2015.

Balbir 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.K.S. Dadwal, Advocate for appellant.

Mr.P.S. Paul, Deputy Advocate General for respondent-
State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 17.01.2004, passed by the learned Special Judge, Hoshiarpur, vide which accused-appellant Balbir Singh has been held guilty and convicted for the offence punishable under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter called the 'Act') and the order on the quantum of sentence of the even dated, vide which, the appellant was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

2- The brief facts of the prosecution case are that accused-appellant Balbir Singh was posted as Assistant Sub Inspector of Police at Police Station Mahilpur in the month of April/May 2002 and was conducting the investigation of case FIR No.23 dated 15.02.2002 for the offences punishable under sections 323/324 read with Section 34 of the Indian Penal Code, which was registered on the complaint of one Rem Dev, resident of village Bham, against complainant Prem Kumar and others. Complainant Prem Kumar in his statement Ex.PA made before Rajwant Kumar DSP alleged that he and his son was granted anticipatory bail by the Court of the learned Additional Sessions Judge, Hoshiarpur on 19.04.2002. The surety bond was to be furnished before the Investigating Officer. He and his son appeared before the accused Balbir Singh being the Investigating Officer and shown him the order of the Court for joining investigation and furnishing the bail bonds. The accused demanded Rs.5000/- as illegal gratification from the complainant before joining them in the investigation and accepting the bail bonds. The complainant told the accused that amount was huge and on his repeated requests, the accused told them to come to his official quarter (residence) on 02.05.2002 along with Rs.3000/- and also to bring his sureties. The complainant was not prepared to pay the bribe. He reported the matter to the DSP, Vigilance Bureau, Jalandhar along with Nirmal Singh and made his statement Ex.PA. The complainant also handed over the currency notes of Rs.3000/- to Rajwant Kumar DSP. The DSP called the official witnesses namely Darshan Singh, Assistant Labour Commissioner and

Gurdev Sharda, Clerk in the said office. These witnesses were introduced to the complainant and Nirmal Singh. The DSP gave demonstration of the mixture of sodium carbonate and phenolphthalein powder. The phenolphthalein powder was applied on all the ten currency notes and entrusted to complainant Prem Kumar with the instructions to go to the official residence of accused ASI Balbir Singh and to give the said currency notes to him on his demand. Nirmal Singh was directed to act as a shadow witness and to accompany the complainant. He was directed to give the signal to the raiding party after passing over the bribe money.

3- The statement of complainant Ex.PA, after making the endorsement Ex.PR, was sent to the Police Station Vigilance Bureau, Jalandhar by the DSP. On the basis of which, FIR Ex.PS was registered. Thereafter, the trap party proceeded towards the Police Station Mahilpur. Prem Kumar and Nirmal Singh shadow witness accompanied by some other persons went to the official residence of the accused. After some time, the said other persons who had accompanied the complainant came out. Thereafter, Nirmal Singh the shadow witness, gave the signal to the raiding party. The raiding party reached at the spot. The DSP introduced himself to the accused and he was held from both the hands. The hand wash of the accused was taken in the solution of some washing powder and it turned to pink in colour. The said solution was put in an empty nip and sealed parcel was prepared, which was taken into possession vide memo Ex.PD. Thereafter, at the instance of the accused and with the help of Darshan Singh, the recovery witness, the tainted currency notes were

recovered lying over the water tank of the flush from the toilet of the residential house of the accused, which were taken into possession vide memo Ex.PC. Thereafter, the pocket wash of the trouser of the accused was also taken, which also turned light pink in colour. The same was also put into an empty nip and was kept in sealed parcel, which was taken into possession vide memo Ex.PF. The Investigating Officer also recovered the file of case FIR No.23 dated 15.02.2002 Police Station Mahilpur from the possession of the accused. The photocopies thereof were prepared and were taken into possession vide memo Ex.PG. The Investigating Officer prepared the rough site plan of the place of occurrence Ex.PT. Accused was arrested and on completion of formalities of investigation, the report under Section 173 Code of Criminal Procedure (for short '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(2) of the Act vide order dated 08.10.2002, 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 the investigation of the case FIR No.23 dated 15.02.2002 was entrusted to him. Since, the offences were bailable, all the accused were released on bail by him. Later on, the offence under Section 326 IPC was added and he arrested

accused Parvesh Kumar and Keshav Kumar and sent them to the judicial custody. In the meantime, accused Prem Kumar and Naveen Kumar had applied for anticipatory bail and on 19.04.2002. He had appeared in the Court of Shri A.S. Narula, the then learned Additional Sessions Judge, Hoshiarpur with the police file and made statement that the said accused were not required for interrogation and accordingly, they were granted anticipatory bail. On 24.04.2002, both these accused were released on bail by him. The complainant had a grievance against him for the reason that he did not release Parvesh Kumar and Keshav Chander for enabling them to apply for anticipatory bail. The DSP Vigilance had taken him to Jalandhar and he was falsely implicated in this case. He had not demanded or received any bribe from Prem Kumar complainant.

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(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.K.S. Dadwal, Advocate, learned counsel for appellant, Mr.P.S. Paul, learned Deputy Advocate General for respondent-State of Punjab and have meticulously examined the record of the case.

11- Initiating the arguments, Mr.K.S. Dadwal, Advocate, learned counsel for the appellant contended that it is a clear case of the false implication of the appellant by a frustrated person, who was an accused in the criminal case being investigated by the appellant. He contended that due to the false implication of the appellant, his entire career has been ruined. He further contended that there are inherent and basic contradictions and infirmities in the case of the prosecution, which have been totally ignored by the learned trial Court. He contended the complainant and shadow witness were the interested witnesses. The complainant was an accused in the criminal case being investigated by the appellant. His two co-accused were arrested and he was feeling humiliated. Shadow witness Nirmal Singh, the companion of the complainant was in the habit of implicating the government officials. He was complainant in two corruption cases registered at the Police Station, Vigilance Bureau, Jalandhar and was familiar to the Vigilance officials.

12- He further contended that the other witnesses are the official witnesses and were bound to support the prosecution version.

13- He further contended that there was absolutely no occasion for the accused to demand the bribe. The anticipatory bail order was passed by the Court on 19.04.2002. The bail bonds were already furnished by the appellant and his son on 24.04.2002. The reference of these bail bonds had come in the recovery memo Ex.PG. The accused had also entered the case diary No.12 dated 24.04.2002 but the same was intentionally withheld by the Investigating Officer. From the statement

of PW10 ASI Jagdish Singh, the subsequent Investigating Officer of case FIR No.23 dated 15.02.2002, it comes out that case No.12 dated 24.4.2002 was prepared by SI Balbir Singh, which has been mentioned in the index Ex.DB. But this case diary was withheld by the prosecution. He contended that when bail bonds were already accepted by the appellant, there could be no reason for the demand of bribe. So, demand of bribe is not established. He contended that once the demand of bribe is not established, the recovery of the currency notes will not constitute the ingredients of the offence. To support his contentions, learned counsel for the appellant relied upon cases **B. Jayaraj Vs. State of A.P., 2014(2) RCR (Criminal) 410**, **Narendra Champaklal Trivedi Vs. State of Gujarat, 2012(3) RCR (Criminal) 974** and **Niranjan Bharati Vs. State of Orissa 2004(2) RCR (Criminal) 167**.

14- He further contended that even the place of trap is not established. PW1 complainant Prem Kumar has stated that the bribe money was paid to the appellant in the police station and recovery was also effected from the toilet of the police station. PW2 Nirmal Singh, the shadow witness has stated that they met the accused in the police station but they were taken to his residence by the accused and, thereafter, the bribe money was passed over. Whereas, PW4 Darshan Singh and PW9 DSP Rajwant Kumar have stated that the complainant and shadow witness had directly gone to the residence of the appellant, which is a serious contradiction and renders entire trap proceedings including the recovery of the tainted currency notes doubtful.

15- He further contended that there was no reason for the accused to place the currency notes on the water tank of the flush as there is no evidence to show that accused has suspected that he was being trapped.

16- He further contended that mere presence of phenolphthalein powder in the hand wash and pocket wash will not establish the offence. The same has also been manipulated and fabricated by the Investigating Officer in connivance with the witnesses.

17- He further contended that from the statement of PW6 Bhagwan Dass, Head Clerk, Office of the Senior Superintendent of Police, Ropar, it comes out that sanction order was already prepared and was signed in routine manner by the Senior Superintendent of Police. So, the sanction order is not valid as there was no application of mind by the competent authority. To support his contention, he placed reliance upon **State of Punjab Vs. Dr.Paramjit Singh 2004(1) RCR (Criminal) 629**. Thus, he contended that the conviction of the appellant is not sustainable in the eyes of law.

18- On the other hand, learned Deputy Advocate General for the State of Punjab contended that the manipulation has been made in the index Ex.DB in collusion with the police officials of Police Station Mahilpur, as accused himself was posted in that Police Station. In fact no case diary dated 24.4.2002 was recorded by the appellant nor the bail bonds were accepted on that day. He further contended that the official residence of the appellant was also situated in the compound of the

police station itself, so, there is no contradiction with respect to the place of trap. He further contended that Nirmal Singh, the shadow witness cannot be considered to be unreliable or interested witnesses simply on the ground that he had got registered corruption cases against two corrupt officials. The prosecution case is fully supported from the statement of complainant, shadow witness, the witness of trap Darshan Singh and the trap lying officer PW9 DSP Rajwant Kumar. From their statements, the demand, acceptance and recovery of the bribe money is fully established. The case of the prosecution also stands corroborated from the fact that the hand wash and pocket wash of the accused has turned pinkish in colour which establishes the acceptance of the bribe money. Thus, he contended that the conviction of the appellant has rightly recorded by the learned trial Court.

19- I have duly considered the aforesaid contentions.

20- In order to establish the charges in the corruption case, the prosecution has to establish the demand and acceptance of the bribe money by the accused and the recovery of bribe money from the possession of the accused. In his statement under Section 313 Cr.P.C., the appellant has raised the plea that the accused were already released on bail by him on 24.04.2002. Thus, a specific defence has been put forwarded by the appellant that since the bail bonds of the complainant and his son were already accepted by him on 24.04.2002, there was no occasion for him to raise the demand of bribe on 01.05.2002 and on 02.05.2002 at the time of trap. But this plea raised by the appellant that

bail bonds were already accepted by him on 24.04.2002 is not substantiated.

21- PW9 DSP Rajwant Kumar has taken into possession the Photostat copy of the entire file of case FIR No.23 dated 15.02.2002 under Sections 326/323 read with Section 34 Indian Penal Code, Police Station Mahilpur vide memo Ex.PG. In the said recovery memo, it has been mentioned that the bail bonds of complainant duly filled in, are available at page No.133/134 of the said file. Learned counsel for the appellant has pleaded that said bail bonds are missing from the judicial file but that plea of learned counsel for the appellant is against the record, as the said bail bonds are available on page No.85 and 87 of the Lower Court record. It is also the case of the prosecution that at the time of trap, when the bail bonds of the complainant and his son were handed over to the appellant, he demanded the bribe money. So, this fact is not disputed that the bail bonds of complainant Prem Kumar and his son Naveen Kumar were presented to the appellant. The question is whether these bail bonds were accepted by the appellant on 24.04.2004 as alleged by him or these bail bonds were handed over to him on 02.05.2002 at the time of trap.

22- As per the law and the Punjab Police Rules, if the bail bonds were accepted on 24.04.2002 and complainant and his son were associated in the investigation, there must have been the case diary to this effect. It has been contended from the side of the appellant that case diary No.12 dated 24.04.2002 was prepared by the appellant to this effect,

which duly find mentioned in the index Ex.DB, which has been proved by PW7 MHC Ashwani Kumar, Police Station Mahilpur and PW10 ASI Jagdish Singh, the subsequent Investigating Officer of the case FIR No.23/2002 Police Station Mahilpur. This fact cannot be lost sight of that appellant Balbir Singh was the police official posted in Police Station Mahilpur itself at the time of trap, wherein the index Ex.DB has been prepared. The memo Ex.PG depicts that the photocopy of the entire file of case FIR No.23/2002 Police Station Mahilpur was got done. The said file contained pages from 1 to 134. The last page was the bail bonds of complainant Prem Kumar. The said Photostat pages are available on record, which shows that the last case diary recorded by the appellant was dated 19.04.2002 and no case diary No.12 dated 24.04.2002 was available at that time. The appellant being a police official was investigating the criminal cases daily in discharge of his official duties. He was fully aware about the importance of the case diary. If case diary No.12 dated 24.04.2002 would have been available at that time and would have been excluded by PW9 DSP Rajwant Kumar while taking into possession the photocopy of all the documents of case FIR No.23/2002, it is not expected the appellant would have kept silent and would not have raised the protest. The memo Ex.PG is also signed by the appellant. The memo Ex.PG shows that on the directions of the Investigating Officer, appellant handed over him the case file of case FIR No.23/2002 which contained pages No.1 to 134. From the statement of PW10 ASI Jagdish Singh, it comes out that he has handed over the

Photostat copy of the entire case file to DSP Rajwant Kumar. So, the entire case file of case FIR No.23/2002 was himself handed over by the appellant to PW9 DSP Rajwant Kumar, which was thereafter got Photostat and PW10 ASI Jagdish Singh has handed over the photocopy of the entire file to PW9 DSP Rajwant Kumar, which was taken into possession vide memo Ex.PG which contained the pages No.1 to 134.

23- It has not been suggested to PW9 DSP Rajwant Kumar that he has not taken into possession the complete record of case FIR No.23/2002. He has only been cross examined that he did not make any inquiry about the index on the back of the FIR and that he did not inspect the record of the MHC of the Police Station to find as to how many case diaries were written by the accused and submitted to the MHC prior to his arrest. PW9 DSP Rajwant Kumar has categorically denied the suggestion that case diary No.12 dated 24.04.2002 was purposely withheld by him. If the appellant would have recorded the case diary on 24.04.2002 with respect to the acceptance of the bail bonds the said case diary might have been transmitted to the higher police officers in accordance with the rules, which could have been easily proved by the appellant by summoning the relevant record in his defence evidence. But no such defence evidence has been adduced by the appellant. It is not known as to what prevented the appellant from bringing on record the copy of the case diary No.12 dated 24.04.2002 and the corroborative record to show that same was duly transmitted well before this trap to the higher police authorities. The index on the back of the FIR Ex.DB has only been

prepared in the police station by the fellow police officials of the appellant, which could have been easily manipulated by the appellant in collusion with his fellow police officials posted in Police Station Mahilpur in order to create his defence. If case diary No.12 dated 24.04.2002 would have been in existence on 02.05.2002, when the trap was laid, the same must have been available in the entire file existing at that time i.e. pages No.1 to 134 taken into possession by PW9 DSP Rajwant Kumar. There was no reason to exclude that case diary alone by PW9 DSP Rajwant Kumar as he has no motive for the false implication of the appellant. Moreover, as already mentioned appellant was a police officer. He was fully aware about the importance of the case diary of the relevant date and would have raised the due protest about this conduct of the Investigating Officer. He could also have moved the representation to the higher Vigilance Authorities about this conduct of PW9 DSP Rajwant Kumar but he had just kept silent, which shows that this plea was an afterthought and has been put forwarded after manipulation of the index Ex.DB.

24- Even the furnishing of the bail bonds on 24.04.2002 by complainant Prem Kumar and his son Naveen Kumar to the appellant in pursuance of the order dated 19.04.2002 is not substantiated. From the perusal of the Photostat copy of the said bail bonds, it comes out that in the said bail bonds the FIR number has been written as 48. In the bail bonds of Naveen Kumar, no date has been mentioned under the signature of Naveen Kumar. In the bail bonds of Prem Kumar available at page

No.87 of the Lower Court record, there is a clear overwriting in the date under the signatures of complainant Prem Kumar. It is visible to the naked eyes that previously figure/digit '5' was written indicating the month but later on it was over written as '4'. There is also manipulation in the date wherein figure/digit '4' has been later on added after figure/digit '2'. It appears that before this manipulation, date '2.5.2002' was written under the signature of complainant Prem Kumar, which was later on interpolated to indicate the date as '24.4.2002' by doing the overwriting. No doubt, the appellant has mentioned the date as 24.4.2002 in both the bail bonds at that time of attestation of the bail bonds. It shows that either the appellant was having some apprehension and in order to be on the safer side, he has mentioned the back date as 24.4.2002 under his signatures or it is also a manipulation in the bail bonds, as as per the statement of PW10 ASI Jagdish Singh, the original file was got photocopied by the fellow police officials of the appellant posted in Police Station Mahilpur. The complainant has categorically deposed that when the accused secured the bail bonds, their sureties came out of the police station. PW2 the shadow witness has also deposed that Prem Kumar furnished the sureties from his village and they stood surety for Prem Kumar before the accused and they went away. PW4 Darshan Singh the witness of trap has also stated that when Prem Kumar and Nirmal Singh went to the residence of the ASI, certain other plain clothes men also followed them. This version of the witnesses establishes that on the date of the trap itself, the sureties of the complainant appeared before the

appellant. Thereafter, they went away. If the bail bonds would have been already furnished on 24.04.2002 then what was the need for the sureties to appear again before the appellant on 02.05.2002 i.e. on the date of trap.

25- The complainant has categorically denied in the cross-examination that they have furnished the bail bonds on 24.04.2002. The said bail bonds have not been put to complainant Prem Kumar in his cross examination. This is a serious omission. If the bail bonds were actually furnished on 24.04.2002, as alleged by the accused, the complainant must have been confronted with his bail bonds available on record. But he has not been confronted with the aforesaid bail bonds for the reasons best known to the accused.

26- It is not believable that the complainant would have propounded the false story of the demand of bribe by the appellant on 01.05.2002 for acceptance of the bail bonds despite the fact that their bail bonds having been already accepted on 24.04.2002 knowing well that he may be in trouble by putting forward the false story against record. So, all these circumstances clearly indicates that the plea of the accused that the complainant and his son Naveen had furnished the bail bonds on 24.04.2002 itself and even a case diary No.12 dated 24.04.2002 was recorded by him to this effect, is not substantiated, rather the same is based on the manipulations and interpolations in the record, which punctured the entire defence of the appellant. Consequently, the appellant had every occasion to demand the bribe on 01.05.2002 as well as on the date of trap i.e. 02.05.2002 as the bail bonds were to be

furnished by the complainant and his son to the satisfaction of the appellant.

27- PW1 Prem Kumar complainant has categorically deposed that on 01.05.2002, he handed over the bail orders to the appellant. The accused was conducting the investigation of the case and told them that they should bring the sureties on 02.05.2002. Accused also stated that their bail has been sanctioned and demanded Rs.5000/- from them for releasing them on bail. The accused again told that they should bring Rs.3000/- and he would release them on bail. Thereafter, he deposed about his lodging the report with the DSP Vigilance accompanied by PW9 Nirmal Singh the shadow witness. He further deposed that on the date of trap, he along with Nirmal Singh and his sureties went to P.S. Mahilpur. He and Nirmal Singh went to the office of the accused and accused secured bail bonds and their sureties came out of the Police Station, while he and Nirmal Singh remained sitting in the office of the accused after the sureties were accepted, the accused demanded money and he handed over the currency notes of Rs.3000/- to the accused and accused put the money in the right pocket of his pants. Nirmal Singh gave signal to the police officials, who had come from Jalandhar. The raiding party entered the office of the accused. The accused was arrested at the spot. After receiving the currency notes from him, accused Balbir Singh went to urinate and when he was coming out of the bathroom he was arrested by the Vigilance Officials. The currency notes were recovered from the tank fitted in the bathroom.

28- PW2 Nirmal Singh the shadow witness has also deposed that he and Prem Kumar went inside the Police Station. Prem Kumar arranged the sureties from his village. They stood surety for Prem Kumar before the accused and went away. He further deposed that he along with Prem Kumar and sureties were taken by the accused to his house. Accused accepted the surety bonds of Prem Kumar and his son and, thereafter, demanded money from Prem Kumar. Prem Kumar handed over Rs.3000/- to the accused and, thereafter, he gave the signal to the police party. The police party came inside the quarter of the accused. He also deposed that accused had come out of the bathroom when the police party entered the room. He further deposed that the DSP inquired from the accused whether he has accepted the bribe but the accused denied this fact. Money was recovered from the tank of flush. The consistent statement of complainant Prem Kumar and PW2 Nirmal Singh, the shadow witness, establishes that the accused had demanded and accepted the bribe of Rs.3000/- for acceptance of bail bonds of complainant Prem Kumar and his son.

29- Learned counsel for the appellant has pointed out that the place of trap is not established as the complainant has stated that the bribe money was handed over to the appellant in his office and it was recovered from the toilet of the office, whereas, the other witnesses have stated that the transaction of the bribe money had taken place at the residential quarter of the appellant and recovery was also effected from the toilet of his residence. From the statement of PW9 DSP Rajwant Kumar it comes

out that the residential quarter of the accused was situated in the premises of Police Station Mahilpur itself. In the cross examination he has further stated that the residential quarter of the accused was at a distance of 50/60 yards from the office of the SHO. There is consistent version of PW2 Nirmal Singh the shadow witness, PW4 Darshan Singh the witness of the trap and PW9 DSP Rajwant Kumar the Investigating Officer that transaction of bribe had taken place in the residential quarter of the appellant and bribe money was recovered from the toilet of his residence. Their oral statements are also corroborated from the seizure memo Ex.PC and the site plan Ex.PT. As the residential quarter of the appellant is situated in the premises of the Police Station itself, it appears that due to this reason, there might be some confusion in the mind of complainant Prem Kumar and under that confusion, he might have stated that they had gone to the office of the accused.

30- The acceptance of the bribe by the appellant is also established from the evidence on record. PW1 Prem Kumar has categorically deposed that after the sureties were accepted the accused demanded the money and he handed over the currency notes of Rs.3000/- to the accused and accused put the money in the right pocket of his pants. PW2 Nirmal Singh the shadow witness has also deposed that the accused accepted the surety bonds of Prem Kumar and his son and thereafter, demanded the money from Prem Kumar. Prem Kumar handed over Rs.3000/- to the accused. When the accused accepted the money, he came out of the room and gave signal to the police party. This oral evidence is

also corroborated from the scientific evidence. The hand wash and wash of right pocket of the pants of the accused were taken by the Investigating Officer, which were kept in the sealed nips and were sent to the Forensic Science Laboratory, Punjab Chandigarh for examination. The report of Forensic Science Laboratory is Ex.PAA, which shows that the contents of both the nips contained the sodium carbonate and phenolphthalein powder. So, in the hand wash and wash of right pocket of the pants of the accused the phenolphthalein powder has been found present, which indicates that the accused appellant had accepted the bribe money/tainted currency notes with his hands and kept the same in the right pocket of his pants. The accused has not rendered any explanation as to why the phenolphthalein powder, which were applied on the tainted currency notes, came on his hands and the pocket of his pants. In the absence of any plausible explanation by the appellant, the presence of the phenolphthalein powder on the hands of the appellant and in his right pants pocket clubbed with the statements of complainant and the shadow witness clearly establishes that the appellant has voluntarily and consciously accepted the bribe money.

31- In case **Ramesh Kumar Gupta Vs. State of Madhya Pradesh 1996 (1) RCR (Criminal) 94**, the hands of the accused got tainted and phenolphthalein powder test regarding the wash of the hand gave positive result. The Hon'ble Apex Court held that it showed that accused must have handled them at some stage and, therefore, his bare denial that he had no knowledge was without any substance. In case

C.M. Sharma Vs. State of Andhra Pradesh 2011(1) RCR (Criminal) 183, there was positive sodium carbonate test vis-a-vis the fingers and right trouser pocket of the appellant. The Hon'ble Apex Court held that it goes to show that he voluntarily accepted the bribe. The same ratio of law has been laid down in cases **Narayana Vs. State of Karnataka 2010(4) RCR (Criminal) 661** and **Phula Singh Vs. State of Himachal Pradesh 2014(2) RCR (Criminal) 51**.

32- The acceptance of the bribe is not negated simply from the fact that the tainted currency notes have not been recovered from the person of the accused, rather those have been recovered lying on the water tank of flush in the toilet of the residential quarter of the appellant. Both the complainant and the shadow witness have categorically deposed that after the acceptance of the bribe money, the appellant has gone to the toilet. The placing of the tainted currency notes on the water tank of the flush indicates that appellant was cautious and was taking the precautions to safeguard himself from being trapped but the recovery of the tainted currency notes from the toilet of his residential quarter is as good as the recovery of the tainted currency notes from his person. PW1 Prem Kumar complainant, PW2 Nirmal Singh the shadow witness, PW4 Darshan Singh the witness of trap and PW9 DSP Rajwant Kumar DSP the Investigating Officer, have consistently deposed that tainted currency notes were recovered from the toilet of the residential quarter of the appellant. Again in his statement under Section 313 Cr.P.C., the appellant has not given any explanation as to how the tainted currency notes came

to be lying on the water tank of the flush of his residential quarter. In case **Parmod Chander alias Parbodh Chander Vs. State of Punjab 2006(2) RCR (Criminal) 239**, the bribe money was recovered on the desk of the accused under a paper weight. The shadow witness has turned hostile but his conviction was upheld by this Court as the accused did not explain why the amount of Rs.1000/- was lying on his table. In case **Kanshi Ram Vs. State of Punjab 2006(4) RCR (Criminal) 840** the tainted money was recovered from the house of the accused lying in a register. No reasonable explanation was offered by the accused as to how tainted money came in his possession. The Hon'ble Apex Court held that the receipt of the money was proved beyond reasonable doubt. In case **Jaswant Singh Vs. CBI 2009(3) RCR 518**, the tainted currency notes of Rs.2000/- was recovered from the drawer of the accused. It was held by this Court that mere this fact that currency notes were recovered from the drawer does not lead to the conclusion that accused has not accepted illegal gratification.

33- In view of the aforesaid ratio of law, mere this fact that the recovery of the tainted currency notes has been effected from the toilet of the accused, does not indicate that he has not accepted the bribe money rather from the evidence on record, already discussed in detail clearly, it is establishes that the accused appellant has voluntarily and consciously accepted the bribe money which was later on recovered from the toilet of his house.

34- PW4 Darshan Singh the witness of trap was posted as

Labour-cum-Conciliation Officer Jalandhar at the time of the trap. He was deputed to join the trap in his official capacity. There is nothing on record to establish that he was the choice of the Investigating Officer. He was a respectable public servant, having no motive for the false implication of the appellant. He was not at all the interested witness. So, there is no reason why not to treat him the independent witness of trap. Thus, from the testimonies of PW1 Prem Kumar complainant, PW2 Nirmal Singh the shadow witness, PW3 Darshan Singh the witness of trap and PW9 DSP Rajwant Singh, it is established that accused has demanded and accepted a bribe of Rs.3000/- from the complainant Prem Kumar for accepting the bail bonds of the complainant and his son. The said tainted currency notes have also been recovered from the possession of the appellant. So, the cases titled **B. Jayaraj Vs. State of A.P.** (supra), **Narendra Champaklal Trivedi Vs. State of Gujarat** (supra) and **Niranjan Bharati Vs. State of Orissa** (supra), relied upon by learned counsel for the appellant, are quite distinguishable on facts.

35- Once the aforesaid ingredient are established, the presumption under Section 20 of the Act comes into action to draw the presumption that the acceptance was as a motive or reward for doing or forbearing to do an official act. To support this view, reliance can be placed upon **Madhukar Bhaskarrao Joshi Vs. State of Maharashtra 2000(4) RCR (Criminal) 705 (SC)**.

36- I also do not find any legal infirmity in the sanction order Ex.PJ. PW6 SI/Head Clerk Bhagwan Dass has proved the sanction order

Ex.PJ. He deposed that the file was put up before the Senior Superintendent of Police by him for grant of sanction. In the cross examination also he deposed that he himself took the file to the Senior Superintendent of Police along with certain other police papers by 12:30 p.m. and the S.S.P. had signed the sanction paper Ex.PJ on the same day. He has further stated that after the file was received in the office, the sanction order was got typed and then he put up the same before the S.S.P., who signed the same. The aforesaid evidence shows that only the draft sanction order was prepared and the same was put up before the competent authority along with the case file and after going through the case file, the sanction order Ex.PJ was signed by the Senior Superintendent of Police on the same day. It does not show that there was non application of the mind by the competent authority while issuing the sanction order.

37- In case **State of Tamil Nadu Vs. 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. On that ground the High Court held that Sanctioning Authority has accorded the sanction without application of mind in a mechanical manner, but the 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 High Court was not justified in reaching the conclusion that Sanctioning Authority granted sanction mechanically and

without application of mind and the Hon'ble Apex Court found no infirmity in the sanction order.

38- This Court also in case **Rakesh Dixit Vs. State of Punjab 1991(2) Recent Criminal Reports 85**, has 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. It is further mentioned in this case that the submission of 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.

39- The Hon'ble Apex Court in case **C.S. Krishnamurthy Vs. State of Karnataka 2005(2) RCR (Criminal) 409**, has laid down that in case the sanction orders speaks for itself, then the satisfaction of the sanctioning authority is apparent by reading the order.

40- The sanction order Ex.PJ also speaks for itself and shows the due application of mind by the Senior Superintendent of Police. The sanction order Ex.PJ shows that after carefully examining the case file and the documents attached therein the competent authority was fully satisfied and issued the sanction order for the prosecution of the appellant. So, there is no defect in the sanction order Ex.PJ. In view of the consistent rule of law laid down in the aforesaid cases, case **State of Punjab Vs. Dr.Paramjit Singh** (supra), relied upon by learned counsel for the appellant, is of no help to the appellant.

41- Thus, keeping in view my aforesaid discussion, I do not

find any legal infirmity or impropriety in the conviction and sentence of the appellant as recorded by the learned trial Court. The same is hereby maintained and affirmed.

42- Consequently, the present appeal is devoid of merits and 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, Hoshiarpur, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Hoshiarpur, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 08.04.2015
sunil yadav

(DARSHAN SINGH)
JUDGE