

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-2125-SB of 2006

Date of Decision: 04.5.2015

Kamaljit Kumar alias Kamaljit Singh (dead) through his L.Rs

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Darshan Singh.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Preetinder Singh Ahluwalia, Advocate
for the appellant(s).

Ms. Rimplejeet Kaur, Assistant Advocate
General, Punjab for the respondent.

Darshan Singh, J.

1. The present appeal has been preferred against the judgment of conviction dated 17.10.2006 passed by the Court of Special Judge, Patiala vide which appellant-Kamaljit Kumar alias Kamaljit Singh was held guilty and convicted for the offences punishable under Sections 7 & 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the Act”) and the order of sentence of even date vide which he was sentenced as under:-

Sr. No.	Offence	Sentence
1.	Under Section 7 of the Act	To undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 2,500/-. In default of payment of fine to further undergo rigorous imprisonment for a period of two months

Sr. No.	Offence	Sentence
2.	Under Section 13(2) of the Act	To undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 2,500/-. In default of payment of fine to further undergo rigorous imprisonment for a period of two months

Both the sentences were ordered to run concurrently.

2. The brief facts giving rise to the prosecution case are that the electric meter of complainant Kuldip Singh, resident of village Dhakoli, District Patiala was damaged in the dust storm on 12.5.1994. He moved an application to the office of Sub Divisional Officer, Punjab State Electricity Board, Zirakpur on 13.5.1994 for restoration of the electricity supply. On 16.5.1994, appellant Kamaljit Kumar alias Kamaljit Singh, Junior Engineer and his co-accused Sher Singh, Assistant Line Man visited his house at village Dhakoli. They checked the meter and told him that new meter had to be installed but they did not restore the electric connection of the complainant on that day. The complainant went to the office of the Punjab State Electricity Board, Zirakpur (hereinafter referred to as “the Board”) and met appellant Kamaljit Kumar alias Kamaljit Singh and his co-accused Sher Singh, who were sitting in the same room. The complainant requested them to restore the electricity of his house. Both the accused asked him if he wanted early restoration of electric supply to his house, then he would have to pay ₹ 2,000/- as illegal gratification to them and in case he did not do so, he had to pay a penalty of ₹ 8,000/-. The complainant requested them that he was a poor person and expressed his inability to pay the huge

amount but the accused were adamant and stated that the matter would not be settled for less than ₹ 2,000/-. The complainant stated that he would arrange the money within two/three days. Then appellant Kamaljit Kumar alias Kamaljit Singh, Junior Engineer stated that the complainant should pay this amount of ₹ 2,000/- as illegal gratification on 19.5.1994 to him or Sher Singh, Assistant Line Man. Thereafter, the complainant along with PW.1 Balbir Singh, the shadow witness, approached the Vigilance Department, Punjab at Chandigarh on 19.5.1994 and reported the entire matter to Inspector Harjap Singh vide his statement Ex. PM. The complainant handed over 20 currency notes of denomination of ₹ 100/- each to Inspector Harjap Singh, who applied phenolphthalein powder thereon and noted down their numbers in the entrustment memo and handed it over to the complainant with the direction to give it to the accused on their demand. Inspector Durga Dass and Balbir Singh were also associated in the proceedings. Inspector Harjap Singh, thereafter, demonstrated the reaction of the powder with the solution of Sodium Carbonate. Balbir Singh was directed to act as a shadow witness. He was instructed that he should accompany the complainant to the office of the accused and should hear their conversation and witness the transaction. He was further instructed that when Kamaljit Kumar or Sher Singh would accept the bribe money, he should give signal to the raiding party. Thereafter, they started for the trap. PW.6 Paramjit Singh, Superintendent, Industrial Training Department was also associated as a witness in the raiding party. The trap was laid as planned. The complainant and Balbir Singh went to the office of appellant Kamaljit

Kumar alias Kamaljit Singh, Junior Engineer where Sher Singh, Assistant Line Man was also sitting by his side. Kamaljit Kumar demanded ₹ 2,000/- from the complainant. He handed over the tainted currency notes of ₹ 2,000/- to Sher Singh, Assistant Line Man who counted the notes and put the same into the front left side pocket of his shirt. Then Balbir Singh gave signal to the raiding party. Thereafter, Sher Singh handed over the tainted currency notes to Kamaljit Kumar alias Kamaljit Singh, Junior Engineer who then went to the room of Cashier Harvinder Kaur and put that money into the cash box and got another currency notes of ₹ 2,000/- from the cash box and he put the same into his pocket. By that time, the police party headed by Inspector Harjap Singh reached at the spot. The Investigating Officer took the hand wash of both the accused and left pocket wash of the shirt of accused Ajit Singh, which turned pink in colour. The tainted currency notes were recovered from the cash box in the room of Harvinder Kaur, cashier along with other cash amount. The tainted currency notes were separated from the remaining currency notes and their numbers were tallied with the numbers noted in the entrustment memo. The tainted currency notes were taken into possession by the Investigating Officer and remaining currency notes of ₹ 15,564/- were handed over to Amarjot Singh, Sub Divisional Officer vide separate memo. The accused were arrested. The nips containing the solution were sent to the Chemical Examiner for examination. Accused Harvinder Kaur was also hauled up. The Investigating Officer took into possession the relevant record and on completion of all the formalities of the investigation, the

report under Section 173 Cr.P.C. was presented.

3. Appellant-Kamaljit Kumar alias Kamaljit Singh and his co-accused Sher Singh were charge sheeted for the offences punishable under Sections 7 & 13(2) of the Act. Co-accused Harvinder Kaur, Cashier was charge sheeted for the offence punishable under Section 201 IPC. They pleaded not guilty and claimed trial.

4. It is pertinent to mention here that co-accused Harvinder Kaur was declared Proclaimed Offender by the trial Court vide order dated 11.4.2005, whereas accused Sher Singh expired during the pendency of trial on 20.8.2006.

5. In order to substantiate its case, the prosecution examined as many as ten witnesses.

6. When examined under Section 313 Cr.P.C., the accused/appellant pleaded that he has been falsely implicated in this case on account of the party faction. However, he did not lead any evidence in his defence.

7. On appreciating the record and the contentions raised by learned counsel for the parties, the trial Court held the appellant guilty and convicted for the offences punishable under Sections 7 & 13(2) of the Act. He was sentenced to undergo the imprisonment as mentioned in the earlier part of the judgment.

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

9. It is pertinent to mention here that during the pendency of the present appeal, appellant-Kamaljit Kumar alias Kamaljit Singh has also

died. His legal representatives i.e. his wife and daughter were allowed to pursue the present appeal by this Court vide order dated 8.1.2013.

10. I have heard Mr. Preetinder Singh Ahluwalia, Advocate, Ms.Rimplejeet Kaur, Assistant Advocate General, Punjab and have meticulously examined the record of the case.

11. Initiating arguments, learned counsel for the appellant has contended that in order to constitute the offence under Section 7 of the Act, the demand of illegal gratification is *sine quo non*. Mere recovery of the currency notes is not sufficient to establish the ingredients of the offences. To support his contentions, he has relied upon the cases ***B.Jayaraj v. State of A.P. 2014(2) R.C.R.(Criminal) 410*** and ***State of Kerala and Another v. C.P.Rao 2011(3) R.C.R(Criminal) 688***. He contended that in the instant case, the demand of bribe is not established. There is no corroboration to the testimony of the complainant as PW.1 Balbir Singh, the shadow witness, has not supported the prosecution version at all. The statement of complainant Kuldeep Singh is contradictory to the story of the prosecution. As per the prosecution version, the demand of the bribe was made in the office. But in his statement, recorded in the Court, the complainant deposed that the demand of the bribe was raised at his house. In view of this, material contradiction, the demand of bribe is not at all established.

12. He further contended that the acceptance of the bribe by the accused/appellant is also not established. The recovery of the tainted currency notes has not been effected from the possession of the appellant. Rather it is alleged that the said currency notes were

recovered from the cash box maintained by co-accused Harvinder Kaur. The story of the prosecution that the room of the accused was adjoining the room of the cashier is falsified from the site plan. So the version of the prosecution that the tainted currency notes were thrown in the cash box by the appellant is not believable. He contended that the fact that the recovery has not been effected from the possession of the appellant or his co-accused Sher Singh, render the whole story of the prosecution doubtful. To support his contentions, he relied upon cases ***Kalu Ram v. State of Punjab 1997(1) R.C.R.(Criminal) 259, Harbans Singh v. State of Punjab 2010(1) R.C.R. (Criminal) 892 and Anand Parkash v. State of Haryana 2008(2) R.C.R. (Criminal) 335.***

13. He further contended that complainant-Kuldip Singh has admitted in his cross-examination that he had raised the dispute in his office and his services were terminated. He challenged his termination upto the Hon'ble Supreme Court but remained unsuccessful. It shows that complainant Kuldip Singh is a witness of poor moral fibre. The independent corroboration of such witness from the independent source becomes essential. The uncorroborated testimony of such a witness cannot be relied upon. To support his contentions, he relied upon cases ***Amrik Singh v. State of Punjab 2005(4) R.C.R.(Criminal) 310, Sat Paul v. Delhi Administration 1976 Supreme Court Cases (Criminal) 160, Kalu Ram's case (supra), Harbans Singh's case (supra) and Anand Parkash's case (supra).***

14. He further contended that what to talk of any independent corroboration, even the shadow witness in this case has not supported

the prosecution version. It demolished the entire case of the prosecution. The story of the prosecution regarding the raid was not trustworthy. To support his contentions, he relied upon cases **Satpal Singh (died) through L.Rs v. State of Punjab 2004(1) R.C.R. (Criminal) 830**, **R.V.Subha Rao v. State represented by Inspector of Police, Anti Corruption Bureau, Kakinada Range 2005(4) R.C.R. (Criminal) 716 (A.P.)** and **Pritam Singh v. State of Haryana 1992(3) R.C.R. (Criminal) 139**.

15. It is, therefore, contended that all the ingredients of the offence i.e. the demand, acceptance and recovery of the tainted currency notes from the possession of the appellant are not established.

16. He further contended that mere positive result of phenolphthalein test is not enough to establish the case. To support his contentions, he relied upon case **Meena(Smt.) wife of Balwant Hemke v. State of Maharashtra, 2000(2) R.C.R.(Criminal) 661**.

17. He further contended that the complainant and PW.6 Paramjit Singh have categorically admitted that they were tutored by Inspector Durga Dass and whatever they have deposed was based on the tutoring. Thus, the testimony of both these witnesses is tutored one and cannot be relied upon. He further contended that the role of Deputy Superintendent of Police Makhan Singh is very suspicious. As per the statement of the complainant and PW.6 Paramjit Singh, Deputy Superintendent of Police Makhan Singh remained associated throughout the proceedings. But his presence is being concealed by the Investigating Officer Inspector Harjap Singh, which renders the version

of the prosecution doubtful. He further contended that the joining of PW.6 Paramjit Singh is also extremely doubtful. The investigating Officer has even denied to identify the signatures of Deputy Superintendent of Police Makhan Singh with respect to the requisition of the witnesses.

18. PW.6 Paramjit Singh has admitted that his superior officer B.S.Kapoor was facing the vigilance enquiry being conducted by Deputy Superintendent of Police Makhan Singh. Thus, Paramjit Singh cannot be considered to be an independent witness.

19. Learned counsel for the appellant further contended that when the demand and acceptance of the bribe is not established, the presumption under Section 20 of the Act is not attracted. To support his contentions, he relied upon the case ***Banshi Lal Yadav v. State of Bihar AIR 1981 Supreme Court 1235***. Thus, he pleaded that the conviction of the appellant has been wrongly recorded by the learned Special Judge.,

20. On the other hand, learned State counsel pleaded that even this fact that the shadow witness has turned hostile is no ground to reject the prosecution version. The complainant has fully corroborated the prosecution version about the demand and acceptance of the bribe by the appellant and his co-accused Sher Singh. The tainted currency notes were thrown by the appellant in the cash box maintained by co-accused Harvinder Kaur and he took out the equal number of other currency notes, which shows the clever move on the part of the appellant. It also shows the voluntary acceptance of the bribe money. She further contended that the appellant was the concerned Junior

Engineer of the area. The complainant has already moved an application for restoration of the electric supply to his house. Thus, he had every occasion to raise the demand of bribe. The testimony of the complainant is fully corroborated from the application moved by him for restoration of the electricity supply and the statement of the other witnesses. She further contended that it is not necessary that the demand of bribe must be proved by direct evidence. She further contended that mere this fact that due to some dispute, the services of the complainant were terminated, does not render him an unreliable witness. She further contended that the victim in a corruption case cannot be considered to be an accomplice. There is absolutely no reason not to consider PW.6 Paramjit Singh as an independent witness. He has been deputed in a legal manner by his superior to participate in the raid. There is no evidence on record to establish that any vigilance enquiry was being faced by PW.6 Paramjit Singh or his superior officer, being conducted by Deputy Superintendent of Police Makhan Singh. She further contended that Deputy Superintendent of Police Makhan Singh was the superior officer. Even if it is accepted that he had supervised the proceedings, that would not render the prosecution case unreliable. She further contended that if the memory of the witnesses was refreshed by Inspector Durga Dass, it cannot be said that they were tutored. Thus, she pleaded that all the ingredients of the offence are fully established from the evidence adduced by the prosecution. The presumption under Section 20 of the Act also arises against the appellant and his conviction has been rightly recorded by the trial Court.

21. I have duly considered the aforesaid contentions.

22. There is absolutely no doubt that in order to establish the offence in a corruption case, the prosecution is required to establish the demand of bribe, its acceptance by the accused and the recovery of the tainted currency notes from the possession of the accused. As per the prosecution version, the electric meter installed at the premises of complainant Kuldeep Singh was damaged due to dust storm on 12.5.1994. He moved an application to the office of the Sub Divisional Officer, PSEB, Zirakpur on 13.5.1994 for restoration of his electric supply. Appellant Kamaljit Kumar alias Kamaljit Singh, Junior Engineer and his co-accused Sher Singh, Assistant Line Man, posted in the PSEB, Zirakpur, visited the premises of the complainant and stated that the meter has to be replaced. When the complainant visited their office on 16.5.1994, the demand of bribe of ₹ 2,000/- was raised in order to restore the electric supply. He was also threatened that if he did not accede to their demand of bribe, he has to pay a penalty of ₹ 8,000/-. Thereafter, he reported the matter to the vigilance department and the trap was laid.

23. Complainant Kuldeep Singh, while appearing in the witness box as PW.5 has fully supported the prosecution version with respect to the demand, acceptance and recovery of the tainted currency notes from the possession of the appellant. He has categorically deposed that on 12.5.1994, his electric meter went out of order due to dust storm. He moved an application to the office of the PSEB, Zirakpur on 13.5.1994. On 16.5.1994, appellant Kamaljit Kumar alias Kamaljit Singh, Junior

Engineer and his co-accused Sher Singh, Assistant Line Man came to his house. They checked the meter and stated that a new meter would be installed and that he has to pay ₹ 2,000/- to them. They, thereafter, did not give him connection on that day and the electricity remained off in his house. Then he went to the office of PSEB, Zirakpur. He asked the accused for two/three days for payment and restoration of the electric supply. He further deposed that he along with Balbir Singh approached the office of Vigilance Department, Punjab on 19.5.1994. Inspector Harjap Singh met him and recorded his statement Ex.PM. Thereafter, he deposed about the pre-trap proceedings. He further categorically deposed that he along with Balbir Singh reached the room/chamber of appellant Kamaljit Kumar alias Kamaljit Singh, Junior Engineer, who demanded ₹ 2,000/- from him. Sher Singh was also sitting by the side of appellant Kamaljit Kumar. Both the accused were present in the Court. He handed over the tainted money of ₹ 2,000/- to Sher Singh, Assistant Line Man. Sher Singh counted the currency notes and then put the same into left hand side pocket of his shirt. Balbir Singh, the shadow witness gave the signal. Then Sher Singh handed over the tainted money to the appellant who had gone to the room of cashier and put the money into the cash box of PSEB. Harvinder Kaur, Cashier was maintaining that cash. Thereafter, he deposed about the arrival of the raiding party in the office of the accused, the hand washes of both the accused and pocket wash of Sher Singh and the recovery of tainted currency notes.

24. No doubt PW.1 Balbir Singh, the shadow witness has not

supported the prosecution case and deposed that no money was paid by Kuldeep Singh to any accused in his presence. No demand was made by any of the accused in his presence. No recovery was effected from any of them in his presence. Mere this fact that the shadow witness has not supported the prosecution case, is no ground to discard the prosecution version which is fully corroborated from the testimony of the complainant and the other evidence available on the record. It is settled principle of law that the demand and passing over of the bribe is not necessarily to be established by direct evidence. It can also be proved by circumstantial evidence. The Supreme Court in case ***Hazari Lal v. State (Delhi Administration)* AIR 1980 Supreme Court 873** has laid down as under:-

“It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from P. W.3. Under Section 114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the Court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received

the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from P.W.3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the findings that the accused had obtained the money from P.W. 3, the presumption under Sec. 4 (1) of the Prevention of Corruption Act is immediately attracted.”

25. In case ***Jagtar Singh vs. State of Punjab 2010(3) R.C.R. (Criminal) 46***, this Court has laid down that it is not always essential that demand of money is to be proved by witness, but the same could also be proved from circumstances as brought on record.

26. The Karanataka High Court also in case ***Thammanna vs. State of Karanataka 2002(3) R.C.R (Criminal) 385*** has laid down that the accused is not entitled to acquittal on the ground that complainant turned hostile. The demand of dowry can be proved by other material placed on record.

27. In case ***State of U.P vs. Zakaullah 1998(1) R.C.R. (Criminal) 345***, the Hon'ble Apex Court has laid down that evidence of a trap laying officer can be acted upon even without corroboration.

28. In case titled ***T. Shankar Prasad Vs. State of Andhra Pradesh 2004 (1) RCR (Criminal) 784***, the trap witness has turned hostile. The Hon'ble Apex Court has held that Court may convict the

accused on the basis of evidence of complainant and official witnesses and other circumstantial evidence.

29. Thus, in view of the ratio of law laid down in the aforesaid cases, mere this fact that PW.1 Balbir Singh, the shadow witness has turned hostile and has not supported the prosecution version is no ground to record the acquittal of the appellant. The Court is duty bound to take into consideration the entire evidence and material available on record to find out as to whether the prosecution has been able to make out the ingredients of the offence.

30. As already mentioned, the complainant, while appearing in the witness box as PW.5, has fully corroborated the prosecution version. There is absolutely no reason to discard his testimony. Mere this fact that the complainant had a dispute in his office and his services were terminated, he remained unsuccessful to get his termination set aside in the Court of law is no ground to conclude that he is a witness of poor moral fibre. The complainant has stated that a fight had taken place in his office during his service with Om Parkash Dogra, Section Holder. He was suspended and enquiry was conducted by his department in the matter and he was dismissed from service. He lost the case filed by him upto the Hon'ble High Court. It shows that the services of the complainant were terminated due to some fight with the Section Holder. It has nothing to do with the poor moral fibre of the complainant. There were no allegations that the services of the complainant were terminated due to any moral turpitude. So, there is no question of any bad antecedents and poor moral fibre of the complainant to adversely affect

the credibility of his testimony.

31. PW.5 Kuldip Singh has admitted in his cross-examination that Deputy Superintendent of Police Makhan Singh had participated in the raiding party and the proceedings took place in his presence. He remained present throughout the entire proceedings but he did not sign any paper of raid in his presence. But the presence of Deputy Superintendent of Police Makhan Singh was denied by the Investigating Officer Inspector Harjap Singh. Even if the version of complainant Kuldip Singh is admitted, Deputy Superintendent of Police Makhan Singh might have merely kept a watch over the proceedings, being carried out by Inspector Harjap Singh, his immediate subordinate police officer. That is why he did not sign any document in connection with the trap. There is no material on the record to establish that Deputy Superintendent of Police Makhan Singh was having any animus or ill-will against the present appellant. A simple suggestion has been put in the cross-examination of the complainant that the accused has been falsely implicated in the case by him in connivance with Inspector Harjap Singh and Deputy Superintendent of Police Makhan Singh. It is settled principle of law that mere suggestion can not take the evidence of proof. The appellant has not led any evidence to show any connivance or connection or relation of Deputy Superintendent of Police Makhan Singh with complainant Kuldip Singh. Even if Deputy Superintendent of Police Makhan Singh was having a watch over the proceedings, being a superior police officer, that has not resulted in prejudice to the appellant as there is nothing to conclude that he has manoeuvred the proceedings

of the trap in any manner against the appellant.

32. PW.6 Paramjit Singh was posted as Superintendent in the office of the Industrial Training Department, Punjab, Sector 17, Chandigarh and was deputed to participate in the trap by his Additional Director. Ex.DX is the letter written by the Superintendent of Police, Vigilance Bureau, Phase-I, Punjab, Chandigarh to the Additional Director, Industrial Department (Training), Punjab for deputing the services of a gazetted officer and PW.6 Paramjit Singh was advised to co-operate the department as requested above. In this manner, PW.6 Paramjit Singh has been deputed by the Additional Director in a proper manner to participate in the trap as a witness.

33. In his cross-examination, PW.6 Paramjit Singh has stated that B.S.Kapoor was the Additional Director of his department at that time who had deputed him to join the raiding party. He admitted that his boss was known to the officers of the vigilance department. He further deposed that he has good relations with his boss. He admitted that a vigilance enquiry was pending against B.S.Kapoor and vigilance officials used to visit their office in connection with various other enquiries as well. However, he had categorically denied the suggestion that he had signed the memos in order to oblige the vigilance department as his immediate boss. There is no material on record to establish that any vigilance enquiry was pending against PW.6 Paramjit Singh. There is also no documentary evidence to establish as to what type of vigilance enquiry was being conducted against B.S.Kapoor, the Additional Director and who was conducting that enquiry. Mere this fact that PW.6 Paramjit

Singh was having good relations with his immediate boss i.e. B.S.Kapoor, the Additional Director, does not mean that he would support the false trap proceedings against another public servant. Moreover, as already discussed, there is absolutely no material on record to establish that the vigilance officials had any enmity or animus against the appellant for his false implication. So, there is no question of their influencing the witnesses to depose falsely. Consequently, there is no reason to disbelieve the testimony of PW.6 Paramjit Singh, the independent witness of the trap and it carries great evidentiary value. He has corroborated the prosecution version on various material aspects of the trap. He has categorically deposed that the complaint of PW.1 Balbir Singh, the shadow witness had gone to the office of the accused. The shadow witness Balbir Singh gave the signal. Thereafter, they reached inside the office. Co-accused Sher Singh was present in his office. Appellant Kamaljit Kumar alias Kamaljit Singh was coming from the room of the cashier having currency notes in his hands. Thereafter, he deposed about the hand wash and pocket wash proceedings and the recovery of the tainted currency notes from the cash box.

34. It is not disputed that appellant Kamaljit Kumar alias Kamaljit Singh was the Junior Engineer concerned. The complainant has categorically deposed that he along with Sher Singh, Assistant Line Man had visited his premises on 16.5.1994 and checked his meter. The complainant was told that new meter was to be installed. Ex.PV is the application moved by the complainant to the Sub Divisional Officer, PSEB, Zirakpur informing about the damage to his electric meter and for

replacement thereof. His application has been marked to the appellant. So, appellant Kamaljit Kumar alias Kamaljit Singh, the concerned Junior Engineer had every occasion to demand the bribe. The application Ex.PV is a documentary evidence to corroborate the testimony of the complainant. This fact is also not disputed that till the date of trap, the electric supply to the house of the complainant was not restored., obviously, due to non-fulfillment of the demand of bribe raised by the appellant and his co-accused Sher Singh.

35. There is no statutory requirement under the Act for associating any public witness in the trap proceedings. An official witness having responsible status in his department can also be treated as an independent witness. In the instant case, as discussed above, PW.6 Paramjit Singh is certainly an independent witness of trap and has corroborated the prosecution version on the material aspects. So, it cannot be stated that the testimony of complainant Kuldeep Singh is not corroborated from any independent source. It is not necessary that such independent corroboration must be in the shape of the testimony of a public witness. The Hon'ble Supreme Court in **Zakaullah's case** (*supra*) has laid down that even the testimony of a trap laying officer can be acted upon without any corroboration. The case in hand is on much better footing as the prosecution version has been fully supported by complainant Kuldeep Singh and his testimony is corroborated from the testimonies of PW.4 Inspector Durga Dass, PW.6 Paramjit Singh, the witness of trap and PW.10 Harjap Singh, the trap laying officer/Investigating Officer as well as the application Ex.PV. A minor

contradiction in the statement of the complainant with respect to the place of the first demand of bribe is no ground to render his statement unworthy of credence. He has consistently deposed that the accused/appellant along with his co-accused Sher Singh visited his house on 16.5.1994 and on that day, the electric supply was not restored and a demand of ₹ 2,000/- was raised. He has further categorically deposed that even on the date of trap i.e. 19.5.1994, the appellant has demanded ₹ 2,000/- from him. Thus, the demand of bribe of the appellant is fully established.

36. The acceptance of the bribe is also established. Mere this fact that the recovery was not effected from the person of the appellant rather from the cash box of the office maintained by his co-accused Harvinder Kaur, is immaterial. Rather it shows a clever move on the part of the appellant. Complainant Kuldeep Singh has categorically stated that appellant Kamaljit Kumar alias Kamaljit Singh demanded ₹ 2,000/- from him. Sher Singh was also sitting by his side. He handed over the tainted money of ₹ 2,000/- to Sher Singh, who had counted the currency notes and put into the left hand side pocket of his shirt. Balbir Singh, the shadow witness, gave the signal. Then Sher Singh handed over the tainted money to appellant Kamaljit Kumar alias Kamaljit Singh who had gone to the cashier and put that money into the cash box of the PSEB. This version of the complainant is corroborated from the recovery of the tainted currency notes from the cash box maintained by Harvinder Kaur. The clever move on the part of the appellant, who went to the room of the cashier mixed the tainted currency notes and to exchange the

tainted currency notes with other currency notes of ₹ 2,000/- clearly shows the deliberate, voluntary and conscious acceptance of the bribe money by the appellant. This version of the prosecution is also corroborated from the scientific evidence i.e. the report of the Forensic Science Laboratory, Punjab at Chandigarh Ex.PW. From the statements of the prosecution witnesses, it is established that the hand wash of the appellant as well as his co-accused Sher Singh were taken at the spot. The front left pocket wash of the shirt of Sher Singh was also taken. These washes were sent to the Forensic Science Laboratory, Punjab at Chandigarh for examination. The report Ex.PW of the Forensic Science Laboratory shows that the said solution contained the phenolphthalein powder and sodium carbonate and was pink in colour. It shows that the tainted currency notes treated with phenolphthalein powder had been handled by the appellant. The appellant has not been able to explain as to how his hands turned pink.

37. The recovery of the tainted currency notes from the possession of the appellant is also fully established. Mere this fact that the tainted currency notes have not been recovered from the person of the appellant rather from the cash box of the office is immaterial as it was a clever mode on the part of the appellant to save his skin. In case ***Rup Singh v. The State of Punjab AIR 1991 Supreme Court 1125***, the accused has thrown the currency notes and were recovered from the adjoining house but he failed to explain the presence of phenolphthalein powder on his hands and any conspiracy against him for the false implication. His conviction was upheld by the Hon'ble Apex Court. In the

instant case also, as already mentioned, phenolphthalein powder was detected in the hand wash of the appellant as per the report of the Forensic Science Laboratory Ex.PW. Thus, all the three ingredients of the offence i.e. the demand of bribe, the acceptance thereof by the appellant and the recovery of the tainted currency notes are fully established.

38. Once, all these facts are established, the presumption under Section 20 of the Act arises against the appellant. In judgment rendered in ***Madhukar Bhaskarrao Joshi's case 2000(4) R.C.R. (Criminal) 705***, the Hon'ble Supreme Court has laid down as under:-

“The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted “as motive or reward” for doing or forbearing to do any official act. So the word 'gratification' need not CRA-S-1010-SB of 2003 25 be stretched to mean reward because reward is the outcome of the presumption which the Court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like “gratification or any valuable thing”. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the

context to mean any payment for giving satisfaction to the public servant who received it”.

39. So there is no escape from the conclusion that appellant accepted the aforesaid tainted currency notes as illegal gratification. The cases relied upon by learned counsel for the appellant are quite distinguishable on the facts. In **B. Jayaraj's case** (*supra*), both the complainant as well as the shadow witnesses have turned hostile and there was no other evidence of the demand of bribe. In **C.P.Rao's case** (*supra*), the complainant was not examined as he was not available in the country. In **Kala Ram's case** (*supra*), the hands of the accused were caught by the police officer who had earlier touched the currency notes. In **Amrik Singh's case** (*supra*), the shadow witness and the complainant were related to each other and this fact was concealed by the prosecution which cast a serious doubt as to the version of the prosecution. The independent witness was not examined. Moreover, the mutation for which the bribe was allegedly demanded was already sanctioned. In **Harbans Singh's case** (*supra*), the money was placed in the drawer of the appellant. So the demand and acceptance of the bribe was not proved. But in the instant case, the appellant had demanded the bribe and had accepted the same voluntarily and consciously. In the judgments rendered in **Sat Paul's case** (*supra*), **Pritam Singh's case** (*supra*) and **Anand Parkash's case** (*supra*) are also of no help to the appellant in view of the authoritative pronouncements of the Hon'ble Apex Court in **Hazari Lal's case** (*supra*) and **Zakaullah's case** (*supra*).

40. Thus, keeping in view my aforesaid discussion, there is no

escape from the conclusion that appellant Kamaljit Kumar alias Kamaljit Singh has accepted ₹ 2,000/- as illegal gratification from complainant Kuldip Singh for replacement of electric meter and restoration of electric supply to his house.

41. Consequently, I do not find any illegality or infirmity in the conviction of the appellant recorded by the learned trial Court and the same is hereby affirmed.

42. Resultantly, the present appeal has no merits and the same is hereby dismissed.

(Darshan Singh)
Judge

May 4, 2015

“DK”