

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

1. CRA-S-418-SB of 2005
Date of Decision : 7.4.2015

Jarnail SinghAppellant

Versus

State of PunjabRespondent

2. CRA-S-404-SB of 2005

Prem SinghAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Anmol Rattan Sidhu, Advocate (CRA-S-418-SB of 2005),
Mr. Anter Singh Brar, Advocate (CRA-S-404-SB of 2005)
for the appellants

Mr. Deepak Garg, AAG, Punjab

RAJ RAHUL GARG, J.

This common judgment shall decide the aforementioned two appeals preferred by Jarnail Singh son of Santa Singh, and Prem Singh son of Bhag Singh, against judgment dated 16.2.2005, rendered by Sh. Surinder Gupta, the then Special Judge, Patiala, whereby both the appellants/accused were convicted for committing offence punishable under Section 7 and 13

(2) of the Prevention of Corruption Act (hereinafter to be referred as “the Act”). Vide order of sentence of the even date, both the appellants/accused were sentenced to undergo RI for 6 months and to pay a fine of ₹ 1000/- each with default clause for undergoing RI for one month each, for committing offence punishable under Section 7 of the Act, and to undergo RI for one year and to pay a fine of Rs.1000/-each with default clause of RI for one month for committing offence punishable under Section 13 (1)(d)/13 (2) of the Act.

Brief facts of the case are like this; that on 12.12.2001, Gurcharan Singh (PW6) gave his statement to Harbhajan Lal, DSP, Vigilance, Patiala, which is Ex.PW5/A. He stated before the police that he deals in electronics goods at Rajpura. He has been doing this business for the last 15 years. He also used to sell baked ground nuts. He used to bring ground nuts from Rajasthan and after roasting the same, sell the same. A truck loaded with ground nuts, belonging to him, came at Rajpura about 10/15 days prior to 12.12.2001. At that time accused/appellants Jarnail Singh and Prem Singh called upon him to say that composition fee of ₹ 12,000/-was payable by him because he has not deposited the Market Committee fee earlier. Accused/appellants called upon him to get the licence issued. On account of paucity of time, it was difficult for him to get the licence issued. As such, the accused persons asked him to pay a sum of ₹ 4000/-as bribe money. Earlier ₹ 12,000/- i.e. the full composition fee was demanded from him but ultimately the matter was settled for ₹ 4,000/-. He paid ₹ 4,000/- to Jarnail Singh. Out of this amount, a sum of ₹ 2,000/- was kept by Jarnail Singh for himself whereas ₹ 2,000/- was given by him to

Prem Singh. Accused/appellants were saying that they were Mandi Supervisors. It was further stated that after receipt of the aforesaid amount of ₹ 4000/-, accused/appellants called upon him to pay 2% of Market Committee Fee in advance to them as and when vehicle loaded with ground nuts belonging to him again reaches at his destination.

On 10.12.2001, a truck loaded with ground nuts belonging to him came. On the next day, both the accused/appellants visited him demanding their share as a truck loaded with ground nuts had already reached the destination. At that time ₹ 3,000/- were demanded by the accused/appellants. After some bargaining, the amount was settled as ₹ 2,000/- as bribe. The complainant promised to pay the aforesaid bribe money on the next day. However, complainant's friend Pritpal Singh met him and during the course of discussion, he had forbidden the complainant from paying ₹ 2000/- to the accused/appellants and suggested to report the matter to the Vigilance Department, which was near Gurudwara Dukh Niwaran Sahib, Patiala. On 11.12.2201, a telephonic call was given to Vigilance Department, Patiala. On 12.12.2201, the complainant and Pritpal Singh visited the Vigilance Office. Patiala. There, they narrated the entire story to DSP Harbhajan Lal. His statement was recorded by the DSP and the complainant put his signatures on the same.

DSP Vigilance sent Inspector Mohinder Singh for calling independent witnesses. Arun Vashishta, Steno of the office of Civil Surgeon, Patiala and Dr. Harbans Singh Saran of Civil Dispensary, Bishan Nagar, Patiala were joined as witnesses. They were made acquainted with the facts of the case. Thereafter, by fetching a glass of water, sodium

carbonate was added in the same but the colour of water did not change. Thereafter, phenolphthalein powder treated paper slip was dipped in that mixture whereupon the colour of the water turned pink. The aforesaid pink colour water as well the paper slip were destroyed. The witnesses were made aware about the phenolphthalein powder. This demonstration memo was prepared as Ex.PW8/A. Complainant, Pritpal Singh, Dr. Harbans Singh Saran and Arun Vashishta signed the same as witnesses. Thereafter, three currency notes of the denomination of ₹ 500/-each, were produced by the complainant before DSP Harbhajan Lal. Phenolphthalein powder was applied on the aforesaid three currency notes and then the same were entrusted to the complainant with the direction that as and when money was demanded from him by the accused/appellants, the aforesaid currency notes were to be handed over to them. Entrustment memo Ex.PW8/B was prepared. It was attested by the aforementioned witnesses. Pritpal Singh appointed as Shadow witness. He was instructed to accompany the complainant to hear the conversation to be held between the accused and the complainant. He was also directed to give the signal by placing his hand on his head when the bribe money was received by the accused/appellants from the complainant. Ruka Mark PW5/A was recorded with endorsement Ex.PW3/A by DSP Harbhajan Lal whereupon, Parminder Singh recorded the formal FIR Ex. PW13/B.

Thereafter, raid was conducted. Raiding party had gone to Rajpura. After reaching Bus stand, Rajpura, the complainant and shadow witness were sent on the groundnuts shop of the complainant at about 5.00 P.M. Both the accused/appellants came on a motor cycle at the shop of the

complainant. After some time signal was flashed by Pritpal Singh and raiding party reached the shop of the complainant. DSP Vigilance disclosed his identity to the accused and recovered the currency notes from the hands of Jarnail Singh, accused/appellant. Number of the currency notes were tallied with the currency notes mentioned in the memo Ex.PW8/B handing over currency notes by the complainant to the Investigating Officer. The recovered currency notes were taken into police possession vide memo Ex.PW8/C. This memo was signed by the aforementioned witnesses. Currency notes are MO-1 to MO-3. Thereafter, water was fetched in a glass in which sodium carbonate was added but colour did not change. Then hands of Dr. Harbans Singh Saran were got dipped in that mixture but colour of the water did not change. Thereafter, hands of accused Jarnail Singh were got dipped in the same mixture and this time the colour of water turned pink. That mixture was poured into quarter bottle MO-4 and was sealed with the seal bearing impression 'HLM' and was taken into police possession vide memo Ex.PW8/D. This memo was also signed by the aforementioned four witnesses. Signatures of Jarnail Singh accused/appellant was also obtained on this memo. Motor cycle along with its RC of the accused/appellant were also taken into police possession vide memo Ex.PW5/F. This memo was also witnessed by the aforementioned four witnesses. It was also signed by Jarnail Singh accused. Personal search of both the accused/appellants were conducted. Memo regarding their personal search are Ex.PW8/E and PW8/F. These memos also bear the signatures of all the aforementioned witnesses as well the accused. Site plan of the spot was prepared as Ex.PW13/C. Accused were arrested.

Statements of witnesses were recorded. Case property was deposited with HC Jagdeep Singh. Report FSL Ex.PW13/D was obtained. After completion of necessary investigation and after obtaining sanction Ex.PW5/A to prosecute both the accused/appellants, prosecution was lodged against them.

After finding prima-facie case against both the accused/appellants for committing offence punishable under Section 7 and 13(1)(d)/13(2) of the Act, they were charge sheeted accordingly, to which, they did not plead guilty but claimed trial.

After obtaining the entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein each incriminating substance appearing against the accused/appellants was denied by them and they pleaded their innocence.

It is the defence of accused/appellant Jarnail Singh that a false case has been registered against him. No recovery was effected from him. The prosecution story is unnatural and concocted one. It has been made up while sitting in the Vigilance Office at Patiala. No raid as well as the prosecution was ever conducted. In fact, his wife had purchased one inverter from the shop of complainant Gurcharan, located at Rajpura. The bill of the ivnerter is available on the file. Said inverter was not properly working. Several requests were made to Gurcharan Singh for the change of the inverter or to refund the amount. There was altercation between Gurcharan Singh and his wife. Threats were given by Gurcharan Singh to teach him a lesson in future. On 12.12.2001 some vigilance officials came to his house at Rajpura and without disclosing anything picked him up in

the presence of Sukhdev Singh son of Mohinder Singh and his family members. Thereafter, they had gone to the house of Prem Singh and arrested him from there in the presence of his neighbours. They were brought to Patiala and falsely implicated in this case.

Prem Singh accused averred by way of defence that the story of prosecution was concocted while sitting in the Vigilance Office at Patiala. No raid was ever conducted by the Vigilance Officials. They came to his residence and without disclosing anything picked him up and straightway brought him to the Vigilance Office, Patiala, where he was detained and ultimately, false case was planted on him. In defence, accused/appellants examined Mann Singh son of Mohinder Singh as DW 1, President, District Unit of BJP Rural Wing, Rajpura, Sukhdev Singh son of Mohinder Singh as DW 2 and Baljit Kaur wife of Jarnail Singh as DW3.

After hearing both the counsel for the parties and appraising the entire evidence and material coming on record, the learned Special Judge, Patiala, held both the accused/appellants guilty of committing offence punishable under Section 7 and 13 (1)(d)/13 (2) of the Act and by passing order of the even date i.e. 16.2.2005, sentenced them as mentioned in earlier part of this judgment.

I have heard Mr. Anmol Rattan Sidhu, Advocate and Mr. Anter Singh Brar, Advocate, for the accused/appellants and Mr. Deepak Garg, AAG, Punjab, for the state and also appraised the entire evidence and material coming on record.

The first and foremost argument advanced by learned defence counsel is regarding sanction to prosecute the accused/appellants. It was

contended that the accused/appellants were Mandi Supervisors. They were, thus, Class-III employees. As per Annexure A of Punjab Market Committees (Class III and IV) Service Rules (hereinafter to be referred as “the Rules”), their appointing authority/recruiting authority is a Committee consisting of the Chairman of the Committee as its President, District Mandi Officer or his nominee, not below the rank of an Assistant District Mandi Officer as expert representative and two other representatives, one each out of the Scheduled Castes and Ex-Serviceman, to be nominated by the Committee from amongst its members. Annexure C of these rules shows as to who is the authority empowered to impose penalty in case of Mandi Supervisors-cum-Fee Collectors. That authority has been shown as Committee. The sanction order Ex.PW 5/A shows that the sanction to prosecute was accorded by the Chairman of the Market Committee, Rajpura. It was never given by the Committee. As such, sanction to prosecute is not a valid sanction and for this very reason, accused/appellants are entitled to acquittal.

The above argument of learned counsel for the accused/appellants carries weight. The Rules define “Chairman” in Rule 2 (c) as 'Chairman means the Chairman of a Committee'. Rule 2(i) speaks about the 'recruiting authority' which means a recruiting authority of a Committee consisting of the Chairman of the Committee as its President, District Mandi Officer or his nominee not below the rank of an Assistant District Mandi Officer as expert representative and two other representatives, one each out of the Scheduled Castes and Ex-servicemen, to be nominated by the committee from amongst its members. Proviso attached

to Rule 2, provides that when there is a vacancy in the Office of the Chairman in terms of Section 17 of the Act, the committee shall elect one of its members to act as President of the recruiting authority. It is further provided that when the Committee is under supersession, the officer appointed by the Government as its Administrator shall be the President of the recruiting authority and two other representatives to be nominated by the Secretary of the Board from among the Officers of the Board one each out of the Scheduled Castes and Ex-Servicemen.”

Rule 6 defines the word 'Appointing Authority' as “All appointments to the Service shall be made by the Committee.”

Appendix C attached to Rule 14 pertaining to discipline, penalties and appeals, says that in case of Mandi Supervisors, authority empowered to impose penalties is- Committee.

This Committee consists of the Chairman of the Committee, as its President, District Mandi Officer or his nominee, not below the rank of an Assistant District Mandi Officer as expert representative and two other representatives, one each out of the Scheduled Castes and Ex-Servicemen, to be nominated by the Committee from amongst its members. As such, it is the Committee who can take disciplinary action and impose penalties and give punishment to the delinquent officials of the Punjab Market Committees. Sanction order Ex.PW5/A shows that sanction to prosecute was given by the Chairman alone. Chairman, Market Committee, is one of the members of the Committee. May be the Chairman is the President of the Committee but he alone is not competent to give sanction to prosecute. Sanction order Ex.PW5/A nowhere states that meeting of the Committee

was called for according sanction to prosecute the accused/appellants or their matter was considered by the Committee and thereafter, the Committee being satisfied that the accused/appellants have committed the offence under Section 7 and 13 (i)(d)/13(2) of the Act and only then accorded sanction. As sanction to prosecute was not given by the authority, which was competent to give sanction and was also the punishing authority, the sanction is not a valid sanction. Chairman of the Market Committee, of course written in sanction order that he is competent to dismiss the accused/appellants yet this observation of the Chairman is misconceived. He alone cannot do so. It is the Committee who can dismiss the accused/appellants. **“State of Goa v. Babu Thomas, 2005(4) RCR (Criminal) 349 (SC)”** is the judgment of the Division Bench of the Hon'ble Apex Court of India. It is fully applicable to the present case. In the aforesaid judgment the power of appointment and dismissal vested in Board of Directors. Sanction for prosecution was issued by Chairman of the company. Under those circumstances, it was held by the Hon'ble Apex Court that it is not valid sanction. Order of Court taking cognizance was set aside.

In the case in hand as well, power of appointment and dismissal is with the Committee whereas the sanction for prosecution has been given by the Chairman alone. As such, it is not a valid sanction and for this very reason, the Court cannot take cognizance and the accused/appellants are entitled to acquittal.

Learned counsel for the accused/appellants have also cited **“Mansukhlal Vithaldas Chauhan v. State of Gujarat, 1997(4) RCR**

(Criminal) 236 (SC)” and “Sita Ram v. State of Rajasthan, 1975 AIR (SC) 1432”, “P.L. Tatwal v. State of M.P., 2014 Cr.LJ 1880 (SC)”. In fact, the aforesaid judgments are on the point that sanctioning authority has to apply its own mind whether to grant or not to grant sanction. Sanction granted without taking into consideration any material or only on the basis of one letter or at the behest of some authority, is not a valid sanction. So far as this preposition of law is concerned, it is not disputed so as to in the present case, the grant of sanction is only an administrative convenience. It is intended to protect public servants against frivolous and vexatious litigation. The authority has to take a conscious decision as to whether the facts would reveal the commission of an offence under legal position. In the case in hand before according sanction, the Chairman has gone into detail, the material for granting sanction for lodging prosecution against the accused/appellants.

Learned counsel for the accused/appellants also cited **Mansukhlal case (supra)** contending that in the aforesaid case conviction was set aside on the ground that sanction for prosecution was bad. At the same time, it was also held by Division Bench of the Hon'ble Apex Court that it is not fair and just to remit the case back for fresh trial. As such, since in the absence of valid sanction, no Court can take cognizance of the offence, therefore, the accused/appellants are entitled to acquittal.

For the reasons recorded above, as the sanction to prosecute, given under Section 19 of the Act, by the Chairman of the Punjab Market Committee, is not a valid sanction, therefore, the accused/appellants are entitled to be acquitted.

As for want of valid sanction, accused/appellants are entitled to acquittal, therefore, the further discussion of the case on merits, is not required. However, for the sake of convenience only, in short, I would like to discuss the case on merits as well.

Present case is the one in which Gurcharan Singh/complainant (PW6) and Pritpal Singh, shadow witness (PW7) tilted towards the accused/appellants. Both supported the entire prosecution version on the demand, acceptance and recovery yet they tried to create confusion so far as the bribe money is concerned and its denomination. Right from the beginning till end, short of repetition, Gurcharan Singh, complainant (PW6) and even Pritpal Singh (PW7), narrated the prosecution story by stating that 10-15 days prior to this case, they brought one truck of ground nuts without payment of Market Committee fee. They were, in fact, not having the licence of the Market Committee for that purpose. As such, the accused/appellants being Mandi Supervisors, came to him (complainant) and demanded a sum of ₹ 12,000/- as composition fee but the matter was settled at ₹ 4,000/-, which was paid to the accused/appellants, who further divided the money. Thereafter, on 10.12.2001, the complainant brought another truck loaded with ground nuts from Rajasthan and then both the accused/appellants contacted him at his shop on 11.12.2001 and demanded ₹ 3,000/- as bribe but the matter was settled at ₹ 1,500/-. The complainant deposed that he never wanted to give bribe to the accused/appellants and this fact was being discussed by him with Pritpal Singh (PW7), who also supported complainant's view and also directed him to report the matter to Vigilance, Patiala. The complainant further supported the prosecution story

regarding going to the Vigilance Office reporting the matter to the DSP, Vigilance, handing over bribe money to the DSP Harbhajan Lal, application of phenolphthalein powder on the bribe money and then appointment of Pritpal Singh as shadow witness. He also deposed that when the raid was conducted, he had gone to his shop. Pritpal Singh also with him. At about 5.00 P.M. both the accused/appellants came to his shop and then he gave the bribe money to the accused/appellants. Thereafter, Pritpal Singh gave the agreed signal whereupon raiding party recovered the bribe money from the hands of Jarnail Singh. With this statement of Gurcharan Singh, complainant, the demand, acceptance and recovery stand proved. The only difference lies in the amount of bribe money as Gurcharan Singh, complainant (PW6) and Pritpal Singh, shadow witness (PW7) deposed that the bribe money was to the tune of ₹ 2,000/- and the same amount was given by the complainant to the accused and the aforesaid amount was recovered. Complainant and Pritpal Singh also deposed differently when they stated that the denomination of currency notes was that two currency notes were of the denomination of ₹ 500/-each whereas 10 currency notes were of denomination of ₹ 100/-. This deposition clearly shows that these two witnesses tilted a bit towards the accused/appellants in order to help them. But it is the settled preposition of law that in cases where the material witnesses turned hostile, the Court has to examine the evidence of the prosecution by ignoring the deliberate attempt, even if made by prosecution to help the accused, to do justice and to maintain the confidence of people in the administration of justice. So has been held in "Sahadevan @ Sagadevan v. State (represented by Inspector of Police, Chennai), 2002

(4) RCR (Criminal) 752” where the Investigating Officer has tried to spoil the prosecution case. The witnesses turned hostile and the Hon'ble Supreme Court has observed as follows :-

“22.....During the trial, we find some material witnesses have turned hostile and other witnesses like PW25 who even though did not turn hostile, have tried to help the defence to the best possible extent. Thus, it has become the duty of the courts below to find out the truth as to the prosecution case. In a situation, like this, as held by this Court, the benefit of an act or omission of the Investigating Agency should not go to the accused in the interest of justice.....”

In that case, it was observed that the court has to examine the evidence of the prosecution by ignoring the deliberate attempt, even if made by prosecution, to help the accused to do justice and to maintain the confidence of people in the administration of justice.”

The complainant admitted his signatures on Mark PW5/B, which has also been exhibited as Ex. PW8/B. Vide this memo, currency notes amounting to ₹ 1,500/-were handed over by the complainant to DSP Harbans Lal. In this very memo, denomination of currency notes already finds mention. These were treated with phenolphthalein powder and entrusted to the complainant. The numbers of these currency notes were also mentioned in the memo. These very currency notes were recovered from the possession of the accused/appellant and were taken into possession vide recovery memo Ex.PW8/C and were signed by Gurcharan Singh and also by the accused. Gurcharan Singh did not state that he signed blank paper but stated that the papers were having writing on it when the same were signed. Even Dr. Harban Singh Saran (PW 8), Arun Vashishta, Steno

of the office of Civil Surgeon, Patiala (PW10) and DSP Harbhajan Lal, Investigating Officer of the case (PW13) have also deposed that the amount of bribe money was ₹ 1500/-and its denomination as 3 notes of ₹ 500/-each. There is no reason as to why these three witnesses would mention a lesser amount. Thus, with their statements, which is consistent with the prosecution case on the point of bribe money as well its denomination, the confusion which PW6 and PW7 had tried to create under some bargain with the accused/appellants to help them, can be of no avail. Under the circumstances, prosecution case does not get defeated merely because some witnesses have tried to dodge it by giving a twist to their statements when they are consistent on the material points.

It was contended by learned counsel for the accused/appellants that the complainant deposed that he purchased ground nuts from Radha Ballabh Badera Baggru Mandi Jaipur but he has not produced any such bill showing purchase of groundnuts from the aforesaid firm. Kamal Tambi (PW-12) Commission Agent, Bagru, District Jaipur, placed on record copy of bill Ex.PW 12/A. As per this bill goods were received by Nand Kishore and Sons at Rajpura. The complainant is not the proprietor or partner of the aforementioned firm. As such, prosecution has failed to prove that on the relevant date, complainant had a truck of ground nuts. Prosecution wanted to show that the complainant used the sales tax number of the aforesaid firm M/s Nand Kishore and Sons but Pawan Kumar (PW4) did not support the prosecution on this point as well. Pawan Kumar as PW 4 deposed that the sales tax number of the aforesaid firm was not given to Gurcharan Singh for fetching truck loaded with groundnuts from Rajasthan. These facts show

that the accused/appellants have been implicated falsely in this case as Jarnail Singh's wife Baljit Kaur was having a tiff with the complainant on the point of inverter which she purchased from Gurcharan Singh, complainant vide bill Ex.D 1 and which went out of order and was not repaired by the complainant nor the amount was refunded.

The aforesaid contention of learned counsel for the accused/appellants is not sustainable as in the present case the complainant was deficient in documents. He was not having licence from Market Committee, as such, could not pay the market committee fee before having vehicle unloaded with groundnuts at his destination. Likewise, if the complainant was not having sales tax number or was using sales tax number of some other firm illegally, would not make this case altogether a false case. From the statements of the complainant, Pritpal Singh and even in the light of the statements of Dr. Harbans Singh Saran (PW 8), Karan Vasisthth, Steno (PW 10) and DSP Harbhajan Lal, Investigating Officer of the case (PW13), it is proved that the complainant was carrying an additional business of selling of ground nuts at Rajpura after purchasing it from Rajasthan. The bribe money was given to the accused/appellants at the groundnuts shop of complainant and the same was also recovered from the hands of Jarnail Singh at that very point. As such, the aforesaid contention of learned counsel for the accused/appellants is not sustainable.

Learned counsel for the accused/appellants citing catena of judgments on the point that when demand and acceptance are not proved, mere recovery of bribe money is not enough to convict the accused. These judgments are as under :-

1. Banarsi Dass v. State of Haryana 2010(3) JT 552 (SC)
2. Ramesh Kumar v. State of Haryana 2010 (2) RCR (Criminal) 676 P & H
3. CM Girish Babu v. CBI, Copchin, High Court of Kerala 2009 (2) RCR (Criminal) 134 (SC)
4. S.P. Paulraj v. State 2009 Cr.LJ 2107 (Madras High Court)
5. State of Punjab v. Krishan Kumar Bhandari 2003 (4) RCR (Crl.) 423 P & H
6. State of Punjab v. Chajju Ram 2003(4) RCR (Crl.) 425 P & H
7. Subhash Parbt Sonvane v. State of Gujarat 2002 (3) RCR (Crl.) 188 SC
8. Mani Ram v. State of Haryana 2000(2) RCR (Crl.) 352 P & H
9. Jangi Ram v. State of J & K 1998 Cr.LJ 3065 J & K High Court
10. Surjit Singh v. State of Punjab 1987 (2) RCR (Crl.) 241 P & H
11. Sita Ram v. State of Rajasthan 1975 AIR (SC) 1432
12. P.L. Tatwal v. State of MP 2014 Cr.LJ 1880 (SC)
13. B. Jayaraj v. State of AP 2014 Cr.LJ 2433 (SC)

The preposition expounded in the aforesaid judgments is not disputed. However, the facts and circumstances of the aforesaid cases are not similar to the present case. In **Banarasi Dass case** (supra) the complainant deposed that he paid the money without demand. He also stated that he placed the currency notes on the table of the accused and no demand was made. Shadow witness stated that he was not present when money was given to the accused. Currency notes were recovered from the pocket of the accused. Under those circumstances, benefit of doubt was given to the accused holding that demand and acceptance not established whereas in the case in hand, as I have already discussed above, demand,

acceptance and recovery stand proved.

In **Ramesh Kumar's case** (supra) the complainant resiled from his statement, shadow witness was an enemical witness whereas so is not in the present case. In the case in hand, the complainant has, in fact, supported the entire prosecution case. On the point of demand and acceptance of money, the only discrepancy is regarding the amount of bribe money and its denomination. Even no enmity of the complainant and shadow witness is alleged and proved in this case. It is also not understandable that only for a dispute regarding inverter, if at all, that was there, the complainant would get accused/appellants implicated falsely in this case.

In other above cited judgments, either the demand by accused was not proved or the accused had proved an enmity with the complainant and no independent corroboration was there whereas in the case in hand Dr. Harbans Singh Saran (PW8) and Arun Vashishta, Steno (PW10) independent witnesses, have fully corroborated the prosecution case besides the statements of the Investigating Officer.

Learned counsel for the accused/appellants have also pointed out certain discrepancies appearing in the statements of prosecution witnesses. It was contended that the complainant deposed that the police party returned to Patiala from Rajpura at 3.00 P.M. and further stated that the writing work was done later on whereas Pritpal Singh (PW7) has given this time as 3/3.30 P.M. Dr. Harbans Singh (PW10) has stated that they reached at Rajpura at 3.30/4.00 P.M. and returned to Patiala at about 8.00 P.M. Arun Vashishta (PW10) deposed that the police party returned to Vigilance office at about 11.00 P.M. DSP Harbhajan Lal, Investigating

Officer, stated that the police party returned to Vigilance Office at 11.30 P.M. from the residence of SP, Vigilance. Thus, these discrepancies in time makes the entire prosecution case doubtful and goes to show that in fact, no raid was actually conducted at the spot.

The above contention of learned counsel for the appellants is not sustainable as the complainant and Pritpal Singh, PWs, have tried to help the accused when the factum of demand, acceptance and recovery stand proved. It hardly makes any difference as to at what time the members of the raiding party reached back.

It was next argued by learned counsel for the accused/appellants that so far as accused Prem Singh is concerned, there is no motive against him. Even none of the prosecution witnesses deposed that he ever demanded any bribe from the complainant or ever effected any money towards bribe from the complainant and even no recovery was effected from him. Likewise, no hand wash of accused Prem Singh is there, so as to show that he accepted the bribe money.

The aforesaid contention of learned counsel for the accused/appellants is not sustainable as Prem Singh accused was with Jarnail Singh right from the very beginning. He is also Mandi Supervisor at Rajpura. He was with Jarnail Singh when they demanded sum of ₹ 6,000/- as bribe from the complainant. The complainant has also deposed that even on an earlier occasion, he gave bribe of ₹ 4,000/-to them which was divided by Jarnail Singh and Prem Singh both. Not only this, even on the day of occurrence, Prem Singh accompanied Jarnail Singh to the shop of ground nuts of the complainant. Jarnail Singh accepted bribe money for himself as

well for Prem Singh. Prem Singh and Jarnail Singh had gone to the shop of the complainant on motor cycle, which was also taken into police possession vide memo Ex.PW5/F. Both the accused were arrested at the spot. All these facts make Prem Singh accused equally liable with Jarnail Singh.

No other point was argued before me.

For the reasons recorded above, as sanction to lodge prosecution against the accused/appellants accorded under Section 19 of the Act, is not a valid sanction, therefore, as the Court cannot take cognizance of the offence with which the accused/appellants have been charged, the accused/appellants are ordered to be acquitted. Their bail/surety bonds are discharged.

(RAJ RAHUL GARG)
JUDGE

7.4.2015
Ashwani