

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

CRA No.S-2919-SB of 2010

Date of decision: 19.10.2015

Jai Narain

..... Appellant

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Rajeev Kaswan, Advocate with
Mr. I.P.S. Ishar, Advocate for appellant.

Mr. Ashok Muthreja, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 01.11.2010, passed by learned Special Judge, Hisar, vide which appellant Jai Narain has been held guilty and convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (here-in-after referred as 'the Act') and the order on the quantum of sentence of the even dated, vide which appellant has been sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 10,000/-, in default of payment of fine to further

undergo imprisonment for six months.

2- The sequence of the events leading to this prosecution are that on 31.01.2007, PW12 complainant Ram Niwas moved application Ex.P24 to the Superintendent of Police, Vigilance, Rohtak alleging therein that he is an agriculturist. His brother Ram Bhagat had the land measuring 1 ½ acre in the village. Accused-appellant Jai Narain, Patwari Halqa Petwar-II is demanding a sum of ₹ 1000/- for the mutation. They both the brothers are joint. He does not want to give the money. He has no faith in the officials of the Vigilance Bureau, Hisar. Hence that application.

3- PW14 Inspector Kanwar Singh made his endorsement Ex.P30 on the said application and sent the same to Police Station, State Vigilance Bureau, Hisar. On the basis of which, FIR Ex.P3 was registered. PW14 Inspector Kanwar Singh formed a raiding party. He reached at Hisar and moved the application Ex.P31 to the Deputy Commissioner, Hisar for deputing the Duty Magistrate. PW10 Mahender Kumar, Tehsildar was deputed as Duty Magistrate. The Investigating Officer along with the complainant, the Duty Magistrate and the other police officials proceeded towards Narnaund to lay the trap. When they reached near Police Station Narnaund, the complainant produced two currency notes of denomination of ₹ 500/- each to the Investigating Officer. The said currency notes were initialled by PW14 Inspector Kanwar Singh and PW10 Mahender Kumar, Tehsildar. Thereafter, the phenolphthalein powder was applied on both the currency notes and same

were handed over to complainant Ram Niwas vide memo Ex.P5. He was instructed to hand-over the said bribe money to the accused on his demand and after giving bribe, gave signal to PW17 Constable Sudama, the shadow witness, who was further instructed to give the agreed signal to the raiding party. The complainant and the shadow witness were sent to the Patwar Khana and remaining police party waited behind the tractor-trolley standing near the Patwar Khana. After sometime, on receiving the signal from the shadow witness, the police party reached at the spot and apprehended the accused-appellant. The Investigating Officer asked the appellant to hand-over the bribe money but he was adamant. At this, the Investigating Officer conducted search of the accused and the tainted currency notes were recovered from the pocket of his shirt. Serial numbers of said currency notes were tallied with the entrustment memo and same were also having the signatures of the Investigating Officer and Mahender Singh, Tehsildar. Thereafter, the hand wash and pocket wash of the accused-appellant were taken in the solution of sodium carbonate. The tainted currency notes were also washed in said solution separately. The said solution was stored in separate sealed nips. The tainted currency notes, the nips containing the solution and the shirt of the accused-appellant were taken into possession vide separate recovery memos after preparing the sealed parcels. The seal after use was entrusted to PW5 SI Ram Narain. The accused-appellant was arrested. The articles of the case property were deposited in intact condition in the Malkhana of Police Station, State Vigilance

Bureau, Hisar. The further investigation was conducted by PW15 DSP Subhash Chander of State Vigilance Bureau, Hisar. After obtaining the requisite sanction for prosecution and on completion of formalities of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (here-in-after referred as the 'Cr.P.C.') was presented in the Court.

4- The accused-appellant was charge-sheeted for the offences punishable under Sections 7 and 13 of the Act vide order dated 20.08.2007, to which the accused pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as 17 witnesses.

6- When examined under Section 313 Cr.P.C., the accused pleaded that he is innocent and has been falsely implicated.

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

8- On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted the appellant for the offence punishable under Section 7 of the Act. Though, he was acquitted of the offence punishable under Section 13(1)(d) of the Act. He was awarded the sentence as mentioned in the upper part of the judgment.

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

10- I have heard Mr. Rajeev Kaswan and Mr. I.P.S. Ishar,

Advocates, learned counsel for the appellant, Mr. Ashok Muthreja, learned Deputy Advocate General for the State of Haryana and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that the whole investigation of the case and the trap proceedings are vitiated and without jurisdiction. The place of occurrence falls in District Hisar. Accused-appellant was also posted at Narnaund, Tehsil Hansi, District Hisar, whereas the application Ex.P24 has been moved to the Superintendent of Police, State Vigilance Bureau, Rohtak, who was not competent to entertain the application as he was not having the territorial jurisdiction. They contended that the State of Haryana has issued the Gazette Notification No. S.O. 102/C.A. 2/1974/S. 2/2002 dated 16.12.2002. Schedule-I of the said notification shows that the office of Superintendent of Police, State Vigilance Bureau, Hisar was having the jurisdiction over the districts of Hisar, Sirsa, Jind, Bhiwani and Fatehabad. The office of Superintendent of Police, State Vigilance Bureau, Rohtak was having the jurisdiction for the districts of Rohtak, Karnal, Panipat, Sonapat and Jhajjar. They contended that it shows that there was *mala fide* intention to move the application to the State Vigilance Bureau, Rohtak, instead of Hisar. They further contended that if we compare the signatures of the complainant on the statement Ex.P26 recorded by the Magistrate under Section 164 Cr.P.C. and on the memos, the application Ex.P24 are not signed by the complainant. So, the investigation of the case and the documentation is totally shoddy and

vitiating.

12- They further contended that there was no occasion for the appellant to demand the bribe. It is alleged that he has demanded the bribe for the mutation of the land purchased by Ram Bhagat, the brother of the complainant. Ex.P15, Ex.P16 and Ex.P19 are the copies of mutation No.2714 entered on the basis of the sale deed No.1472 dated 17.10.2006 in favour of Ram Bhagat. Said mutation was already entered by the appellant on 02.11.2006 and the same was even rejected by the Assistant Collector, 2nd Grade on 17.11.2006 in *jalsa-e-aam* in the presence of the Lambardar. So, there was no basis for the demand and the whole case of the prosecution was rendered doubtful. To support their contentions, they relied upon case ***Amrik Singh Vs. State of Punjab 2005(4) RCR (Criminal) 310.***

13- They further contended that there is no evidence to establish the demand and acceptance of the bribe. Complainant Ram Niwas and his brother Ram Bhagat have not supported the prosecution case at all. Constable Sudama, the shadow witness of the case, was standing at a considerable distance and had not heard any conversation between the appellant and the complainant. So, the demand and acceptance of bribe on the part of the appellant is not established. Even the learned trial Court has discarded the case of the prosecution with respect to the demand of bribe and that is why the appellant has been acquitted for the offence under Section 13(1)(d) of the Act and he has only been convicted for the offence punishable under Section 7 of the

Act.

14- They further contended that the entire trap is extremely doubtful and further renders the acceptance of the bribe as well as recovery of tainted currency notes from the possession of the appellant extremely doubtful. They contended that there are serious contradictions in the statements of the prosecution witnesses. The time of the trap is not established at all. The place of apprehension of the accused-appellant is also discrepant. They contended that the application Ex.P24 has been received by PW14 Kanwar Singh at Rohtak at 12:15 P.M. Rohtak falls at a distance of 150 kilometers if a person goes from Rohtak to Hisar and then to Narnaund. But PW10 Mahender Kumar, Tehsildar stated that SI Kanwar Singh came to him at 11:00 A.M. on 31.01.2007 and they reached at Narnaund at 12:30 P.M., which shows that the entire proceedings are fabricated and no reliance can be placed on the statements of the officials witnesses.

15- The investigation conducted by Inspector Kanwar Singh is also shoddy. He admitted that he did not verify as to whether the appellant has already entered the mutation or not. The duty of the appellant was only to enter the mutation. The mutation was to be sanctioned by the Assistant Collector 2nd Grade, in which the appellant has no role. It shows that the Investigating Officer was determined to falsely implicate the appellant.

16- They further contended that the repercussion of the conviction in a case under the provisions of the Act are very serious. In

the instant case, no independent witness has been associated. There are material contradictions in the statements of the official witnesses. The shadow witness is a junior police officer. The work, for which bribe has been demanded, was already completed much before the date of occurrence. So, the evidence of the prosecution does not inspire any confidence and it is not of the standard which is needed to base the conviction under the provisions of the Act. To support their contentions, they placed reliance upon cases *Amrik Singh Vs. State of Punjab* (supra) and *Dhyan Singh Vs. State of Haryana, CRA-S-2123-SB of 2009* decided by this Court on 10.08.2015.

17- The further contended that mere positive result of phenolphthalein powder is also not a ground to establish the guilt. To support their contentions, they relied upon cases *Anand Parkash Vs. State of Haryana 2008(2) RCR (Criminal) 335* and *Meena W/o Balwant Hemke Vs. State of Maharashtra 2000 (2) RCR (Criminal) 661*.

18- They further contended that the appellant has been convicted by the trial Court by raising presumption under Section 20 of the Act. But when the demand and acceptance of the bribe are not established, no such presumption under Section 20 of the Act can be raised. To support their contentions, they relied upon cases *V. Venkata Subbarao Vs. State represented by Inspector of Police, A.P. 2007(1) RCR (Criminal) 519*, *Om Parkash Vs. State of Haryana 2006(1) RCR (Criminal) 820*, *Union of India through Inspector, CBI Vs. Purnandu Biswas 2005(4) RCR (Criminal) 517*, *Satvir Singh Vs. State of Delhi*

thorough CBI 2014(4) RCR (Criminal) 40, B. Jayaraj Vs. State of A.P. 2014(2) RCR (Criminal) 410, Sukumaran Vs. State of Kerala (SC) 2015(2) RCR (Criminal) 159 and Criminal Appeal No.31 of 2009 titled P. Satyanarayana Murthy Vs. The Distt. Inspector of Police & anr. decided on 14.09.2015 by the Hon'ble Apex Court.

19- They further contended that as the entire trap proceedings are suspicious and doubtful, the statements of the witnesses cannot be relied upon with respect to the recovery of the tainted currency notes from the possession of appellant. Moreover, mere recovery will not constitute any offence. They further contended that the suspicion, however grave, it cannot establish the offence. To support their contentions, they relied upon case *Sujit Biswas Vs. State of Assam (2013)12 SCC 406*. Thus, they contended that the learned trial Court has wrongly recorded the conviction of the appellant.

20- On the other hand, learned State counsel pleaded that it is not disputed that the appellant was posted as Revenue Patwari in the concerned revenue circle. Ram Bhagat, the brother of the complainant, has purchased the land vide sale deed Ex.P27. The appellant was certainly concerned with entering and getting the mutation sanctioned. So, he has every occasion to demand the bribe. He contended that though complainant Ram Niwas and his brother Ram Bhagat have not supported the prosecution version, but from the statement of PW5 SI Ram Narain, PW10 Mahender Kumar, Tehsildar, PW14 Inspector Kanwar Singh and PW17 EHC Sudama, it is established that the appellant has accepted the

bribe of ₹ 1000/- from complainant Ram Niwas and the said tainted currency notes were recovered from his shirt's pocket. He further contended that the case of the prosecution is also corroborated from the report of the FSL Ex.P23 wherein the phenolphthalein powder has been detected in the hand wash and pocket wash of the appellant.

21- He further contended that there was no reason for the false implication of the appellant and the appellant has not given any explanation as to how the tainted currency notes came in his possession. Thus, he contended that the conviction of the appellant recorded by the learned trial Court does not suffer from any infirmity.

22- I have duly considered the aforesaid contentions raised by learned counsel for both the parties.

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

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

accused. Therefore, it is beyond doubt that the evidence in a criminal case has to be appreciated and the guilt of an accused is to be proved beyond shadow of reasonable doubt after appreciation of evidence on record.”

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

25- The Hon’ble Supreme Court in case *Sujit Biswas Vs. State of Assam* (supra) has held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of “may be” true but has to upgrade it in the domain of “must be” true in order to steer clear of any plausible surmise or conjecture. It was further laid down that if two views are plausible, then the benefit of doubt must be given to the accused.

26- In the instant case, though the appellant was charged for the offences punishable under Section 7 and 13(1)(d) of the Act, but has been convicted by the learned trial Court only for the offence punishable under Section 7 of the Act and has been acquitted of the charge under Section 13(1)(d) of the Act, obviously on the ground that the demand of bribe was not proved. He has been convicted for the offence punishable under Section 7 of the Act on the ground that the appellant has received the illegal gratification of ₹1000/- from the complainant and the tainted

currency notes have been recovered from his possession. It is a material question to be considered as to whether there can be any acceptance of bribe in the absence of any proof for the demand of bribe, which shall be dealt with in the later part of the judgment.

27- It is not disputed that the occurrence, admittedly, has taken place in District Hisar. The Court can take the judicial notice of the Gazette Notification issued by the State Government. The Notification No. S.O. 102/C.A. 2/1974/S. 2/2002 dated 16.12.2002 issued by the Statement Government reads as under : -

“ APPENDIX 'E'

(Authorised English Translation)

HARYANA GOVERNMENT

HOME DEPARTMENT

Notification

The 16th December, 2002

No. S.O. 102/C.A. 2/1974/S. 2/2002 :- In exercise of the powers conferred by clause (5) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), and in supersession of Haryana Government, Home Department, notification No. S.O. 1/C.A. 2/1974/S. 2/97, dated 2nd January, 1977, the Governor of Haryana hereby declares that the offices specified in column 1 of the Schedule 1 given below, shall be police stations and they shall have jurisdiction within the areas specified against each of them in column 2 of the said Schedule for the purposes of offences mentioned in Schedule II below, namely :-

SCHEDULE I	
Name of offices	Areas of Jurisdiction
Office of the Superintendent of Police, State Vigilance Bureau, Ambala	The Districts of Ambala, Kaithal and Kurukshetra.
Office of the Superindent of Police, State Vigilane Bureau, Rothak.	The Districts of Rohtak, Karnal, Panipat, Sonipat and Jhajjar.
Office of the Superintendent of Police, State Vigilance Bureau, Hisar.	The Districts of Hisar, Sirsa, Jind, Bhiwani and Fatehabad.
Office of the Superintendent of Police, State Vigilance Bureau, Gurgaon.	The Districts of Gurgaon, Faridabad, Narnual and Rewari.
Office of the Superintendent of Police, State Vigilance Bureau, Head Quarters, Panchkula.	The Districts of Panchkula and Yamunanagar.

SCHEDULE II

(a) Officers punishable under Sections 161 to 165 A, 166, 167, 168, 169, 170, 171, 197, 198, 201, 204, 217, 218, 379 to 382, 384 to 389, 403, 406 to 409, 411 to 414, 417 to 420, 465 to 471 and 477A of Indian Penal Code 1860 (45 of 1860)

(b) Offences punishable under the Prevention of Corruption Act, 1988 (49 of 1988).

(c) Offences relating to the contravention of Essential Commodities Act, 1955 (10 of 1955) and Official Secret Act, 1923 (19 of 1923).

(d) (Attempts in respect of offences mentioned in items (a) to (c) above by whom so ever committed.

BIRBAL DASS DHALIA,
Financial Commissioner and Principal Secretary
to Government Haryana,
Home Department. ”

28- As per the aforesaid Notification, the office of the Superintendent of Police of the State Vigilance Bureau has been notified as a Police Station, which shall have jurisdiction within the area specified against each of them in column No.2. The office of the Superintendent of Police, State Vigilance Bureau, Hisar is the Police Station with respect to the districts of Hisar, Sirsa, Jind, Bhiwani and Fatehabad. The Office of the Superintendent of Police, State Vigilance Bureau Rohtak is the Police Station with respect to the districts of Rohtak, Karnal, Panipat, Sonipat and Jhajjar. As per this Notification, the Superintendent of Police, State Vigilance Bureau, Rohtak had no jurisdiction with respect to District Hisar.

29- As mentioned above, the occurrence admittedly had taken place at Narnaund, District Hisar. The basis for laying this trap was the alleged demand of bribe by the appellant to get the mutation sanctioned with respect to the land situated in village Petwar, Distt. Hisar. Complainant Ram Niwas is also resident of village Petwar District Hisar.

It is not the case of the prosecution that any part of the cause of action has arisen in the jurisdiction of State Vigilance Bureau, Rohtak. Thus, the alleged offence has taken place in District Hisar but it is not explained as to how and why the application Ex.P24 moved by complainant Ram Niwas has been entertained by the office of the Superintendent of Police, State Vigilance Bureau, Rohtak. The Punjab Police Rules 1934 (here-in-after referred to as 'the Police Rules') (Vol. III) Chapter 25, Rules 25.3 and 25.4 deal with the relevant issue, which are reproduced as under:-

“25.3. Action when offence occurring in another police station is reported.-

When the occurrence of a cognizable offence in another police station jurisdiction is reported, the fact shall be recorded, in the daily diary and information shall be sent, to the officer in charge of the police station in the jurisdiction of which the offence was committed. Meanwhile all possible lawful measures shall be taken to secure the arrest of the offender and the detection of the offence.

25.4. Where offence appears to have occurred in other police station.-

(1) If a police officer after registering a case and commencing an investigation discovers shall that the offence was committed in the jurisdiction of another police he shall at once send information to the officer in charge of such police station.

(2) Upon receipt of information such office shall proceed without delay to the place where the investigation is being held and undertake the investigation.”

30- Rule 25.3 of Police Rules provides that when occurrence of a cognizable offence in the jurisdiction of another police station is reported, that fact shall be recorded in the daily diary and information shall be sent to the Officer, Incharge of the concerned police station. In the meanwhile, all possible lawful measures shall be taken to secure the

arrest of the offender and detection of the offence. Rule 25.4 further provides that on receipt of the information, the officer in whose jurisdiction the offence has been committed, shall proceed without delay to the place where the investigation is being held and will undertake the investigation. But in the instant case, the aforesaid Rules have been violated. No doubt application Ex.P24, after making the endorsement by PW14 Inspector Kanwar Singh, was sent to Police Station, State Vigilance Bureau, Hisar for the registration of the case but he himself constituted the trap party and proceeded for trap in the jurisdiction of another police station. The officials of Police Station, State Vigilance Bureau Hisar have also not reached the place of occurrence to take over the investigation as required under Rule 25.4 of the Police Rules.

31- No plausible reason/explanation has come forward from the prosecution as to why the officials of the Police Station State Vigilance Bureau, Hisar were bypassed by the complainant and why the application Ex.P24 has been entertained by State Vigilance Bureau, Rohtak. In application Ex.P24 simply this fact has been recorded that the complainant has no faith in the officials of the State Vigilance Bureau, Hisar. But no reason has been mentioned as to why he lost faith in the officials of State Vigilance Bureau, Hisar, who were having the local jurisdiction to investigate the matter. Even, no official of the State Vigilance Bureau, Hisar has been associated in the trap. The purpose of the aforesaid Rules is that the police officer may not interfere in the working of the officers of the other police station. But in the instant case,

these Rules have not been complied with and have been deliberately violated, which casts a doubt about the fairness and genuineness of the investigation.

32- As per the prosecution allegations, appellant Jai Narain was posted as Revenue Patwari, Revenue Halqa Petwar-II and had demanded a bribe of ₹ 1000/- from complainant Ram Niwas for getting the mutation of land purchased by his brother Ram Bhagat sanctioned. Complainant Ram Niwas has stepped into the witness box as PW12 and stated that Jai Narain Patwari, Halqa Petwar-II did not demand any bribe from him for entering mutation of the said land nor he had handed over any bribe to accused Jai Narain. He was cross-examined at length by the learned Public Prosecutor but nothing material could be brought on record in his cross-examination, except that he admitted his signatures on memos Ex.P5, Ex.P6, Ex.P7 and Ex.P17. He also admitted that he made the statement before the Judicial Magistrate, Hisar, which is Ex.P26, but in the cross-examination conducted by the learned defence counsel, he stated that police had threatened to implicate him in a false case if he did not make statement Ex.P26 and statement Ex.P26 was got made from him under pressure and threat. PW13 Ram Bhagat is the brother of complainant Ram Niwas, who had allegedly purchased the land, for which the mutation was to be sanctioned. In the cross-examination, this witness stated that he did not depute or authorise his brother Ram Niwas for entering the mutation of aforesaid land. So, both these material witnesses of the prosecution have not supported the prosecution case at

all.

33- There is no dispute with the proposition of law that even if the complainant resiles from his statement, the demand of bribe can still be proved by other evidence. But in the instant case, there is even no indirect evidence to prove the demand of bribe. PW5 SI Ram Narain is only a witness of trap. He has not deposed anything about the demand of bribe or acceptance thereof. PW10 Mahender Kumar, Tehsildar is also a witness of trap and has reached at the actual spot only on receiving the signal from the shadow witness. PW14 Inspector Kanwar Singh is the trap lying officer, who was standing at a distance taking shelter behind a tractor-trolley when the complainant and the shadow witness had gone to the accused. PW17 EHC Sudama was the shadow witness. He deposed that he was appointed as shadow witness and was instructed to follow Ram Niwas complainant and to overhear the conversation in between Ram Niwas and Jai Narain and to give the signal to the remaining raiding party. He further deposed that after that Ram Niwas complainant handed over said currency notes to Jai Narain, who was standing in front of the tea shop. Complainant gave the agreed signal to him and in turn, he gave signal to the remaining members of the raiding party. So, he has nowhere stated that as to whether he had heard any conversation between the complainant and accused-appellant Jai Narain with respect to demand and acceptance of the bribe.

34- Even there was no purpose or basis for the demand and acceptance of the bribe by the appellant from the complainant. As already

mentioned it is alleged that the said bribe was being demanded for getting the mutation with respect to the land purchased by the brother of the complainant sanctioned. PW10 Mahender Singh, Tehsildar has stated in the cross-examination that mutation is entered by the Patwari and is sanctioned by the Circle Revenue Officer. This very fact/procedure has been admitted by PW14 Inspector Kanwar Singh, the Investigating Officer in the cross-examination. So, the function of the appellant was only to enter the mutation. During the investigation of the case, the Investigating Officer has taken into possession the copies of mutation No.2714 i.e. the disputed mutation which are Ex.P15, P16 and Ex.P19. Ex.P15 and Ex.P16 are the copies of Parat Patwar whereas Ex.P19 is the copy of Parat Sarkar. These documents show that appellant Jai Narain Patwari has already entered the mutation on 02.11.2006. So, Jai Narain has already done the job on 02.11.2006. The callous attitude of the Investigating Officer is evident from his admissions in the cross-examination that he did not verify as to whether the accused has entered the mutation or not. He also admitted that he did not verify from the concerned Circle Revenue Officer, Tehsildar and other Revenue Officer with respect to the sanctioning of the mutation. It was the duty of the Investigating Officer to verify the truthfulness of allegations mentioned in the application Ex.P24 before arranging the trap. But he did not verify these facts even after the trap.

35- The copy of mutation Ex.P19 further shows that the mutation was taken up by the Assistant Collector 2nd Grade for sanction

on 17.11.2006. In the order passed by the Assistant Collector 2nd Grade, it is mentioned that the mutation of sale was presented in the general meeting (*jalsa-e-aam*) as per identification of Parkash Chand, Lambardar. The mutation was rejected as the area did not tally. So, even the said mutation was rejected by the Assistant Collector 2nd Grade on 17.11.2006 i.e. about 2 and a half months prior to the present trap. Thus, when the mutation was already entered by the appellant and rejected by the competent authority i.e. A.C. 2nd Grade on 17.11.2006, there can be no purpose or basis for demand and acceptance of bribe on 31.01.2007 i.e. the date of trap. To support this view reference can be made to case ***Kuldeep Singh Vs. State of Himachal Pradesh 2014(2) SimLC 682*** Law Finder Doc Id # 625562. In that case also the Revenue Patwari was an accused and the bribe was alleged to have been demanded for getting the mutation attested. It was found that accused had already entered the mutation. The attestation work was to be done by the Tehsildar, which could not be done as concerned person was not present before the Tehsildar. The Hon'ble Himachal Pradesh High Court held that there was no occasion for the accused to ask for the money on 28.11.2008 as he has already entered the mutation on 24.11.2008. The case in hand is on much better footing because in this case what to talk of only entering the mutation by the appellant, but even the said mutation was already rejected by the Assistant Collector 2nd Grade about two and a half month prior to trap. The same legal position has been laid down by the Hon'ble

Karnataka High Court in case *S. Suryanarayana Rao Vs. State of Karnataka 2000 (2) Criminal Law Journal 3377*. In case *Amrik Singh Vs. State of Punjab* (supra) the version of the prosecution was found shaky and conviction was set aside as the mutation for which the copy of registered sale deed was required was already sanctioned. Thus, in these circumstances, the very basis for the demand and acceptance of the bribe is not established.

36- As already mentioned the learned trial court has acquitted the appellant for the offence punishable under Section 13(1)(d) of the Act and has recorded his conviction only for the offence punishable under Section 7 of the Act, obviously on the ground that the demand of the bribe was not proved but the acceptance of the bribe was proved as the tainted currency notes were recovered from his possession and he has not been able to give any explanation. The acceptance of bribe can only be there if there is some demand of bribe. Thus, in the absence of proof of demand of bribe, there cannot be the acceptance of the illegal gratification. This aspect has been elaborately dealt with by the three Judges Bench of the Hon'ble Apex Court in a recent judgment titled as *P. Satyanarayana Murthy Vs. The Distt. Inspector of Police and Anr.* (supra) wherein the hon'ble Apex Court has laid down as under : -

“20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. **It has been propounded that in the**

absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. **Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand.** Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.”

37- In view of the aforesaid ratio of law laid down by the Hon’ble Apex Court, the acceptance of illegal gratification could follow only if there was proof of demand of bribe.

38- In the instant case the learned trial Court has convicted the appellant only for the offence punishable under Section 7 of the Act. The learned trial Court observed that if the demand of bribe was not

proved by the prosecution, the accused shall be convicted under Section 7 of the Act and not under Section 13(1)(d) of the Act. Finally, the learned trial Court concluded as the appellant has received the illegal gratification and failed to furnish any explanation so his conviction under Section 7 of the Act was recorded. So, even the trial Court has nowhere held that the demand of bribe by the appellant was proved and this conclusion of the learned trial Court has obtained finality as the respondent-State of Haryana has not challenged the same. But as per the ratio of law laid down by the Hon'ble Apex court in case ***P. Satyanarayana Murthy Vs. The Distt. Inspector of Police and Anr.*** (supra), the acceptance of the illegal gratification could follow only if there was proof of demand. It was further laid down that the proof of demand of illegal gratification is gravamen of the offence under Sections 7 and 13 (1) (d) (i) & (ii) of the Act and in absence thereof, unmistakably the charge thereof, would fail. It was further laid down that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, *ipso facto*, would thus not be sufficient to bring home the charge under these two sections of the Act.

39- Thus, as per the aforesaid authoritative pronouncement of the Hon'ble Apex Court, the failure of the prosecution to prove the demand for illegal gratification would be fatal and in the absence thereof, even the acceptance of the bribe cannot be established mere recovery of the amount from the possession of the accused will not entail the conviction of the accused under Section 7 or 13 of the Act.

40- Even otherwise, the entire trap proceedings are extremely doubtful. Application Ex.P24 is the basic document which set into motion the present proceedings. As per the endorsement Ex.P30, this application was dealt with by PW14 Inspector Kanwar Singh at 12:15 P.M. on 31.01.2007 at Police Station, State Vigilance Bureau, Rohtak. Thereafter, the police party started from Hisar. The investigating Officer moved application Ex.P31 to the Deputy Commissioner Hisar to depute the Duty Magistrate. The Deputy Commissioner deputed the Tehsildar Hisar to be the Duty Magistrate. This fact has not been disputed at bar by learned counsel for the parties that the distance between Hisar and Rohtak is about 90 kilometers. As per the application Ex.P24, obviously the police party had started from Rohtak after 12:15 P.M. on 31.01.2007. Thereafter, the Investigating officer went to the office of Deputy Commissioner, Hisar, then to the office of PW10 Mahender Singh, Tehsildar to associate him in the raid and then the raiding party proceeded to Narnaund for the purpose of trap, which is admitted to be at a distance of more than 45 kilometers from Hisar. PW5 SI Ram Narain stated that they started from Rohtak at 12:15 P.M. PW14 Inspector Kanwar Singh stated that they left State Vigilance Bureau Rohtak at 12:15 P.M. and reached the office of the Deputy Commissioner Hisar at about 02:00 P.M. and obviously thereafter, they went to the office of PW10 Mahender Singh, Tehsildar to associate him in the raiding party. But PW10 Mahender Singh Tehsildar stated that the Inspector came to him at 11:00 A.M. and after 10/15 minutes they proceeded for Narnaund.

He further deposed that they reached Narnaund at about 12:30 P.M. and they remained there upto 03:00 P.M., whereas the Investigating Officer stated that the accused was apprehended at 04:00 P.M. in front of Shyam Misthan Bhandar and they stayed there upto 6:00 P.M. PW5 SI Ram Narain stated that complainant Ram Niwas accompanied them from Rohtak, whereas PW17 EHC Sudama, the shadow witness, stated that Ram Niwas complainant met the police party outside Patwar Khana, Narnaund. He further stated that Ram Niwas came near their vehicle and he was made to sit in their vehicle. He was also in that vehicle. So, as per the version of this witness, the complainant joined the raiding party only when the raiding party was proceeding towards Narnaund. He came to them on seeing their vehicle and he was made to sit on their vehicle. This version of Constable Sudama, the shadow witness, has rendered the entire proceedings doubtful. If Ram Niwas had met the raiding party only at Rohtak, then the moving of the application Ex.P24 at State Vigilance Bureau, Rohtak by the complainant is itself rendered doubtful. PW17 EHC Sudama has also stated that it was at around 12:30 noon when they left the Mini Secretariat, Hisar, whereas as per the statements of PW5 SI Ram Narain and PW14 Inspector Kanwar Singh they left Rohtak only at 12:15 P.M. According to PW5 SI Ram Narain on the asking of the Investigating Officer accused took out the money which he had received from complainant Ram Niwas. He took out two currency notes of denomination of ₹ 500/- each from the pocket of shirt and handed over to Tehsildar Mahender Kumar, whereas the Investigating Officer stated that

he asked accused Jai Narain to hand over the bribe which was taken by him, firstly the accused was adamant upon which he conducted the search of accused and recovered two currency notes in the denomination of ₹ 500/- each from the pocket on search of the accused. So, there are material contradictions in the statements of witnesses of trap. EHC Sudama, who was allegedly deputed as a shadow witness has not signed any memo and has deposed against the basic story of the prosecution which renders his presence doubtful. Similarly, in view of the glaring contradictions in the timing stated by PW10 Mahender Singh, Tehsildar his presence is also extremely doubtful. Consequently, the entire trap proceeding are rendered doubtful and does not inspire any confidence.

41- If the trap proceedings are rendered doubtful, the case of the prosecution with respect to the passing over of the bribe money to the appellant and the recovery of the tainted currency notes from his possession cannot be relied upon. So, even this fact is not established that accused-appellant has accepted or received the illegal gratification of ₹ 1000/- from the complainant and the tainted currency notes were recovered from his possession.

42- Mere presence of phenolphthalein powder in the hand wash and pocket wash of the appellant will not establish the charges. To support this view, reference can be made to case **Anand Parkash Vs. State of Haryana** (supra). The same ratio of law has been laid down by the Hon'ble Apex Court in **Meena W/o Balwant Hemke Vs. State of Maharashtra** (supra).

43- It is settled principle of law that in the absence of demand and acceptance of the bribe mere recovery of the tainted currency notes from the possession of the accused will not attract the ingredients of the offence. To support this view reference can be made to cases *Union of India through Inspector, CBI Vs. Purnandu Biswas* 2005(4) RCR (Criminal) 517, *T. Subramanian Vs. State of Tamil Nadu* 2006 Criminal Law Journal 804, *C.M. Girish Babu Vs. C.B.I., Cochin, High Court of Kerala* 2009(2) RCR (Criminal) 134 (SC), *Banarsi Dass Vs. State of Haryana* 2010(2) RCR (Criminal) 553, *Rakesh Kapoor Vs. State of Himachal Pradesh* 2013(2) RCR (Criminal) 211, *B. Jayaraj Vs. State of A.P.* 2014(2) RCR (Criminal) 410, *Satvir Singh Vs. State of Delhi through CBI* 2014(4) RCR (Criminal) 40 and *P. Satyanarayana Murthy Vs. The Distt. Inspector of Police and Anr.* (supra).

44- No doubt, the appellant has taken the defence plea of simple denial. The non-explanation of the appellant with respect to the recovery of the tainted currency notes from the appellant has been taken as one of the ground for conviction of the appellant by the learned trial Court. As already mentioned the entire trap proceedings were suspicious and extremely doubtful. So, it cannot be concluded that the tainted currency notes were recovered from the possession of the appellant. Moreover, before the accused can be called upon to explain as to how the amount in question was found in his possession, the fundamental facts must be established by the prosecution, which are totally lacking in this case. So, the accused cannot be punished simply on this ground that he

has not come forward with the explanation. To support this view reference can be made to case ***State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede 2009(4) RCR (Criminal) 217.***

45- In the absence of proof with respect to the demand and acceptance of bribe even the presumption under Section 20 of the Act cannot be attracted. In case ***V. Venkata Subbarao Vs. State represented by Inspector of Police, A.P. 2007(1) RCR (Criminal) 519*** the Hon'ble Apex Court has laid down that in the absence of proof of demand the question of raising the presumption would not arise and the conviction was set aside. The same ratio of law has been reiterated by the Hon'ble Apex Court in cases ***Om Parkash Vs. State of Haryana 2006 (1) RCR (Criminal) 820***, ***Union of India through Inspector, CBI Vs. Purnandu Biswas*** (supra), ***Satvir Singh Vs. State of Delhi through CBI*** (supra) and ***P. Satyanarayana Murthy Vs. The Distt. Inspector of Police and Anr.*** (supra). Thus, presumption under Section 20 of the Act also does not arise against the appellant.

46- Thus, keeping in view my aforesaid discussion and the cumulative effect of all circumstances and infirmities, the prosecution has not been able to establish even the charge under Section 7 of the Act, for which the appellant has been convicted by the learned trial Court, beyond shadow of reasonable doubt. Thus, the conviction of the appellant recorded by learned trial Court under Section 7 of the Act cannot be sustained in the eye of law.

47- Resultantly, the present appeal is hereby allowed. The

conviction and sentence of the appellant, as recorded by the learned trial Court, is hereby set aside. By affording the benefit of doubt the accused-appellant is hereby acquitted of the charges. Fine, if deposited, be refunded to the appellant as per rules.

Dated: 19.10.2015
sunil yadav

(DARSHAN SINGH)
JUDGE