

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

**CRM No.A-1033-MA of 2012 (O&M)**

**Date of decision: October 01, 2015**

State of Haryana

...Applicant

Versus

Anil Kumar Bhatia and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Anmol Malik, Asstt. Advocate General, Haryana  
for the applicant-State.

Mr.A.P.S.Deol, Senior Advocate with  
Mr.Vishal Rattan Lamba, Advocate  
for respondent No.1.

Mr.Amit Mehta, Advocate  
for respondent No.2.

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**INDERJIT SINGH, J.**

Applicant-State of Haryana has filed this application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against respondents Anil Kumar Bhatia and Hans Raj, challenging the judgment dated 19.09.2012 passed by learned Special Judge, Ambala, whereby the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is good on merits. It is further stated that judgment of acquittal of the accused-respondents under Section 7 and 13(1) (d) of the Prevention of Corruption Act, 1988 has caused grave miscarriage of

justice. The State Government has accorded sanction of filing the present appeal.

Notice of motion

I have heard learned State counsel for the applicant-State as well as learned counsel for the respondents and have gone through the record.

The brief facts of the case are that on 18.07.2006, Mohit Khanna, complainant presented an application before, D.I.G. SVB, Ambala, which was to the effect that they are running a factory for manufacturing of plastic rope in village Saddopur. On 18.05.2006, the incident of fire had taken place in their factory wherein the machines, goods and the building were extensively damaged. In that factory, they had obtained a load of 43 HP from the electricity board. Now, the said factory is lying closed and they are getting a minimum bill of ₹8,000/- from the electricity department. They had applied to the Electricity Board, Model Town for reducing their electricity load. The employees of electricity board had told that since the office of special staff of electricity department is situated at Kurukshetra, therefore, the officials of that section/branch will do the needful.

On 24.06.2006, Hans Raj Sharma, JE alongwith SDO, driver of electricity department, Kurukshetra and some other employees visited their factory and demanded ₹10,000/- for reducing the load of factory. He made several requested to them that he has already suffered loss of lacs of rupees due to the fire and he has no such money. Hans Raj, JE and the SDO told him that if ₹10,000/- are not given to them, they

will not reduce their load. Ultimately, the deal was struck at ₹6,000/- and that time, under the compelling circumstances, he had paid ₹5,000/- to Hans Raj, JE in the presence of SDO, but he insisted to take ₹1,000/- more and left without completing his work and told him that they will again come on 18.07.2006 and will reduce the load, if ₹1000/- more are paid to them.

Then the application was marked to Inspector Suresh Chand. 10 currency notes of denomination of ₹100/- each were produced by the complainant, upon which Inspector Suresh Chand put his initials 'SC' and also applied phenolphthalein powder and handed over the same to complainant. Constable Balwan Singh was deputed as a shadow witness. He was directed to follow the complainant and to give the pre-appointed signal to the raiding party after receiving of bribe money either by Hans Raj JE or the SDO on their demand from the complainant. SI Tejinder Kumar along with other police officials joined the police party. FIR was also registered. Shri Partap Singh, Naib Tehsildar also joined the police party. On receiving signal from the shadow witness, raid was conducted and currency notes were recovered and other proceedings were conducted.

Learned Special Judge, Ambala by appreciating the evidence acquitted the accused-respondents vide impugned judgment dated 19.09.2012.

Learned Special Judge, Ambala discussed the statement of PW-5, Sewak Ram, father of the complainant, who mainly stated

that one JE Mr.Goyal, who is working in the electricity board got settled the matter for ₹6000/- and he paid a sum of ₹5000/- to Hans Raj on that very day i.e. 24.06.2006 but despite that load of factory was not reduced on that day whereas PW-6 Mohit Khanna, complainant, while appearing in the Court has stated that he paid ₹5000/- to JE Hans Raj because he was having only ₹5000/- in his pocket. He further deposed that he and Balwan Singh went inside the factory and he handed over ₹1000/- to SDO Anil Bhatia on his demand and thereafter he gave signal to Constable Balwan Singh, who further passed on the signal to the raiding party.

In the present case, first of all, there is material contradiction which goes to the root of the case. PW-5 Sewak Ram says he has given ₹5000/- to Hans Raj on 24.06.2006 whereas PW-6 Mohit Khanna stated that he had paid ₹5000/- to JE Hans Raj as he was only having ₹5000/- in his pocket. This material contradiction goes to the root of the case and it becomes doubtful as to who paid the bribe money of ₹5000/- on 24.06.2006. Furthermore, in the present case, shadow witness was a police official, Head Constable Balwan Singh, who in his statement has nowhere stated regarding demand raised by the accused. He has stated that he did not hear the conversation. Balwan Singh was deputed as shadow witness. He accompanied the complainant to the factory. PW-6 Mohit Khanna complainant states that he had put ₹1000/- in the pocket of accused and gave signals to Balwan Singh. So, the plea of demand of bribe by the accused and hearing of conversation by shadow witness is not

proved.

The Court held that it is not mentioned in Ex.P10 that Anil Kumar Bhatia had made any demand from the complainant with regard to illegal gratification. The name of Hans Raj was also not mentioned in the complaint Ex.P10. The Court also discussed the statement of Investigating Officer, who specifically denied the version of the complainant that he neither brought the complainant and his father and other witnesses to vigilance office after conducting raid. The father of the complainant was not present in the factory premises on 13.07.2006. The Court further discussed in the judgment that according to statement of PW-4, the report Ex.P6 is a complete report duly signed by the then SDO, JE and consumer. The accused were not to do any more in this regard after this report. The accused have no role to play after the submission of this report Ex.P6. The evidence on record shows that accused Anil Kumar Bhatia had already passed the order and gave report dated 31.05.2006 for reduction of load. JE Hans Raj made the report after checking the meter on 24.06.2006. The report was made in favour of the complainant. MPS-71 was disconnected vide report dated 31.05.2006 and the XEN passed the order on 12.07.2006. So, there was no occasion to demand for the bribe by these accused. They had already performed the function for reduction of load. The orders Ex.P6 and Ex.P7 were already passed before the date of raid.

Keeping in view the above findings given by learned Special Judge, Ambala, I find that a reasonable doubt exists in the

prosecution version. Firstly against accused Hans Raj, there is material contradiction as to who paid ₹5000/- to him. PW-5 Sewak Ram states that he paid the money whereas PW-6 Mohit Khanna states that he paid the money. Secondly, the load was already reduced and SDO passed the order on 31.05.2006, which is much before the raid and further, no role was to be played by him. The load was already reduced and even the order was passed on 12.07.2006 by the XEN. Further, the shadow witness is the official witness and he nowhere states regarding demand of bribe by Anil Kumar Bhatia SDO. Even in the complaint Ex.P10 given by complainant, there is no allegation that Anil Kumar Bhatia demanded bribe money. Even the shadow witness had not heard the conversation when the currency notes were put in the pocket of Anil Kumar Bhatia.

In view of the above discussion, I find that the findings given by learned Special Judge, Ambala, are as per evidence. In no way, the findings can be held as perverse nor there is anything on the record to show as to which material evidence has been misread or which material evidence has not been considered by the Court below. The impugned judgment dated 19.09.2012 passed by learned Special Judge, Ambala, is correct, as per law and evidence.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

**October 01, 2015**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**