

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

**CRA-S-2343-SB of 2003
Date of decision:- 03.07.2015**

Kuldeep Singh**Petitioner**

Vs

State of Haryana**Respondent**

Present: Mr. Naresh Kumar Advocate,
for the petitioner.

Mr. Pardeep Parkash Chahar, DAG Haryana.

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

RAJ MOHAN SINGH, J.

1) Accused Kuldeep Singh is in appeal against judgment of conviction dated 27.11.2003 and order of sentence dated 28.11.2003 passed by Special Judge (Under Prevention of Corruption Act, 1988), Kurukshetra.

2) FIR No.508 dated 15.11.1999 was registered under Section 7 and 13 of P.C. Act, 1988, in Police Station, City Thanesar, District Kurukshetra. Complainant Balwant Singh in his complaint (Exhibit PB), alleged that he is resident of village Dauda Kheri. Land of Lala Banarsi is in their possession and in respect of

mutation and girdawari, Kuldeep Singh, Patwari demanded Rs.10,000/- as bribe. It has been alleged that Kuldeep Singh, Patwari does not do the work without money. Earlier also, complainant has paid an amount to Kuldeep Singh, Patwari for this work. He used to come out of Udasian Dera in Sehan for accepting the amount. Complainant along with Ram Singh went to DSP, Kurukshetra along with amount as he did not want to give the amount as bribe to the Patwari and action was sought against him.

3) On this complaint, Deputy Superintendent of Police (PW-12) made communication with the Additional Deputy Commissioner, Kurukshetra, requesting him to depute some Gazetted Officer in the raiding party. Thereafter, Spattar Singh Tanwar, Deputy Director, Agriculture, Kurukshetra was sent by Additional Deputy Commissioner, Kurukshetra. Complainant produced 20 currency notes of Rs.500/- each which were got initialed by Spattar Singh and DSP. Notes were applied with phenolphthalein powder (hereinafter referred as P. Powder). Memo was prepared accordingly. Raiding party was constituted in which Ram Singh, nephew of the complainant was joined as shadow witness. Shadow witness was to accompany complainant Balwant Singh, for hearing the conversation between the complainant and the accused. Constable Jasmer Singh was to signal the police party on receipt of signal from shadow witness-

Ram Singh after receipt of payment by the accused from the complainant. Complainant and the shadow witness went to the accused in Dera Udasian where the accused was present. It has been alleged that on demand, the amount was paid which was accepted by the accused. On getting the prescribed signal, the other members of the raiding party reached at the spot. On seeing the police party, the accused tried to run towards his office/patwarkhana. On his way, he got entangled in iron chain in the courtyard and he threw the currency note from his right pocket. On entangling, he fell down and he was nabbed by the police party. The currency notes lying on the ground were collected and were got tallied with the details of memo Ex.PE. The currency notes were found to be same which were initialed by Spattar Singh (PW-7) and Bishan Singh, DSP (PW-12).

4) Solution of sodium carbonate was prepared in a jug. Two clean jugs were arranged. Currency notes were washed with the said solution in an empty jug. In an empty jug, the solution became pinkish. The said solution was poured in two separate clean and dry bottles. Thereafter, the said jug was cleaned and fresh solution of sodium carbonate and water was prepared in it. Hands of the accused were got washed with the said solution in an empty jug. The solution became pinkish. Similarly, the pant of the accused was also put to such wash from pockets by dipping in the solution. Right pocket of the pant and handkerchief turned

pinkish. The solution was also poured in a separate jug and thereafter, the solution was poured in two separate clean and dry bottles. All these 6 nips were sealed with the seal of BS. The currency notes were put in a separate envelope and was accordingly sealed with the seal of BS. The envelope and 6 nips and parcel of pants and handkerchief were taken into police possession as Ex.PF. These were duly attested by the complainant-Balwant Singh, shadow witness-Ram Singh, recovery witness-Spattar Singh, recovery witness-Virender Kumar and Investigating Officer, DSP Bishan Singh. Thereafter, the case was registered vide FIR (Ex.PB/1). The aforesaid process adopted by the police in not getting the case first registered and then to raid the premises, may have legal consequences. According to learned counsel for the appellant, police is obligated in law to register a case on receipt of cognizable offence. Police cannot embark upon enquiry before registration of the case. In view of the judgment of case titled as “**Lalita Kumari versus State of U.P. and Ors. (2014) 2 SCC (1)**”, only scope of enquiry before registration of case is to the extent of knowing whether any cognizable offence is made out or not. Therefore, procedure adopted by the police is claimed to be in violation of guidelines framed under the aforesaid Lalita Kumari (supra) case. The aforesaid argument of the learned counsel for the appellant would

be taken along with other submissions of the party at the relevant stage.

5) The hand washes and the recovered parcels were subjected to Forensic Science Laboratory test. Report (Ex.PR) was received from FSL, Madhuban. Sanction to prosecute the accused was taken from Collector, Kurukshetra. After investigation of the case, challan (Ex.PB/3) was presented. Copies of report under Section 173 Cr.P.C. (challan) was supplied to the accused under Section 207 Cr.P.C. Thereafter, accused-appellant was charged under Section 7/13 of P.C. Act, 1988 and was charge-sheeted vide order dated 09.03.2000, passed by the Special Judge, Kurukshetra.

6) The Investigating Officer got prepared site plan (Ex.PA) showing respective positions of accused vis-à-vis other witnesses. In the site plan, Point 'A' is the place where an amount of Rs.10,000/- was given to the accused by the complainant. Point 'B' is the place where Ram Singh, shadow-witness saw and heard the conversation while giving and taking the amount by the complainant and the accused respectively. Point 'C' is the place where Jasmer Singh gave the appointed signal to the raiding party which was shown stationed at Point 'D' in the site plan. Point 'E' is the place where the accused got entangled in iron chain and fell down and Point 'F' is the place where the amount of Rs.10,000/-

was collected by the police which was thrown by the accused from his right pocket.

7) Exhibit PL/1 to Ex.PL/4 are the mutations of inheritance of Asha, Sawan, Chamela and Beer Singh, which were entered in favour of Chamela, Laxman, Beer Singh and Sulekh Chand respectively, vide mutations No.677 to 680. Reading of column of possession shows entry badastoor (as existed earlier). Apparently the column of possession was not changed and the entry remained badastoor (as existed earlier). Naksha nazri (Ex.PO) was also prepared by the Investigating Officer showing placement of accused vis-à-vis other witnesses with reference to distance between them. From the personal search of the accused, total Rs.3000/- were recovered as supplementary recovery which was also taken in police possession.

8) Sohan Lal collateral of the complainant moved an application before Tehsildar on 27.9.1999 alleging that they are in possession of Asha son of Deewan from the last about 70 to 80 years. Mutation of inheritance has been wrongly entered in the name of Chamela, Sawan who is not even resident of the village. Request was made that the hearing of the mutation be conducted in the presence of the applicant. However, this application was marked as Mark 'A' on record. A rapat roznamcha No.114 dated 15.11.1999 (Ex.PX) was recorded by the then Patwari. In this context information given by Suresh Pal that his grandfather was

Nanku and his mutation of inheritance was sanctioned in favour of Gobind and Chhajju sons of Shibbu on 28.05.1905. Thereafter, mutation of inheritance of Chhajju son of Shibbu was sanctioned in favour of his son Ajmer Singh on 15.06.1943 and after the death of Ajmer Singh, the mutation was sanctioned in favour of Gobind son of Shibbu. After death of Gobind, the mutation of inheritance was sanctioned in favour of Jagir as Jagir and Sardha son of Gobind son of Shibbu. After the death of Jagir, the mutation of inheritance was sanctioned on 26.07.1979 in favour of Kailash Chand and Suresh Pal.

9) The mutations earlier shown as Ex.PL/1 to Ex.PL/4 were ultimately brought in jalseam of the village on 30.09.1999 and parties were directed to be present on 30.09.1999 before the Assistant Collector, 1st Grade at 03:00 p.m. The mutation remained contesting mutation on record.

10) Prosecution examined Sudip Kumar as Naksha Navis who prepared site plan (Ex.PA) with marginal notes. Mam Chand, Inspector, State Vigilance Bureau as PW2 who got registered FIR (Ex.PB/1) on receipt of ruqa (Ex.P3), Arjun Dass, Reader, District Collector as PW3 who produced the sanction order against the accused Kuldeep Singh granted by the Collector, Kurukshetra. Head Constable Jatinder Singh has been examined in the context of carrying special report to the CJM, DSP and Superintendent of Police. Ishwar Singh has been examined as PW5 who submitted

his affidavit (Ex.PD) on link evidence. Complainant Balwant Singh has been examined as PW6 who has broadly reiterated the version of the complaint. Additionally, he has deposed that according to direction of DSP, he along with Ram Singh went to Akhara Baba Kachha Gher on a scooter, there Patwari was sitting. He was known to Patwari. He asked the complainant to come out. Kuldeep Singh, Patwari also came out. Kuldeep Singh asked the complainant whether entire amount has been brought or not. Complainant replied in affirmative. Thereafter, the demanded amount of Rs.10,000/- was paid to the accused and kept the same in his pocket. Complainant signaled to the shadow-witness by rolling hand over his head and Ram Singh in his turn signaled to the raiding party. On seeing the police party, accused started running towards his office. While running, he threw the amount from his pocket and thereafter, he fell down being entangled in iron chain. Police apprehended him.

11) The aforesaid version has been pleaded by the complainant in his examination-in-chief. No reference has been made to Jasmer Singh who was found standing at Point C in the site plan prepared by Draftsman as well as by the Investigating Officer. The extracted cross-examination of the complainant revealed that the complainant did not know as to how much land was purchased by his grandfather Ganga Ram out of 20 acres of

land as at that time, he was not there. Many persons were owners of this land whose names were not known to the complainant.

12) Complainant knows Laxman, Sulekh Chand and Baldev. Complainant did not know as to whether the aforesaid persons had moved any application to Tehsildar through their advocate for getting the mutation of share of Asha, rather Patwari got effected the mutation of Asha Ram in favour of these persons and the same was claimed to be wrong mutation.

13) Complainant came to know about this mutation after some time. It is correct that on coming to know about this mutation, brother of the complainant Sohan Lal gave one application to Tehsildar to the effect that the mutation be not sanctioned. This application was given on 27.09.1999. This application was marked by Tehsildar to Patwari. Brother of the complainant also met Patwari. After two days, brother of the complainant appeared in person before Tehsildar and requested that mutation in respect of land of Asha Ram be not sanctioned on 30.09.1999. CRO visited the village and the complainant side raised objections before him. They were asked by CRO to appear before him on 30.09.1999 at 03:00 p.m. in Tehsil office. Their signatures were obtained on notice.

14) On 30.09.1999, complainant party appeared before Assistant Collector Ist Grade, Thanesar along with their advocate and adjournment was given. Complainant has admitted that after

entering the aforesaid mutation they met Patwari-Kuldeep Singh and requested him that aforesaid mutation be not entered in the name of Laxman. On this, Kuldeep Singh, Patwari replied that whatever, he feels correct, he has done, now you do whatever you feel correct. Complainant made a complaint against the conduct of Patwari before the Deputy Commissioner.

15) The aforesaid facts extracted from cross-examination of the complainant has added phenomenal dimensions to the original version. In examination-in-chief the statement of the complainant has been wiped out the role of Jasmer Singh from the raiding party. In cross-examination, the complainant has admitted filing of application dated 27.09.1999 by Sohan Lal before the Tehsildar and thereafter, visit of CRO on 30.09.1999 in the village and their appearance before CRO on 30.09.1999 in the Tehsil office, request of the complainant to the accused thereafter not to enter the mutation and on refusal by Patwari and filing of complaint against the conduct of Patwari by the complainant to the Deputy Commissioner. The aforesaid activities were done on or around 30.09.1999. Now it has to be seen whether the accused-appellant demanded amount of Rs.10,000/- on 15.11.1999, even after declaring the mutations to be contesting by the Assistant Collector, Ist Grade, Kurukshetra on 30.09.1999.

16) Spattar Singh, Deputy Director, Agriculture, Kurukshetra has been examined as PW7, he acted as Executive

Magistrate in the case. Whether the witness was appointed under the written orders of the Deputy Commissioner or not, is to be appreciated in the light of evidence on record. The witness in his cross-examination has stated that on 15.11.1999, a telephonic message was received from Additional Deputy Commissioner to the effect that he has to attend proceedings of a corruption case and he should meet S.P. Kurukshetra. He went to S.P., Kurukshetra at about 01:30 p.m. and he was asked to meet DSP, Kurukshetra. The witness met DSP in his office. DSP got introduced with the persons sitting in his office i.e. Balwant Singh and Ram Singh and he was apprised of the prosecution story. Thereafter, 20 currency notes of denomination of Rs.500/- each were produced by DSP, Balwant Singh. Memo was prepared and P.Powder was applied on the currency notes. After preparation of the memo, the witness signed the same along with complainant and Ram Singh. According to this witness, Jasmer Singh was appointed and was asked to stand near a gate in civil dress. The raiding party was standing outside the gher which is the outer gate of gher. Complainant was given the amount to pay the same to the accused. Ram Singh was deputed to hear the conversation and thereafter to signal Jasmer Singh by rolling his hand over his head. Jasmer Singh, Constable was instructed to inform the raiding police party by rolling his hand over his head. To the extent of assigning role to Jasmer Singh, the statement of this

witness is in contradiction with the complainant who has stated that the shadow witness gave signal to the police party by rolling his hand over his head. According to the site plan, both scaled as well as Nazari prepared by Draftsman and Investigating Officer respectively, if role of Jasmer Singh is segregated vis-à-vis his placement at Point C in the site plan then a person standing at point B will not be able to see the placement of raiding police party at point D.

17) Sultan Singh, Head Constable has been examined as PW8 who is a witness of link evidence. Ram Singh, shadow witness has been examined as PW9 who has not supported the case of prosecution on material particulars. Aforesaid witness was declared hostile. This witness has admitted that land measuring 20 acres is in possession of his father and uncle and he does not know whether mutation in respect of share of Asha Ram was applied by Laxman etc. before Tehsildar. And he does not know whether mutation was entered on the direction of Tehsildar in favour of Laxman etc. He has admitted that his father had given an application before Tehsildar that mutation in respect of share of Asha Ram be not sanctioned without hearing him. He does not know whether an application was marked to Halqa Patwari or not. This witness does not know whether mutation was declared as contested one or not. The witness was cross-examined in detail, but nothing incriminating could come out from his testimony.

Randip Singh, Patwari has examined as PW10 and Sham Lal, Sadar Kanungo has been examined as PW11. PW10 Randip Singh, Patwari has admitted in his cross-examination that an application was received from Tehsildar in respect of mutation in favour of Laxman etc. in which Tehsildar has ordered that mutation be entered and be placed before Circle Revenue Officer (CRO) and the Patwari in compliance to that order did the needful in entering mutation Ex.PL/1 to Ex.PL/4 on 15.09.1999 and the Patwari was legally bound to do so. PW11 is formal witness and was not cross-examined.

18) Investigating Officer, Bishan Singh, DSP has been examined as PW12. The I.O. has reiterated the role of Jasmer Singh whereas, complainant in his statement has not narrated about any such role vis-à-vis role assigned to aforesaid Jasmer Singh. Witness has stated conversely in the context of entering mutations Ex.PL/1 to Ex.PL/4. This statement was not in consonance with the statement given by the complainant as well as PW-11 Patwari who had deposed after seeing the record.

19) Statement of the accused was recorded under Section 313 Cr.P.C. who pleaded innocence and lead evidence in defence. Ram Chander has been examined as DW1 and Kamaljit Singh has been examined as DW2. These witnesses have deposed in the context of entitlement of complainant-party vis-à-

vis the land of Banarsi and Asha. The defence witness has admitted that the complainant-party appeared before Kanungo and Patwari and Patwari disclosed to them that according to orders passed for sanctioning mutation in favour of heirs of Asha. This witness has also stated that during enquiry, the complainant party stated that for the last 50 years, their possession is intact and many Patwaris came and have gone and they could not enter the mutation. Thereafter, Kanungo and Patwari went from the village. After 10-15 days, Tehsildar came to village, Patwari was also accompanying him. Complainant-party produced their version before the Tehsildar and Tehsildar went away from the village. This visit was about 3 years back. DW Kamaljit has deposed in respect of roznamcha No.114 who while acting as Patwari wrote the same on the basis of information derived from one Suresh Pal.

20) I have considered arguments from both sides. Mutations Ex.PL/1 to PL/4 had already been entered and were declared contested on 30.09.1999 i.e. much before the complaint filed in the context of registration of FIR. After declaration of the mutations as contested mutations, only jurisdiction lies with Assistant Collector Ist Grade. As per prosecution case itself, the parties had already appeared before the Assistant Collector, Ist Grade on 30.09.1999 and thereafter, the case was adjourned.

21) Secondly, as per complainant himself, the accused appellant stated in plain words when complainant party demonstrated before him that whatever he intended to do, has been done by him and the complainant-party may take action in the manner it likes. There was an instinct of hostility in the reply of the accused.

22) Thirdly, the complaint dated 27.09.1999 filed by Sohan Lal before the Tehsildar even though, a marked document but the same has already been admitted in the statement of the complainant. The mutations which were entered were in the name of heirs of deceased Asha Ram, Sawan, Chamela Singh and Beer Singh. The possessory title of the party was not touched. It is a settled principle of law that inheritance cannot remain in abeyance. Moreover, mutation is not a document of title rather it is a mechanism to set the record right. Parties are always at liberty to get the title of the land settled by means of title suit. Apparently, mutations were entered on 15.09.1999 only, the column of possession remained as badastoor. Those mutations were declared contested after appearance of the parties on 30.09.1999. All these proceedings took place before registration of the case.

23) Fourthly, complainant in the context of placement of parties vis-à-vis their location in the site plan has not pointed out placement of Jasmer Singh at Point C. Scaled site plan Ex.PA

and Naksha Nazri Ex.PO showed Jasmer Singh to be at Point C, who on receipt of required signal from shadow witness alleged to have conveyed the same to the police raiding party at Point D. Once the statement of the complainant ruled out presence of Jasmer Singh at Point C, then according to both site plans scaled as well as Nazri, shadow witness at Point B would not be able to see even police raiding party standing at Point D. On the other hand, complainant has himself alleged to have conveyed signal to police raiding party at Point D while standing at point B by rolling his hand on his head. Perusal of site plans rules out any such possibility.

24) Fifthly, the appointment of Spattar Singh, PW-7 as Executive Magistrate is not proved to be by way of any written order even his statement in respect of part attributed to Jasmer Singh runs counter to the statement of the complainant himself.

25) Sixthly, Ram Singh, PW9 shadow witness has not supported the prosecution case, rather he was declared hostile and his long cross-examination did not yield any incriminating evidence.

26) Seventhly, needful for which demand could have been made was not in existence in view of already entry of mutation and declaration of the same to be contested one on 30.09.1999 by the Assistant Collector 1st Grade. Even parties had already

appeared before the Assistant Collector, 1st Grade on 30.09.1999 and the case was further adjourned. Question arises whether there can be any demand for a job which could not be legally accomplished by the accused particularly in view of conduct of the accused by refusing the complainant in plain words that whatever he intended to do has been done by him and now it is left with the complainant to take whatever action they like. In view of such a hostility for not entertaining the claim of the complainant, whether accused can make such a demand to rectify the entries qua which he had no control? The answer will be simple in negative.

27) Eighthly, report of FSL has its own configurations. Admittedly, currency notes Ex.1 and pants including handkerchief Ex.2 were found having P.Powder smearing on them, but their respective washes Ex.3 and 5 were not having any sodium carbonate traces. The anomaly which goes to the roots of the case was sought to be explained by the trial Court by saying that absence of P.powder in note wash (Ex.3), pant wash (Ex.5) is indicative of the fact that job was assigned to some irresponsible person who ditched the Investigating Officer by sending water and sodium carbonate solution labeling as currency note wash and pant wash. Prosecution has tried to explain the aforesaid latch by labeling unfounded allegation particularly when entire process of note wash, pant wash was undertaken by the Investigating officer in the presence of prosecution witnesses. No such delegation of

excuses can be entertained by the Court in view of the fact that cases falling under the prevention of Corruption Act are to be strictly construed because in such cases, accused persons not only goes to jail but also losses his livelihood and earns ignominy. In corruption cases, a greater degree of consideration is required and these cases are to be treated on different footing so far as appreciation of evidence is concerned. Mere recovery of tainted amount from the accused is not enough to prove the demand for illegal gratification. The Court should be careful and circumspect that in case, two views are possible, then the view favouring the accused should be adopted. The guilt of the accused has to be proved beyond all reasonable doubts.

28) In view of aforesaid discussion, it can be found that the accused-appellant could not have made demand for Rs.10,000/- as illegal gratification in view of already declaration of mutations as contested one and hostile attitude adopted by the accused for not adhering to the claim of the complainant on previous occasions. Even the demand as per appreciation of statements of complainant and witnesses is not proved which is sine quo non for offences under Sections 7 and 13 of the P.C. Act. No independent witness has been examined to prove the factum of demand and acceptance thereof. Shadow witness has already been declared hostile. It is also a settled principle that shadow witness is always an interested witness. Even in the present case, the said shadow

witness is nephew of the complainant who even has been declared hostile. In such a situation, great degree of corroboration was required to be done on the point of demand having been made by the accused towards illegal gratification. In **Amrik Singh Versus State of Punjab, 2005(4) R.C.R. (Criminal) 310**, this Court has held that shadow witnesses treated to be interested witness if he is proved to be related with the complainant. His statement has to be scrutinized collectively as the same is inferior to the ordinary interested witnesses. Since the shadow witness has already been declared hostile and there is no other independent corroboration of the prosecution version, therefore, the case has to be tested on the very threshold of independent corroboration. In this context, reference can be made to **Karnail Singh versus State of Punjab, 2009 Volume I RCR (Criminal) 403** and **Jarnail Singh versus State of Haryana 1991, Volume I RCR (Criminal) 391.**

29) Mere recovery of currency notes from the accused without any proof of demand cannot be considered sufficient for bringing the culpability under the mischief of offence under Prevention of Corruption Act. In **M.R. Parshotam versus State of Karnataka 2015 (Criminal) Law Journal 72**, the Hon'ble Apex Court has considered the aforesaid proposition and acquitted the accused on the ground that without proof of demand, the act cannot bring the guilt of the accused to the hilt for the offence

under Section 13(1)(D) of the Act. In the said case, the conviction was sought inter alia on the basis of testimony of shadow witness which in the present case is not even subsisting. Therefore, the present case is placed even on higher pedestal.

30) In **B.Jayaraj Vs. State of Andhra Pradesh, 2014(2) RCR (Criminal) 410**, the Hon'ble Apex Court while dealing with a case under Prevention of Corruption Act on the ground held that mere possession and recovery of currency notes from the accused without proof of demand will not bring him the offence under Section 7. Demand of illegal gratification is sine quo non to constitute the said offence and mere recovery of currency notes cannot constitute offence under Section 7 unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be a bribe. If the facts and the evidence on record of this case are considered in the light of aforesaid analogy, then it is found that demand is not proved on record and therefore, conviction is unsustainable in law. Since the demand is an essential element of the offence, therefore, it has to be proved by an independent evidence.

31) In **Banarasi Dass versus State of Haryana 2010 (2) RCR (Criminal) 553**, the Hon'ble Apex Court held that when the shadow witness is turned hostile then on technical ground of the witness turning hostile, benefit has to be given to the accused.

This is more so in view of the fact that in case under P.C. Act, the accused not only losses the job but the same is considered stigmatic even qua his family and has great impact on the prospects of the family. Therefore, corruption cases are to be treated on different pedestal so far as appreciation of the evidence is concerned and if conviction takes place these cases, not only the accused goes to jail but he also losses his livelihood and earns ignominy. In view of aforesaid, the testimony of shadow witness if goes hostile to the prosecution case, may be read in favour of the accused.

32) Since the tainted amount has not been recovered from personal search of the accused, the same was recovered from the ground where the same was thrown by the accused on seeing police. FSL report in the context of hand wash of currency notes and hand wash of pants have its own relevancy. Therefore, presumption in terms of Section 20 of P.C. Act would not be attracted **Vineet Kumar versus State of Punjab 2015 Volume I RCR (Criminal) 647**, relied upon by the respondent State, does not advance any help to the case of prosecution on the basis of contrast situation as emerges on record. Lastly, I have considered one more pertinent aspect of the case even though the same has not been pleaded before the trial Court. The hands of the complainant were not got washed in the solution of sodium carbonate after the alleged handing over of currency notes to the

accused. Failure on this front, creates doubts as to the act and conduct of the Investigating Officer. Had Investigating Officer got the hands of the complainant washed in the solution of sodium carbonate, had he sent the contents of the same to the chemical examiner for scientific test and had a report of chemical examiner being favoured to the prosecution, it would have been certainly proved that complainant had actually given the said currency to the accused on the spot immediately before recovery of the same from his possession. In the absence of such an obligation, no such linkage can be established. On the aforesaid proposition, reliance can be placed on **Abdul Rashid Ansari versus State of U.P. 93 Volume II Crimes 26 (Allahabad)**.

33) From the aforesaid discussion and assessment of all incriminating facts and circumstances on record, it can be held that demand at the instance of accused-appellant is not proved on record. Motive for such demand is also non-existent. Evidence of demand and acceptance are at variance. Prosecution story is found to be untrustworthy on the basis of official record of Revenue Department, shadow witness has not supported the case of prosecution and link evidence is not established on record. Considering all the attending circumstances of the case, benefit should go to the accused-appellant in technical offence. Resultantly, this appeal is allowed. Impugned judgment of

conviction and order of conviction are set aside.

Accused/appellant is acquitted of the charges against him.

**(RAJ MOHAN SINGH)
JUDGE**

July 03, 2015
SwarnjitS