

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 6th April, 2016

+ **CRL.A. 1222/2011**

HARISH KUMAR

..... Appellant

Through

Mr. Ashok Soni & Mr. S.S. Chugh,
Advocates

versus

STATE

..... Respondent

Through

Mr. Hirein Sharma, APP for the
State.

+ **CRL.A. 1225/2011 & CrI. MA 4908/2012**

SAHIB SINGH

..... Appellant

Through

Mr. Deepak Sharma, Advocate

versus

STATE

..... Respondent

Through

Mr. Hirein Sharma, APP for the
State.

%

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Feeling aggrieved by the judgment dated 20th August, 2011 passed by the Special Judge (PC Act)-06, Tis Hazari, Delhi in CC No.185/09 vide which appellant Sahib Singh was convicted under Section 7, 13(1)(d) punishable under Section 13(2) of the POC Act, 1988 r/w Section 120B of IPC and accused Harish guilty under Section 7 of POC, 1988 Act r/w Section 120B of IPC and order on sentence dated 8th September, 2011 vide which both the appellants were sentenced to undergo RI for a period of one

year with fine of Rs.5,000/- in default to undergo simple imprisonment for further period of 3 months, separate appeals bearing nos. 1225/2011 and 1222/2011 have been preferred by them.

2. During the pendency of the appeal, Sahib Singh expired on 10th December, 2012 and vide order dated 15th April, 2013, his legal heirs were allowed to continue with the appeal to be decided on merits.

3. Succinctly stated, prosecution case is as follows:-

On 6th May, 2005, complainant Somi, S/o Chander Bhan came to Anti Corruption Branch, Delhi and gave a statement alleging *inter alia* that on 5th May, 2005, he along with his cousin brother Raj Kumar was going to Clock Tower, Shakti Nagar from Lal Bagh, Azad Pur on a two wheeler scooter bearing No. DL 8 5C 9216. At Check Post near ganda nala, his scooter was stopped by Sahib Singh who asked for the documents of the scooter including pollution certificate. Since he was not having the pollution certificate, Sahib Singh told him that his vehicle will be impounded. He pleaded that he was a poor man, thereupon Sahib Singh demanded Rs.100/- for releasing the vehicle, however, he was not having Rs.100/-. Therefore, his driving licence as well as mobile make *garud* bearing No.20572030 belonging to Raj Kumar was kept by him and he was asked to pay Rs.100/- on 6th May, 2005 at 4:00 p.m. and then take back the driving licence as well as mobile. He was further asked to give the amount to a shopkeeper near the picket and to take back the licence. Sahib Singh would take bribe through that shopkeeper, however, he is against paying any bribe, therefore, he prayed for action. Statement of the complainant Ex.PW4/A was recorded by PW7-ACP then Inspector B.S.Yadav in the presence of *panch*

witness-Mahesh Kumar. The complainant had brought one GC note of Rs.100/- which was handed over to him and he recorded its serial number in the pre-raid report Ex.PW4/B. Phenolphthalein powder on those GC notes was applied by Sh.B.S.Yadav and demonstration was given to the *panch* witness and the complainant by touching the right hand of *panch* witness with those treated GC notes and his wash of right hand in the solution of Sodium Carbonate was taken which turned into pink. Thereafter hands of *panch* witness were got washed with the soap and that solution was thrown away. The GC note was given to the complainant who kept the same in the pocket of his shirt. *Panch* witness was instructed to remain close to the complainant and to overhear the conversation and after being satisfied that bribe had actually been given, *panch* witness was asked to give a signal by putting his hand over his head. The complainant was also instructed to remain close to *panch* witness in such a manner that he could be able to see the transaction and hear the conversation and give the bribe money on specific demand. On the same day, at about 3:45 pm, Inspector B.S. Yadav along with the complainant, *panch* witness, Inspector K.S. Pathak, Sub-Inspector Sumer Singh along with 3 or 4 other members of raiding party left Anti-Corruption Branch for Gur Mandi Ganda Nala, Model Town in a government vehicle and reached there at about 4:00 pm. The government vehicle was left at the gate of Gur Mandi and Inspector K.S. Pathania remained in that vehicle. Complainant and *panch* witness were reminded about the instructions given to them in pre-raid proceedings and they were sent towards police picket Ganda Nala, Gur Mandi. Inspector B.S. Yadav along with members of raiding party followed them and took their suitable positions near

police post. Outside the police picket, both the accused were standing. The complainant talked to Constable Sahib Singh. Sahib Singh asked him to give the money to accused Harish Kumar. Thereafter, the complainant gave GC note of Rs.100/- in the right hand of accused Harish which he kept in the left side pocket of his shirt. Harish went to his shop and brought one envelope and handed over the same to the complainant. After seeing the transaction, the *panch* witness gave the pre-determined signal to the members of the raiding party who came there and apprehended both the accused persons.

On the instructions of Inspector B.S. Yadav, *panch* witness recovered that GC notes from the pocket of the shirt of the accused-Harish which was taken into possession vide seizure memo Ex.PW4/C. Thereafter right hand wash of accused Harish was taken in the colourless solution of Sodium Carbonate which turned into pink. That solution was transferred into two empty small clean bottles which were sealed with the seal of BSY. Wash of left pocket shirt of Harish was also taken and seized vide seizure memo Ex.PW4/E. The driving licence of the complainant and mobile phone were seized vide seizure memo Ex.PW4/F. Thereafter rukka Ex.PW7/A was prepared and was sent through Constable Jai Prakash to Police Station, Anti-Corruption Branch for registration of the case on the basis of which FIR, Ex.PW12/A was got recorded by PW12-SI Hari Om. Thereafter, Inspector K.S. Pathania was called at the spot and custody of both the accused was handed over to him along with case property. Inspector K.S. Pathania prepared site plan Ex.PW14/A at the instance of complainant and *panch* witness. Both the accused were arrested. The case property was deposited in

malkhana. During the course of investigation, the case property was sent to FSL from where result Ex.PW14/A was received. A letter of request along with documents was sent to DCP for grant of sanction to prosecute accused Sahib Singh which was accorded by PW-11 Sh.Virender Singh. After completing investigation, charge sheet was submitted against both the accused.

4. Both the accused were charged for offence punishable u/s 7 of the Prevention of Corruption Act, 1988 r/w Section 120B IPC. Additionally Sahib Singh was also charged for offence u/s 13(1)(d) punishable u/s 13(2) of Prevention of Corruption Act, 1988. Both the accused abjured the guilt and claimed trial.

5. In order to substantiate its case, prosecution examined 14 witnesses. All the incriminating evidence was read over to both the accused while recording their statement u/s 313 Cr.P.C. wherein they denied the case of the prosecution. Accused Harish Kumar pleaded that neither he demanded any bribe nor accepted the same. He was victim of circumstances. He did not know what transpired between the complainant and the co-accused. He was not even aware as to what was lying in the envelope which the complainant was having. Sahib Singh also denied having demanded or accepted any bribe. According to him, he was not working as traffic police at the relevant time. The checking of vehicle is entrusted to traffic police. He never asked for bribe from the complainant or other witness, namely, Raj Kumar. Raj Kumar is a bad character of the area and black mailer who had dragged 2-3 other officials in the same fashion. However, none of them preferred to lead any defence evidence.

6. Vide impugned judgment and order, both the appellants were convicted and sentenced as mentioned hereinbefore.

7. Assailing the findings of the learned Special Judge, Sh. Anil Soni, learned counsel for the appellant-Harish submitted that Harish is a tempo driver. The charge against him was u/s 7 of Prevention of Corruption Act r/w Section 120 B IPC, however, he has been convicted for offence u/s 13(1)(d) of POC Act, 1988 and punishable u/s 13(2) of POC Act r/w Section 120 B IPC as if he is a public servant. As per the prosecution case, when the demand of bribe was made by the co-accused Sahib Singh on 5th May, 2005, he was not present at the spot. Even on the date of incident, he was not on the check post. Absolutely no evidence was led by the prosecution to prove that there was a conspiracy between the two co-accused. In this regard heavy reliance was placed on the cross-examination of the complainant wherein he deposed that when on the asking of Sahib Singh, he gave Rs.100/- to Harish, he was surprised and thereafter looked at Sahib Singh. When Sahib Singh nodded his head, then Harish took the same. Therefore, where is the question of meeting of minds? No evidence has been led by the prosecution to prove that this appellant was having the knowledge that it was bribe money. Although it was not disputed during the course of arguments that Rs.100/- was given to him which was recovered from his possession but it was submitted that the evidence is conspicuously missing that the appellant was having the requisite knowledge that it was bribe money. Therefore, he could not have been convicted for the said offence. Reliance was placed on *Prem Singh Yadav vs. CBI*, 2011(2) JCC 1059; *K. Subba Reddy vs. State of Andhra Pradesh*, 2008 CrI.LJ 345 and *Virendranath vs. State of Maharashtra*, (1996) 11 SCC 688.

8. Assailing the findings of the learned Special Judge, counsel for appellant-Sahib Singh submitted that as per the case of prosecution, on 5th May, 2005 itself, the driving licence of complainant as well as mobile phone of Raj Kumar was kept by this appellant to be returned on payment of Rs.100/-. However, PW13-Sumer Chand, uncle of Raj Kumar has deposed that the mobile is in his name and this mobile telephone was given by him for use to his nephew Raj Kumar on 6th May, 2005. If the mobile itself was given to Raj Kumar on 6th May, 2005 by Sumer Chand, how this mobile could be handed over by the complainant to Sahib Singh on 5th May, 2005. Furthermore, although it is the case of the prosecution that the driving licence of the complainant was taken into possession but testimony of PW3-Kartar Singh is silent regarding deposit of driving licence. The *panch* witness did not identify any of the accused. Moreover, according to Inspector B.S.Yadav, the bribe amount was taken out from the pocket of Harish by the *panch* witness, however, testimony of *panch* witness is conspicuously silent in this regard. Moreover, the punch witness did not hear any conversation between Sahib Singh and the complainant as according to him, he was standing outside the police booth whereas the talks between the complainant and Sahib Singh took place inside the booth. Moreover, Raj Kumar, who was allegedly accompanying the complainant on 5th May, 2005 when the mobile phone and driving licence were kept by Sahib Singh for non-payment of bribe amount, although was examined as PW-11 but his testimony is confined to handing over the copy of the registration certificate of the scooter. He has not deposed anything regarding the incident which allegedly took place on 5th May, 2005. As such, the very genesis of the case is doubtful.

9. Reference was also made to an application moved u/s 391 r/w Section 482 Cr.P.C. filed by the appellant for leading further evidence for

showing that a specific suggestion was given to the complainant that Raj Kumar is a bad character of police station Sabzi Mandi but he pleaded his ignorance. In his statement u/s 313 Cr.P.C. also same plea was taken by the appellant that he is a black mailer who had dragged 2-3 officials in the same fashion but at that time he had no details of the cases. Now, under RTI Act he has come to know that as many as 14 cases are pending against Raj Kumar whereas the complainant is also arrested in a case u/s 324/34 IPC, Police Station Adarsh Nagar, Delhi. Under the circumstances, it is submitted that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. As such, the appellant is entitled to be acquitted. It is further submitted that during the pendency of the appeal, the appellant has expired and the present appeal has been pursued by his family members. He was a constable in Delhi Police and was suspended after the registration of this case. All the benefits accrued to the appellant have not been released to his family members due to pendency of this case. As such, it is submitted that even on humanitarian grounds, a liberal view is required to be taken.

10. Reliance is placed on :-

State of Punjab vs. Madan Mohan Lal, AIR 2013 SC 3368
Hari Singh Yadav vs. State, CrI.A.464/2004 dated 18.02.2014
S.K.Singhal vs. State (CBI), 2013 (136) DRJ 431
Chironjilal vs. State of M.P., 2008 CrI.L.J 1784 (Madhya Pradesh High Court)
Raghubir Singh vs. State of Punjab, 1976 CrI.L.J 172 (Supreme Court of India)
State of Rajasthan vs. Mohan Lal, 2009 (2) RCR (CrI.) SC 812
Sanjiv Kumar vs. State of Haryana, 2010 (4) RCR (CrI.) 891
Roshan Lal Saini vs. CBI, 2011 (2) RCR (CrI.) 36 (Delhi)
State (Govt. NCT of Delhi) vs. Girdhari Lal Verma, 2011 (3) JCC 1744
Narayan Swami vs. Of Maharashtra, 1968 CrI.L.J. 657 (S.C.)
The Public Prosecutor (A.P.) vs. Baggu Rama Murti & Ors., 1973 CrI.L.J.1761 (Andhra Pradesh High Court)
Kanti Prasad Tyagi vs. State of Delhi, 2014 (1) JCC 803 DHC
Rajinder Kumar Narang vs. State, 2014 (2) JCC 1085 (Delhi High Court)

11. Countering the submissions of learned counsel for the appellant, learned Additional Public Prosecutor for the State submitted that the factum of payment of bribe, its acceptance and recovery has been proved by the prosecution beyond reasonable doubt. Even the *panch* witness has supported the case of prosecution in all material particulars except for identifying the accused. However, the identity of the accused is proved from the testimony of the complainant and other witnesses. The impugned judgment does not call for any interference. As such, the appeals are required to be dismissed.

Appeal No.1222/2011 (filed by Harish Kumar)

12. As per the prosecution case, on 5th May, 2005, while PW4-Soni along with PW11-Raj Kumar were going on two-wheeler scooter and reached at Check Post near Ganda Nala, they were stopped by co-accused Sahib Singh who asked for the documents of the scooter including pollution certificate. Since the complainant was not having the pollution certificate, he was told that the vehicle would be impounded. A sum of Rs.100/- was demanded by Sahib Singh as bribe for releasing the vehicle. The driving licence of the complainant and mobile phone of Raj Kumar were kept by Sahib Singh to be returned on the next day when Rs.100/- will be paid by the complainant. It is alleged that the complainant did not want to pay bribe, therefore, approached the Anti-Corruption Branch. A trap was laid pursuant to which one *panch* witness-Mahesh Kumar, PW8 was joined. Thereupon the officials of the Anti-Corruption Branch along with the complainant and *panch* witness reached the spot where on the directions of Sahib Singh, complainant gave a note of Rs.100/- to this appellant which was kept by him in left pocket of his shirt. Thereafter,

when the raiding party reached the spot, the recovery was effected from Harish Kumar. Recovery of Rs.100/- from the pocket of Harish Kumar is not even disputed by the learned counsel for the appellant, however, the crucial question for consideration is whether Harish Kumar was aware of the fact that it was a bribe money or there was any meeting of minds between Harish Kumar and the appellant-Sahib Singh. The sequence of events as narrated by the prosecution witnesses makes it clear that when demand of Rs.100/- was made by the co-accused Sahib Singh on 5th May, 2005, this appellant was not present. As regards the incident of 6th May, 2005, the cross-examination of the complainant himself is very material wherein he deposed as under:-

“The tempo stand of accused Harish was at a distance of about 20 meters from the check post. When I went to the spot along with the panch witness, accused Sahib Singh was present near the check post and accused Harish was present near his tempo stand. The talks of bribe took place with accused Sahib Singh at the check post. When the talk took place with Sahib Singh, Harish was at his tempo stand. Accused Sahib Singh asked me at check post to hand over money to Harish who was standing near his tempo stand. When I tendered money to Harish at his tempo stand, Harish was bit surprised and when I told Harish that Sahib Singh had asked me to hand over money to him and then Harish looked at Sahib Singh and Sahib Singh nodded with head indicating to accept the money. When Sahib Singh directed me to handover the money to Harish, he told me that he (Sahib Singh) has to pay Rs.100/- to Harish. Harish handed over envelop to me at the asking of Sahib Singh.....”

13. The conduct of this appellant in getting surprised when the complainant tendered money to him and thereafter on receiving signal from Sahib Singh to accept the money itself raises a doubt as to whether he was having any knowledge that the amount paid to him was bribe money. Moreover, Sahib Singh also told the complainant that he was to pay Rs.100/- to Harish and, therefore, the said amount be paid to him. Admittedly, no demand was made by this appellant either on 5th May, 2005 or on 6th May, 2005. Demand of illegal gratification is sine qua non for

constituting an offence under the Act, 1988. As such, mere recovery of tainted money alone is not sufficient to record conviction.

14. In **Prem Singh Yadav** (supra), learned Single Judge relied upon the following judgments:-

*“In **Suraj Mal vs. State (Delhi Administration)**, (1979) 4 SCC 725, it was held that mere recovery of money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Mere recovery of money cannot prove the case of the prosecution against the accused in the absence of any instance to prove the payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. In the case of **C.M. Girish Babu (supra)**. The Supreme Court held that mere recovery of money from the accused by itself is not enough in the absence of substantive evidence of demand and acceptance. In this case the reliance was also placed on a three-Judge Bench judgment in **M. Narsinga Rao v. State of A.P.** wherein it was held as under:*

*“20. A three-Judge Bench in **M. Narsinga Rao v. State of A.P.** while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p.700, para 24)*

*24. ...we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide **Madhukar Bhaskarrao Joshi v. State of Maharashtra**) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned Counsel: (See P.577, Para 12)*

12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

4. ...It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (See **V.D. Jhangan v. State of U.P.** at AIR p. 1764, para 4).

(Emphasis supplied)

15. In the case of **Dnyaneshwar Laxman** (supra) also the Supreme Court held as under:

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

15. **K. Subba Reddy** (supra) was also a case where the complaint was that Excise Sub-Inspector demanded bribe from complainant for return of stock register. The complainant was asked to pay amount to the accused in case Sub-Inspector was not available. Tainted money was paid and recovered from accused. His conviction was set aside by Hon'ble Supreme Court on the ground that there was no evidence to show that accused had any knowledge that money paid was bribe money. Accused was a home guard. He had no role to pay in return of stock register, as such, evidence was insufficient to convict him. **Virendranath** (supra) was again a case where the complainant gave tainted money to A2-a restaurant owner at the request of A1-a police officer. A trap was laid and tainted money was recovered from A2. A1 was convicted under Section 7 and 13(1) (d) r/w Section 13(2) and A2 convicted as abettor u/s 7 r/w Section 12. Conviction of A2 was set aside on the ground that the prosecution had not led any other evidence except for recovery of tainted money from the possession of A2 from which it can be spelt out that A2 was a habitual go-between in facilitating acceptance of bribe by A1. Even in **State of Panjab vs. Madan Mohan Lal Verma** (supra) relied upon by the counsel for co-accused Sahib Singh, it was held that demand of illegal gratification is *sine qua non* for constituting an offence under the Act, 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of amount by accused is not sufficient to fasten guilt in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act by bringing on record evidence, either direct or circumstantial, to establish

with reasonable probability that the money was accepted by him other than as a motive or reward as referred to in Section 7 of the Act. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution.

16. In the instant case, although the accused has led no evidence in defence but from the cross-examination of prosecution witnesses more particularly the complainant himself, he has satisfactorily discharged the onus laid upon him. By preponderance of probability, the accused has been able to create doubt in the prosecution case. Except for recovery of tainted money from the possession of this appellant, no evidence has come on record to prove that accused had any knowledge that money paid was bribe money. It is settled principle of law that suspicion, howsoever grave, cannot take place of proof and in case of doubt, the accused is entitled to get the benefit of the same.

17. As regards the submission that although the appellant was charged for offence under Section 7 of POC Act/120B IPC but convicted and sentenced for offence u/s 13 (1) (d) of POC Act r/w 13(2) of POC Act r/w Section 120B IPC, it seems to be a clerical error. Vide judgment dated 20th August, 2011 this appellant was held guilty u/s 7 of POC Act r/w Section 120B IPC only. However, while awarding sentence, the same Sections under POC Act and IPC were mentioned as that of Sahib Singh, however, this was only a technical error but on the factual matrix of the case as observed above, prosecution failed to establish its case beyond reasonable

doubt qua this accused. As such, his appeal succeeds. The impugned judgment qua him stands set aside and he is acquitted of the offences alleged against him.

Appeal No. 1225/2011 filed by Sahib Chand

18. It is not in dispute that this appellant was posted as constable in Delhi police. As stated above, as per the case of prosecution, on 5th May, 2005 he had demanded a sum of Rs.100/- from the complainant for releasing his vehicle and since the complainant was not having the requisite amount on that day, as such, the driving licence of the complainant and mobile phone of Raj Kumar was kept by this appellant and complainant was told to pay the amount next day and thereafter the seized articles will be returned to him. According to the complainant, he was accompanied by Raj Kumar, S/o Chhote Lal and were going on two-wheeler scooter towards Shakti Nagar Chowk when this incident took place. It is pertinent to note that Raj Kumar S/o Chande Lal although was examined by prosecution as PW11, however, his testimony is confined to handing over the copy of registration certificate of two-wheeler No.DL 8 5C 9216 to Investigating Officer of the case which was in the name of Suresh Kumar on 8th March, 2006. If the complainant was accompanied by this witness when the requisite demand of bribe was made by this appellant, the Investigating Officer who had recorded his statement must have recorded the incident of 5th May, 2005 as well. But his testimony is conspicuously silent regarding the incident of 5th May, 2005. Not only that, his testimony is also conspicuously silent as to whether on 5th May, 2005, he was having any mobile make *garud* bearing No.20572030 which he handed over to the appellant. Except for the testimony of the complainant who is an interested witness, there is no corroboration either

to his initial statement Ex.PW4/A or his deposition in the Court regarding the incident of 5th May, 2005.

19. Things did not end here. Although according to the complainant, the mobile phone of Raj Kumar make *garud* bearing No.20572030 was handed over to the appellant on 5th May, 2005, however, as stated above, testimony of Raj Kumar is completely silent in this regard. The prosecution also examined PW13-Sumer Chand, uncle of Raj Kumar who has deposed that this mobile is in his name and he had given this mobile telephone for use to his nephew Raj Kumar on “6th May, 2005”. If the mobile phone was handed over to Raj Kumar on 6th May, 2005 only, where was the question of Raj Kumar having this mobile on 5th May, 2005 so that it could be handed over to Sahib Singh on that day? All this makes the genesis of the entire incident doubtful.

20. Furthermore, besides the complainant, the only independent witness is PW8-Mahesh Kumar. This witness did not support the case of prosecution in all material particulars and in cross-examination by learned Public Prosecutor, he categorically denied that this appellant was the same person who met them at police picket or accused Harish Kumar was the person who had accepted the bribe of Rs.100/- from the complainant on the direction of accused Sahib Singh.

21. Over and above, according to Inspector B.S. Yadav, specific instructions were given to this witness to remain with the complainant and to hear the conversation between the complainant and the appellant but he admits in cross-examination that he did not hear the conversation which took place between the complainant and the constable as the complainant and constable were sitting inside the beat box whereas he was standing

near the window of beat box. In *State of Rajasthan vs. Mohan Lal*(supra) and *Sanjiv Kumar*(supra), one of the ground for acquittal of the accused was that the independent witness did not hear any conversation between the complainant and the accused.

22. Furthermore, according to Inspector B.S. Yadav and Inspector K.S. Pathania, the entire post-raid proceedings were conducted at the spot. However, they were contradicted by this witness who deposed that pre-raid proceedings were conducted before going for raid and post-raid proceedings were conducted after bringing the two persons to Anti-Corruption Branch.

23. Moreover, it is not established on record as to who recovered the amount from Harish as Inspector B.S. Yadav has deposed that on his instructions, *panch* witness recovered the GC notes from pocket of shirt of the accused Harish, however, testimony of *panch* witness is completely silent in this regard.

24. Lastly, it was suggested to the complainant in cross-examination that Raj Kumar is bad character of Sabji Mandi and is involved in 11 cases of Police Station Subzi Mandi and Bara Hindu Rao and has also dragged 2-3 other officials in the same fashion. Although no concrete evidence was led by the appellant, however, now he has placed on record information received under Right to Information Act for showing that Raj Kumar was involved in as many as 14 cases.

25. It is settled principle of criminal jurisprudence that the burden of proving the guilt of the accused beyond reasonable doubt is upon the prosecution and as stated above, the burden to displace the statutory

presumption raised under Section 20 of the Act would rest on the accused only after his foundational facts have been established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence has to be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused person. (*Vide: Ram Prakash Arora v. The State of Punjab*, AIR 1973 SC 498; *T. Subramanian v. The State of T.N.*, AIR 2006 SC 836; *State of Kerala and Anr. v. C.P. Rao*, (2011) 6 SCC 450 and *Mukut Bihari and Anr. v. State of Rajasthan*, (2012) 11 SCC 642); *State of Punjab vs. Madan Mohan Lal Verma* (supra)

26. The testimony of the complainant regarding the demand of Rs.100/- on 5th May, 2005 in the presence of Raj Kumar does not find corroboration from any independent source as despite the fact that Raj Kumar was examined as a witness he did not depose so. Similarly, keeping the mobile phone of Raj Kumar on 5th May, 2005 by the appellant is highly suspicious in view of the testimony of PW13 who had handed over the mobile to Raj Kumar on 6th May, 2005 only. Therefore, question of Raj Kumar handing over his mobile on 5th May, 2005 to this appellant does not arise. In view of the aforesaid discussion, the prosecution has not been able to prove the guilt of the accused beyond shadow of reasonable doubt. That being so, even this appellant deserves the benefit of doubt. Accordingly, he is also acquitted of the offence alleged against him.

27. The result of the aforesaid discussion is that both the appeals succeed. Conviction and sentence are set aside.

28. The sentence of appellants was suspended vide order dated 2nd February, 2012, on furnishing surety bond, bail bonds are cancelled and sureties stand discharged.

Pending applications, if any, also stand disposed of.

Trial court record be sent back forthwith.

(SUNITA GUPTA)
JUDGE

APRIL 06, 2016
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