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

**Criminal Appeal No.S-535-SB of 2004 (O&M)
Date of Decision: November 15, 2017**

Jeet Singh

..........APPELLANT(s).

VERSUS

Central Bureau of Investigation

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Akshay Bhan, Senior Advocate with
Mr. Harparteek Singh Sandhu, Advocate
for the appellant (s).

Mr. S.S. Sandhu, Advocate
for respondent-CBI.

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SURINDER GUPTA, J.

This is appeal against the judgment of conviction and order of sentence both dated 31.01.2004 passed by Special Judge, CBI, Punjab at Patiala, whereby the appellant was convicted for the offence under Sections 7 and 13 (1) (d) punishable under Section 13(2) of Prevention of Corruption Act, 1988 (for short-P.C. Act) and sentenced as follows:-

Sr. No.	Under Section	Sentence.
1.	7 of P.C. Act.	Rigorous imprisonment for two years and to pay a fine of ₹1000/- in default of payment of fine to further undergo rigorous imprisonment for three months.
2.	13(1)(d) punishable u/s 13(2) of P.C. Act.	Rigorous imprisonment for two years and to pay a fine of ₹1000/- in default of payment of fine to further undergo rigorous imprisonment for three months.

Case of the prosecution, in brief, is that appellant Jeet Singh was working as mechanic in Telecom Department, Moonak, District Sangrur. Complainant Jagtar Singh son of Charan Singh (PW1) moved an application for installation of CCB (Coin Collection Box) and was apprised by Jarnail Singh, J.T.O. that the same has been approved and for installation of CCB connection, he should meet Jeet Singh appellant, who was posted as Phone Mechanic. Complainant approached the appellant, who initially had been dilly-dallying and later on demanded ₹500/- for installation of CCB connection. Detailing his demand, he told the complainant that in normal course, they take ₹300/- and ₹200/- was required for labour charges for installing the pole. The complainant, then met his friend Nachhattar Singh (PW2) and apprised him of the demand made by the appellant, who advised him to contact Deputy Superintendent of Police, Vigilance Bureau, Sangrur. On 06.10.2000, complainant went to the office of DSP, Vigilance Bureau, Sangrur, where his statement Ex.PW1/A was recorded. DSP Gurmukh Singh made endorsement Ex.PW9/1 on this statement and sent the same to Police Station Vigilance Bureau, Patiala for registration of FIR. A raid was planned and ASI Kewal Singh was deputed to call one Gazetted Officer and one non-gazetted officer. He called Gurmail Singh, Dairy Development Officer and Bal Kishan Inspector, Municipal Council, Sangrur and both were apprised about the fact of the case. Complainant handed over five currency notes of denomination of ₹100/- each to DSP Gurmukh Singh, which were treated with P.powder and handed over to Jagtar Singh. He was directed to hand over the tainted money to Jeet Singh on his demand for bribe and a handing over memo Ex.PW1/B was prepared. The demonstration of reaction of P.powder in the solution of sodium carbonate was also shown to the witnesses and demonstration memo Ex.PW1/G was prepared. Nachhattar Singh was deputed to act as shadow witness and was directed to accompany Jagtar Singh, to hear the conversation between him and Jeet Singh and to flash a signal on payment of bribe money to Jeet Singh by putting his right hand over his head. On reaching Moonak with raiding party, Jagtar Singh and Nachhattar Singh were sent inside the building of telephone exchange while remaining members of the raiding party remained outside at scattered places.

On reaching the telephone exchange, complainant could not find Jeet Singh and was told by Jagdev Singh security guard that he might have gone to attend some complaint. On a telephone call made by Jagdev Singh, Jeet Singh came to the telephone exchange. The complainant took him aside and as settled, handed over tainted money to him, which was counted by the appellant and put in rear pocket of his pant. Nachhattar Singh flashed the settled signal at which raiding party rushed inside the telephone exchange. Appellant was directed to remain sitting on the chair. On seeing the raiding party, he took the tainted money and put it in the drawer of his table. The hands of the appellant were washed in a solution of sodium carbonate and colour of which turned pink. The solution was poured in a nip (Ex.P6) and was sealed with seal bearing impression 'BS'. Hand wash memo Ex.PW1/E was prepared. The appellant took out the tainted currency notes from the drawer of his table which were taken into possession vide recovery memo Ex.PW1/C. Serial numbers of the recovered currency notes were tallied with serial numbers mentioned in handing over memo. Appellant was asked to remove his pants and rear pocket of the pants was washed in a clear solution of sodium carbonate, colour of which turned pink. The pink solution was poured in the nip Ex.P7 and sealed with seal bearing impression 'BS'. A separate parcel of the pant (Ex.P8) was prepared and sealed with same seal impression. Pocket wash memo Ex.PW1/D was also prepared. Personal search of the appellant was conducted vide personal search memo Ex.PW1/F and he was arrested. House of the appellant was also searched but nothing incriminating was recovered. The investigation of the case was later on entrusted to ASI Dharamdev Negi PW11, who after receipt of the report of FSL (Ex.PW11/2) and sanction for prosecution of the appellant-accused, submitted the final report in the Court.

Finding a prima facie case, charge for the offence under Section 7 and 13(1)(d) punishable under Section 13(2) of P.C. Act, was framed against the appellant-accused to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined complainant Jagtar Singh as PW1, Nachhattar Singh as PW2, Gurmail Singh Chahal as PW3, Bal Krishan as PW4, Deep Chand as PW5, Constable Gora Lal as PW6, Jagdev Singh as PW7, Amarjit Bangarh as PW8, DSP Gurmukh Singh as PW9, Head Constable Rajinder Singh as PW10 and SI Dharam Dev Negi as PW11.

On completion of prosecution evidence, statement of appellant as required under Section 313 Code of Criminal Procedure was recorded, wherein he denied the allegations of the prosecution and pleaded his false implication. He stated in his defence as follows:-

> “I am innocent and has (sic have) been falsely involved in this case. I had no occasion to demand and accept the

> illegal gratification from the complainant. The connection of Jagtar Singh had to be installed by private contractor. On 13.10.2000 complainant Jagtar Singh had been informed through a letter by the deptt. that as he has not brought any machine so his connection has been kept pending and same will be installed after he will bring the Machine. I have been falsely involved in this case due to the reason that nephew of shadow witness Nachattar Singh was working on temporary basis in the Telephone Exchange. He had quarrelled with me after consuming liquor regarding which I made complaint against him to superior Officers of the Deptt. of Union Secretary. Due to this he was nursing grudge against me and at his instance Jagtar Singh and Nachhattar Singh have falsely implicated me in this case. No recovery was effected from me. When Jagtar Singh met me in the office, he shook hands with me and then immediately police officials grabbed me and took me to the Vigilance Bureau Office."

To substantiate his defence, the appellant examined Jagmail Singh JTO as DW1 and S.P. Chopra, SDO Telephones as DW2.

Learned Special Judge, CBI, Punjab at Patiala vide his judgment dated 30.01.2004 held the charges against appellant for the offence under Sections 7 and 13(1)(d) punishable under Section 13(2) of P.C. Act duly proved and convicted and sentenced him as detailed in opening para of this judgment.

Learned counsel for the appellant has argued that the trial Court while convicting the appellant, has not formed any point for determination on the issue as to whether sanction for prosecution of the appellant was legal and valid. The sanction given in this case do not reflect the application of mind and was just a reproduction of the facts mentioned in the FIR. Amarjit Bangarh Divisional Manager, who had given sanction for prosecution of the appellant, while appearing as PW8 has stated that CCB connection cannot be installed in the residential locality. He had not made any independent inquiry except going through the police file with regard to the motive of the appellant to demand bribe. Jagtar Singh complainant, who appeared as PW1 has stated that he handed over the tainted currency to the appellant without his demand which show that the tainted currency was planted on the appellant and he was falsely implicated. PCO was not allotted in the name of complainant, who while appearing as PW1 has admitted that this PCO was allotted in the name of Harminder Singh. When the PCO was not allotted in the name of complainant , he has no reason to seek the installation of CCB connection. Shadow witness Nachhattar Singh at the time of alleged handing over of bribe money was at a distance of 15 feet which is a good distance and it was not possible for the shadow witness to over-hear what the complainant was talking with the appellant. The complainant (PW1) also stated that he had not given any signal to Nachhattar Singh, while Nachhattar Singh (PW2) stated that complainant gave signal to him thereafter, he flashed signal to the raiding party. This contradiction in their statements show that the testimony of complainant as well as shadow witness is not trustworthy. The appellant was posted as telephone mechanic, whose job was to rectify the mechanical defects and not to install CCB/PCOs. The job of installation was entrusted to the private contractors. DW2 S.P. Chopra, Sub Divisional Engineer (Commercial) has stated that lineman of the department had no role in installing of CCB/PCOs and the

JTO gets this work done from lineman and work contractor engaged by the department. The appellant could be at the most called for repair of installed CCB/PCO and not for installing the same. PW2 Nachhattar Singh shadow witness is an interesting witness. He stated that his nephew Mithu Singh, who is also working at telephone exchange, Moonak, is on friendly terms with Jagtar Singh and for that reason, he knew Jagtar Singh for the last so many years and Jagtar Singh had brought him from Chotiyan on scooter on the day of trap. All the above facts show that appellant has been falsely implicated in this case. The basic ingredients of demand of bribe money and handing over the same to the appellant on demand, have not been duly proved. In support of his contention, he has placed reliance on ***State of Punjab Vs. Madan Mohan Lal Verma 2013(14) SCC 153, Jagat Ram Vs. Central Bureau of Investigation (CRA-S-1192-SB-2002 decided on 10.05.2017) and order dated 08.12.2016 passed in CRA-S-2099-SB-2003 Jagdish Singh Vs. Central Bureau of Investigation.***

Learned counsel for CBI has argued that the complainant had no motive for false implication of the appellant. He being aggrieved due to non-installation of CCB connection, had been approaching the appellant, who had initially put him off on one pretext or the other and then demanded bribe of ₹500/- for installation of CCB. The testimony of complainant is supported by shadow witness and independent witness of recovery. The demand of bribe, its acceptance and then recovery of bribe money from the possession of appellant is duly proved. Neither of the prosecution witnesses has any animus against the appellant for his false implication. The citations referred by learned counsel for the appellant have no application to the facts of the present case. The prosecution has been able to prove that the appellant was a public servant. He solicited and received illegal gratification as reward for doing an official act. In the case in hand, the appellant has not disputed his posting as Phone Mechanic at Telephone Exchange, Moonak. Though, he has tried to make out that it was not his duty to install the CCB connection but it is proved from the statement of DW2 S.P. Chopra, SDO (Telephones) that JTO gets the work of installation executed from Lineman and Work Contractor engaged by the Department. The JTO energises the telephone from the exchange and the Telephone Mechanic or Lineman looks after this process at the place on installation. This shows that appellant had role in installation of CCB connection and motive to demand and accept the bribe. The judgment of the trial Court is based on appreciation of evidence on record and suffers from no legal or factual infirmity, calling for interference in this appeal.

I have given careful thought to the submissions of learned counsel for the parties.

The law on the issue is well settled that the demand of illegal gratification is sine-qua-non for constituting an offence under the P.C. Act. Section 7 of P.C. Act bars the public servant from taking gratification other than legal remuneration. To establish offence under this Section, it must be proved that :-

(i) The accused was a public servant or expected to be a public servant at the time when the offence was committed.

(ii) The accused accepted or obtained or agreed to accept or attempted to obtain illegal gratification from some person.

(iii) for himself or for any other person.

(iv) Such gratification was not a remuneration to which the accused was legally entitled.

(v) The accused accepted such gratification as a motive or reward for,

(a) doing or forbearing to do an official act, or

(b) doing or forbearing to show favour or disfavour to someone in the exercise of this official functions, or

(c) rendering or attempting to render any service or disservice to some one with the Central or any State Government or Parliament of the Legislature of any State, of with any local authority, Corporation or Government company referred to in Sec. 2 Cl.(c) or with any public servant, whether named or otherwise."

It is not disputed that the appellant was a public servant at the relevant time. In order to prove that the appellant had demanded illegal gratification, prosecution examined complainant as PW1, who has stated that after the approval of CCB connection, he contacted appellant for its installation, who demanded bribe of ₹500/- and elucidated his demand by telling the complainant that they usually take ₹300/- but ₹200/- was required for labour work for installing the pole. At the time of trap, complainant gave ₹500/- to the appellant as per the settlement, who counted the tainted money in the presence of complainant and put the same in the rear pocket of his pant. After the appellant had put the tainted money in the rear pocket of his pant, PW2 Nachhattar Singh-shadow witness gave signal to the raiding party. On seeing the raiding party, the appellant took out the tainted money from his pocket and put the same in the drawer of his table from where it was recovered.

In order to prove the recovery of tainted money from the drawer of the table in the office of appellant, the prosecution examined complainant as PW1, Nachhattar Singh shadow witness as PW2, Gurmail Singh as PW3, Balkishan as PW4 and DSP Gurmukh Singh, who was heading the raiding party as PW9. The statements of the witnesses i.e. Nachhattar Singh PW2, Gurmail Singh PW3 and Balkishan PW4 so far as the recovery of ₹500/- from the drawer of the table in the office of appellant is concerned, is unblemished and has been rightly relied upon by learned trial Court. While appraising the evidence, learned trial court tested the evidence on three parameters, which find reference in para 16 of its judgment as follows:-

(i) The receiver must be a present or prospective public servant;

(ii) he must solicit or receive illegal gratification; and

(iii) It must have been received with a motive or reward for doing an official act.

The first and foremost point to be determine in this case is as to whether the prosecution has been able to prove the motive for demand of bribe money by the appellant. So far as the testimony of bribe giver i.e. complainant is concerned, the law is well settled that the same is to be scrutinised very carefully and require corroboration. The complainant is usually considered to be accomplice and independent corroboration of his testimony is sought for (if not as a matter of law, but at least as a matter of prudence).

In order to prove the demand of illegal gratification, which is sine-qua-non for constituting the offence under the provisions of P.C. Act., prosecution has heavily relied on the statement of PW1 Jagtar singh complainant, who has stated that accused had demanded ₹500/- for installation of CCB connection. Learned trial court relied on the statement of PW1 Jagtar Singh and PW2 Nachhattar Singh while reaching conclusion that demand of ₹500/- made by the appellant is proved from the fact that appellant had accepted ₹500/- from the complainant.

The entire version of the prosecution is based on the plea of complainant that the appellant had demanded ₹500/- as bribe for installation of CCB connection. The vital fact which call for consideration, but ignored by trial Court is as to whether on the day of demand or even on the day of trap, there was any reason or motive for the appellant to raise such demand. The prosecution has relied on an Advice Note issued by S.D.E. (Commercial) in the office of General Manager (Telephones), Sangrur, whereby S.D.E. (G). Lehragaga was asked to provide local CCB PCO at Moonak and there was a note on the Advice Note that the connection is to be provided with CCB instrument to be purchased by the complainant. To elucidate this fact, the prosecution has examined PW5 Deep Chand, who has stated that the cash coin box machine was to be purchased by the complainant and the appellant was to energise the connection. DW1 Jagmail Singh JTO Telecom, Telephone Exchange, Lehragaga has further elucidated this fact by placing on file a letter Ex.DW1/2 written by JTO (G), which reads as follows:-

> "It is for your kind information that I visited the sub premises, along with K.N. Singla, T.T.A. but there was found no CCP at the sub premises. I have already noticed him to purchase the CCB but he not purchased upto 13.10.2k. So, the CCB is not feasible. It is for your N/A, please."

This letter was written on 13.10.2000 i.e. much after the date of trap. Perusal of this letter shows that even upto 13.10.2000, the complainant had not purchased the CCB machine and the CCB connection could not be released to him. He has also placed on file letter dated 07.11.2000 written by the complainant, whereby, he intimated S.D.E. (Commercial), Sangrur that the order of release of CCB Local PCO have been returned to him, as he was not having CCB Local PCO box. Now, he had purchased Local PCO box, as such the order of release of connection be reissued. Here I revert to important and sole document relied upon by the prosecution i.e. Ex.PW5/2, which bear the date of 12.12.2000 and date of installation of connection as 15.11.2000 i.e. after the letter dated 07.11.2000 written by the complainant. This fact is not disputed that the complainant was required to purchase apparatus for CCB connection. The Investigation Officer has totally ignored this fact as to whether there is any substance in the allegation levelled by the complainant that the appellant was demanding ₹500/- for releasing CCB connection. He did not look into this aspect as to whether as per the terms of the Advice Note, complainant had purchased the apparatus of CCB connection. No receipt of the purchase of apparatus by the complainant or giving any intimation to the Telephone Department in this regard was procured during investigation. Complainant while appearing as PW1 has stated that he had purchased apparatus for CCB connection prior to the trap for ₹5200/- or ₹5300/-. He had not handed over the bill of the purchase of apparatus to the Investigating Officer. He was not aware of the shop from where this apparatus was purchased. He has stated that Jagmail Singh, JTO was apprised about the purchase of apparatus but said Jagmail Singh while appearing as DW1, has proved letter Ex.DW1/4 dated 07.11.2000 written by the complainant apprising him about the purchase of apparatus for CCB connection. He was no where suggested that the complainant had apprised him about the purchase of CCB apparatus prior to the trap. Investigating Officer DSP Gurmukh Singh is totally silent on this aspect and has nowhere stated that he verified about the fact that complainant had purchased the apparatus for the CCB connection before the trap and the same was ready for installation as per Advice Note Ex.PW5/2. The prosecution, as such, has totally failed to prove the motive for the appellant to demand the money. The prosecution has deliberately withheld the evidence as to when the apparatus for installation of CCB connection was purchased by the complainant. If he was having the bill in this regard, there was no reason for the prosecution to withhold the same.

The second important point which call for consideration is as to whether the prosecution has been able to prove the demand of ₹500/- by the appellant and that amount of ₹500/- was paid on his demand. In this regard, there is solitary statement of Jagtar Singh complainant who has stated that before the trap he contacted Jeet Singh appellant who asked for ₹500/- for installation of CCB connection. Thereafter, he reported this fact to CBI and a trap was arranged. From the testimony of Nachhattar Singh-shadow witness, it is apparent that he had not seen or heard any conversation between the complainant and the appellant regarding demand of ₹500/- or handing over the same by the complainant to the appellant. It will be relevant to have a note of his testimony when he appeared as PW2. He has stated that on reaching the Telephone Exchange with the raiding party, he remained outside the Telephone Exchange till the arrival of the appellant. On reaching the Telephone Exchange, appellant and complainant Jagtar Singh went inside the room while he was standing on the gate of Telephone

Exchange. Jagtar Singh was facing towards him and appellant was having back towards him and both were at a distance of about 20 karam (more than 100 feets) from him. He had not given the signal to the raiding party on seeing the money paid to the accused but had first received the signal from the complainant and then flashed signal to the raiding party. This shows that he had not seen anything transpiring between the complainant and appellant. Even after giving signal, he remained present at the gate of Telephone Exchange while the other members of the raiding party went inside. He had gone inside the Telephone Exchange later on. To the contrary, the complainant had nowhere stated that he had given any signal to Nachhattar Singh and on receiving his signal Nachhattar Singh flashed signal to the raiding party. Prosecution has also examined PW7 Jagdev Singh, Security Guard, who has stated that on 06.10.2000, complainant came to Telephone Exchange and inquired about the appellant, who had gone out to repair some fault. When the appellant came to the Telephone Exchange, complainant took him out of the office. After few minutes Jeet Singh came running in the office and followed by two or three persons in civil dress. He stopped those persons, who were following the appellant and in the meanwhile DSP came there and gave his introduction. He asked him to go from the spot. The DSP and other members of the team did some writing work for two hours and then left with the appellant. He also stated that the complainant was alone when he came to the Telephone Exchange and this rule out the presence of Nachhattar Singh near the place of occurrence as shadow witness.

On perusal of testimony of complainant as well as shadow witness Nachhattar Singh, it is clear that neither the complainant nor shadow witness have stated that bribe of ₹500/- was given to the appellant on demand. Complainant has stated that on arrival of Jeet Singh at the Telephone Exchange, he took him aside and handed over the tainted money . The appellant counted the same and put it in the rear pocket of his pant. Nachhattar Singh PW2 was outside the Telephone Exchange and had not over heard any conversation between the complainant and the appellant.

Now the prosecution is left with only statement of complainant that demand of bribe was made before matter was reported and trap was laid and recovery of ₹500/- from the drawer of the table in the office of appellant and evidence regarding wash of hand and pocket of pant of the appellant.

Hon'ble Apex Court in case of ***State of Punjab Vs. Madan Mohan Lal Verma (supra),*** has observed as follows:-

> "7. The law on the issue is well settled 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 the amount by the 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."

In case of ***Krishan Chander Vs. State of Delhi 2016(3) SCC 108***, the accused had thrown the tainted money on the ground which was picked up by shadow witness. These facts find mention in para 11 of the judgment, which read as follows:-

> "11. Anoop Kumar Verma informed the raiding team

that the appellant had demanded and accepted the bribe money of Rs.1000/- from the complainant-Jai Bhagwan. Inspector Sunder Dev introduced himself as Inspector from Anti Corruption Branch to the appellant upon which he immediately took out the tainted GC notes from the pocket of his shirt with his left hand and threw the same on the ground. The said GC notes were then picked up from the ground by panch witness-Anoop Kumar Verma on the instructions of Inspector-Sunder Dev. The serial numbers of the recovered GC notes were matched with those noted in the pre-raid proceedings. The wash of right and left hand of the appellant as well as the wash of left pocket of his shirt was taken in colorless solution of sodium carbonate which turned pink. The solution was transferred into clean glass bottles which were sealed and labeled. Thereafter, the appellant was arrested and FIR No. 36 of 2004 was registered against him for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the PC Act."

In that case, Hon'ble Apex Court on appraisal of evidence on record, has observed in para 33 and 34 as follows:-

"33. After a careful reading of the evidence of the complainant-Jai Bhagwan (PW- 2), statements made by the appellant in his examination under Section 313 of Cr.P.C. as well as the evidence of Anoop Kumar Verma (PW-6) and inspector-Sunder Dev (PW-12), it is clear that there was no demand of bribe money by the appellant from the complainant-Jai Bhagwan.

34. It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in the case of ***B.***

Jayaraj (supra), ***A. Subair (supra)*** and ***P. Satyanarayana Murthy (supra)*** upon which reliance is rightly placed by the learned senior counsel on behalf of the appellant. The relevant paragraph 7 from ***B. Jayaraj case (supra)*** reads thus:

> *"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in* ***C.M. Sharma v. State of A.P.*** *and* ***C.M. Girish Babu v. CBI."*** *(emphasis supplied)*

In the case of ***P. Satyanarayana Murthy (supra)***, it was held by this Court as under:

> *"21. In* ***State of Kerala and another vs. C.P. Rao****, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained. 22. 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*** *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. 23. 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 therefore, 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.*** *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." (emphasis supplied)*

> 34. Further, in the case of ***Satvir Singh v. State of Delhi, 2014(4) R.C.R. (Criminal) 40***, this Court has held thus:
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> > *"34. This Court, in* ***K.S. Panduranga*** *case has held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent to constitute an offence, the relevant paragraph in this regard from the abovesaid decision is extracted hereunder: (SCC pp. 740-41, para 39)"*

The appeal filed by the convict was allowed and he was ordered to be acquitted.

In the case of ***Rakesh Kapoor Vs. State of Himachal Pradesh 2012 (13) SCC 552***, the complainant has alleged that the demand of bribe was made to him over the mobile phone. The Investigating Officer had not taken the call details to corroborate the statement of complainant and shadow witness, who has stated that he had overheard the complainant saying that he had brought the money. Hon'ble Apex Court observed that the demand and acceptance was not duly proved.

The appellant in this case is a government employee and the allegation against him is that he had sought bribe from the complainant. 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 case, 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.

In view of the above settled law, the trial Court fell in grave error while concluding that demand of bribe is duly proved, on the basis of uncorroborative statement of complainant. Shadow witness Nachhattar Singh has not stated any word on this issue. Sole testimony of complainant as per observation in case of ***State of Punjab Vs. Madan Mohan Lal Verma (supra)*** is not reliable.

There is another discrepancy in the testimony of complainant and shadow witness. Complainant has stated that he had been telling Nachhattar Singh about the demand of bribe money by the appellant about 15 days prior to the date of trap. While Nachhattar Singh PW2 has stated that complainant told him about the demand made by the appellant for the first time on the day of trap. On that day, complainant had brought him from village Chotian on his scooter. The appellant in his statement under Section 313 Cr.P.C. has stated that he had no occasion to demand or accept illegal gratification from the complainant as the CCB connection was to be installed by the private contractor and the complainant had not purchased CCB connection apparatus. On 13.10.2000, complainant was informed through a letter that he had not bought the required apparatus so his connection is to be kept pending till he purchased the machine. He has, however, denied the recovery of money from him and has stated that Jagtar Singh shook hands with him in his office and immediately officials of raiding party grabbed him and took him to the Vigilance Bureau Office.

Learned counsel for CBI has argued that as per the provisions of Section 20 of P.C. Act, the burden is on the accused (appellant) to explain the recovery of tainted money which the appellant had utterly failed to prove in this case. Section 20 of P.C. Act comes into operation in this case if the prosecution had proved beyond shadow of doubt the motive and demand of illegal gratification by the appellant. As already discussed, the prosecution utterly failed on this two counts, as such, the conviction of the appellant cannot be recorded on the sole fact that he had failed to explain the recovery of tainted money from his possession.

The submission of learned counsel for the appellant regarding non-application of mind while granting sanction of prosecution carries no weight. Amarjit Singh Bangarh, Divisional Engineer (Telecom), who gave sanction (Ex.PW8/1), stated that he had gone through the relevant record and passed sanction order Ex.PW8/1 after application of mind. The sanction order (Ex.PW8/1) is also a detailed order which shows application of mind by the authority while granting sanction of prosecution, as such, this submission of learned counsel for the appellant is discarded.

As a sequel of my above discussion, I am of the considered opinion that prosecution has utterly failed to prove the ingredients to constitute the offence punishable under Sections 7 and 13(1)(d) of P.C. Act.

Giving the benefit of doubt, the appellant deserves to be acquitted. Consequently, this appeal is accepted. Judgement of conviction and order of sentence passed by learned Trial Court are set aside and the appellant is ordered to be acquitted of the charge framed against him.

(SURINDER GUPTA)
JUDGE

November 15, 2017
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No