IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.S-2196-SB of 2005 (O&M)
Date of Decision: November 16, 2017

Amar Nath

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

VERSUS

State (C.B.I.)

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

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Sudhir Sharma, 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 17.11.2005 passed by Special Judge, CBI, Chandigarh, whereby the appellant was convicted for the offence punishable under Sections 7 and 13 (1) (d) read with 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 six months 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) read with S. 13(2) of P.C. Act.	Rigorous imprisonment for one year 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 complainant Gian

Chand was running a shop at Mauli Jagran, Chandigarh, where he had a telephone connection No.550446, which was disconnected in the year 1999 due to non-payment of bill. Complainant deposited outstanding bill and penalty in the month of January and February, 2000 but his telephone was not restored. He went to Telephone Exchange, Manimajra and contacted the appellant, who asked him to come on the next date. On his asking, he visited him twice in the month of April, 2000. The appellant told him that to get his telephone connection restored, the complainant will have to pay ₹200/- as bribe. Complainant apprised the appellant that he did not have ₹200/- in his pocket at that point of time, at which appellant asked him to come at 4.00 p.m. on the same day. As the complainant was not willing to pay any bribe, he made complaint (Ex.PA) to CBI. From the office of CBI in the presence of an Inspector, complainant rang up the appellant, who again asked him to pay ₹200/- for restoration of his telephone connection.

On the direction of Superintendent of Police, CBI, Chandigarh, a team of CBI Officers was constituted to conduct the raid which comprised of Inspector M.L. Kaushal, Inspector Hawa Singh, Sh. M.K.Tiwari, SI Parveen Dubey, Constables Kishori Lal and Dharam Pal. Two employees from FCI i.e. S.K. Sharma and Devinder Khosla were also associated with the team. The complainant gave two currency notes of denomination of ₹100/- each to M.L. Kaushal, who treated the same with P-powder. Demonstration of reaction of Sodium Carbonate with P-powder was shown to the entire raiding team. Currency notes after recording their serial numbers were handed over to complainant with direction to give the same to the appellant on demand. A pre-trap memo to this effect Ex.PB was prepared. Surinder Kumar Sharma (PW3) was deputed as shadow witness with direction to accompany the complainant to hear the conversion regarding demand of bribe by the appellant and to give pre-appointed signal on the payment of bribe money to the appellant. Before leaving the CBI Office, the entire team was searched to ensure that nothing incriminating remained with any member of the team. Hands of all the members of the team were washed with soap and water and complainant was asked to greet the appellant from a distance with '*Namaskar*' and not to shake hands with him. They departed from CBI Office in two Government vehicles and reached Telephone Exchange, Manimajra. Both vehicles were stopped at a distance of 200-250 yards from telephone exchange. Complainant and shadow witness went inside the telephone exchange and remaining members of the raiding party in the guise of general public went near the exchange one by one. At about 4.00 p.m., shadow witness came out of the room of appellant and gave pre-pointed signal at which Inspector M.L. Kaushal along with his team rushed towards the room of the appellant. Inspector Hawa Singh gave his introduction to the appellant and asked as to whether he had accepted the bribe. The appellant became nervous and admitted that he had committed the mistake. He was caught by Inspector M.L. Kaushal by holding his right hand wrist while Constable Dharam Pal caught his left hand wrist. Solution of sodium carbonate was prepared and fingers of right hand of appellant were dipped in the solution at which the solution turned pink. It was put in a quarter bottle (Ex.P4) and sealed with CBI seal. In another glass, solution of sodium carbonate was prepared and left hand fingers of appellant were dipped at which solution turned pink.

The same was put in another quarter bottle (Ex.P5) and sealed with same seal. With the help of independent witness Devinder Khosla, personal search of the appellant was conducted and two currency notes of the denomination of ₹100/- each were recovered from the right hand side pocket of his pants. Serial numbers of the recovered currency notes were tallied with serial numbers mentioned in pre-trap memo (Ex.PB). After arranging a new pair of pants for the appellant, he was asked to remove his pants. Fresh solution of sodium carbonate was prepared in a glass and right side pocket of the pants, from which bribe money was recovered, was taken out and dipped in the solution, which turned pink. The same was poured in quarter bottle Ex.P6 and sealed. On further search of appellant, his identity card issued by DOT was recovered. All the above articles including the quarter bottles were taken into possession vide post-trap memo Ex.PC. The appellant was arrested and intimation was given to his relatives and superiors.

After completion of investigation and obtaining sanction for prosecution of the appellant-accused, final report was presented 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.

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. I have been falsely implicated because it was not my duty to restore the telephone connection of the complainant and I was working in the non-technical staff and to restore the telephone connection is the duty of technical staff."

In order to substantiate his defence, the appellant examined Om Parkash SDE as DW1.

Learned Special Judge, CBI, Chandigarh vide his judgment dated 17.11.2005 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 demand of illegal gratification is sine-qua-non for constituting offence under P.C. Act. In this case, learned trial Court has relied on the sole testimony of complainant regarding the demand of bribe money which find no corroboration. The shadow witness has nowhere stated that amount of ₹200/- was paid to the appellant on demand. The complainant was not even sure as to who was shadow witness with him. Somewhere he said that PW2 Devinder Khosla had accompanied him as shadow witness while at other places, he refers Surinder Kumar Sharma PW3 as shadow witness. Complainant while appearing as PW1 has stated that tainted money was paid to the appellant on demand while the shadow witness PW3 Surinder Kumar Sharma had not heard any conversation between the complainant and the appellant. He has stated that complainant Gian Chand entered the office of accused before him. Accused received amount of ₹200/- from complainant Gian Chand and then he along with Gian Chand came out and flashed signal. The other witnesses examined by the prosecution are witnesses of recovery and they do not prove the demand of bribe money by the appellant. The complaint on the basis of which FIR was recorded, was scribed by the complainant on the dictation of Investigating Officer M.L. Kaushal PW8. As per case of the prosecution, bribe money was demanded by the appellant for restoration of telephone connection of the complainant. The prosecution has collected no evidence to prove that it was job of the appellant to restore the telephone connection. The mere facts that jumper slip and advice note were recovered from the drawer of the table of appellant in the office, cannot be taken as proof of the fact that appellant had any role in getting the telephone connection of the complainant restored. In his complaint to CBI or even in his statement, complainant is silent about the date when the first demand was made. In support of his contention, he has relied on ***Suraj Mal Vs. State (Delhi Administration) 1979 (4) SCC 725; Amrik Singh Vs. State of Punjab 2005(4) R.C.R. (Criminal) 310; State of Punjab Vs. Kushal Singh Pathania 2004(4) R.C.R. (Criminal) 498; Satinder Kumar Vs. State of Punjab 2006(3) R.C.R. (Criminal) 12.***

Learned counsel representing CBI has argued that the complainant had no animus to falsely implicate the appellant. He is a businessman and required telephone for smooth running of his business. In order to get his telephone connection restored, he had paid the penalty as well as previous bills. Despite the advice note and jumper slip issued by the department, telephone of the appellant was not being restored and he was asked to contact the appellant, who had kept the advice note and jumper slip in his drawer. The complainant appears to have fumbled while describing the name of shadow witness. Firstly, he stated that Mr. Khosla was shadow witness with him and then rectified by stating that Mr. Sharma was the shadow witness. Though in the later part of his statement, he referred Mr. Khosla as shadow witness but in fact shadow witness was Surinder Kumar Sharma, who has appeared as PW3 and fully supported the prosecution case. The complainant has stated that bribe money was paid to the appellant on demand and there is no reason to disbelieve his statement. Though the shadow witness has not stated anything about conversation between the complainant and the appellant or the demand of bribe money by him but his statement that appellant received the bribe money in his presence and put it into his pocket, corroborate the testimony of complainant and proves that appellant had received the bribe money on demand. Even before conducting the raid, the factum of demand was verified by the Investigating Officer when he asked the complainant to make a call to appellant and in telephonic conversation also, he demanded the bribe money. Learned trial Court on appraisal of evidence on record, has rightly convicted the appellant and judgment of the trial Court call for no interference in this appeal.

In order to prove motive for demand of bribe by appellant, actual demand and receipt of bribe money, prosecution has examined complainant Gian Chand as PW1, official witnesses in the raiding party Devinder Khosla PW2, shadow witness Surinder Kumar Sharma as PW3 and Devinder Singh SDO, who was present on his duty in Telephone Exchange, Manimajra at the time of raid as PW4. Devinder Singh (SDO) has stated that on the day of trap, he was sitting in JTO cabin when the appellant was caught red handed while demanding a sum of ₹200/-. All the formalities of hand-wash, pocket wash and recovery of bribe money were conducted in his presence. He has also given details of the manner in which a disconnected telephone connection is restored. Besides these witnesses, prosecution has relied on testimony of Investigating Officer M.L. Kaushal PW8, who was heading the raiding party.

Complainant Gian Chand while appearing as PW1 has reiterated the version given by him in his complaint. He has stated that the appellant demanded bribe of ₹200/- for restoration of his telephone connection. He reported the matter to CBI vide complaint Ex.PA, where a trap was planned. As per directions of Investigating Officer, he along with shadow witness went to the office of appellant and had a talk with him. On demand, he handed over tainted money i.e. ₹200/- to the appellant, who put the same in the right side pocket of his pant. Thereafter, shadow witness gave signal to the raiding party and the appellant was apprehended. The tainted currency of ₹200/- was recovered from the right side pocket of his pant. Shadow witness Surinder Kumar Sharma PW3 has stated that he was deputed by his office to accompany the raiding party. Investigating Officer M.L. Kaushal asked him to accompany complainant as shadow witness to telephone exchange, Manimajra and to give a signal when the appellant accept the bribe money. He along with complainant went to the office of accused. Gian Chand entered the office before him. On receipt of amount of ₹200/- by the appellant from the complainant, he gave signal to the raiding party.

PW2 Devinder Khosla is official witness who was in the raiding party and stated that after apprehending appellant, he had taken out the tainted money from the right side pocket of pants worn by the accused and the remaining proceedings of dipping the fingers and right side pocket of the pants of the appellant in the solution of sodium carbonate was conducted at the spot.

Devinder Singh SDO (PW4) was present in the telephone exchange on the day and was sitting in the JTO cabin. He deposed that a trap was laid in the OCS Section and accused Amar Nath was caught red handed while demanding a sum of ₹200/-. All the formalities, hand-wash, pocket wash, recovery of bribe money were also completed in his presence. Being an official of BSNL, he had also stated the procedure for restoration of the telephone connection as follows:-

> "Regarding procedure of restoration of telephone connection I have to state that first of all when any party will not pay the telephone bill in time then telephone revenue account (TRA Section), Sector 17-D, Chandigarh will issue instructions to OCS opening and closing section to disconnect the concerned telephone connection. Before this department will allow incoming calls for 15 days and outgoing calls will not be allowed. If the subscriber deposits the bill in time within 15 days, then it will continue with written order from TRA section. If the subscriber will not deposit bill within 3 months, then TRA Section will give written order for its restoration after receiving the bill and installation charges with fine etc. If the period exceeds three months and subscriber did not pay the bill after three months then TRA section will write a letter to Commercial Officer for restoration of the said telephone connection after completing all the formalities i.e. recovery of bill,

fine etc. Then commercial officer will issue advice note in three copies one for their record, second to SDO Phone for concerned area and third copy to SDE Maintenance. After that all concerned received the said advice note in their record. SDO will direct his JTO for execution of work as per the advice note. After that JTO will enter the advice note in his record and will give it to the concerned area line man. Line man will give a vertical to the JTO. JTO will issue a jumper slip to the MD(F) main distribution frame. MDF section will check the line to the subscriber office/shop/residence. **If the line is ok, then the jumper slip will be given to the OCS section of the concerned exchange. If jumper/line is faulty, then this jumper will be sent back to the JTO with remarks. JTO will again put the jumper to OCS for correcting the line. After that OCS section will check his office record and will give remarks for restoration of telephone number. This jumper slip with OCS remarks will be sent to main telephone exchange, Sector-17, Chandigarh, for necessary action. Main exchange, Sector-17, Chandigarh will restore the telephone number with proper remarks i.e. N.E. No./LL No.** After execution of the process from the main exchange, one copy will remain with main exchange, and **second copy of the jumper will be sent to OCS section, Manimajra for their office record. OCS Section will give the written instructions to MDF section, Manimajra to done the jumper.** MDF will do it accordingly and the telephone number will start work. After restoration of the telephone number MDF section will check it from the subscriber through telephone call and confirm its address and telephone number."

This witness has stated that Gian Chand was having telephone No.550446 issued from Old Telephone Exchange, Panchkula. All the telephone numbers of Old Exchange, Manimajra/Panchkula were transferred to New Telephone Exchange near Modern Housing Complex, Manimajra. As the telephone No.550446 had been disconnected, it was not transferred to New Telephone Exchange. Commercial Officer, Sector 17, BSNL had written new number 730446 from New Exchange, Manimajra without confirming its area transfer. This number could start functioning if transferred to New Telephone Exchange, Manimajra. JTO Gopal Krishan Jaggi of Main Telephone Exchange had written an objection on 10.04.2000 that "DN" (Directory Number) is not changed in area transfer so the jumper relates to Old Exchange, Manimajra. Objection dated 10.04.2000 by JTO Mr. Jaggi was supposed to be placed before JTO, Manimajra for correction of the said remarks, which was not done by OCS Section. Though this witness was present at the time of completing all the formalities after raid, he has categorically stated that neither the demand of bribe money was raised nor the bribe money was given to the appellant in his presence.

Gopal Krishan Jaggi, PW5 was posted as JTO, Switch Room, Fetex Unite-II, Sector-17, Chandigarh. On that day, he had written a note that Directory number is not changed in the area transfer, so the jumper issued in this case relate to old exchange Manimajra. His note is Ex.PE, which reads as follows:-

> "DN is not changed in Area Tfr, so this jumper relates to
> Old Exch. Manimajra."

Manmohan Khullar, SDE Fetex Unite-II, Sector-17, Chandigarh appeared as PW6 and has proved posting of appellant at the relevant point of time at Manimajra and his joining report as Ex.PH. He has stated that employees working at Manimajra Exchange with the post of TO/Clerk had to get a telephone activated after receiving order from SDO and send the same to concerned exchange for activation, which was to be done from Sector-17, Exchange. However, in case of any objection, the same is sent to OCS, Manimajra for further information to the concerned SDO.

PW7 Kiran Kumar Sharma was posted as JTO, Indoor Telephone Exchange, Manimajra, in the year 2000. He was, however, on leave on the day of raid i.e. 12.04.2000.

PW8 M.L. Kaushal is the Investigating Officer of the case, who constituted the trap team and supervised it.

PW9 C.S. Kataria, DGM approved the sanction for prosecution of appellant.

PW10 Subhash Sen, who was posted as Inspector CBI, ACB Chandigarh during the period from 13.12.1999 to 28.11.2002 appeared as PW10. He had partly investigated the case and filed charge-sheet. Another Inspector Hawa Singh PW11 was member of the raiding party, which apprehended the appellant after the signal of shadow witness Mr. Surinder Kumar Sharma.

The appellant examined Om Parkash, Sub Divisional Engineer as DW1, who has stated that post of Telephone Supervisor in the telephone department comes under the category of non-technical staff of BSNL. To disconnect or installation of telephone connection is the duty of technical staff of BSNL i.e. telephone mechanic or JTO.

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

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 Gian Chand as PW1. He has stated that in order to get his telephone connection, which was disconnected, restored, he met the appellant, who told him that telephone connection would not be restored in this manner and he (complainant) would have to spend some amount for getting it restored. The appellant demanded ₹200/- from him as bribe. As the complainant was not willing to give bribe, he approached the CBI and moved a complaint (Ex.PA). After pre-trap demonstration, a raiding party was constituted. The complainant appears to have fumbled while describing the shadow witness, who had to accompany him. Initially, he stated that 'Khosla' accompanied him as shadow witness and then rectified himself by saying that 'Sharma' (Surinder Kumar Sharma) accompanied him as shadow witness. This appears to be only slip of tongue not relevant or material to discard the entire testimony of complainant.

The first question to be seen in this case is as to whether the appellant had any motive to receive the illegal gratification. This fact is proved from the statement of complainant that he had gone to the telephone exchange to get his telephone connection restored and met the appellant, who initially asked him to sit there and then to come on the next day. After the complainant met him twice, appellant demanded ₹200/- for restoration of his connection. The jumper slip (Ex.PD) issued for restoration of connection of appellant, was also recovered from the drawer of table of the appellant. This shows that the appellant was seized of the matter relating to reconnection of telephone connection of complainant, who had been contacting him for this purpose. Initially, he asked the complainant to come time and again and then demanded bribe money. This proves the motive for the appellant to demand the bribe money.

The next question, which call for consideration is as to whether demand of illegal gratification is duly proved in this case.

The complainant while appearing as PW1 has stated that after the disconnection of his telephone, he deposited the outstanding bills and penalty amount but his telephone connection was not restored. He visited Telephone Exchange, Manimajra and contacted the appellant, who after making him visit Telephone Exchange twice, demanded ₹200/- as bribe. At the time of trap, complainant along with Surinder Kumar Sharma-shadow witness visited the office of appellant, who asked him as to whether he has brought the amount, to which complainant replied in positive and paid ₹200/- (tainted currency) to the appellant, who put the tainted currency in the right side pocket of his pants and thereafter, shadow witness gave signal to the raiding party. After apprehending the appellant, the tainted currency notes were recovered from the right side pocket of his pants and the jumper slip of the telephone connection of the complainant was recovered from his drawer. Complainant has stated that he had contacted the appellant on the asking of Sub Divisional Officer. After reporting the matter to CBI, he rang up in Manimajra Exchange on the asking of Investigating Officer M.L. Kaushal and in the telephone conversation, appellant asked him to bring money to his office in the afternoon and assured that thereafter his work will be done. This call was made from the office of CBI. The complainant has further stated when he reached with shadow witness in office of appellant and asked him to restore his telephone connection, he inquired as to whether he had brought ₹200/-. Complainant after responding in positive to his query, handed over ₹200/- (tainted currency) to the appellant.

Surinder Kumar Sharma, shadow witness has appeared as PW3 and stated that at the time of raid, he along with Gian Chand complainant reached the office of accused. Gian Chand entered the office of accused before him and the accused received the amount of ₹200/- from complainant Gian Chand. He immediately came out and gave prescribed signal of the remaining members of the raiding party. While giving the details, he has stated that he entered the Telephone Exchange after about 30 to 45 seconds of entering the complainant. He had seen the accused receiving ₹200/- by his right hand and putting the same in right side pocket of his pants. He then came out of the Exchange and Gain Chand also came out of the Exchange after about 15 to 20 seconds and then both of them by raising their hands over the head, gave signal to the CBI. He has further stated that he has not heard any conversation between the complainant and appellant. The tainted currency was recovered from the possession of appellant. PW3 Surinder Kumar Sharma-shadow witness has categorically stated that accused received ₹200/- from the complainant. The testimony of recovery witnesses and the evidence of hand-wash, pocket wash of the pants of appellant coupled with statement of complainant, who appeared as PW1, recovery witness Devinder Khasla PW2, Surinder Kumar Sharma-shadow witness PW3, PW4 SDO Devinder Singh, who were also present at the time of apprehension of the appellant; M.L. Kaushal, Investigating Officer and PW11 Hawa Singh duly proved the recovery of bribe money from the appellant. In his statement under Section 313 Cr.P.C., the appellant has not come up with any explanation regarding the recovery of tainted currency from his possession. This coupled with the fact that the jumper slip pertaining to the telephone connection of complainant was recovered from drawer of his table shows that appellant was retaining jumper slip only to compel the complainant to pay the bribe money. This fact that there was some objection and the jumper related to old exchange have no meaning as the telephone connection of the complainant was restored on the same day, the trap was laid (as stated by complainant-PW1). Devinder Singh SDO, who was posted in the Telephone Exchange, Manimajra but was not a member of the raiding party while appearing as PW4 has stated that a trap was laid in OCS Section and accused Amar Nath was caught red handed while accepting sum of ₹200/- and all the formalities of hand-wash and pocket-wash, recovery of bribe money were conducted in his presence. Though bribe money was neither demanded nor paid in his presence, still he had first hand information of what transpired at the spot, the trap and about entire happening that had taken place in his office. Jumper slip was in OCS Section of Manimajra Exchange i.e. with appellant from where it was required to be sent to the concerned SDO. Appellant has not explained as to why he had not done the needful and retained the jumper slip in drawer of his table. This shows that he intended to exploit the complainant by utilizing the opportunity available with him. He intended to retain the jumper slip with him to extract bribe from complainant. Statement of complainant, in these circumstances, is reliable and stood corroborated by recovery of jumper slip issued for restoration of his telephone connection from drawer of table of appellant. Receipt of bribe money in presence of shadow witness, its recovery from right side pocket of his pants further shows that appellant had demanded and received bribe from complainant.

He has also not been able to dispel the presumption of Section 20 that he accepted the bribe money as a motive or rewards as mentioned in Section 7 of P.C. Act.

I have carefully gone through the citation referred by learned counsel for the appellant.

In case of ***Suraj Mal Vs. State (Delhi Administration) (supra),*** the evidence produced by the prosecution being shaky and unconvincing was discarded by the trial Court. The witnesses have made two inconsistent statements. In the report by the complainant, there was no reference about the appellant (in that case) demanding any bribe. All the facts were taken into consideration while discarding the recovery of bribe money from the appellant and upholding his acquittal by the trial Court.

In case of ***State of Punjab Vs. Kushal Singh Pathania (supra),*** accused had been acquitted, as the independent eye-witness stated that accused was not accepting the illegal gratification and tainted money was put in the pocket of his shirt. In this case, testimony of complainant was not found trustworthy and it was also proved that the complaint had been made out of frustration as a fine of ₹52,000/- was imposed on complainant for violation of energy consumption circulars.

In case of ***Satinder Kumar Vs. State of Punjab (supra),*** four-folds contentions have been raised before this Court, which find mention in para 6 of the judgment, which reads as follows:-

> "(i) The indent system was discontinued vide letter dated 7.11.1986 (Ex.DA). Thus, there was no occasion for the complainant to submit the indents for getting monthly supply of the ration for distribution

amongst the ration card holders of the village;

(ii) The accused was neither Halqa Inspector of the complainant, nor he was concerned with the supply of ration to him;

(iii) The shadow witness has not supported the prosecution version with regard to the passing of the illegal gratification to the accused;

(iv) The DSP nowhere stated that he had offered himself for search by the accused before conducting search of his (accused) person. Thus, the search of the accused conducted by the DSP was illegal."

The allegation in the complainant was that he had contacted the accused for supply of ration for his depot and it was found that indent system and permit system had already been done away with. A Coordinate Bench of this Court relied on the contentions raised while accepting the appeal and acquitting the appellant.

In case of ***Amrik Singh Vs. State of Punjab (supra),*** it was observed that trap witnesses are interested witnesses, concerned with the success of the trap and corroboration of such interested witnesses from independent source was required. Corroboration of trap witness by the police official was held to be not sufficient. The above observation, along with other circumstances of the case led the Coordinate Bench of this Court to set aside the conviction of the appellant.

In the above referred cases, accused were given the benefit of acquittal keeping in view the specific facts and circumstances of those cases. The observations in those cases are not applicable to the facts and circumstances of the present case. Shadow witness in this case, is an official of FCI, who has no motive to depose against the appellant. Devinder Khosla

PW2 is also an official of FCI and is independent witness. The entire trap proceedings were conducted in the presence of Devinder Singh PW4, who is an officer in the department of appellant and was present in the office at the time of raid. The statement of aforesaid witnesses is without any material contradiction and could not be shaken in the cross-examination. On the strength of the evidence on record, learned trial Court has committed no error while observing that unimpeachable testimony of prosecution witnesses is conclusive proof of demand and acceptance of the bribe money by accused (appellant), which is duly proved in this case.

About the complaint Ex.PA, the complainant has stated as follows:-

> "I made a complaint in writing on 12.4.2k. in the morning at about 11:00/12:00 before noon, which was writing (sic written) by me with my own hand in Hindi, which was written by me at the dictation of Mr. Kaushal."

From the above statement, learned counsel for the appellant tried to make out that the complaint was made at the behest of Investigating Officer Mr. Kaushal and not by the complainant of his own. The complainant while appearing as PW1 has stated that on reaching the CBI office, he made the complaint (Ex.PA). He has further explained that the complaint was written in his hand-writing at the dictation of Mr. Kaushal. The above statement does not show that he has given the complaint at the behest of Mr. Kaushal but he wants to convey that he had written the complaint in his own hand-writing on the asking of or as dictated by Mr. Kaushal, the Investigating Officer. Even otherwise, nothing has been suggested to him that Mr. Kaushal has any motive to falsely implicate the appellant or reason to take a false complaint against him. The argument of learned counsel for the petitioner in this regard is also discarded.

On perusal of the judgment of learned trial Court, I find no legal or factual infirmity therein calling for any interference. Consequently, I find no merits in this appeal and the same is dismissed. The sentence awarded to the appellant by the trial Court is upheld. The appellant, whose sentence has been suspended vide order dated 16.12.2005, be taken into custody and sent to jail to undergo the remaining part of his sentence.

Copy of this order be conveyed to the trial/successor Court.

(SURINDER GUPTA)
JUDGE

November 16, 2017
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No