IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRA-S-631-SB of 2007 (O&M)
Date of Decision: 16.02.2018

Shashi Mohan ....Appellant

VERSUS

Central Bureau of Investigation ....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Tapan Yadav, Advocate
for the appellant (s).

Mr. Sumeet Goel, Advocate
Retainer counsel for respondent-CBI.

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SURINDER GUPTA, J.

This is appeal against the judgment of conviction and order of sentence both dated 12.03.2007 passed by Special Judge, CBI Court, 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 one year and to pay a fine of ₹2500/- in default of payment of fine to further undergo rigorous imprisonment for three month.
2.	13(1)(d) read with Sec. 13(2) of P.C. Act.	Rigorous imprisonment for one year and to pay a fine of ₹2500/- in default of payment of fine to further undergo rigorous imprisonment for three months.

2. FIR in this case was registered on the complaint of Sat Pal Sharma made to CBI vide complaint (Ex. PW-1/1), which reads as follows:-

"I, Sat Pal Sharma s/o Sh. Ram Chander Shrama, r/o

2058/1, Sector 45-C, Chandigarh, had purchased a MIG (L) Flat No. 2058/1, Sector 45-C, Chandigarh from Sh. Balram Puri, the original allottee of the above-said house. I had applied for transfer of the said house in my name to the Board in 2104 (sic 2014). The board raised some objections vide letter dated 05.04.2004. The reply to these objections was submitted to the Board by Sh. Balram Puri, original allottee on 24.06.2004. The Board kept on raising objections time and again. I tried my best to get the said house transferred in my name but all in vain. Sh. Shashi Mohan, Dealing Asstt. was contacted by me on 28.11.2005 and he demanded ₹20,000/- from me to process the file and help in removing the objections. He further told me that initially ₹5000/- (25% of the total amount) was to be paid for processing the file in favourable manner and rest ₹15,000/- (75% of the total bribe money) after issuance of the letter. He further told me that bribe amount of ₹5000/- is to be paid to him on 30.11.2005 till noon in his office. I do not want to give the bribe. I made a false promise to make the payment on 30.11.2005. It is requested to take legal actin against Sh. Shashi Mohan, Dealing Asstt. O/o Chandigarh Housing Board, Sector 9, Chandigarh."

3. On the aforesaid complaint, FIR bearing No. 34 dated 30.11.2005 was registered with CBI, ACB, Chandigarh under the orders of Superintendent of Police (CBI) and the case was entrusted to Inspector Ravinder Kush for investigation. A team of CBI officers was constituted and it was decided to lay a trap. On the request of investigating officer, two

officials of Central Excise and Custom, Chandigarh, namely, Inspector Sanjeevan Kumar and Inspector Jarnail Singh were deputed to join the CBI team by Additional Commissioner, (P&V), Central Excise and Custom, Chandigarh. Complainant was also taken to the team and introduced with independent witnesses and other members of trap team.

4. Complainant produced 10 currency notes of the denomination of ₹500/- each before the investigating officer. The trap memo Ex. PW-1/2 was prepared on which numbers of currency notes were noted. Notes were tainted with P-powder (Phenolphthalein Powder). A solution of water and sodium carbonate was prepared in a glass tumbler and witness Jarnail Singh was asked to touch the tainted currency notes and wash his hands in the solution, which turned pink. The reaction of phenolphthalein powder with the solution of sodium carbonate was explained to entire team and the solution so prepared was destroyed. The tainted currency notes were put in left pocket of shirt of the complainant after conducting his personal search and ensuring that nothing else except tainted notes were in his pocket. He was instructed not to touch the currency notes until and unless the same are to be passed to appellant. Sanjeevan Kumar was instructed to act as a shadow witness; to accompany the complainant; to see the transaction of bribe and hear the conversation, if any; and to pass the signal by touching his head with both hands. He was also instructed to observe where the appellant kept the bribe money after accepting the same. Other team members were asked to remain close to the place and try to see the transaction of bribe and hear any conversation. Thereafter, search of entire trap team was conducted and nothing except I-card and mobile phone was allowed to be carried. All the members washed their hands with soap and

water. After conducting the demonstration, the entire team including complainant left for office of Chandigarh Housing Board, Sector 9, Chandigarh and reached there at 11.30 a.m.

5. As planned, complainant with shadow witness went inside the office premises of appellant-Shashi Mohan while other members of trap party also entered the office building and took suitable positions. On reaching the seat of appellant, he was found busy in some work. After sometime, he (appellant) took complainant and shadow witness (Sanjeevan Kumar) to canteen, where they had tea. Thereafter, appellant took them to rear side of the building from back door and demanded money. Complainant took out the tainted currency notes from his shirt pocket and handed them over to him. He accepted the money and put it in the pocket of his pants at which Sanjeevan Kumar gave preappointed signal. Immediately, CBI team reached there. Complainant pointed towards appellant-Shashi Mohan and stated that he (appellant) had demanded and accepted amount of ₹5000/- from him and kept the same in his right side pants pocket after counting the same. Investigating officer, Inspector Ravinder Kush disclosed his identity while Inspector Balbir Sharma and Sub-Inspector Dinesh Kumar caught right and left hand wrist of appellant, who felt perplexed and later admitted his guilt. He was brought to the room of Secretary, Chandigarh Housing Board at the ground floor, where solution of sodium carbonate was prepared in a clean glass tumbler and appellant-Shashi Mohan was asked to dip his right hand fingers in the solution. On doing so, colour of solution turned pink and the entire solution was transferred to a quarter bottle (Ex. P-1) and was sealed. Thereafter, another fresh solution of sodium carbonate was prepared in another clean glass tumbler in which complainant was asked to

dip his left hand fingers, which also turned pink and this solution was also transferred in a quarter bottle (Ex. P-2). Paper slips (Ex. P-1 and Ex. P-2) were pasted on both the quarter bottles.

6. Independent witness, Jarnail Singh was asked to recover the currency notes from right side pants pocket of the appellant. He took out the currency notes and gave it to Sanjeevan Kumar, who tallied numbers of currency notes with numbers mentioned in pre-trap memo. On comparison, numbers of currency notes recovered from the pocket of appellant tallied with numbers mentioned in pre-trap memo. Currency notes (Ex. P-3 to Ex P-12) were put in a white envelope (Ex. P-13) and were sealed.

7. One trouser (*pyjama*) was arranged for appellant and he was asked to put off his pants. Another fresh solution of sodium carbonate was prepared in a separate clean glass tumbler. The inner lining of the right side pants pocket of appellant were dipped in the solution, which turned pink and was transferred to quarter bottle (Ex. P-4) and it was sealed with a paper slip. The pair of pants (Ex. P-15) was put in a parcel (Ex. P-16) and was sealed. The inner lining of right side pants pocket of the appellant were signed by independent witnesses.

8. File pertaining to allotment of H. No. 2058/1, Sector 45-C, Chandigarh (Ex. PW-5/1) was recovered from the office table of appellant and was taken into possession through seizure memo Ex. PW-8/1. Arrest memo of appellant (Ex. P-17) and rough site plan (Ex. P-19) of place of recovery were prepared. The seal used during post-trap proceedings was handed over to Sanjeevan Kumar with the instructions to keep it in safe custody and produce as and when required. The post trap memo (Ex. P-18) was also prepared and Inspector Ravinder Kush conducted the investigation of the case till 01.12.2005 and thereafter, investigation was transferred to

DSP Karnail Singh. After completion of investigation and obtaining required permission, he presented challan against the appellant.

9. Learned trial Court framed charges for offences punishable under Sections 7, 13 (1) (d) read with Section 13 (2) of the P.C. Act against the appellant to which he pleaded not guilty and claimed trial.

10. In support of its case, prosecution examined Sanjeevan Kumar as PW-1, Amar Nath, Chief Executing Officer, Chandigarh Housing Board as PW-2, Sat Pal Sharma (complainant) as PW-3, Inspector Jarnail Singh as PW-4, Gurdip Singh as PW-5, Gokul Dass Pal, Junior Assistant, Chandigarh Housing Board as PW-6, Balram Puri as PW-7, Bhagat Ram, Superintendent, Chandigarh Housing Board as PW-8, Subhash Sharma, Section Officer, Municipal Corporation, Chandigarh as PW-9, Inspector Ravinder Kush (Investigating Officer) as PW-10 and DSP Karnail Singh, ACB, Chandigarh as PW-11.

11. On completion of prosecution evidence, statement of appellant as required under Section 313 Cr.P.C. was recorded, wherein he denied allegations levelled against him and pleaded false implication. He has stated in defence as follows:-

> *"I am innocent and falsely been implicated. No trap has been laid. Nothing has been recovered from my possession. Sh. Satpal Sharma and Balram Puri never met me with regard to the present case. There was no demand of any kind by me to Sh. Satpal or Balram Puri with regard to the present case. The file for transfer was dealt by me. In the mutual transfer case, allottee is an active applicant and his case was rejected for want of compliance of mandatory conditions for the mutual transfer. Again on the request of allottee, the case was put up*

for mutual transfer and on 16.11.2005, I put a proposal for processing the file for mutual transfer and thereafter, the file has not come to me. On 28.11.2005 and 30.11.2005, the file was not with me and there was nothing to be done by me on the said dates as the file was already with the higher authorities from 16.11.2005. Prior to that, the file remain pending (with) AO and SO from 18.02.2005 to 24.05.2005 and there was no delay on my part. I put up the file as per rules as and when the same was received by me.

On 30.11.2005, I was on computer training in the SPIC Centre Punjab Engineering College, Chandigarh from 08.00 a.m. to 10.00 a.m. and when I came out at about 10.15 a.m., two persons met me and disclosed that they are the officers of the CBI, Chandigarh and my presence is required in the office of the CBI in connection with a matter of Chandigarh Housing Board. I told them that I can accompany them after informing my office as I have to attend my office but they told me that they will free me within half an hour after showing the file of the C.H.B. I believed in them and accompanied them to the CBI office, Chandigarh. There a false case was made against me. There is no complaint against me during my 20 years service in the Chandigarh Housing Board."

12. Appellant examined Jaswinder Singh Shawany, Assistant Society for Promotion of IT, Chandigarh as DW-1 in defence, who has stated that on 30.11.2005, appellant attended training in their institute from 08.00 a.m. to 10.00 a.m.

13. After hearing learned counsel for the appellant and learned

counsel representing the CBI, the trial Court convicted and sentenced the appellant as discussed in 1st para of this judgment.

14. Learned counsel for the appellant has argued that as per complainant, he had met appellant on 28.11.2005, when demand of ₹20000/- was raised to process the file of complainant and help him in removing the objections. PW-5 Gurdip Singh, who remained posted as Secretary, Chandigarh Housing Board from 14.02.2005 to 01.12.2005 has stated that the file in respect of H. No. 2058/1, Sector 45-C, Chandigarh was put up before him on 10.05.2005 and he approved the note. Thereafter, the file was again put up before him with note to give final opportunity to Gian Chand Singla to intimate if he has any objection regarding transfer of the house in favour of complainant. He had approved the note. Again file was put up by the appellant on 18.11.2005, proposing to issue reminder to Gian Chand Singla. The note was put up by the appellant seeking permission to further process the case for transfer of the house in favour of complainant and it was the account officer, who had raised objections. This witness has stated that all the noting on file made by the appellant was as per rules and notes put up by the appellant were in order and were never rejected. Even complainant has admitted that transfer of the house in his name was delayed on account of previous agreement. Appellant was putting up the file in time. He had processed the file of complainant before the alleged demand of bribe, as such, there was no reason and motive for him to demand and accept the bribe. While assailing the credibility of complainant he has argued that complainant was not even aware as to whether the shadow witness deputed with him was Jarnail Singh or Sanjeevan Kumar. Somewhere he has stated that Jarnail Singh was shadow witness and somewhere he states Sanjeevan

Kumar as shadow witness. Complainant has stated that on the day of trap, when he reached the seat of appellant, no bribe was demanded, rather he took them to canteen. It was after coming out of the rear gate of the canteen, he took out the currency notes from his pocket and gave them to appellant without specific demand from him at that point. PW-1 Sanjeevan Kumar, the shadow witness, has stated that the appellant had taken the complainant to backside of building and there he demanded *"lao bhai paise do"* at which complainant took out the tainted currency notes and handed over the same to appellant stating *"lo sir pure panch hazar hai, gin lo."* Statement of shadow witness is in contradiction with statement of complainant, who has nowhere stated that appellant demanded the currency notes, then counted the same before putting it in the pocket of his pants. PW-1 Sanjeevan Kumar has stated that on receipt of currency notes, he gave preappointed signal and Inspector Ravinder Kush with his raiding party reached and apprehended the appellant. PW-4 Jarnail Singh, the other independent witness, has stated that after about half an hour of going inside the building, Sanjeevan Kumar came out and gave the preappointed signal. His statement is in contradiction with statement of PW-1 Sanjeevan Kumar, who has stated that he gave the signal from the spot.

15. While referring to observations of Hon'ble Apex Court in case of ***Rakesh Kapoor* vs. *State of Himachal Pradesh*, 2012 (13) SCC 552,** learned counsel for the appellant has argued that where the demand of bribe money is not proved, no offence under Sections 7 or 13 (2) of the P.C. Act is made out. He has also relied on observations of Madhya Pradesh High Court in case of ***Hariram Patel* vs. *State of M.P.*, 2012 (1) RCR (Criminal)**

804; observations of this Court in case of ***Rachhpal Singh** vs.* ***State of Punjab**, 2011 (3) RCR (Criminal) 394* and observations of Hon'ble Apex Court in case of ***State of Kerala and another** vs.* ***C.P. Rao**, 2011 (6) SCC 450*.

16. Learned counsel for the appellant has argued that after clearing the file on 16.11.2005, the appellant had nothing more to do in that file and it was the Account Officer, who had differed with his opinion and after 22.11.2005, the appellant had never received the file. False implication of the appellant is duly proved from the fact that on the day of alleged trap, he was attending his training with Society for Promotion of I.T. and his presence was duly marked there. The appellant has specifically alleged that he was picked up from the training centre by CBI officials at about 10.15 a.m. and falsely implicated in this case. Much emphasis has been put on the fact that file of complainant was taken into possession from the desk of appellant but the recovery memo Ex. PW-8/1 nowhere states that it was picked up from the desk of appellant. As per office record, appellant had not even attended his office on 30.11.2005.

17. Learned counsel for CBI has argued that the prosecution by leading cogent and convincing evidence has proved that the file of complainant regarding transfer of house purchased by him from Balram Puri was being dealt with by the appellant. He was deliberately delaying the file and PW-5 Gurdip Singh, who was posted as Secretary, Chandigarh Housing Board, has specifically stated that he made a note on file when it was put up before him on 20.05.2005 *"Badly delayed case, office may avoid delay in such cases."* This shows that the appellant was deliberately delaying the file of complainant. The file was lying on the seat of appellant. On 16.11.2005,

he had made a note, seeking permission to process further the case for transfer of the house no. 2058/1, Sector 45-C, Chandigarh in favour of complainant. This shows that the appellant had motive to exploit complainant by demanding bribe money from him. Even on the day of trap, he had asked complainant to bring ₹5000/-. The appellant very shrewdly took complainant to canteen where he offered him a cup of tea and then he took him to rear side of the canteen to take the bribe money. The complainant has though stated that at the time of receiving money, no specific demand was raised but has explained that there was no question of any demand at that stage as it was pre-settled that ₹5000/- was to be paid to appellant on that day. The complainant had no personal grudge against the appellant. He is a most natural witness and so is the shadow witness. The other members of trap party have also fully supported the case of prosecution. Tainted money was recovered from pocket of the pants of appellant and he had not been able to explain the recovery of that money from his possession. Trial Court after appraisal of evidence has rightly convicted and sentenced the appellant and conclusion drawn by the trial Court calls for no interference in this appeal.

18. Firstly, I look into this aspect as to whether prosecution has been able to prove motive and demand of bribe by the appellant. Complainant while appearing as PW-3 has stated that he had entered into an agreement to purchase H. No. 2058/1, Sector 45-C, Chandigarh from Balram Puri and sought transfer of the same in his name on 26.02.2004 vide application Ex. PW-3/1 alongwith all required documents. He did not get the requisite order and issued reminders. Thereafter, he contacted the appellant, who was dealing clerk, who continued putting off in the matter on

one pretext or the other. Finally on 28.11.2005, he demanded illegal gratification of ₹20,000/- for processing the case favourably. Out of this amount, he demanded payment of initial amount of ₹5000/- on 30.11.2005 before lunch. As complainant was not inclined to give bribe, he reported the matter to police. After planning of trap, he alongwith shadow witness reached the office of appellant, who took complainant and shadow witness to canteen where they had tea. After taking tea, appellant took complainant and shadow witness to rear side of the building from back door where he demanded money. Complainant has stated that in the hall, where appellant has his seat, he did not demand the bribe money before taking them to canteen. On reaching rear gate of the canteen, he took out the currency notes from the pocket and gave the same to appellant without any specific demand from the appellant at that time, who accepted the same. Complainant has explained that "there was no question of any demand at that stage as it was pre-settled that ₹5000/- was to be paid on that day." Complainant appears to be little confused about the name of shadow witness, which he somewhere mentioned as Sanjeevan Kumar and somewhere as Jarnail Singh, but it is not material as Sanjeevan Kumar himself has appeared as PW-1 and has stated that he was shadow witness with the complainant. Even otherwise, Sanjeevan Kumar met complainant for the first time in the office of CBI, where he (complainant) also met Jarnail Singh and other members of trap party and there could be confusion of the name of shadow witness, who had accompanied complainant. From the testimony of complainant, it is amply proved that bribe money was paid to appellant as per his demand. Though, shadow witness has stated that the appellant demanded bribe money and after receiving and counting the same put it in the pocket of his pants, complainant has stated that he paid bribe money as it had already been settled that bribe money will be paid before lunch on 30.11.2005. The manner in which appellant had behaved with complainant also clearly indicate that he was signalling about payment of bribe money form complainant. This is why he took them to canteen, where they took tea. There was no reason for the appellant to take complainant to rear side of the building from back door of the canteen. In normal course he should have come out of the canteen and taken the complainant either to his seat or had informed him about progress in his case. Very shrewdly, appellant instead of receiving the bribe money on his seat, which was in a hall, took complainant accompanied by shadow witness to canteen and then to rear side of the building to find suitable place to accept the bribe money. Though, words about demand of bribe money as stated by shadow witness are missing in the statement of PW-3 Sat Pal Sharma (complainant) but in his examination-in-chief, complainant has stated that appellant demanded the bribe money at which he paid him the tainted currency notes. I find testimonies of both the witnesses regarding demand and acceptance of bribe money reliable.

19. Admittedly, appellant was posted as Senior Assistant and was processing the file of complainant for transfer of house purchased by him from Balram Puri. While appearing as PW-7, Balram Puri has stated that he was original allottee of house no. 2058/1, Sector 45-C, Chandigarh, which he agreed to sell to complainant in January, 2004. He applied to Chandigarh Housing Board for transfer of the said house in the name of complainant vide his application Ex. PW-3/1 and also furnished the requisite indemnity bond and completed other formalities. On 05.04.2004, some objections were raised regarding which he submitted the reply. Initially, he had sold

the house to Gian Chand Singla in the year 1989 but that agreement was cancelled. From the testimony of this witness, it is apparent that he had completed all the formalities required for transfer of the house. The manner in which file relating to transfer of the house was being moved is evident form the statement of PW-5 Gurdip Singh, who was posted as Secretary, Chandigarh Housing Board during the relevant period. The file was put up before him for the first time on 10.05.2005 and while approving the note on 20.05.2005, he made observation "Badly delayed case, office may avoid delay in such cases." He has stated that complainant had applied for mutual transfer of the house on 26.02.2004. The file again came to him on 14.09.2005 for giving final opportunity to Gian Chand Singla (with whom there was a previous agreement of Balram Puri, the original allottee, to sell the house) to intimate if he has any objection regarding the said transfer, which he approved on 16.09.2005. The appellant, who was dealing assistant, had put up a note dated 16.11.2005 seeking permission to process the case further for transfer of the house in favour of complainant. This note was put up through Bhagat Ram SO-2 and Sh. Jit Singh Chahal, Account Officer. A recommendation was made by Jit Singh Chahal, Account Officer to issue reminder to Sh. Gian Chand Singla, but he rejected his note with the endorsement "No need" and the note made by the appellant was approved. After 24.11.2005, the file remained pending with the appellant and no follow up action was taken on it. He has stated that it was the duty of dealing hand to ensure that no inordinate delay is caused in such type of matters. PW-8 Bhagat Ram, Superintendent has stated that at the relevant time, appellant was posted as Senior Assistant in recovery section and was processing the file of transfer of house no. 2058/1, Sector 45-C, Chandigarh. On 16.11.2005, the appellant had put up a note with recommendation for allowing to process the case further for transfer of house in question in favour of complainant. After approval on 22.11.2005 by the Secretary, Chandigarh Housing Board, the file was marked to AO-2 and then to him on 24.11.2005. He then marked the same to appellant and there was no further follow up in the matter. After the trap on 30.11.2005, he handed over the file to Investigating Officer Inspector Ravinder Kush which was taken into possession vide seizure memo Ex. PW-8/1. Statement of PW-5 Gurdip Singh and PW-8 Bhagat Ram show that the appellant was keeping the file of transfer of house in favour of complainant with him and this has given him reason to demand the bribe. It is also proved on record that file was lying on the table of appellant from where PW-8 Bhagat Ram gave it to the CBI. It is clear from the above evidence that permission to process the case further for transfer of the house in favour of complainant had already been allowed by Secretary, Chandigarh Housing Board on 22.11.2005 and this has given reason to appellant to extract money from complainant and he raise demand of ₹20,000/- on 28.11.2005. It is also evident that till 30.11.2005, appellant was sitting over the file and had not processed it despite approval of his note on 22.11.2005 to process the case further.

20. From the above evidence, it is evident that the prosecution has been able to prove the motive for demand. Much emphasis has been laid by learned counsel for the appellant on the point that on 30.11.2005, the appellant had gone to attend a training programme with Society for Promotion of I.T., Chandigarh, as such, he was not present in the office and his presence has also not been marked in the attendance register. DW-1 Jaswinder Singh has stated that appellant attended training in their institute from 08.00 a.m. to 10.00 a.m. PW-8 Bhagat Ram, Superintendent has stated

that on 30.11.2005, the appellant had attended the office late as he had to attend the training at Punjab Engineering College, Sector 12, Chandigarh from 08.00 a.m. to 10.00 a.m. He did not mark his attendance in the attendance register on that day. He has further categorically stated that the appellant was present in the office on the relevant day. During the trap, he had seen the appellant removing his trouser and putting on *pyjama* and the pants being packed in the room of Secretary, Chandigarh Housing Board, where he had gone. There is no reason to disbelieve statement of this witness about the presence of appellant in the office on 30.11.2005 and recovery of file of transfer of house in question in favour of complainant from his seat. Testimony of PW-3 Sat Pal Sharma (complainant), PW-4 Jarnail Singh, PW-10 Inspector Ravinder Kush that tainted currency notes were recovered from pocket of pants of the appellant is un-shattered. Though, mere recovery of bribe money from possession of the appellant *ipso facto* is not sufficient to hold him guilty for offences punishable under Section 7 and 13 (2) of the P.C. Act, but in this case, the prosecution has been able to prove the motive and demand of bribe by the appellant. Learned trial Court has elaborately discussed the evidence produced by prosecution and has observed in para 50 (numbered twice) and 51 as follows:-

> *"50. Once it is proved that there was a prior demand and that in pursuance of that demand the complainant had gone to the office of the accused on 30.11.2005, it has to be found as to whether there was acceptance of bribe by the accused. In this context the statements of the independent witnesses corroborate that of the complainant. There is no reason to disbelieve them that initially the complainant and the shadow witness went in the hall to*

the seat of the accused from where the accused took them to canteen where they had tea and from canteen they were taken to the rear portion through back door where the accused accepted bribe. The treated currency notes were recovered from the pants pocket of the accused. Merely because the complainant has not deposed that the accused had counted the currency notes, it does not mean that he had not counted the same as deposed by the shadow witness.

51. The fact is indisputable that the hands and the inner lining of the trouser pocket of the accused turned pink when dipped in sodium carbonate solution. From this, on no hypothesis except that the currency notes emerged from the accused's pocket or possession, can the pink colour be accounted for. There being sufficient proof on the record to the recovery of tainted notes from the pocket of the trouser of the accused, the testimony of the complainant and that of the shadow witness gets corroborated in that the accused had accepted the bribe money willingly. The report of expert Ex. PW-11/1 being positive too lends corroboration to the ocular version. Even otherwise, it is not the case of the accused that the currency notes were thrust into his pocket."

21. Hon'ble Apex Court in case of ***State of Punjab Vs. Madan Mohan Lal Verma (2013) 14 SCC 153,*** while narrating the law relating to proof of offences punishable under Sections 7 and 13 of the P.C. Act, has

observed in para 11 as follows:-

> *"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. 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. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 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 1988 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. The complainant is an interested and partisan witness concerned with the success of the trap*

> *and his evidence must 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. State of Punjab (1972) 3 SCC 652, T. Subramanian v. State of T.N. (2006) 1 SCC 401, State of Kerala v. C.P. Rao (2011) 6 SCC 450 and Mukut Bihari v. State of Rajasthan (2012) 11 SCC 642.****)"*

22. The Apex Court in case of ***V. Sejappa Vs. State by Police Inspector Lokaukta, Chitradurga 2016 (2) RCR (Criminal) 860*** has observed that the initial burden to prove that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution and has observed in para 18 and 20 as follows:-

> *"18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act......."*
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> *19. xx xx xx xx xx*
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> *20. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was*

paid was an illegal gratification, reference can be made to following observation in ***Mukut Bihari and Anr. v. State of Rajasthan (2012) 11 SCC 642****, wherein it was held as under:-*

> *"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the 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 bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 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 1988 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 as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."*

23. The appellant in this case has not come up with any explanation regarding recovery of bribe money from his possession. To the contrary, his conduct shows that he had acted in a planned manner to receive the bribe money. As the prosecution has proved the demand and acceptance of the bribe money, observations in cases of ***Rakesh Kapoor (supra), Hariram Patel (supra)*** and ***C.P. Rao (supra)*** are not applicable to facts of present case. In the case of ***Rachhpal Singh (supra)*** all the witnesses including independent witnesses, shadow witness, complainant have turned hostile and mere recovery of currency notes from trouser and positive result of phenolphthalein test was found not sufficient to establish the guilty of accused. In this case all the prosecution witnesses have fully supported its case. Their testimonies coupled with recovery of currency notes from the pocket of pants of the appellant, place where he was apprehended and positive result of phenolphthalein test and the fact that the appellant was

dealing with the file of complainant and retaining it on his table prove his guilty beyond any shadow of doubt.

24. Keeping in view above facts and circumstances of the case and on perusal of judgment of the trial Court, I find that the trial Court has recorded conviction and sentence of the appellant on the basis of sufficient, cogent and convincing evidence on record and conclusion drawn by the learned trial Court calls for no interference.

25. As a sequel of my discussion above, this appeal has no merit. Conviction and sentence as recorded by trial Court is upheld and this appeal is dismissed. Appellant, who is on bail on suspension of sentence vide order dated 23.03.2007, be taken into custody and sent to jail to undergo remaining sentence awarded to him.

Copy of this judgment be sent to concerned Chief Judicial Magistrate/Duty Magistrate for compliance.

February 16, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No