

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

**Criminal Appeal No.S-497-SB of 2006 (O&M)
Date of Decision: February 16, 2018.**

P.K. Verma

.....APPELLANT(s).

VERSUS

Central Bureau of Investigation

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Gautam Dutt, Advocate
for the appellant (s).

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

SURINDER GUPTA, J.

This is appeal against the judgment of conviction and order of sentence both dated 28.02.2006 passed by Special Judge, CBI, Punjab at Patiala, 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 two years and to pay a fine of ₹2000/- in default of payment of fine to further undergo rigorous imprisonment for one month.
2.	13(1)(d) read with Sec. 13(2) of P.C. Act.	Rigorous imprisonment for three years and to pay a fine of ₹3000/- in default of payment of fine to further undergo rigorous imprisonment for two months.

FIR (Ex.PW5/1) in this case was registered on the complaint dated 22.06.2000 (Ex.PW1/1) of Paramjit Singh, which reads as follows:-

“I am contractor by profession. I am registered with Chief Engineer, Western Command, Chandimandir vide index No.A-6. I have been taking contracts from MES since 1985. Presently, I have completed three contracts allotted by the office of Commander Works Engineer Patiala. I am handling the contracts of cement handling, Road construction and building construction.

My two bills amounting to ₹45,000/- for road works and ₹85,000/- for cement handling are pending since November 1999. I have been meeting surveyor of works, and concerned Asstt. Surveyor of works, but my bills were not passed.

On 20.06.2000, I met Sh. P.K. Verma, Commander Works Engineer Patiala at his office and requested him to clear my pending bills. Shri P.K. Verma told me that he will pass the bill if an amount of ₹5,000/- is paid to him. He assured me that he will instruct concerned staff to clear my bills. He asked to pay the amount of ₹5,000/- by 23.06.2000 positively. I do not want to pay any bribe to Sh. P.K. Verma and legal action against Sh. P.K. Verma may be taken.”

Superintendent of Police, CBI deputed Inspector M.S. Brar to lay the trap. He called some officials of CBI and two witnesses from Home Department, U.T., Chandigarh to join the raiding party on 23.06.2000. All the CBI officials and independent witnesses assembled at his office, who were shown complaint (Ex.PW1/1). Paramjit Singh handed over 50 currency notes of ₹100/- each to Inspector M.S. Brar on which P-powder was applied and a demonstration was held for the raiding party to show the reaction of P-

powder with sodium carbonate. A list containing the serial numbers of the currency notes Ex.PW1/2 was prepared which was signed by the complainant. He was asked to keep the currency notes and hand over the same to the appellant on demand. Before handing over the currency notes to him, personal search of the complainant was taken and nothing incriminating was left with him. Complainant kept the tainted currency in the pocket of his shirt. Complainant was asked not to touch the currency notes till handing over the same to the appellant or to shake hand with him. Jaswant Singh (PW2) was requested to remain present with Paramjit Singh and to over hear the conversation between the complainant and the appellant. They were also instructed to keep a watch on the tainted currency after delivery of the same to the appellant. The pre-trap memo/handing over memo (Ex.PW1/3) was prepared.

The raiding party then left towards Patiala in two vehicles and reached near the office of appellant at Sangrur Road at about 4.30 p.m. Complainant and shadow witness Jaswant Singh were instructed to move towards office chamber of the appellant. Jaswant Singh was given instruction to give signal by rubbing his head with the hand, after the receipt of bribe money by the appellant.

On reaching the office of appellant, complainant came to know that he was busy in a meeting which was over at about 5.45 p.m. Thereafter, an officer came to the office room of the appellant and tea was served to them. Complainant and shadow witness remained outside the office of appellant. After the officer had left, complainant asked peon of the appellant that he wanted to meet the appellant. He went inside and informed the

complainant that they have been permitted to go to meet the appellant. Complainant along with shadow witness entered office room of appellant and asked him to clear his bills as he was in financial crisis. The appellant asked the complainant as to whether he had brought the bribe money on which complainant took out the tainted currency from the pocket of his shirt and handed it over to the appellant, who kept the same in the right side pocket of his pants. **Thereafter, Jaswant Singh flashed a signal by touching his turban.** At which Inspector M.S. Brar immediately rushed towards the office chamber of appellant and showed him his identity card. Two constable caught hold of him from his both wrists. After disclosing his identity, Inspector M.S. Brar (PW15) apprised the appellant that he has been caught while demanding and accepting bribe of ₹5000/- from the complainant. On hearing this, the appellant got perplexed and kept mum for some time. In the presence of official and private witnesses, a glass of water was arranged and solution of water and sodium carbonate was prepared. Right hand fingers of appellant were dipped in the solution and its colour turned pink. Solution was poured in an empty clean bottle (Ex.P1) and sealed at the spot. Fresh solution of water and sodium carbonate was prepared and the appellant was asked to dip his left hand fingers but the colour of the solution did not change. This solution was also poured in a clean quarter bottle (Ex.P2) and sealed. Bribe money was recovered from the right side pocket of the pants of appellant. The number of the currency notes recovered from the appellant tallied with the numbers mentioned in pre-trap memo. The recovered currency was put in a separate envelop, which was signed by all the witnesses. Then a pair of pants was arranged for

the appellant from his house and he was requested to take off pants worn by him from which the tainted money was recovered. The right side inner pocket of pants was taken out and dipped in a fresh solution of water and sodium carbonate which turned pink and put in a bottle (Annexure P-3) and sealed. Post-trap memo Ex.PW1/4 and rough site plan (Ex.PW1/6) were prepared. During post-trap proceedings, complainant pointed towards one small slip pad on which the appellant at the time of his meeting with complainant and demanding bribe on 20.06.2000 had noted down his pending bills. After obtaining the sanction for prosecution (Ex.PW4/1) under Section 19 of P.C. Act and report (Ex.PW15/5) of CFSL, New Delhi, challan against the appellant was presented in the Court.

The appellant was charge-sheeted for the offences punishable under Sections 7 and 13 (1)(d) punishable under Section 13(2) of P.C. Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined complainant Paramjit Singh as PW1, shadow witness Jaswant Singh as PW2, Varinder Singh as PW3, Suman K. Sharma as PW4, Hari Singh as PW5, Pala Ram as PW6, C.L. Bansal as PW7, Lt. Col. V.S. Dhillon as PW8, Rajesh Nigam as PW9, Jaswinder Singh as PW10, Gautam Ray as PW11, R.P Sharma Inspector CBI as PW12, Naresh Sharma as PW13, Parshant Srivastav Inspector CBI as PW14 and Inspector M.S. Brar as PW15.

After conclusion of prosecution evidence, all the incriminating material was put to the appellant in his statement recorded under Section 313 Cr.P.C., which he denied and claimed his false implication. He stated in his defence as follows:-

“I am innocent. I had been falsely involved in this case. I was posted CWE in MES, Patiala during the relevant period. During my tenure I detected various irregularities in the contract awarded to Paramjit Singh complainant. Due to which several contract of Paramjit Singh were cancelled by the Chief Engineer on my recommendations. Due to this reason he was inimical to me and was nursing grudge against me. To settle the score he has implicated me in a false case in connivance with the CBI. The bills of complainant were never remained pending with me and as such no work of complainant was pending with me. I have never demanded or accepted any illegal gratification. No recovery was effected from me. No hand wash or pants wash or any proceedings were ever carried. I have been implicated in a false trap by the complainant in connivance with the investigating agency i.e. CBI. Instructions were also given to the office to effect the recovery from the various bills of Paramjit Singh or any arbitration awards.”

In support of his defence, appellant examined Sukhdev Singh as DW1 and Shri Ravinder Nath as DW2.

Learned trial Court held the charges framed against the appellant as proved; convicted and sentenced him as mentioned in para 1 of this judgement.

Out of 15 witnesses examined by prosecution, complainant Paramjit Singh PW1, shadow-witness Jaswant Singh PW2, Varinder Singh PW3, Sub Inspector R.P. Sharma PW12, Sub Inspector Naresh Sharma PW13, Sub Inspector Parshant Srivastav PW14 and Inspector M.S. Brar Investigating Officer PW15 have been examined as witnesses to prove the

demand, acceptance and recovery of bribe money from the petitioner. While complainant Paramjit Singh PW1 and shadow witness Jaswant Singh PW2 are the witnesses, who have been examined to prove the demand and acceptance of bribe money, above referred remaining witnesses have been examined to prove the recovery of tainted money from the appellant.

Complainant Paramjit Singh while appearing as PW1 has stated that he was MES contractor and was carrying out of contract work of the construction of roads, buildings and handling of cement. He had handed over two bills amounting to ₹45,000/- and ₹85,000/- for handling of cement and these bills were pending with P.K. Verma, appellant. He requested him to clear his bills for which he demanded ₹5000/- as bribe. He moved complaint before CBI to this effect, which is Ex.PW1/1. He made statement in his examination in chief supporting the prosecution version about demand, acceptance and recovery of bribe money from the right side pocket of pants of the appellant. In his cross-examination, he made certain admissions which are reproduced as follows:-

- (i) The MES Contractor works under the supervision of Garrison Engineer, whose office (located at Patiala) makes payment of the contractor after carrying out measurement at the spot.
- (ii) As per procedure, 10% amount of the bill is retained to be paid after completion of the work.
- (iii) The measurement of the work is carried out by Assistant Surveyors of Works at the time of final payment of bills by Garrison Engineer.
- (iv) If the work is found as per specification, the Garrison Engineer

(G.E.) forwards the bill to the office of Commander Work Engineer (CWE) for technical check-up. The bill is sent by G.E. to ASW through the office of CWE. After checking the final bills ASW sends it back to G.E. for the purpose of passing. Thereafter, the G.E. Sends the bill to Assistant Accounts Officer for check and approval of Controller of Defence Accounts (CDA). After checking the CDA sends back the bill to G.E. For payment after approval.

(v) He had not submitted any bill of contract work to G.E. (Volunteered) it was prepared by A.G.E. He had only sent a letter regarding completion of work to the G.E., with a copy to AGE.

(vi) Garrison Engineer is competent authority to pay the bill to the contractor.

(vii) These work contracts allotted and executed by him were cancelled by Commander Works Engineer out of which two such contracts pertain to Patiala, which were cancelled on 12.11.1999 and 12.01.2000 and one contract of Chandigarh. These contracts were cancelled by the Chief Engineer.

(viii) Garrison Engineer had ordered to effect certain recoveries with regard to the three contracts, which were cancelled and arbitration proceedings in that matter were pending.

(ix) Garrison Engineer had informed the complainant on 11.05.2000 with regard to the recoveries of ₹4,88,154/- and ₹3,30,175/- with regard to the two contracts which were cancelled at Patiala.

(x) He had filed civil suit but his request for grant of stay was declined on 02.05.2000.

(xi) He had received a letter dated 03.02.2000 vide which he was removed from the approved list of contractors.

PW2 Jaswant Singh has stated that he accompanied the complainant to MES Office where they were told that concerned officer was busy in a meeting. After the meeting, a slip was sent to the officer and complainant Paramjit was called inside and **he remained outside the office room. After sometime, Paramjit himself came out of the office room and flashed the signal to the raiding party by touching his turban.** Thereafter, raiding party reached the spot and he along with raiding party entered the office room of appellant. Two Inspectors caught hold of the appellant from his arms and the appellant told the CBI officer that he had kept the tainted money in the right side pocket of his pants. PW Varinder Singh took out the tainted money Ex.P5 to Ex.P54 from the right side pocket of the pants of appellant and their number were tallied. Thereafter, solution of water and sodium carbonate was prepared and left hand, right hand and pocket of the pants were washed in three separate solutions. The colour of the solution turned pink in which right hand and pocket of pants were washed and the colour of the solution did not change in which left hand of appellant was washed. He stated that one Chowkidar was present at the spot and remained there throughout the period, the CBI team was in MES office. Two senior Army Officers also came to the spot, who were intimidated by the CBI about incident and they remained at the spot for a short period.

PW3 Varinder Kumar, Jr. Asstt. in the office of Home Secretary, Chandigarh has supported the prosecution case about recovery of tainted currency from the right side pocket of the pants of the appellant. He

also stated that Paramjit Singh complainant had gone to the office room of appellant while Jaswant Singh remained outside near the window and signalled to the raiding party was given by Jaswant Singh by touching his turban. He further stated that all the members of the raiding party reached the office room of appellant within two minutes after Paramjit Singh and Jaswant Singh went away from them.

Sub Inspector R.P. Sharma PW12, Sub Inspector Naresh Sharma PW13 and Sub Inspector Parshant Srivastav PW14, were members of the raiding party and had deposed about the recovery of tainted currency from the appellant. **To the similar effect is the statement of Inspector M.S. Brar PW15.** They, however, stated that Jaswant Singh was appointed as shadow witness with direction to hear the conversation and to see the transaction and then to give signal to the raiding party. At about 6.30 p.m., shadow witness passed on signal to the team members. Investigating Officer M.S. Brar PW15 also stated that Jaswant Singh came out of the office of P.K. Verma and flashed pre-appointed signal and the raiding party immediately rushed to the office of the appellant. Jaswinder Singh, who was appointed as Peon in the CWE Office in the year 2000 appeared as PW10 and deposed as follows:-

“I joined this department in the year 1997. I was posted as peon in C.W.E. Office in the year 2000. I was working in the office of Commander Works Engineer on 23.06.2000. On 23.06.2000 at about 5.30 p.m., contractor Paramjit Singh who was known to me, came to me handed over a paper slip with the request to see Sh. P.K. Verma, C.W.E. I made to wait in the waiting room since the officer was busy with some other officials. I handed

over the slip to the accused who directed me to ask Paramjit Singh to sit and wait. At about 6.00 p.m., the officers left the room of the accused and I reminded back my officer. Thereafter Paramjit Singh was called and he met the accused inside the room. Paramjit Singh had a talk with the accused in a high pitch and the accused was standing in the room at that time. I kept the bag of the officer in the car and in the meanwhile 2-3 persons gathered there and tried to enter the room being attracted with matter. I inquired about their identity and they told that they are CBI officials. They entered the room of the accused and two Sikh gentlemen stayed outside in the waiting room. I served water etc. to those Sikh gentlemen. After 20-22 minutes the accused was taken by the CBI Officers with them. Later on, I came to know from the Sikh gentlemen that the accused was caught by CBI team in connection with accepting illegal gratification, at their instance.”

In his cross-examination, he stated that he had gone inside the office of appellant with Paramjit Singh. Neither the appellant demanded any bribe nor complainant Paramjit Singh paid any money to him in his presence. No such search of the appellant was conducted by the CBI in his presence. Jaswant Singh and Varinder Singh whom he served water had not entered the office of appellant with CBI team. Paramjit Singh was arguing with appellant in connection with some contract work and saying that he (appellant) had damaged his work.

Hari Singh, Superintending Surveyor of Works appeared as PW5. He deposed regarding the Military Engineering Service Rules and Regulations. He stated that works are allotted to the contractors by the competent authorities i.e. Garrison Engineer, C.W.E. And Chief Engineer

through tendering process. After acceptance of the tender, same was sent to Garrison Engineer, who placed the work order on the contractor to commence the work. Garrison Engineer is competent to make the payment. Bill is checked by Surveyor Assistant of the office of Garrison Engineer and audited by the Auditor. Thereafter, the payment is released by Garrison Engineer. Completion certificate is also issued by Garrison Engineer after completion of work. Garrison Engineer's office sends the bills for technical check of SW, ASW of CWE's office. After technical check of the bill by S.W./A.S.W., the same is sent to the Garrison Engineer's office and G.E. sends it to the Auditor. Paramjit, the complainant was allotted two works in the year 1998. Part work was completed in March, 2000. Appellant was competent authority to allot this work to Paramjit Singh and company. He further stated that 'recovery was due from the complainant's company as his three contracts were cancelled being defaulter which was intimated to the company of complainant'. Even if the bills complained in the FIR had been passed for payment, no amount could have been paid to the contractor namely Paramjit Singh as recovery of outstanding amount was due against him. The instructions had been issued by the office of Chief Engineer to recover the outstanding amount as the contracts of M/s Paramjit Singh Company (complainant) were cancelled at the recommendation of appellant and there were standing instructions from Controller of Defence Accounts to effect the recovery from the outstanding amount of Contractor. The reason for cancellation of contract of complainant was slow progress of work due to bad planning and company of complainant was debarred from taking further contracts. **Paramjit and Company had not submitted final bill which was**

prepared by the department. After preparing the bill much time was not taken in CWE Office in finalising the bill and the appellant had no role to prepare the bill and make the payment after passing it. No bill was presented or processed by the CWE at any point of time.

C.L. Bansal, A.G.E. (B&R) in the office of Garrison Engineer MES, Patiala appeared as PW7. He deposed that after following the procedure, final bill of the complainant amounting to ₹42,953/- was passed. As per letter dated 16.03.2000, complainant was asked to return the excessive cement bags and as per letter dated 18.03.2000 (mark-DE), it was directed that payment was to be released only after production of 34 bags of cement by complainant. The complainant was further intimated vide letter dated 24.03.2000 that payment was delayed due to his fault. He has stated that after the bill of contractor is duly checked, the payment is to be made by Garrison Engineer and not by CWE. On the final bill of complainant, this witness did not find any signature of the appellant. On perusal of the file brought by him, he stated that appellant never dealt with final bill and he was interrogated by the prosecuting agency in this regard.

PW9 Rajesh Nigam has joined CWEP, Patiala in 1999 and remained posted there upto September, 2001 as Section Officer. He has stated that some outstanding payment was due against the complainant, as such, no payment in cash could be made to him. There was dispute regarding the additional tax imposed by Himachal Government. Payment of the bills of the complainant except for disputed amount of additional tax imposed by Himachal Government has been cleared. He has also stated that CWE did not have any role to play in payment of any running accounts

receipt or final bill when a contract is accepted by the Garrison Engineer or even when CWE himself accept a contract. The final bills of complainant bearing No.E/98-99 were cleared by their office on 15.03.2000 for payment. This bill was again sent to their office on 17.05.2000 as certain objections were raised by the audit authorities. Complainant was claiming payment for reimbursement of additional goods tax imposed by Himachal Pradesh Government, which was not admissible as per contract. Vide recommendation of the appellant dated 21.12.1999 and 10.01.2000 (mark PW9/DA and PW9/DB), two contracts of the complainant had been cancelled. A sum of about ₹8 lakh was due against the complainant on account of cancellation of the contracts and no payment in cash is made to a contractor against whom some recovery is to be effected. Even if, the bill is passed, the amount cleared is adjusted against the recovery due to be made. He has further stated that final bill of the complainant was prepared by Garrison Engineer and forwarded to the office of CWE vide letter dated 29.09.1999 and was cleared by the CWE vide letter Ex.PW9/3 dated 15.03.2000.

Gautam Ray, Garrison Engineer appeared as PW11 and stated that three contracts of complainant had been cancelled and even if the bill submitted by him had been passed, the payment could not be made to him as the same was to be adjusted in the outstanding amount due against him. He also stated that appellant P.K. Verma did not have any role in passing of the bills and any receipt. These bills were to be passed by the Local Audit Office and the office of CDA, which are two separate and independent wings and were not under the control of CWE.

Learned counsel for the appellant has argued that appellant (since deceased) was falsely implicated in this case as the complainant was aggrieved by the action of appellant, which led to cancellation of his three contracts and initiation of recovery proceedings against him. It is proved on file that the appellant had no reason or motive to ask for bribe of ₹5000/- from the complainant, who has alleged that he had completed three contracts allotted by the office of CWE, Patiala and his two bills of ₹45,000/- for road work and ₹85,000/- for cement handling were pending since 1999. He met the appellant with request to clear his pending bills, who demanded bribe money of ₹5000/- to do this favour to him. Firstly the appellant was not competent authority to clear the bills of complainant. The pending bills have already been cleared but the payment of those bills could not be made to the complainant as these were to be adjusted in the final bill. Secondly, the appellant had absolutely no role in clearance of the outstanding bills. PW5 Hari Singh, Director (Contracts), Chief Engineer has stated that recovery was due from the complainant as his three contracts were cancelled. Even if, the bills mentioned in the FIR had been passed for payment, no amount could have been paid to the complainant as recovery of outstanding amount was due towards his firm. Three contracts of complainant were cancelled on the recommendation of CWE P.K. Verma (appellant). After cancellation of the contract, company of the complainant was debarred from taking further contracts. Complainant had not submitted any final bill and the same were prepared by the department. After preparing the bills, office of CWE did not take much time in finalising the payment and the appellant had no role in preparation of bills and payment after passing it. Even the complainant has

admitted that Garrison Engineer is competent authority to make payment of the bills. He has further admitted that his bills were cleared by account section and sent to Garrison Engineer on 18.03.2000. However, he was not informed that delay in payment was due to lapse on his (complainant's) part. The complainant had full knowledge that Garrison engineer is the competent authority for payment of bills to the contractors and his three contracts were cancelled on the recommendation of appellant. It is also evident from the statement of complainant that he had indulged in litigation with the department and his request for stay was declined by the Court of Additional Civil Judge (Senior Division), Patiala. PW9 Rajesh Nigam, Section Officer in the office of CWE(P) has also stated that there was some outstanding payment of complainant which was to be adjusted against his outstanding bills, as such no payment in cash was to be made to him. Testimony of these witnesses show that the complainant had inimical relations with the appellant. He was annoyed as his three contracts had been cancelled on the recommendation of appellant. He was fully aware that no payment was to be released to him as the competent authority to release his payment was Garrison Engineer. He had indulged in civil litigation on this score but failed to get any relief. Even the Garrison Engineer had not to make any payment to him as the outstanding payment of the complainant were to be adjusted against the demand raised by the department on account of cancellation of his contracts. All this shows that complainant had no occasion to come to the appellant. The prosecution has utterly failed to prove the demand of bribe by the appellant and keeping in view the facts and circumstances and conduct of the complainant, his testimony regarding

demand without corroboration is not believable. The shadow witness has not seen or heard any conversation between the complainant and the appellant and has not corroborated the testimony of complainant that bribe money was paid to the appellant on demand. Chowkidar in the office of CWE appeared as PW10 and has stated that on the request complainant was called inside by Mr. P.K. Verma (appellant). On entering the room, Paramjit had a talk with the appellant in a high pitch and in the meanwhile, 2-3 persons gathered there and tried to enter the room. On inquiry, they told him that they were CBI Officials. They entered the room of appellant and two Sikh gentlemen including shadow witness stayed outside in the waiting room to whom he served water. After 20-25 minutes, appellant was taken away by CBI Officers with them. In his cross-examination, he has categorically stated that Jaswant Singh (shadow witness) and Paramjit Singh, did not enter the office of appellant along with CBI team. Complainant was arguing with appellant with regard to some contract work and that he had done damage to his work. From the evidence on record, it is evident that firstly the appellant had no motive to demand bribe; secondly, he was not competent to release the bills of complainant even after receiving the bribe; thirdly, no payment was to be made by the appellant even if bills of complainant have been cleared by the concerned authorities; and fourthly, the complainant was inimical towards the appellant as his three contracts had been cancelled on the recommendation of the appellant.

Learned counsel representing CBI has argued that the recovery of tainted currency was effected from right side pocket of the pants of appellant. On dipping of right hand fingers of his hand in solution of

sodium carbonate, its colour turned pink, which shows that appellant had touched the tainted currency while accepting the bribe. On dipping of right side pocket of pants of appellant in solution, it again turned pink, which further corroborate the testimony of complainant that he had paid the bribe money to the complainant, who after accepting the same, put it in the right side pocket of his pants. It is proved on file that the bills of complainant were sent to the office of appellant. PW5 Hari Singh stated that office of Garrison Engineer sent bills for technical check to S.W., A.S.W. in the office of CWE, as such, this argument was not available to the appellant that he had no concern with the bills of complainant. The mere fact that three contracts of the complainant were cancelled on the recommendation of the appellant, is no reason to disbelieve the statement of complainant. This rather shows the pressure tactics of the appellant to extract the bribe money. PW9 Rajesh Nigam has stated that final bill of the complainant was prepared by Garrison Engineer and forwarded to CWE for technical check on 29.11.1999 vide letter Ex.PW9/D3. All this shows that the appellant was directly involved in the matter of issuance of contract and then clearing the bills of contractors. Complainant was aggrieved as his bills have not been cleared for payment and to get the relief in this regard, he had contacted the appellant, who raised the demand of bribe from him. While relying on the observations of Hon'ble Apex Court in case of ***State of A.P. Vs. C.Uma Maheshwara Rao and Another (2004) 4 Supreme Court Cases 399***, learned counsel representing CBI has argued that when the recovery of tainted currency had been effected from the appellant, presumption is to be drawn that the appellant has received this money as bribe unless he accounts for

possession of this amount. The trial Court has rightly relied on the evidence produced by the prosecution while reaching the conclusion that offences punishable under Sections 7 and 13 of P.C. Act are duly proved against the appellant and the conclusion arrived at by the trial Court call for no interference in this appeal.

In order to prove the offence punishable under Sections 7 and 13 of P.C. Act, the prosecution is required to prove that the accused had motive to demand the bribe, he raised the demand and bribe money was recovered from his possession.

Firstly, I have a look on the evidence of prosecution with regard to demand to bribe money and motive for demand by the appellant. Complainant while appearing as PW1 has attributed motive for demand of bribe by the appellant as follows:-

- (i) I had submitted two bills amounting to Rs.45,000/- and Rs.85,000/- for handling of cement. P.K. Verma was working as Commandant Works Engineer, Patiala and the bills were pending with him.
- (ii) I asked the accused to pass the bills and he demanded Rs.5,000/- as bribe for passing of the bills. The demand was raised by accused on 20.06.2000 and he asked to pay the amount of bribe by 23.06.2000.

He has stated that on the day of trap, he had gone to the office of accused, who inquired from him if he had brought the bribe money. He paid the tainted currency, which the appellant put in right side pocket of his pants.

Jaswant Singh, shadow witness, who appeared as PW2, has stated that he did not go inside the office room of appellant and remained

outside. After some time, Paramjit Singh came out of the office room and himself flashed signal to the raiding party by touching his turban. Thereafter, raid was conducted and tainted money was recovered from the right side pocket of his pants. He has specifically stated that he was asked by complainant to remain outside the office room of appellant.

Testimony of PW2 Jaswant Singh clearly makes out that he neither acted as a shadow witness at the spot or heard any conversation between the complainant and appellant or had witnessed giving of tainted currency by the complainant to the appellant.

PW3 Varinder Singh is the official witness, who has joined the raiding party. He has stated that at the time of raid, he was outside the MES premises while complainant along with Jaswant Singh had gone to the office of P.K. Verma. Complainant went inside the office of appellant while Jaswant Singh remained immediately outside his office near a window. He has, however, stated that it was Jaswant Singh (shadow witness), who had given signal to the raiding party. This witness has also stated that CBI has never recorded his statement and he has deposed for the first time when he was called as witness. He has further stated that investigating officer has not recorded his statement or the statement of Jaswant Singh PW2 on 23.06.2000.

As per version of complainant, he along with Jaswant Singh had reached the office of appellant at 4.30 p.m. On reaching there, they were apprised that a meeting was in progress which ended at about 5.40 p.m. Thereafter an officer came to the office of appellant and tea was served to him. After that officer had left, he was called in the office of complainant.

PW3 Varinder has stated that all the members of the raiding party reached the office room of appellant after two minutes of going of Paramjit Singh and Jaswant Singh away from them. The office room was visible from inside the place where the other members of raiding party were standing.

Other recovery witnesses examined by the prosecution are PW12 R.P. Sharma, PW13 Naresh Sharma and PW14 Parshant Srivastav, all Sub Inspectors of CBI and these witnesses have stated that the signal, after completion of transaction between the complainant and appellant, was given by Jaswant Singh, shadow witness. Inspector M.S. Brar, Investigating Officer of this case appeared as PW15. He has also stated that at about 6.20 p.m., Jaswant Singh shadow witness came out of the office of accused-appellant and gave a pre-arranged signal and thereafter raid was immediately conducted.

From the evidence produced by the prosecution, it is apparent that on the point of motive for demand of bribe and payment, there is solitary statement of complainant. In order to corroborate its case that appellant has motive for demanding the bribe money, prosecution has examined some witnesses of the department of appellant. The purpose of examining these witnesses appears to be that appellant had dealt with and cleared the bills of complainant. Hari Singh, Director (Contracts) in the office of Chief Engineer, Jalandhar, who at the relevant time, was posted as Superintending Surveyor of works, has been examined as PW5. He stated that Commander Works Engineer (CWE) is responsible for efficient engineering services in the district and for proper utilisation of allocated funds. The work is allotted to contractors by competent authority i.e. Garrison Engineer (GE), CWE and

Chief Engineer through tendering process. While describing the process of allotment of tender and payment to the contractor, this witness has stated as follows:-

- (i) GE is competent to make the payment, Bill is checked by Surveyor Assistant of the office of Garrison Engineer and audited by the Auditor. Then the payment is made by GE. After completion of the work, GE issues the completion certificate. Contractor submits final bill. If he does not submit the bill within the reasonable period, then it is prepared by department. Final bill is technically checked by Surveyor Assistant. GE's office sends this bill for technical check of SW, ASW of CWE's office. SW selects few bill not less than 20% of the total bill for the minor and maintenance works and 50% for other works. After technical check of bills by SW/ASW bill is sent to the GE's office and GE sends it to the auditor, Auditor after audit check, sends the bill for payment, who makes the payment. As a general rule, the payment is made by the GE.”
- (ii) The recovery was due from M/s. Paramjit Singh and company as his three contracts were cancelled being defaulter which was intimated to the concerned firm.
- (iii) Even, if the bills mentioned in the FIR had been passed for payment, no amount could have been paid to the contractor namely Paramjit Singh and Co. as recovery of outstanding amount was due towards this firm and instructions were issued from their office to the effect that recovery of outstanding amount due from various contractors be deducted at the earliest. There were standing instructions from Controller of Defence Accounts

to the effect that recovery is to be made for the outstanding amount from contractor. Three contracts of M/s Paramjit Singh and company of Patiala were cancelled at the recommendation of CWE-P.K. Verma, accused which included two contracts pertaining to Patiala area. The reason of cancellation of contracts was slow progress of work due to bad planning which may be due to bad financial position. After cancellation of the contracts Paramjit Singh and company was debarred from taking further contracts.

- (iv) Paramjit Singh and company did not submit final bill, which was prepared by the department. After preparing of the bill by department much time was not taken in finalising the payment of the bill in CWE's office. CWE P.K. Verma had no role to prepare the bill and make the payment after passing it. No bill is presented or processed by the CWE at any point of time.

PW7 C.L. Bansal was posted as A.G.E. (B&R) under the Garrison Engineer, MES, Patiala at the relevant time. He had seen the file of final bills of the complainant. He has stated that the measurement of the work was done by Superintendent (B&R)-II Shri Kukesh Kumar, and the bill was technically checked by then J.S.W. Shri Paramjit Singh. The bill was audited by Unit Accountant as well as C.D.A. (Western) at two different stages. While elaborating the details of the work and submission of bill by the complainant, this witness has stated in his cross-examination as follows:-

- “(i) The road repair work in question was completed on 13.7.1999. as per procedure, the bill is required to be submitted by the contractor only after completion of work. In the present case, the bill

had not been submitted by the contractor. It is correct that the contractor had been reminded to submit the bill as per photocopy of letter dated 29.09.1999 bearing No.8199/30/47/E8 written by the then Garrison Engineer to S. Paramjit Singh.

- (ii) “As per photocopy of letter dated 16.03.2000 Mark-DD, the contractor had been asked to return the excessive cement bags. As per photocopy of letter dated 18.03.2000 shown to me today in the court i.e. Mark-DE, it had been directed that the payment was to be released only after production of 34 bags of cement by the contractor. As per photocopy of letter dated 24.03.2000, it had been intimated to Paramjit Singh that the payment of bill was being delayed due to the fault of the contractor Paramjit Singh. The said letter had been issued under my signatures.”
- (iii) “After the bill is duly checked, the payment is to be made by G.E. Mr. P.K. Verma was posted as CWE at that time. Mr. Verma was not supposed to issue the cheque for payment of the bill. I do not know as to whether the bill had been dealt with by Sh. P.K. Verma. I have seen the file Mark-Y i.e. the final bill and the same does not bear the signatures of P.K. Verma. As per the file Mark-Y, Mr. P.K. Verma has never dealt with the final bill. I had been asked several questions by the CBI pertaining to the final bill.”

Rajesh Nigam, who was posted as Section Officer in CWE (P) Patiala, stepped into witness box as PW9. He has also stated that some payment was outstanding against the complainant, which was to be adjusted in his payment, as such, no payment in cash could be made to him. While

explaining the submission and clearance of bill submitted by the complainant, this witness has stated in his cross-examination as follows:-

- (i) “The rest of the payment of bill was cleared except for additional tax imposed by the Govt. The Garrison Engineer was accepting officer of contract No.GE/PAT/30/98-99. C.W.E. Does have not any role to pay in payment of any running accounts receipt or final bill when a contract is accepted by the Garrison Engineer even if the CWE himself accepts a contract.”
- (ii) “Final bill of contract No.E/98-99 was cleared by our office on 15.3.2000 for payment. The bill was again sent to our office on 17.5.2000 as certain objections were raised by the Audit authorities.”
- (iii) “As per contract, no payment towards handling was due to the contractor. Paramjit Singh contractor is claiming payment for reimbursement of additional goods tax imposed by Himachal Pradesh Govt. which was not admissible as per contract. Three contracts awarded to M/s Paramjit Singh were cancelled by Chief Engineer, two of which were pertaining to C.W.E. Patiala area. Two contracts were cancelled on the recommendation of P.K. Verma Commander Works Engineer, Patiala vide recommendations dated 21.12.1999 and 10.1.2000, photocopies of which are mark-PW9/DA and PW9/DB.”
- (iv) “As per photocopy of letter dated 11.5.2000 and 10.5.2000 approximately Rs.8,00,000/- were due to be recovered from M/s Paramjit Singh on account of cancellation of contracts. Photocopies of letters are mark PW9/DC and PW9/DD and this was conveyed to the firm M/s Paramjit Singh. No

payment in cash is made to the contractor against whom some recovery is to be effected. Even if the bill is passed, the amount passed is adjusted against the recovery due to be made.

- (v) That final bill was prepared by Garrison Engineer and forwarded the same to the C.W.E. by technical check up vide letter dated 29.11.1999. The said letter is Ex.PW9/D3. It is correct that final bill was cleared by the CWE office vide Ex.PW9/3.” (This letter is dated 15.03.2000 i.e. much before the date of trap.)

This letter (Ex.PW9/3) which was addressed to Garrison Engineer, Patiala reads as follows:-

“2. Final bill bearing voucher No.25/1167 dated 22 Oct 99 is returned herewith duly technically checked subject to compliance of the following observations before processing the final bill to audit authorities:-

- (a) Note that contractor has signed the final bill without any protest/reservation.
- (b) Confirm that no other recovery is due to be made from contractor otherwise recover the same from final bill.
- (c) Break down details of recovery made on account of defects has not rectified by contractor.
- (d) Cage III statement of Sch. 'B' justification of rolling has not yet been signed by JSW in token of technical checked as stated in para 2 (a) in your abid (sic above) mentioned letter.
- (e) Your reply against obsn No.2(f) is not clear. Please confirm that cement constant has been approved for stone sett flooring and stone after (.....) calculation of cement quantities at site of work.

- (f) Estimated quantity of Sch. 'B1' store, cement is 376 Bags. Please take back the over drawn Sch. 'B' store if any and enclosed necessary RV in final bill.
- (g) the rate of Srl. Item No.16 of Abstract has not approved as per the P.R. No.65 forwarded this HQ letter No.8500/GE Pat/Gen/2142/E8 dated 15 Mar 2000. Please note and enclose the copy of the P.R. With the final bill after getting it signed from the contractor.
- (h) Please make the duplicate copy of the true replica of the original final bill.
- (j) please intimate the date of payment to update the record.”

Rajesh Nigam PW9 has also proved the letters written to the complainant from time to time on the issue of return of cement bags and the delay being made by him. Vide letter dated 29.11.1999 Ex.PW9/D-2, it was intimated to the complainant that delay of final payment will be responsibility of the complainant and department will not be liable for the same. This letter was written to the complainant by Garrison Engineer. Vide letter dated 16.03.2000 Ex.PW9/D-4, complainant was asked to return 34 bags of cement, which were over issued to him. Again vide letter dated 24.03.2000 (Ex.PW9/D-6), written by the office of Garrison Engineer, the reason for delay in bill was explained to the complainant. Para 6 to 9 of the letter (Ex.PW9/D-6) reads as follows:-

- “6. As the final bill was not submitted by you hence the final bill was submitted to HQ CWE(P) Patiala on 29 Nov. 99 prepared by the Deptt.
- 7. The payment of the final bill has been delayed due to non return of overissued cement 34 bags

by you in spite of verbal reminders as well as requested to you vide this office letter No.8198/30/59/E8 dated 16 Mar 2000.

8. As the cement has been returned by you so the payment of the RAR has been released to you. The final bill has been progressed to CDA WC through AAO GE Patiala on 18 Mar 2000.

9. From the above, it will be seen that there is no delay in the payment of the final bill to you but was delayed due to non submission of the final bill to the Deptt. And due to non return of over issued Schedule 'B' stores by you.”

Vide letter dated 20.06.2000 (Ex.PW9/D-9), Headquarter Commander Works Engineer (P), Patiala had intimated the Garrison Engineer that no approval of CWE is required in the matter. The letter reads as follows:-

- “1. Reference your letter No.8198/30/77/E8 dated 17 May 2000.
2. As the subject contract is concluded by your office as such no approval of the CWE is required for placing the DO. The time effect in the DO No.2(P) should be “NIL” as mentioned in the AIP issued by your office.
3. The matter has also been discussed with concerned staff of your E-8 Section.”

PW9 Rajesh Nigam has stated that vide letter Ex.PW9/D-10 dated 21.06.2000, Garrison Engineer has intimated Paramjit Singh (complainant) and also resubmitted final bill to CDA for payment and thereafter final bill was lying with CDA.

From the statements of aforesaid witnesses and the letters

produced on record, it is evident that complainant was having all the

correspondence regarding clearance of his bills with Garrison Engineer and not with the appellant or his office.

Garrison Engineer posted at Patiala at the relevant time PW11 Gautam Rai has stated that there was some dispute regarding the contract in question with the complainant pertaining to levy of some tax by Himachal Pradesh Govt. His predecessor had recommended that payment be made to Paramjit Singh towards additional levy of tax but said proposal was turned down by the office of CWE (P) Patiala and the payment of extra charges to the contract were disallowed. On representation of contractor for payment of additional charges (levied by Himachal Government), he had recommended the review of previous order by CWE vide letter dated 14.10.99. The office of CWE vide its letter dated 01.11.99 reviewed the earlier decision and ordered for reimbursement of additional tax paid by the contractor. Accordingly, hand receipt for reimbursement of the tax paid by the contractor was prepared by Assistant Garrison Engineer S.C. Adalakha. This witness has also stated certain facts regarding the payment to the complainant in his cross-examination, which are reproduced as follows:-

“(i) It is correct that the entire payment pertaining to the contract in question, except for disputed amount towards Toll-tax, had been made to the contractor.”

(ii) “It is correct that even after the office of CWE(P) had approved the payment of the goods tax to Paramjit Singh, the office of CEA at Chandigarh turned down the request for payment on the ground that the same was not admissible.”

(iii) “It is correct that after the payment had been declined by the CDA, the matter was referred to the

Chief Engineer, Chandigarh Zone vide letter dated 16.6.2000 under the signatures of accused P.K. Verma, which is already exhibited as Ex.PW9/13. I cannot say if the Chief Engineer has sent any letter in reply to the letter Ex.PW9/13. It is correct that two of the contracts awarded to Paramjit Singh had been cancelled by the office of the Chief Engineer. The said contract was cancelled on the recommendation of accused P.K. Verma. The reason for cancelling the said contract were the slow progress of the work.”

(iv) “It is correct that some recovery was to be effected from Paramjit Singh on account of cancellation of the contract. Even if the bills submitted by Paramjit Singh were passed, the payment in respect of such bills was to be made after adjustment of the amounts to be recovered from Paramjit Singh. Accused P.K. Verma did not have any role in passing of the bills or the hand receipts. The bills are to be passed by the local Audit office and the office of CDA and the said two wings are separate from the office of CWE and are completely independent and are not under the control of CWE.”

Statements of above prosecution witnesses have been discussed in detail in order to find as to whether any bill of complainant was pending with the appellant at the time of raid or he could oblige him by clearing the payment and for that had reason to demand illegal gratification.

From the above evidence, it is evident that there was one issue regarding the payment of additional levy of tax by Himachal Govt. and the appellant vide letter dated 16.6.2000 had already recommended Chief Engineer, Chandigarh Zone for release of that payment to contractor. Some contracts of the complainant had been cancelled on the recommendation of

the appellant and the recovery proceedings were pending against him. The witnesses have categorically stated that firstly, all the payments of complainant were to be released by the Garrison Engineer and not by the office of appellant and secondly, even if the bills of the complainants have been passed, no payment could be made to him as the same was to be adjusted towards the payment outstanding against him. This shows that appellant had no motive or reason to demand any bribe from the complainant, rather, the complainant being the aggrieved person, due to cancellation of his three contracts, had reason and motive to implicate the appellant.

Keeping in view the above facts, solitary statement of complainant regarding the demand of bribe money by the appellant could not be believed. As per the statement of Jaswant Singh (PW2), who was appointed as shadow witness, he had neither seen nor heard any conversation between the complainant and appellant. He had remained outside the office of appellant on the asking of complainant. As per him, even the signal to the raiding party was given by the complainant and not by him. His statement finds corroboration from the testimony of Jaswinder Singh, who was posted as Peon in the office of appellant. He has stated that Jaswant Singh and one more person namely Barinder Singh did not entered the office of appellant. Both have remained outside and he had also served them water. It was Paramjit Singh, complainant, who was arguing with the appellant in connection with some contract work.

It is well settled that sole testimony of complainant without any corroboration should not be believed regarding the demand of bribe. In the

present case, when the complainant was aggrieved and had motive for false implication of the appellant, his statement regarding the demand of bribe cannot be believed without corroboration.

Here learned counsel for CBI has argued that the bribe money was recovered from the pocket of the pants of appellant and the recovery of bribe money without any explanation from the appellant duly proves that he had accepted this amount as illegal gratification. This lends support to the testimony of complainant.

The prosecution has examined a number of witnesses to prove the recovery of tainted currency from right side pocket of pants of appellant and the question which arise for consideration is as to whether the recovery of tainted currency is sufficient to prove the offence punishable under Section 7 and 13 of P.C. Act.

Section 20 of P.C. Act 1988 reads as follows:-

“20. Presumption where public servant accepts gratification other than legal remuneration. -

(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

Hon'ble Apex Court in case of *A. Subair Vs. State of Kerala*

2009(6) SCC 587, has observed in para 23 as follows:-

“23. Mere recovery of currency notes (Rs. 20/- and Rs.5/-) denomination, in the facts of the present case, by itself cannot be held to be proper or sufficient proof of the demand and acceptance of bribe. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence.”

In case of *Banarsi Dass Vs. State of Haryana 2010 (4) SCC 450*, Hon'ble Apex Court has taken note of the conclusion drawn by this Court while convicting the accused for the offence under P.C. Act and observed in para 9 as follows:-

“9. The above findings recorded by the High Court show that the Court relied upon the statements of PW-10 and PW-11. It is further noticed that recovery of currency notes Ex. P-1 to P-4 from the shirt pocket of the accused, examined in light of Ex. PC and PD, there was sufficient evidence to record the finding of guilt against the accused. The Court remained uninfluenced by the fact that the shadow witness had turned hostile, as it was the opinion of the Court that recovery witnesses fully satisfied the requisite ingredients. We must notice that the High Court has fallen in error in so far as it has drawn the inference of demand and receipt of the illegal gratification from the fact that the money was recovered from the accused.”

While elaborating the law on the point, it was observed in para 12 and 13 of the above judgment as follows:-

“12. Reliance on behalf of the appellant was placed upon the judgment of this Court in the case of *C.M. Girish Babu*

(supra) where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in para 18 and 20 of the judgment held as under :

"18. In *Suraj Mal v. State (Delhi Admn.)* [1979 (4) SCC 725] this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

20. A three-Judge Bench in *M. Narsinga Rao V. State of A.P.* [2001 (1) SCC 691: SCC (Cri) 258] while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p. 700, para 24)

"24. ... we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide *Madhukar Bhaskarrao Joshi V. State of Maharashtra* [2000(4) R.C.R. (Criminal 705 : 2000 (8) SCC 571]). The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (Madhukar case, SCC p. 577, para 12) '12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word

"gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

13. In fact, the above principle is no way derivative but is a reiteration of the principle enunciated by this Court in Suraj Mal case (supra), where the Court had held that mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money. ”

In the case of *State of Kerala and another Vs. C.P. Rao 2011*

(6) SCC 450, Hon'ble Supreme Court has observed that the mere recovery by itself cannot prove the charge that the accused voluntarily accepted the money knowing it to be the bribe. In case of *State of Punjab Vs. Madan Mohan Lal Verma (supra)*, Hon'ble Apex Court 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.)”**

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 19 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.** In the case at hand, all

that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act.

19. After referring to ***Surajmal v. State (Delhi Administration) (1979) 4 SCC 725***, in ***C.M. Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779***, it was held as under:-

“18. In ***Suraj Mal v. State (Delhi Admn.) (supra)***, this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.”

In ***State of Kerala and Anr. v. C.P. Rao (2011) 6 SCC 450***, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.”

Similar observations were also made in case of ***N. Sunkanna Vs. State of Andhra Pradesh (2016) 1 Supreme Court Cases 713***.

Learned counsel representing CBI has argued that the recovery of tainted currency from the possession of the appellant leads to a presumption that he had accepted this currency as bribe, particularly when the appellant has not come up with any explanation. He has relied on following observation of Hon'ble Apex Court in case of ***State of A.P. Vs. C.Uma Maheshwara Rao and Another (supra)***:-

“11. For appreciating rival stands it would be proper to Section 20(1) of the Act, which reads as follows:

"20(1): Presumption where public servant accepts gratification other than legal remuneration.-(1) Where in any trial or an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) or Section 13 it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

12. Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Indian Evidence Act, 1872 (in short the 'the Evidence Act'). The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be presumed" is employed in Section 20(1) of the Act, it must have the same import of compulsion.

13. When the sub-section deals with legal presumption, it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. **The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification.** The Section does not

say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. (See ***M. Narsinga Rao V. State of A.P. (2001 (1) SCC 691***).

14. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in ***Hawkins v. Powells Tillery Steam Coal Co. Ltd. (1911 (1) KB 988***) observed as follows:

"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

15. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court may have regard to common course of natural events, human conduct, public or private business vis-a-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

16. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances.

Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.

17. For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted the Court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in ***Suresh Budharmal Kalani V. State of Maharashtra (1998 (7) SCC 337)***

"A presumption can be drawn only from facts—and not from other presumptions—by a process of probable and logical reasoning".

18. Illustration (a) to Section 114 of the Evidence Act says that the Court may presume that

"a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession".

That illustration can profitably be used in the present context as well when prosecution brought reliable materials that there was recovery of money from the accused. **In fact the receipt and recovery is accepted. The other factor is the acceptability of the plea of loan, which the High Court itself has not held cogent or credible."**

Mr. Sumeet Goel, retainer counsel for CBI has argued that

independent and official witnesses, whose testimony is credible. While referring to the Illustration (a) to Section 114 of Evidence Act, as referred in the above citation, he has argued that the trial Court has rightly drawn the presumption that the tainted money recovered from the appellant was accepted by him as bribe from the complainant.

Firstly, I take a look on the Illustration (a) to Section 114 of Evidence Act, which shows that if a person is found in possession of stolen goods soon after the theft, the presumption is that he is either thief or has received the goods knowing it to be stolen property, unless he can account for its possession.

The above Illustration is not applicable to the facts of the present case as in order to prove the offence punishable under Sections 7 and 13 of P.C. Act, the initial burden is on the prosecution to prove the demand and acceptance of illegal gratification. If this ingredient is successfully proved by the prosecution, then burden of proving defence shifts on the accused. A stolen property has a specific stigma attached to it and is proved to be owned and taken out from the possession of the owner before its recovery.

In this case, as has already been held that prosecution has failed to prove the motive for the appellant to demand any illegal gratification. It is also proved that complainant had motive and grievance against the appellant. The shadow witness has neither heard any conversation between the complainant and the appellant nor seen the tainted money being given or accepted. In these circumstances, mere recovery of tainted currency from the possession of the appellant cannot be taken as proof of motive for

demand of bribe money and its acceptance by the appellant. 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. Keeping in view the above facts, I am of the opinion that learned trial Court should have looked for independent corroboration before relying on testimony of complainant, which is missing in this case.

The core question which call for answer in this case is whether there is sufficient legal evidence to prove the guilt of the appellant for offences punishable under Sections 7, 13 (1) (d) read with Section 13 (2) of P.C. Act. The evidence on record in this case is not sufficient to bring home the guilt of the appellant. As held by Hon'ble Apex Court in case of ***Banarsi Dass Vs. State of Haryana; State of Kerala and another v. C.P. Rao; State of Punjab Vs. Madan Mohan Lal Verma; V. Sejappa Vs. State by Police Inspector Lokaukta, Chitradurga; and N. Sunkanna Vs. State of Andhra Pradesh (supra)***, mere recovery by itself cannot prove the charge of demand, payment and acceptance of bribe money by the appellant. The sole testimony of complainant on above points cannot be relied as the complainant is interested and partisan witness, who had motive and grievance against the appellant and his evidence is to be seen and appreciated in the same way as that of any other interested witness. In the absence of any corroboration to his testimony, I do not find the statement of complainant reliable or convincing. The citation referred by learned counsel

representing CBI is not applicable to the facts and circumstances of the present case. Even in that case, Hon'ble Apex Court has observed only condition for drawing a legal presumption under Section 20 Evidence Act is that during the trial, prosecution has proved that the accused accepted or agreed to accept any gratification. In this case, prosecution has utterly failed to discharge its obligation in this regard.

As a sequel of my above discussion, I find merits in this appeal and the same is accepted. The conviction and sentence awarded to the appellant (since deceased) is set aside and the appellant is acquitted of the charges framed against him. Amount of fine deposited by appellant be refunded to his legal representative(s) or any one of them, if agreed by all legal representatives.

February 16, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No