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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRA-S-3316-SB-2017 [O&M]
Date of Decision : April 26, 2019

Tej Kumar Goyal Appellant

Versus

State of Punjab Respondent

2. CRR-3612-2017

George Subh Petitioner

Versus

State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Vinod Ghai, Senior Advocate,
with Mr. Jasdev Singh Mehndiratta, Advocate,
for the appellant-Tej Kumar Goyal.

Mr. Rajat Bansal, AAG, Punjab,
for respondent-State.

Mr. H.S.Oberoi, Advocate,
for the revisionist-complainant - George Subh.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction
and order of sentence dated 08.09.2017 passed by learned Additional

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Sessions Judge, S.A.S. Nagar, Mohali whereby appellant – Tej Kumar Goyal was convicted and sentenced as under:-

Under Section	Sentence	In default
Section 7 of the Prevention of Corruption Act, 1988 (for short, “the Act”).	to undergo Rigorous Imprisonment for a period of Three years and to pay a fine of Rs.7000/-	to further undergo R.I. for a period of three months.
Section 13(2) of the Act	to undergo Rigorous Imprisonment for a period of Three years and to pay a fine of Rs.7000/-	to further undergo R.I. for a period of three months.

Both the sentences were ordered to run concurrently.

2. Complainant - George Subh has filed CRR-3612-2017 seeking enhancement of sentence awarded to the accused-appellant by the trial Judge. Therefore, both these cases are taken up together and are being disposed of by this common judgment.

3. Facts relevant for the purpose of decision of present appeal; that complainant George Subh is aggrieved of the act of the present appellant whereby he was harassed and compelled to part with bribe money of Rs.50,000/-. He had applied for getting Numberdari in the year 2008 and for that purpose, he moved an application before the Deputy Commissioner, Kapurthala. However, on 17.12.2008, the Deputy Commissioner observed that the complainant had admitted that he is 'Masih' by caste, which does not come under the Scheduled Caste, for which the said post was reserved. Complainant alleged that he did not make any admission. Thereafter, appeal was preferred by the complainant before the Commissioner, Mandal, Jalandhar and a complaint was also moved by him before the Chairperson, Punjab State Scheduled Castes

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Commission, Chandigarh, for conducting verification regarding caste of the complainant. On that complaint, he received summons, whereby the complainant was asked to appear before present appellant Tej Kumar Goyal (T.K. Goyal) - Enquiry Officer on 16.08.2010 at 11 am. On 16.08.2010, the complainant was asked to appear on 26.08.2010 for getting recorded his statement. Later on, as per prosecution case, the accused called the complainant separately and asked him to meet him at Bus Stand Mohali. Accordingly, on 07.09.2010 at about 8:30 am, the accused met the complainant at Bus Stand Mohali and demanded Rs.1,00,000/- for deciding the matter in favour of the complainant. The complainant agreed to pay Rs.50,000/- and promised to hand over the same to the accused in his office on next day i.e. 08.09.2010 in the afternoon.

4. On 08.09.2010, complainant George Subh moved an application before DSP Vigilance Bureau, Kapurthala (Baldev Singh). DSP Baldev Singh talked to Senior Superintendent of Police, Vigilance Bureau, Jalandhar and Superintendent of Police told that the officer in question was posted at Chandigarh, so the application was to be moved before Chandigarh S.S.P. Accordingly, S.S.P. Vigilance Bureau at Jalandhar instructed DSP Baldev Singh to take the complainant to Vigilance Bureau, Chandigarh. On 08.09.2010, DSP Baldev Singh, complainant George Subh and witness Baltar Ram met Superintendent of Police, Vigilance Bureau, Chandigarh, alongwith DDR No.11 dated 07.09.2010. The complainant got recorded his statement before the Superintendent of Police and produced 50 currency notes of 1000 denomination each which were taken into police

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custody after noting down their details and were duly withheld. Two official witnesses namely Anil Shahi, SDO and Charan Dass, SDO were also associated. On 8.9.2010, at about 4:40 pm, the complainant and shadow witness Baltar Ram entered the office of the accused. At 5:20 pm, Baltar Ram [PW-2] came out of the office of the accused and gave pointed signal to raiding party and on his signal, members of the raiding party entered the office of accused person and currency notes were recovered from the pocket of shirt of the appellant. However, the accused had thrown the said currency notes on the ground. In that process, pocket of the shirt of the accused was torn. The other formalities of raid were completed. A glass of water was arranged and sodium carbonate was put in the said glass. Both the hands of the accused were dipped and got washed in the said water, upon which the colour of the water got changed to light pink colour. Samples of the said water of light pink colour were prepared and the same were sealed. Currency notes were also recovered. Jamatalashi articles were also recovered. Anil Sahi dipped the pocket of the shirt of the accused in the said glass of water and colour of the same changed to light pink. Separate parcels of pink colour water and shirt were prepared and sealed and the same were taken into police custody. Case property was deposited with the MHC. After completion of investigation proceedings, challan was presented in the Court for trial.

5. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, under Sections 7 and 13(2) of the Act. Prosecution examined 16 witness apart from leading documentary evidence. Accused-appellant was

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examined under Section 313 Cr.P.C. In defence, the accused examined 12 witnesses apart from leading documentary evidence. After considering the prosecution and the defence evidence on record, learned trial Court held the accused guilty and convicted him for commission of offence under Sections 7 and 13(2) of the Act and sentenced him vide judgment and order dated 08.09.2017 as mentioned in para No.1 above.

6. Aggrieved of passing of judgment of conviction and order of sentence, appellant Tej Kumar Goyal, is before this Court by way of present appeal No. CRA-S-3316-SB-2017. Complainant - George Subh has filed CRR-3612-2017 seeking enhancement of sentence awarded to the accused-appellant by the trial Judge.

7. At the time of arguments, learned senior counsel for the appellant contended that the appellant has been falsely implicated in this case and the entire prosecution case is not believable and self-contradictory. He further contended that the basic ingredients of the alleged offence are not proved in this case and falsifies the prosecution version. The prosecution was required to prove three basic facts i.e., (1) Demand of bribe money (2) Acceptance of bribe money and 3). Recovery of bribe money.

8. As regard to demand of bribe money on the part of accused-person, learned senior counsel representing the appellant contended that as per the prosecution case, the complainant was aggrieved of denial of his status as scheduled caste for the purpose of Numberdari. However, the said claim had already been rejected by the Deputy Commissioner long back. Thereafter, the complainant had made complaint before

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Chairperson, Punjab State Scheduled Castes Commission, Chandigarh and enquiry was entrusted to the present appellant, who was working as Joint Secretary, Welfare Department, Punjab. First such meeting for the purpose was held on 16.08.2010 which was duly participated by present complainant – George Subh and he had signed the proceedings on 16.08.2010 itself and the same is evident from Ex. DW-7/A on the record. The next date for the proceedings was fixed as 26.8.2010. On that day, complainant – George Subh was present and he made the following statement:-

“xx My father died in the year 1997-98 and he was buried in the ground and not cremated..”

9. The said statement, Ex. DW-7/C was signed by the complainant himself on 26.08.2010. Apart from that, the complainant had made statement on 16.8.2010 that he had earlier made statement before District Welfare Officer, Kapurthala. The same is correct and the same be treated as his statement, meaning thereby that the complainant was associated in the enquiry proceedings on 16.8.2010 and had voluntarily made statement on 16.8.2010 and 26.8.2010 that he was satisfied with his earlier statement. He is Christian by caste and as such, his father was buried and not cremated and in that capacity, he was not covered under Scheduled Caste category. His status had rightly been decided by the Deputy Commissioner much earlier. If that was the case, there was no motive with the accused to demand bribe money from the complainant. Document Ex. DW-7/A, which was duly signed by the complainant and his statements dated 16.08.2010 and 26.08.2010 establish that there was

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absolutely no motive for him to raise demand of bribe and the entire prosecution case falsifies on that ground. Since the status of complainant – George Subh whether he was a Scheduled Caste or not, was decided by the competent forum much earlier, there was no question of offering any bribe to the appellant. On this point, reliance was placed on the decision of Apex Court in **Balkar Singh Versus State of Punjab, 2014(1) R.C.R. (Criminal) 737.**

10. As regard to acceptance of the bribe money, learned senior counsel representing the appellant contended that if the entire prosecution story is taken to be correct, nothing was recovered from the possession of the present appellant. As per prosecution case itself, 50 currency notes of Rs.1000/- denomination each, were lying on the ground itself. This fact has been admitted by PW-3 Anil Shahi, Executive Engineer and PW-4, Charan Dass, SDO (Retd.). However, both these official witnesses have not supported the prosecution case and they were declared hostile witnesses. They had also not supported the prosecution case as regard to removal of shirt of the accused person in the Secretariat.

11. Learned senior counsel further contended that the acceptance of bribe money is the basic ingredient so as to prove the offence punishable under Sections 7 and 13(2) of the Act which has also not been established in this case.

12. As regard to recovery of bribe money, learned senior counsel further contended that the same has not been proved from the possession of the accused-appellant. So all the three basic ingredients involved for commission of offence under Sections 7 and 13(2) of the Act are not

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established in this case and learned trial Judge has completely ignored all these facts while deciding the controversy.

13. While arguing further, learned senior counsel contended that the prosecution has not been able to prove that the appellant had met the complainant at Bus Stand, Mohali on 7.9.2010 as alleged by complainant – George Subh. On this point, he placed reliance upon the testimony of DW-1, Munish Bindra who produced call details of mobile of complainant – George Subh as Ex. DW-1/C and DW-2, Amit Dabra, who produced call details pertaining to the accused-appellant as DW-2/C. The testimony of both these defence witnesses and call details establish that the appellant had not gone to Mohali on 7.9.2010 as alleged against the accused. These facts were also established by DW-3, Gurmail Singh, who was posted as Junior Scale Steno Typist in the Department of Welfare Cell. DW-5, Ram Kumar, Driver of official car No. PB-65F-7435 also establishes the same.

14. Learned senior counsel for the appellant also contended that since the matter pertaining to appellant had already been decided on 26.8.2010 and the proceedings were signed by the other members even, there was no question of demand and acceptance of bribe money, but learned trial Judge has completely ignored all these facts while recording the judgment of conviction and the same is liable to be set-aside.

15. Learned State Counsel as well as learned counsel representing the complainant/revisionist contended that the prosecution case has been duly proved on the file as per statement of PW-1, complainant – George Subh, PW-2 Baltar Ram, shadow witness, apart from testimony of all the official witnesses who were members of the

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raiding party. The prosecution has been able to establish that there was demand of illegal gratification for establishing the case of the complainant that he was a Scheduled Caste category candidate and the enquiry was pending with the present appellant. For that purpose, he had demanded Rs.1,00,000/- as bribe but the same was settled at Rs.50,000/- from complainant – George Subh on 7.9.2010 at Mohali in the presence of shadow witness, Baltar Ram (PW-2) and thereafter the alleged payment was made on 8.9.2010 in the office room of appellant-accused in the presence of shadow witness and the said currency notes were recovered from the accused person from his office.

16. As regard to defence plea taken by accused-appellant that tower locations were indicating different location of the accused-person and the complainant, the same is not legally reliable evidence because the same are computerized copies of call details and not admissible as per Section 65-B of the Evidence Act. On this point, reliance was placed upon judgment from Hon`ble Apex Court in **Anvar P.V. Vs. P.K.Basheer and others** 2014(5) Law Herald 4558 (SC).

17. Learned State counsel as well as learned counsel representing the complainant/revisionist also contended that there was no motive for the complainant and shadow witness to falsely implicate the present appellant, rather they were pressurized and harassed and because of that, the complainant made the complaint to the Vigilance Department and thereafter raid was conducted where the accused was caught red-handed.

Learned State counsel as well as learned counsel representing the complainant contended that on the basis of different

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exhibited documents, prosecution has been able to establish that complainant – George Subh was 'Masih' by caste and he along with his family follows Christianity as religion but he was denied the status of Scheduled Caste and was not issued Scheduled Caste certificate as on 26.08.2010 vide Ex. PW-7/A. The complainant had been continuously trying to establish that he was having valid Scheduled Caste certificate. More so, even by changing the religion, the caste of person is not changed. On this point reliance was placed upon judgments from Hon`ble Apex Court in **Mohammad Sadique Versus Darbara Singh Guru, Civil Appeal No.4870 of 2015** decided on 29.04.2016 and **K.P. Manu Versus Chairman, Scrutiny Committee for Verification of Community Certificate, Civil Appeal No.7065 of 2008** decided on 26.02.2015.

18. As regard to the demand of bribe money, the same stands established on the basis of statement of complainant – George Subh (PW-1) and Baltar Ram (PW-2), who have duly supported and corroborated the prosecution version as per Section 20 of the Act that acceptance of money by the accused establishes the ground of demand and that has happened in this case. On this point reliance was placed upon the judgment of Hon`ble Apex Court in **State of Andhra Pradesh Versus P. Venkateshwarlu, 2015(3) R.C.R. (Criminal) 131**. On the same point, reliance was also placed upon the judgment from Co-ordinate Bench of this Court in **Kamaljit Kumar alias Kamaljit Singh (dead) through his L.Rs. Versus State of Punjab, 2015(3) R.C.R. (Criminal) 746**.

19. Learned State counsel as well as learned counsel

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representing the complainant also raised contention that the recovery of tainted money from the floor of office of the appellant establishes the recovery of tainted money from the accused because the appellant had thrown the currency notes on the floor when he found that he had been trapped and that amounts to acceptance and possession of bribe money with the appellant-accused. On this point, reliance was placed upon judgment from Hon`ble Apex Court in **V. Kannan Versus State Represented by The Inspector of Police, 2009(4) R.C.R. (Criminal) 212.**

Reliance in this regard was also placed on the testimony of PW-16, Mandhir Singh, who had deposed that the accused had thrown the currency notes from the pocket of his shirt and in that process the pocket of the shirt of the accused was torn.

20. Learned State counsel as well as learned counsel representing the complainant further contended that in the light of above, there is no ground for acceptance of the appeal having been filed by the accused-appellant, rather it is a case of enhancement of sentence and the revision petition filed by the complainant be accepted and suitable sentence be awarded against the present appellant.

21. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that the appellant has been convicted and sentence for commission of offence punishable under Sections 7 and 13(2) of the Act on the basis of statements of complainant – George Subh (PW-1), shadow witness, Baltar Ram (PW-2) whereas official witnesses, namely Anil Shahi (PW-3) and Charan Dass (PW-4) have not supported the prosecution case.

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22. In **Sat Paul Vs. Delhi Administration**, 1976 SCC (Crl.) 160

Hon`ble Supreme Court held that trap witnesses are interested witnesses concerned with the success of the trap and qualitatively their testimony is inferior to that of an ordinary interested witness. Besides, it was observed that corroboration of such interested witness from independent source is essential where witnesses have poor moral fibre with bad antecedents and have motive to remove the accused from their way. Corroboration of another trap witness, who was a police official was held not to be sufficient.

23. Similar view was taken by the Co-ordinate Bench of this Court in **Amrik Singh Versus State of Punjab**, 2005(4) R.C.R. (Criminal) 310.

In the light of view taken by Hon`ble Apex Court and Co-ordinate Bench of this Court and the facts of the case in hand, this Court would like to appreciate the prosecution and defence evidence led in the case. Prosecution case is mainly based upon the testimony of PW-1 and PW-2 apart from other official witnesses who were members of the raiding party.

The basic ingredients required to be proved in such like cases are :-

- (1). Demand of bribe money;
- (2). Acceptance of bribe money; and
- (3). Recovery of tainted money.

This Court would like to deal with all the three ingredients available in this case.

Demand of bribe money

24. In such like matters, demand of bribe money by public servants and acceptance and recovery thereof, the most ingredient is demand of bribe money. Similar matter was before Hon`ble Apex Court in

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V. Sajappa Vs. State By Police Inspector Lokayukta, Chitradurga,

2016 (2) R.C.R. (Criminal) 860, wherein it was held by Hon`ble Apex Court as under:-

“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...”

“20.....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.”

25. As regard to the demand of bribe money, relevant factors would be motive for raising the demand of bribe money and other evidence on the point. In the light of that background, case of the prosecution is that complainant – George Subh was aggrieved of non-issuance of certificate of Scheduled Castes was decided by Deputy Commissioner, Kapurthala on

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17.12.2008 vide Ex. D-11. At that time, Deputy Commissioner had observed that as per statement of George Subh, he was 'Masih' by caste and he could not be appointed Numberdar because the post was reserved for *Harijan Numberdar*. Thereafter appeal was filed against that order. In fact, that is the main grievance of the complainant. For that purpose, complainant – George Subh moved an application before the Chairperson, Punjab State Scheduled Castes Commission, Chandigarh on 9.4.2009 and the Commission marked the enquiry which was conducted by District Welfare Officer. On 11.5.2010 meeting of Vigilance Cell was held which was presided over by Director – Indu Mishra (PW-6) and the matter was sent to state level Scrutinization Committee (for short, “the Committee”) for taking decision.

26. On 16.8.2010, first meeting of the Committee took place wherein complainant – George Subh appeared. At that time, he had taken the plea that his statement recorded by District Welfare Officer and Vigilance Cell be treated as his statement and that he did not want to say anything else. This is evident from Ex. DW-7/A and DW-7/B. The proceedings were adjourned for 26.8.2010. Vide Ex. DW-7/C, complainant himself admitted that his father had been buried and on the basis of that, the Committee had taken the decision that George Subh did not belong to Scheduled Caste. The proceedings available on the file establish that the decision had already been taken on 26.08.2010 by the Committee and thereafter there was no question of raise of demand of bribe money by the accused-appellant from the complainant. More so, on 7.9.2010, file was put up by Bindu Walia, Joint Director of the Welfare

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Department for signatures of the appellant on the basis of decision taken in the said meeting dated 26.10.2010. On 7.9.2010 itself, signatures of Bindu Walia were already available on the file.

27. As the decision had already been taken by the Committee on 26.08.2010, there was no question of any demand having been raised by the appellant and the defence version on the basis of testimony of all the defence witnesses is on the same point, but learned trial Judge has not considered all these aspects.

28. Identical matter was before a Co-ordinate Bench of this Court in **Balkar Singh's case (supra)** wherein facts were almost identical and the report had already been submitted on 16.11.1999. This Court observed that there was no occasion for the accused-appellant to have demanded or accepted bribe thereafter on 22.11.1999. Quite identical are the facts of the present case. Relevant part of the view taken by Hon`ble Apex Court in **Balkar Singh's case (supra)** is extracted hereunder:-

“15. Since the appellants had already made a report on 16.11.1999 that the land could not be demarcated in view of passing of the status quo order by the Civil Court, there was no occasion for the appellants to have demanded or accepted bribe thereafter on 22.11.1999 as alleged by the complainant. It appears that the complainant was unhappy because the demarcation of the land had not been done by the appellants and due to this reason, he falsely involved the appellants in this case.”

29. In **G.V.Nanjundiah Vs. State (Delhi Administration), 1988 CrI. L.J 152 (SC)** the Hon'ble Supreme Court considered a case where the appellant therein was an Engineer and was charged for accepting bribe

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from a contractor working under him. The contractor alleged that the appellant therein who was an Executive Engineer was not making payment of Rs. 1 lac to him which was deducted by way of security from his running bills. It was alleged that there was delay in payment to him for additional items of work executed by him. The complainant is stated to have asked the Executive Engineer on three-four occasions to release the security amount and to sanction the amount due on account of extra items of work done by him. The matter is stated to have been settled for Rs.2,500/- which the complainant alleged was given at the house of the accused Executive Engineer on 30.10.1973 in which the accused was trapped. In fact, the case of the accused was that he had been fair to the contractor and that the release of the security amount had never been delayed. According to the accused the Accountant in the office was in league with the contractor. Besides, the accused Executive Engineer had made payments to the contractor within the limits of his power which was to the extent of Rs.25,000/- and he in all had made payment of a sum of Rs. 1,84,000/- on account of the extra works.

30. In these circumstances, it was observed by the Hon'ble Supreme Court that the foundation of the prosecution case of the demand made by the appellant for bribe had been shaken to a great extent and in any case it casts a grave doubt on the subsequent event that was alleged to have taken place in the matter of giving bribe. In the circumstances, it was observed that the question as to handing over of any bribe and recovery of the same from the accused is to be considered along with other material circumstances, one of which was the question whether any

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demand was at all made by the appellant for bribe and when it was found that no such demand was made by the accused and the prosecution has given a false story in that regard, the court would view the allegations of demand of bribe and the recovery of the same from the accused with great suspicion. The said case was of an Engineer, who was alleged to have accepted bribe from a contractor.

31. Identical view as taken by Coordinate Bench of this Court in **Amrik Singh's case (supra)** that if the decision has already been taken or orders had already been passed, there was no question of demand of bribe money or acceptance of the same and the defence version cannot be simply discarded as the same is coming from the accused side.

32. Similar matter was also before this Court in **Surinder Singh Versus State of Punjab, 2010(4) R.C.R. (Criminal) 222**, wherein accused was working as Patwari and allegedly raised demand of Rs. 700/- from the complainant for making some correction of entries in the relevant record and on the basis of that trap was laid. Tainted currency notes were recovered which were lying underneath a *khes* (thick cloth) which place was pointed out by complainant and not by accused and this Court observed that it was not a case of apprehending the accused red handed as the required action had already been taken.

33. The next point involved in this case is whether the prosecution has been able to establish that demand of bribe money was raised by the accused person and that was accepted by him and the alleged recovery of bribe money was effected from his possession.

34. As per the complainant, the accused-appellant had asked the

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complainant to meet him on 7.9.2010 at Mohali Bus Stand, but the tower location, on the basis of call details as proved by DW-1, Munish Bindra and documents, Ex. DW-1/C and Ex. DW-1/G establish that the complainant was in village Begowal till 10.42 AM and thereafter he had gone to Jalandhar and remained at Jalandhar till 6.00 PM and thus, he was not available at Mohali. Further call details of appellant Ex.DW-2/C and DW-2/G also establish that the appellant never visited Mohali on 7.9.2010 at 8.30 AM rather, he was present in his house at Sector 19, Chandigarh. If that is the case, the prosecution case falls to the ground because the demand of bribe money is not proved at all.

35. Learned State counsel as well as learned counsel representing the complainant had placed reliance upon judgment in **P.K.Bhasheer's case (supra)** dealing with evidentiary value of such evidence under Section 65-B of the Evidence Act.

36. However, similar matter was recently before Hon`ble Apex Court in case **Shafhi Mohammad Versus State of Himachal Pradesh, 2018(3) R.C.R. (Criminal) 388**, wherein it was observed by Hon`ble Apex court as under.

“14. The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be

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invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.”

37. The above view taken by Hon`ble Apex Court establishing that the accused person at the best could lead that photo copy of the call details which he has already done and complainant had admitted the call details of his phone, as detailed in Ex. DW-1/C and DW-1/G and on that basis, learned trial Judge was to take the view that accused has been able to establish his defence that he was not present at Bus Stand, Mohali on 7.9.2010 rather, he was present in his house. As such, the element of demand of bribe money is not established in this case.

Acceptance and Recovery of bribe money

38. As per prosecution case, the accused-appellant had accepted the bribe money in his office at 5.15 PM on 8.9.2010. But on this point, testimony of complainant – George Subh and shadow witness, Baltar Ram is self contradictory. As per the complainant, they had entered in the room of the accused at 4.40 PM and demand was raised at 5.15 PM and thereafter the shadow witness had given signal. However, again these facts are proved to be wrong on the basis of call details and defence evidence. On this point, the testimony of PW-16, Mandhir Singh, the then Superintendent of Police is most relevant and the call details Ex. DW-1/F and Ex. DW-1/G establish that he was in Sector 8 at 5.00 PM and Sector 9

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at 5.20 PM. DW-3 Gurmail Singh, who was working as Steno in the office of the accused stated that the appellant was not present till 5.00 PM. Similar is the testimony of DW-5, Ram Kumar, Driver who had stated that they started journey at 5.00 PM for Mini Secretariat.

39. As regard to recovery of tainted money, testimony of PW-3, Anil Shahi and PW-4 Charan Dass are most relevant because they are the official witnesses who deposed that when the Investigating Officer along with other members of the raiding party entered the office, the officials of the Vigilance had already caught hold of the accused by hands and currency notes were lying scattered on the floor. So, it was not possible to throw the currency notes on the floor. As per prosecution case itself, the alleged recovery of currency notes was from the floor of the office and not from possession of the appellant. Even the defence of the accused is that there was no recovery of the tainted money and there was no motive on the part of the accused to demand and accept the money as no decision was to be taken in the case of complainant – George Subh on 7.9.2010 or 8.9.2010 as the decision had already been taken on 26.8.2010 by the Committee. Similar matter was before Hon`ble Apex Court in **Babu Lal Bajpai Versus State of U.P., 1994(3) R.C.R. (Criminal) 300** where the allegations were that accused person had thrown the currency notes on the floor and there was no motive on the part of the accused to demand and accept the bribe money and Hon`ble Apex Court held that the accused was entitled to acquittal.

40. More so, as per testimony of DW-7, Dr. Jassi Anand, she proved her report (Ex. DW-7/1) that signatures of shadow witness, Baltar

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Ram (PW-2) were adjusted later on which proved that the document Ex. PW-1/7 was forged one. More so, DDR No.11 dated 7.9.2010 (Ex. PW-16/1) also appears to have been tempered with later on. Ex. PW-1/A and Ex. PW-16/1 both were not mentioned in the statement of the complainant on 8.9.2010 in Ex. PW-1/B and the same were not in the police proceedings. Ex. PW-1/B has been proved to be false on the basis of the fact that there is mention in the said document about meeting of the complainant and the appellant on 8.9.2010 and there are cutting and over-writing at points A, B, C and D as admitted by PW-16, Investigating Officer of the case, where word 'aaj' has been forged as 'kal' all all the places and in the light of that forgery of record, testimony of the complainant and the shadow witness as well as investigating proceedings cannot be relied upon safely. More so, the recovery of shirt worn by the accused at Secretariat is not established on the file.

41. In view of the above, this Court is of the considered view that the prosecution has not been able to establish that,

- (i). there was any demand of bribe money and in turn, there was any motive for the accused person to raise demand for bribe on 7.9.2010 and 8.9.2010 as the decision had already been taken by the Committee on 26.08.2010.
- (ii). the prosecution has not been able to establish that the accused-appellant as well as the complainant had gone to Bus Stand Mohali on 7.9.2010 where the alleged demand of bribe money was made; and
- (iii). no recovery was effected from the possession of the appellant,

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rather his presence in the office at the relevant time is doubtful and even if the entire prosecution case is taken to be correct, the said currency notes were lying on the floor and same cannot be considered to be recovery from the possession of the accused-appellant. That fact becomes more relevant in the light of the fact that the demand of bribe money on the part of accused-appellant is not proved and acceptance thereof is also not established.

42. However, learned trial Judge has not considered all these aspects while recording the judgment of conviction and order of sentence dated 8.9.2017.

43. Resultantly, the impugned judgment of conviction and order of sentence dated 8.9.2017 passed by learned Additional Sessions Judge, S.A.S. Nagar, Mohali stand set-aside and the appellant is acquitted of the charge. The present appeal bearing CRA-S-3316-SB-2017 is allowed. The appellant shall be entitled to all the service benefits which he would have been otherwise entitled to.

44. In view of the above, the revision petition, bearing CRR-3612 of 2017 for enhancement of sentence, stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 26, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes