

*that “any person” in Sub-section (3) of Section 34 must be confined to a person intimately connected in the aforesaid sense with the assessments of the years under appeal.”*

(11) In the light of above discussion, the expression ‘any person’ in Section 11 has been used in widest term, which includes the panchayat which is intimately connected in the affairs of village and management of the shamilat land under the provisions of the Act. This fact is further strengthened by the fact that in the year 1993 amendment was made in the Act and after the words ‘any person’ appearing in Section 11(1) words ‘or panchayat’ have been added and the word “panchayat” was already existing in Section 11(2) meaning thereby the rights vest in panchayat as well as in any other person. It is not confined to the persons who are other than panchayat.

(12) In view of above discussion, the reference is answered in above terms. The writ petitions be placed before the appropriate Bench.

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*V. Suri*

*Before Anita Chaudhary, J.*

ASI ANANT RAM—*Petitioner*

*versus*

STATE OF PUNJAB—*Respondent*

**CRA-S-1268-SB of 2002**

May 28, 2014

*Prevention of Corruption Act, 1988 - S. 7 - Trap case - Accused alleging false implication - In cross case against complainant - Accused-appellant sought illegal gratification to settle case against complainant - Raid was organised - At trial - Independent witness not examined - Complainant and shadow witness turned hostile - Only the official witness supported prosecution case - Conviction cannot be based on inferences - Offence should be proved beyond reasonable doubt either by direct or even by circumstantial evidence - Each link of the chain of events has to be established pointing towards guilt of accused by cogent evidence - Mere recovery itself cannot prove charge,*

***in the absence of evidence proving demand and acceptance—  
Conviction set aside.***

*Held*, that it is settled canon of criminal jurisprudence that conviction of the accused cannot be founded on the basis of inferences. Offence should be proved beyond reasonable doubt either by direct evidence or even by circumstantial evidence and each link of the chain of events has to be established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence and satisfy the essentials of a complete chain duly supported by appropriate evidence.

(Para 12)

*Further held*, that it is found that the prosecution had failed to prove that there was a demand or acceptance. It is unfortunate but true that the shadow witness made a statement before the Court which was different from the one that was made before the police during investigation. Iqbal Singh completely denied the incident. The complainant also could not give some of the facts and the prosecution had to lead him with questions and the complainant readily answered them in the affirmative. Though, after being declared hostile, the complainant had supported the prosecution case but the Court cannot ignore that fact.

(Para 12)

*Further 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 had voluntarily accepted the money.

(Para 15)

Mr. H.R. Nohria, Advocate, *for the appellant*.

Mr. Gazi Mohd., D.A.G. Punjab.

**ANITA CHAUDHRY, J.**

(1) This appeal is directed against the judgment and order of conviction dated 03.08.2002, passed by the Special Judge, Patiala vide which the appellant was convicted under Section 7 of the Prevention of Corruption Act and had been sentenced to 2 years rigorous imprisonment along with a fine of ₹ 5000/-. In default of payment of fine, he was to further undergo rigorous imprisonment for 3 months.

(2) The facts giving rise to this appeal are:-

Manjit Singh complainant used to run a PCO in Preet Nagar, Tripri Road, Patiala. There was a dispute with Balwinder Singh and some others who were running a PCO nearby. An altercation had taken place between them in which the complainant had suffered injuries. On the statement of the complainant, a case was registered against Balwinder Singh and others. ASI Anant Ram who was investigating the case prepared a cross case against Manjit Singh. In order to settle the case, the accused demanded ₹ 2,000/- but the deal was struck at ₹ 1,000/-. The complainant did not want to pay the amount and approached the Vigilance Department. A raid was organized. The complainant gave 10 currency notes of ₹ 100/- denomination. A demonstration was held in the presence of the complainant and the shadow witness by DSP Surinder Singh where Surinder Singh, Senior Surveyor was also called. The DSP applied phenolphthalein powder on the currency notes and handed them over to the complainant which were to be passed on to the accused. Iqbal Singh was appointed as shadow witness.

(3) The raiding party went and stood near the PCO. The complainant and the shadow witness were sent forward. The shadow witness was asked to hear the conversation between the complainant and the accused. He was asked to give the appointed signal when the bribe money was passed over to the accused. The accused entered the PCO of the complainant and the amount was paid to him. The shadow witness gave the signal to the police party who entered the PCO. The accused was asked to raise his hands. Thereafter, his hands were washed in sodium carbonate solution which turned pink. In view thereof, the criminal prosecution started.

(4) After investigation, charge-sheet was filed against the accused-appellant. The prosecution examined 9 witnesses in support of its case. The defence examined two witnesses. On conclusion of the trial, appellant was convicted and sentenced to the punishment as referred to here-in-above.

(5) Aggrieved, the appellant has preferred this appeal.

(6) I have heard the submissions made by both the sides. Shri H.R. Nohria, Advocate, representing the appellant has submitted that the

complainant was an accused in the cross-case and he was pressurizing the police not to challan him and since the Investigating Officer was not agreeing, therefore, he made up a story. It was urged that the accused was present in the PCO of the complainant and there were 2-3 more persons and Iqbal Singh - PW8 was not there and when the accused was making a telephone call, he found that the complainant had thrust something in his pocket and immediately, thereafter, the Investigating Officer came inside and shook hands with him and then searched his pocket. It was urged that the shadow witness completely demolished the case of the prosecution and the only independent witness Surinder Singh was not examined as he had died and the complainant too had not supported the prosecution version and was turned hostile and on being confronted by the Public Prosecutor, he simply agreed to what the Public Prosecutor was asking. It was urged that it is serious matter and mere recovery of tainted money is not sufficient to convict accused when substantive evidence in the case is not reliable. It was urged that the prosecution had failed to lead evidence to show that the money was taken voluntarily. It was contended that the burden rests upon the prosecution and the complainant was interested and partisan witness who was concerned with the success of the case and without their being any corroboration, the trial Court should not have convicted the appellant. Reliance was placed upon *State of Punjab v. Madan Mohan Lal Verma(1)*.

(7) The submission of the State counsel was that there was a demand & acceptance and subsequent recovery from the appellant and the appellant had been unable to point out any contradiction and it is another matter that the appellant was able to win-over the shadow witness but the prosecution has been able to establish by direct evidence that the money was accepted by the appellant and the hand wash had turned pink. It was urged that the prosecution has been able to bring home the charge against the accused and the ingredients of Section 5(2) of the Prevention of Corruption Act were duly satisfied and no leniency is called for.

(8) In order to examine the merits or otherwise the contention raised, it is important to refer to the basic facts that emerge from the record giving rise to the present appeal. The complainant runs a PCO.

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(1) 2013(3) RCR (Criminal) 972

Admittedly, he had a dispute with Balwinder Singh who runs a PCO nearby. The complainant's allegations were that Balwinder Singh was jealous of him as his business was not doing as well as that of the complainant and Balwinder had cut the telephone wires and had inflicted injuries to him inside his shop. The complainant made a statement to the police regarding that occurrence in the hospital. It is not disputed that a case had been registered against Balwinder Singh and others. There was a cross version also regarding which Anant Ram ASI had called the complainant to the Police Post. Manjit Singh - PW7 had deposed before the Court that he had gone to the police station a number of times and in one of those visits, Anant Ram who was posted as ASI, demanded ₹ 2,000/- for not registering the cross case against him.

(9) The case of the prosecution is that the complainant did not want to pay the illegal money and reported the matter to S.P. Vigilance. When the complainant went to lodge the complaint, he was accompanied by Iqbal Singh who was working in the Truck Union along with him. The complaint was handed over to the DSP and a trap was laid and the raiding party which consisted of the complainant, the shadow witness and independent witness Surinder Singh and the investigating team, went to the PCO of the complainant. The case of the prosecution further is that the money was given to the appellant, the shadow witness gave the appointed signal and the raiding party reached inside and on search of the appellant, the tainted money was recovered.

(10) At the trial, the prosecution had examined Karamjit Singh Constable - PW1, Constable Gurbej Singh - PW2, who were formal witnesses. Inderjit Singh HC - PW4 had proved the sanction letter. H.C. Kulwant Singh - PW5 proved the FIR. ASI Pritam Singh - PW6 had presented the challan in the Court. PW Surinder Singh was given up as he was reported to have died.

The star witness of the prosecution was Manjit Singh PW7 who gave the initial story and supported the prosecution till the stage the complaint was made to the DSP. He faltered when he was asked to give the exact details of the denomination that was handed over to the police. He stated that it could be ₹ 100/- or even ₹ 50/-. At that stage, the Public Prosecutor declared the witness hostile and had repeated his question

and the complainant again gave the same answer that the currency notes could be of ₹ 100/- or ₹ 50/-. Thereafter, the statement Ex.PF was shown to him and the witness, admitted to all the suggestions that were put to him. The witness had also stated that the application that was given to the DSP was not on the judicial file. He admitted that a cross-case had been filed against him in the Court. The complainant denied that he had gone to meet Anant Ram with respect to the cross-case.

Iqbal Singh PW8, who was the shadow witness failed to support the prosecution story and was turned hostile. He denied that he had gone along with complainant to hand over the complaint to the DSP. He refused to support the prosecution with respect to demand, payment or the recovery.

The only statement left was that of Harjap Singh PW9 who was then posted as DSP Vigilance. He supported the prosecution story.

(11) The above would show that the prosecution had examined the complainant who had partially supported the prosecution case but was turned hostile and thereafter, on being confronted with his earlier statement, agreed to all the suggestions put by the Public Prosecutor. The shadow witness failed to support the prosecution story and then we are left with the statement of the Investigating Officer.

(12) It is settled canon of criminal jurisprudence that conviction of the accused cannot be founded on the basis of inferences. Offence should be proved beyond reasonable doubt either by direct evidence or even by circumstantial evidence and each link of the chain of events has to be established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence and satisfy the essentials of a complete chain duly supported by appropriate evidence.

Applying these tests to the facts of the present case, it is found that the prosecution had failed to prove that there was a demand or acceptance. It is unfortunate but true that the shadow witness made a statement before the Court which was different from the one that was made before the police during investigation. Iqbal Singh completely denied the incident. The complainant also could not give some of the facts and the prosecution had to lead him with questions and the

complainant readily answered them in the affirmative. Though, after being declared hostile, the complainant had supported the prosecution case but the Court cannot ignore that fact.

(13) The money was certainly recovered from the pocket of the accused. The question is whether mere recovery from the pocket is enough to prove the charges.

(14) In **CM. Girish Babu vs. CBI, Cochin(2)**, 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 paras 18 and 20 of the judgment held as under.

(15) In **Suraj Mal v. State (Delhi Admn.)(3)** the Court took the view that 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.

(16) A three-Judge Bench in **M.Narsinga Rao v. State of AP(4)** observed 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 (8) SCC 571]). The following statement made by us in the said decision would be the answer*

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(2) (2009) 3 SCC 779

(3) (1979) 4 SCC 725

(4) (2001) 1 SCC 691:SCC(Cri)258

*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.”*

(17) From the above it is clear 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 had voluntarily accepted the money. In the light of the above principles and in the light of the statement of the witnesses considering the fact that the witnesses did not support the prosecution, I am of the considered view that the judgment convicting the accused cannot be sustained in law.

(18) For the reasons recorded above, the judgment of the trial Court is set aside and the accused is acquitted of the charges. The appeal is accordingly allowed. Records of the case be sent back.

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***A.Aggr.***