



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Appeal (Sb) No. 408/2018

State Of Rajasthan Through P.P.

-----Appellant

Versus

Rameshwar Singh S/o Mohar Singh, r/o. Village Jatnasi, Police Station Roopwas, District - Bharatpur, the then Constable No.254, Police Station Sepau, District - Dholpur.

-----Respondent

Connected With

S.B. Criminal Appeal No. 587/2016

Bhim Singh s/o. Ram Gopal Jatav, r/o. Vijay Nagar, Police Station Kumher, District - Bharatpur. At that time Constable No.549, Police Station Sepau, District - Dholpur.
(Presently confined in Central Jail, Bharatpur)

-----Appellant

Versus

State Of Rajasthan Through P.P.

-----Respondent

S.B. Criminal Appeal No. 604/2016

Veeri Singh s/o. Birja Singh, r/o. Pagore, Tehsil Kumher, District - Bharatpur, the then ASI, Police Station Saippau, District - Dholpur. (Presently confined in Central Jail, Bharatpur)

-----Appellant

Versus

State Of Rajasthan Through P.P.

-----Respondent

For Appellant(s)	:	Mr. Rinesh Kumar Gupta with Mr. Saurabh Pratap Singh. Mr. Anoop Meena and Mr. Gaurav Sharma. Mr. A.S. Shekhawat with Mr. Dushyant Singh Naruka. Mr. Imran Khan (for State)
For Respondent(s)	:	Mr. Imran Khan, P.P. Mr. Manish Gupta.

**HON'BLE MR. JUSTICE ASHOK KUMAR JAIN****Order****REPORTABLE****Date of Reserve : 25.04.2023****Date of Pronouncement : 04.09.2023**

1. These three appeals are preferred aggrieved from common judgment dated 30.05.2016 in Sessions Case No. 84/2014 (32/2001) passed by learned Special Judge (PC Act Cases), Bharatpur, whereby learned Trial court has convicted appellants- Veeri Singh s/o. Birja Singh and Bhim Singh s/o. Ram Gopal Jatav under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (hereinafter referred as 'PC Act'), but acquitted accused- Rameshwar Singh S/o Mohar Singh from charge under Section 201 IPC. Aggrieved from order of acquittal of Rameshwar Singh, State of Rajasthan (Prosecutor) preferred a leave to appeal, wherein leave was granted on 22.02.2018.

After conviction, learned Trial Court has convicted Veeri Singh and Bhim Singh in the following manner:-

- (i) under Section 7 of PC Act - Rigorous imprisonment of 03 years with fine of Rs.10,000/-;
- (ii) Section 13(1)(d) read with Section 13(2) of PC Act - Rigorous Imprisonment of 04 years with fine of Rs.15,000/-;

The aforesaid sentence of imprisonment shall run concurrently with benefit of set of.



2. In nutshell, the fact of the matter is that a written report (Ex.-P/3) was submitted by Munna Lal Tomer to the Dy. S.P., ACB, Dholpur, wherein it was mentioned that complainant was a RMP Doctor having Clinic in Sepau Village near Police Station. One month ago, PS-Sepau In-charge, Rajveer Singh Kuntal called him and informed the complainant that a case is registered against him for negligent treatment of Pooran s/o. Tunda and the case is well proved, so he would arrest him and in such a way that he would not be bailed out before Monday. On his prayer, SHO asked him to repair and service his Motorcycle and he paid Rs.1700/- for that, but afterwards when he contacted Rajveer Singh, then he was informed that the inquiry is with ASI-Veeri Singh Chahar and Veeri Singh will release him on bail from Police Station itself, but the complainant did not meet Veeri Singh. It is further stated that on 02.06.1997, when Veeri Singh contacted him, then he sought bribe of Rs.1,000/- and also Chicken-Liquor Party. On 05.06.1997, party was arranged and ASI demanded Rs.3,000/- for submitting closure report. Thereafter, when he met ASI Veeri Singh with his relative Hukam Singh Thakur and requested him to reduce the amount then he asked them to meet SHO, who further told them to pay Rs.2,000/- to Reader-Bhim Singh, but when they went to Police Station, Bhim Singh was not there, so they returned. Complainant requested for action against SHO-Rajveer Singh, ASI-Veeri Singh with commitment not to bribe them.

3. On the basis of aforesaid report, constable Jankinandan was appointed with complainant for verification and same could not be conducted as neither Rajveer Singh nor Veeri Singh or Bhim Singh





were found in Police Station. Thereafter on 07.06.1997, Jankinandan informed the ACB about verification and complainant was not available on 08.06.1997, therefore, trap was arranged for 09.06.1997 and on 09.06.1997, trap was arranged with two independent witnesses but same trap could not materialize on 09.06.1997 and same was again planned for 10.06.1997 and on 10.06.1997, complainant with Phenolphalein Powder Coated Currency Notes went to Police Station campus, wherein on signal from complainant, trap team went inside and the constable-Bhim Singh after seeing them ran away. SHO, P.S. Sapeu Rajveer Singh, who was in civil dress also obstructed the trap team but on advice, he calmed down. Thereafter, they nabbed the constable who was Bhim Singh. Phenolphalein Powder Coated Currency Notes were already transferred by him to Rameshwar Singh. The entire proceedings were conducted on spot in presence of Bhim Singh and Rajveer Singh but as per proceeding Veeri Singh ASI was not found in Police Station, so he was not part of any proceedings on 10.06.1997. During this proceedings, Rameshwar Singh was called at 3:30 p.m. and Rs.2,000/- were recovered in his presence.

4. After investigation, ACB had recommended prosecution sanction against Rajveer Singh, Veeri Singh, Bhim Singh and Rameshwar Singh, but prosecution sanction was denied against Rajveer Singh, SHO and Charge-sheet was filed against Veeri Singh, Bhim Singh and Rameshwar Singh.

5. Learned Trial Court has framed charges under Section 120-B IPC and Section 7 and 13 (1)(d) read with Section 13(2) of PC Act against Veeri Singh and Bhim Singh, whereas under Section 201



IPC against Rameshwar Singh. During Trial, 16 witnesses were examined and 53 documents with 38 articles were exhibited by the prosecution. Accused were examined under Section 313 Cr.P.C., but no defence witness was examined by any of the accused. After affording opportunity of hearing to both the parties, impugned judgment was passed by the Trial Court, hence, this appeal.

6. Learned Public Prosecutor while challenging order of acquittal against Rameshwar Singh submitted that the amount of bribe was paid to Bhim Singh by the complainant on demand made by ASI Veeri Singh, but during trap proceedings, this bribe amount was handed over to Rameshwar Singh, a colleague constable posted in same Police Station with object to frustrate the trap proceedings. The respondent Rameshwar Singh after receiving bribe money ran away from the spot with important evidence relating to commission of crime and ultimately his presence was procured at 3:30 p.m. on 10.06.1997. During this period, he tried to manipulate and change the character of important evidence of commission of crime. He further submitted that the amount was recovered from conscious possession of Rameshwar Singh and a chain of evidence were led by prosecution before the Trial Court, but the Trial Court without considering aforesaid evidence acquitted respondent Rameshwar Singh. He submitted that the order passed by learned Trial Court is against the material on record, hence, perverse and illegal with regard to Rameshwar Singh.



Arguments of Rameshwar Singh:

7. Aforesaid contentions were opposed by learned counsel for Rameshwar Singh and he submitted that Rameshwar Singh was not aware about any so called trap proceedings or bribe amount. He did not demanded any money from anyone and no amount was entrusted by anyone to Rameshwar Singh. He further submitted that the complainant has turned hostile and he did not supported the version that money was handed over by Bhim Singh to Rameshwar Singh. He further submitted that it was just a story cooked up by ACB Department to implicate Rameshwar Singh as he was not involved in any of the transaction. He further submitted that the Trial Court on the basis of evidence and material on record, rightly arrived at a conclusion that Rameshwar Singh did not helped in hiding or destroying evidence relating to commission of crime. He further submitted that not a single iota of evidence was submitted by the prosecution to presume that Rameshwar Singh was aware about the fact that Rs.2,000/- allegedly handed over to him by Bhim Singh was bribe money. He further submitted that no sufficient evidence were available on record to establish the fact that Rameshwar Singh assisted or aided in causing disappearance of evidence, therefore, there was no perversity or illegality in order of acquittal, hence, no sufficient grounds to interfere in the order of acquittal.

Arguments of Veeri Singh:

8. Learned counsel for the appellant-Veeri Singh would submitted that prosecution has failed to lead evidence on factum of demand and entrustment. He further submitted that there was



no verification of demand and recovery of illegal gratification from the possession of Veeri Singh. He further submitted that the entire evidence led by prosecution pointed out fingers on Rajveer Singh, SHO, P.S. Sepau, but prosecution sanction was denied by his employer and no charge-sheet was filed to prosecute him. He further submitted that this is a case, wherein demand was made by Rajveer Singh and bribe was paid in pursuant to demand by Rajveer Singh, but Rajveer Singh was not forwarded for facing trial under the PC Act, therefore, the entire proceedings were vitiated from beginning but the Trial Court has failed to take note of this fact. He further submitted that neither Veeri Singh was present at the time of trap nor his communications were recorded in tape-recorder during verification. He specifically referred methodology and reasoning of Trial Court in arriving at a conclusion of conviction against appellant Veeri Singh. He submitted that the Trial Court while relying upon FIR (Ex.-P/7) observed that the complaint was signed by the complainant though he turned hostile during trial.

9. Learned Trial Court further relied upon Ex.P/16 and Ex.-P/17, verification of communication between accused that no testimony of complainant is available on record to verify his voice. He further submitted that the voice samples were exhibited, but not proved from any evidence. He further submitted that the learned Trial Court further relied upon Ex.-P/8 statement of complainant under Section 164 Cr.P.C. recorded on 13.10.1997 by PW-16, the then ACJM No.2, Bharatpur with wrong analogy. He submitted that the statement recorded under Section 161 Cr.P.C. is used for the



purpose as described under Section 162 Cr.P.C. and Section 164 Cr.P.C. is just to replace the statement under Section 161 Cr.P.C., therefore, statement under Section 164 Cr.P.C. is not a substantive piece of evidence. He submitted that except these grounds, there were no reasons to arrive at a conclusion of conviction against Veeri Singh before the Trial Court and the said analogy is against the law. He submitted that the Trial Court convicted the present appellant on surmises & conjecture, therefore, order of conviction is bad and against the established principles of law.

10. He further submitted that PW-1 is the star-witness of the prosecution and also the complainant, but he turned hostile and not supported the version of prosecution. He referred the entire deposition of PW-1 and submitted that the admission clearly reveals that he had a word with Rajveer Singh, who was not forwarded for prosecution as prosecution sanction was denied. He further submitted that only at the instance of Rajveer Singh, the bribe money was allegedly paid though there was no communication between PW-1 and Bhim Singh. He further submitted that the admission of PW-1 clearly indicated that he signed the documents only under the pressure of ACB and he made the statement under Section 164 Cr.P.C. only under the pressure and influence. He further referred the statement of PW-14 to submit that this witness verified the demand as he accompanied with PW-1, but time and date on which he met Veeri Singh was not established from the evidence, therefore, no verification of demand was proved against Veeri Singh. He further



submitted that neither Bhim Singh nor Veeri Singh demanded the bribe and same was not verified with respect to Bhim Singh and Veeri Singh.

11. He referred the statement of PW-7 Trap Officer, wherein he admitted that Veeri Singh was not present on the spot either before or after the proceedings. He further submitted that there was not a single iota of evidence with respect to conspiracy between Veeri Singh and Rajveer Singh or with other accused, therefore, in absence of any evidence, learned Trial Court wrongly presumed that there was a conspiracy. He specifically referred the judgment of Hon'ble Supreme Court in case of criminal conspiracy to submit that unless there is meeting of mind and concrete proof of meeting of mind from direct or surrounding circumstances, criminal conspiracy cannot be presumed. He further submitted that under Section 7 of PC Act, there has to be a demand and acceptance in pursuant to demand of illegal gratification, but unless these are proved no presumption can be drawn under Section 20 of the PC Act. He further submitted that no electronic evidence was available on record against Veeri Singh, therefore, learned Trial Court on wrong assumption and without any ground, jumped to the conclusion of conviction and same is absolutely wrong. He further referred the statement of PW-15 and pointed out other contradictions and discrepancies, which were overlooked by learned Trial Court.

Arguments of Bhim Singh:

12. Learned counsel for the appellant - Bhim Singh would submitted that prior to 10.06.1997, the complainant PW-1 never





met Bhim Singh as no work was pending with him and he was not aware about any communication between Rajveer Singh and complainant. He submitted that complainant PW-1 has turned hostile and he did not supported the version of prosecution based on FIR (Ex.-P/7). He further submitted that PW-1 complainant admitted the statement under Section 164 Cr.P.C. were given under influence and pressure, which clearly means that the statement under Section 164 Cr.P.C., is not a substantive piece of evidence, cannot be read against present appellant. He further submitted that it is essential for prosecution in trap cases to establish that there was some work pending, a demand was made and the bribe money either in kind or cash was received by the accused. He submitted that here in this case, no work was pending with Bhim Singh and there was no communication between PW-1 and Bhim Singh. There was no demand made by Bhim Singh and no illegal gratification or bribe money was recovered from Bhim Singh. He further submitted that from statement of PW-1 and PW-14, no evidence whatsoever were led by the prosecution against Bhim Singh.

13. He further referred the statement of PW-8 to submit that the *Malkhana* was not deposited in sealed cover and no seal was found on *Malkhana*, which means every article, which was exhibited, lost its sanctity and the Trial Court failed to notice aforesaid. He further submitted that one of the star-witness Chetram was not produced by the prosecution, who prepared (transcript) Ex.-P/16 and Ex.-P/17, therefore, nothing was established against Bhim Singh. He further submitted that from evidence of PW-6



Sanctioning Officer, it was established that neither he perused the record nor applied his mind before granting the sanction, therefore, the prosecution sanction was also issued without application of mind. He further referred the statement of other witnesses and pointed out discrepancies and contradictions to submit that the order of conviction is bad in eye of law.

14. He would further submitted that the prosecution has failed to establish demand and acceptance as there was no recovery and the sanctity of entire process was not established beyond reasonable doubt, therefore, the Trial Court hurriedly arrived at the conclusion only on the basis of presumptions, but without any proof. He further submitted that no evidence was led by the prosecution to establish conspiracy with Veeri Singh or Rajveer Singh, therefore, any meeting with anyone, cannot be presumed as conspiracy. At last, he submitted that nowhere it was established that appellant Bhim Singh was following direction of Rajveer Singh to receive bribe on behalf of Rajveer Singh as there was no work pending with appellant Bhim Singh.

15. Learned counsels for the parties relied upon judgments of Hon'ble Supreme Court in cases of **K. Shanthamma v. State of Telangana : (2022) 4 SCC 574; Neeraj Dutta v. State (Government of NCT of Delhi) : 2022 SCC Online SC 1724; K.S. Panduranga v. State of Karnataka : (2013) 3 SCC 721; B. Jayaraj v. State of Andra Pradesh : (2014) 13 SCC 55; State of Punjab v. Madan Mohan Lal Verma : (2013) 14 SCC 153; Dashrath Singh Chauhan v. CBI : AIR 2018 SC 4120; CBI v. Ashok Kumar Aggarwal : AIR 2014 SC 827; M.R.**



Purushottam v. State of Karnataka : 2015 CrLJ 72 (SC); C. Sukumaran v. State of Kerala : 2015 CrLR SC 382; Union of India v. Purnandi Biswas : (2005) 12 SCC 576; V. Venkata Subbarao v. State.: (2006) 13 SCC 305; C.M. Girish Babu v. CBI : (2009) 3 SCC 779; Ram Singh & Ors. v. Col. Ram Singh : 1986 AIR SC 3; R. Venkatesan v. State : 1980 CriLJ 41; Nanhku Singh v. State of Bihar : 1972 CrLJ 1204 (SC); Shanker v. State of U.P. : 1975 CrLJ 634 (SC); State of Karnataka v. P. Ravi Kumar @ Ravi & Ors.: (2018) 9 SCC 614; P.K. Narayanan v. State of Kerala : (1995) 1 SCC 142; Baldev Singh v. State of Punjab : (2009) 6 SCC 564 and Kanhaiyalal v. State of Rajasthan : 1998 CrLJ 3155.

16. Aforesaid contentions were opposed by learned Public Prosecutor and he would submitted that even though PW-1 has turned hostile, but he not only exhibited Ex.-P/1, but Ex.-P/8 as well, wherein he corroborated that all the three accused were indulged in demanding and receiving illegal gratification. He further referred the statement of PW-5 and PW-7 particularly cross-examination of PW-7 to submit that the evidence clearly established that learned Trial Court rightly arrived at a conclusion of conviction against Veeri Singh and Bhim Singh.

17. Heard learned counsel for the appellants and learned Public Prosecutor. Perused the record and also perused the judgments of Hon'ble Apex Court and a coordinate Bench of this Court as submitted by learned counsels for the appellants-Veeri Singh and Bhim Singh.



18. Learned counsels for the appellants relied upon judgments of Hon'ble Apex Court in the cases of **B. Jayaraj (supra)**, **M.R. Purushottam (supra)**, **K.S. Panduranga (supra)** and **K. Shanthamma (supra)**, on the ground that demand of illegal gratification is *sine qua non* to constitute the offence under Section 7 of PC Act. Mere possession of currency notes, is not sufficient unless, it is proved beyond doubt that the accused voluntarily accepted the money knowing it to be bribe. Also for the argument that when complainant has turned hostile and there was no evidence that accused made demand and accepted bribe, the demand and acceptance of bribe not proved further Phenolphalein Test, cannot be said to be conclusive proof.

19. In case of **Neeraj Dutta (supra)**, a Constitution Bench of Hon'ble Supreme Court considered judgments of 03 Judges Bench in the case of **B. Jayaraj (supra)** and **P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Anr.: (2015) 10 SCC 152**, as they were in conflict with an earlier 03 Judge Bench's decision in the case of **M. Narsinga Rao v. State of A.P.: (2001) 1 SCC 691**.

Accordingly, the following question was referred:-

"Whether in absence of evidence of complainant/director or primary evidence of demand of illegal gratification, is it not permissible to draw influential deduction of culpability/guilt of a public servant under Sections 7 and 13(1)(d) read with Section 13(2) of PC Act based on other evidence adduced by the prosecution."

20. Accordingly, the Constitution Bench in the case of **Neeraj Dutta (supra)**, held that in absence of the complainant's testimony in a prosecution for offence under Sections 7 and 13(2)



of PC Act, the prosecution can rely upon even circumstantial evidence to prove the demand of gratification. In para-68 of the decision of the Constitution Bench summarized its conditions as under:-

"68. What emerges from the aforesaid discussion is summarised as under:

- (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.
- (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.
- (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.
- (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:
 - (i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.
 - (ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.



- (iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act.

Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.

- (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.
- (f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.
- (g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d) (i) and (ii) of the Act.



- (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature."

21. While referring Section 20 of PC Act, the judgments of Hon'ble Supreme Court in cases of **UOI v. Purnandi Biswas (supra)**, were referred to buttress that presumption regarding acceptance of illegal gratification can only be raised when demand by accused is proved and not otherwise. Further, the accused is not required to meet the same standard of proof as the prosecution. For tape-recording version and electronic evidence, reliance is placed on judgment of Hon'ble Supreme Court in cases of **Ram Singh (supra)** and **R. Venkatesan (supra)**, to buttress that to establish and proof tape-record of conversation, which is relevant, it is necessary to prove time, place and accuracy of recording with identification of voices. Before relying upon electronic evidence of tape-recording version, certain safeguards as referred in **Ram Singh (supra)** were required to be taken care of.

22. A reliance is placed upon **Nanhku Singh (supra)** and **Shanker (supra)** on the ground that FIR is not a substantive piece of evidence and on the basis of FIR, a fact cannot be deemed proved. The evidentiary value of FIR was discussed in detail and it was held that it can ordinarily be used for the purpose of corroborating, contradicting or discrediting its author, if examined and not any other witness, meaning thereby FIR is not a substantive piece of evidence.



23. Principle of law laid down in **State of Karnataka v. P. Ravi Kumar @ Ravi (supra)**, was referred wherein it was held that if witness is declared hostile then statement recorded under Section 164 Cr.P.C. may not be of relevance and cannot be considered as substantive evidence to base the conviction.

24. Judgments of Hon'ble Supreme Court in cases of **P.K. Narayanan (supra)** and **Baldev Singh (supra)** were relied upon for criminal conspiracy to fortify the contention that criminal conspiracy can be proved either by direct or circumstantial evidence, but there has to be an agreement between the parties to establish the alleged conspiracy. Further, mere knowledge or discussion, is not enough. There must be an agreement between two or more persons and agreement must relate to doing or causing to be done either an illegal act or an act not illegal in itself but done by illegal means.

25. At last, reliance is place upon **Kanhaiyalal (supra)**, wherein a coordinate Bench of this Court laid down that when there was no work of complainant pending with accused-appellant, therefore, he could not have given any money as bribe and the case of prosecution is contrary to the story, therefore, accused appellant, cannot be held guilty.

26. We have also considered the judgment of **Neeraj Dutta v. State (Govt. of NCT of Delhi) : Criminal Appeal No. 1669/2009, Order dated 17.03.2023**, decided after answer by the Constitution Bench of Hon'ble Supreme Court, wherein complainant-Ravijit Singh died before the trial commenced. Hon'ble Supreme Court laid down that the allegation of demand of



gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench doesn't dilute the elementary requirement of proof beyond a reasonable doubt.

27. On complaint of PW-1 Munna Lal, a verification was done by PW-14 Jankinandan. PW-1 Munna Lal turned hostile and he named Rajveer Singh, SHO for demand of illegal gratification. Further, he stated that Rajveer Singh directed him to deliver to anyone, who was found in quarter, wherein Rameshwer was there and he received aforesaid currency notes. During cross-examination, PW-1 admitted that none of the three accused facing trial had demanded bribe from him. He further admitted that the report was written under the guidance of ACB Personnel. This PW-1 further admitted that he signed memos only on the directions of ACB Personnel. The entire deposition of PW-1 targetted Rajveer Singh, SHO and no one else, but this Rajveer Singh was not forwarded for trial as prosecution sanction was denied to prosecute Rajveer Singh.

28. In Ex.-P/1 one Hukam Singh was also named and this Hukam Singh was examined as PW-3 by the prosecution and he also turned hostile and not deposed against any of accused. Two witnesses PW-5 Mahesh Kumar Agarwal and PW-10 Ram Kumar Sharma were independent witnesses working in other Government Departments, were also examined by the prosecution. We have considered the deposition of these two witnesses. During cross-examination, PW-5 and PW-10 admitted that Veeri Singh was not present at spot and during entire proceedings, he did not turned-



up in Police Station. Both the witnesses have named Bhim Singh to whom complainant delivered Phenolphalein Powder Coated Currency Notes and hands of Bhim Singh were washed in their presence. Further, they deposed that when Bhim Singh was asked about Rs.2,000/-, then he named Rameshwar Singh, who took Rs.2,000/-, but when Rameshwar Singh was called at, then he turned-up at 3.30 p.m. and returned Rs.2,000/- to Dy. S.P. and both the witnesses PW-5 and PW-10 further corroborated the proceedings carried out on spot.

29. One of the important witness, which was referred by the prosecution was PW-14 Jankinandan, who verified the demand. This PW-14, again named SHO Rajveer Singh, but during his deposition, he also named Veeri Singh, who visited Clinic of complainant. During cross-examination, this PW-14 admitted that he is not aware about talks between complainant and Veeri Singh. He admitted that demand of bribe by Veeri Singh was not verified. He also admitted that on 10.06.1997 when trap proceedings were conducted, Veeri Singh was not present and no recoveries were effected from Veeri Singh. This PW-14 also admitted that the bribe amount was neither paid to Veeri Singh nor accepted by Veeri Singh. He further admitted that Bhim Singh has also not demanded bribe amount and it was not recovered from Bhim Singh. PW-14 further admitted that Bhim Singh had not handed over any bribe amount to Rameshwar Singh.

30. The evidence led by prosecution clearly indicates that PW-1 Munna Lal, PW-3 Hukam Singh and PW-13 Mahesh Kumar, who were private witnesses have turned hostile and they have not



supported prosecution against any of appellants and also respondent-Rameshwar Singh. The deposition of PW-1 Munna Lal only relevant upto the extent that Rajveer Singh demanded money as bribe and he also incurred expenses to repair Motorcycle of Rajveer Singh. PW-1 also stated that Rajveer Singh asked him to pay money to anyone, who is available in police quarter in front of his quarter. PW-1 Munna Lal neither named Bhim Singh nor Veeri Singh for demanding bribe or accepting any of amount of bribe. But from his deposition, even if he is hostile, is relevant for the purpose that on demand of bribe by Rajveer Singh, the then SHO, he paid bribe amount to someone in Police Station Sepau.

31. Now comes the question that whether any other evidence is available to establish the case of prosecution or not. Here in this case, two eye-witnesses, but they are independent witnesses, PW-5 Mahesh Kumar Agarwal and PW-10 Ram Kumar Sharma, both were Government Servant, but not relating to Police or ACB, were trap-witnesses and they were involved by PW-7 Vishal Kumar in entire proceedings. The deposition of PW-5 and PW-10 clearly indicated that they deposed against Bhim Singh and learned Trial Court has specifically relied upon these two witnesses. Moreover, the deposition of PW-5 and PW-10 make it clear that they were not aware about any demand made by Veeri Singh or payment thereof to Veeri Singh in light of demand. The deposition of these two PW-5 and PW-10 also makes it clear that they also did not deposed against Rameshwar Singh though PW-5 and PW-10 were not declared hostile but they deposed against Bhim Singh. We



have gone through cross-examination relating to Bhim Singh. The fact is quite clear that Bhim Singh was the person, to whom PW-1 paid money under the instruction of Rajveer Singh and later on hands of Bhim Singh were washed in front of PW-5 and PW-10 and the water turned colour, which further established that Bhim Singh had touched the Phenolphalein Powder Coated Currency Notes (Article-1 to Article-29). In the entire set of evidence, whether it is of PW-7 Vishal Kumar, PW-9 Rajpal Singh, PW-14 Jankinandan and PW-15 Chandra Singh, one thing is quite clear that no work was pending with Bhim Singh and no direct demand was made by Bhim Singh. Herein this case from Ex.-P/16 and P/17, there were some verification for Veeri Singh, ASI, but money was not paid to Veeri Singh and there was no evidence on record to suggest that Bhim Singh received aforesaid amount under the instructions or on behalf of Veeri Singh.

32. Hon'ble Supreme Court in cases of **Neeraj Dutta (supra)**, **B. Jayaraj (supra)**, **C. Sukumaran (supra)** and **K. Shanthamma**, clearly laid down that demand of illegal gratification is *sine qua non* to constitute the offence under Section 7. In case of **B. Jayaraj (supra)** also held that mere possession of recovery is not sufficient unless it is proved that accused voluntarily accepted the money knowing it to be bribe.

33. Here in this case, the entire evidence on record clearly indicated that it was Rajveer Singh, SHO, who was pivotal in demanding money from complainant and later he directed complainant to contact Veeri Singh, ASI, there is some conversation as transcribed in Ex.-P/16 form evidence of PW-14



Jankinandan that there was some verification, but the entire deposition of PW-14 Jankinandan clearly indicate that this demand was not wholly verified against Veeri Singh. The demand was not corroborated by PW-1 Munna Lal and PW-3 Hukam Singh. Moreover, PW-7 Vishal Kumar and other witnesses have also not deposed for demand against Veeri Singh.

34. In view of evidence on record, the fact is quite clear that neither Bhim Singh nor Veeri Singh demanded aforesaid Rs.2,000/- as bribe. At the most, Rs.3,000/- was demanded by Veeri Singh, but this Rs.3,000/- was in fact neither paid nor corroborated from any evidence on record. The amount of Rs.2,000/- was paid at the instance of SHO Rajveer Singh, but Rajveer Singh was not forwarded to face trial, therefore, the demand was made by Rajveer Singh and Rs.2,000/- was paid at the instruction of Rajveer Singh not at the instruction of Veeri Singh. Herein, no evidence of prosecution is available on record to connect a chain to establish the fact that Bhim Singh received amount at the instruction of Veeri Singh, therefore, from evidence on record connection with Veeri Singh was not established beyond reasonable doubt. Herein this case Veeri Singh did not accepted any bribe money and no communication is available on record to implicate Veeri Singh with the alleged payment. Moreover, the evidence on record from PW-1 to PW-14 clearly indicate that none of them have seen Veeri Singh at Police Station on 10.06.1997 in the Police Station's Premises. Moreover, no record available to connect Veeri Singh with alleged payment of bribe to Bhim Singh and recovery thereof from other person.



35. The Criminal Law prescribed fastening liability on two grounds firstly direct involvement and secondly vicarious involvement. As regarding to direct involvement is concerned, herein this case, no evidence was led by prosecution to connect Veeri Singh with alleged payment and recovery thereof. Now comes vicarious liability, wherein we can consider the case with aid of Section 34 of 149 or 120-B or 107 of IPC. Herein this case, a charge under Section 120-B IPC was leveled against accused. In case of **P.K. Narayanan (supra) and Baldev Singh (supra)**, Hon'ble Supreme Court clearly laid down that criminal conspiracy can be proved either by direct or circumstantial evidence, but it is necessary to led evidence on meeting of mind and agreement between minds of participants, but herein this case, when we look at deposition of PW-1 Munna Lal, PW-5 Mahesh Kumar Agarwal, PW-7 Vishal Kumar, PW-9 Rajpal Singh, PW-10 Ram Kumar Sharma, PW-14 Jankinandan and PW-15 Chandra Singh, then there were no evidence led by any of these witnesses to establish meeting of minds between Bhim Singh and Veeri Singh or Veeri Singh with Rajveer Singh. The fact is quite clear on record that no work was pending with Bhim Singh. The work was pending with Veeri Singh ASI, but evidence to this effect was led by the prosecution, wherein the criminal matter relating to PW-1 was pending inquiry with accused Veeri Singh.

36. The criminal justice system comprises different stages, firstly- registration of case and investigation thereof, secondly- framing of charge and trial thereof, thirdly- evaluation of material on record and conviction or acquittal on the basis of material on





record. All these stages have different principles of law governing them. After considering material on record in criminal case, the strict burden of proof lies upon prosecution and once they are able to establish the facts required to be proved under the law, the presumption can be drawn **[Neeraj Dutta v. State (supra)]**.

Herein this case relating to PC Act, as a Rule of evidence, the provision of presumption under Section 20 of PC Act is also available, but to draw a presumption, it is necessary that there must be some evidence so as to provide a basis to establish a particular fact in strict sense, but once it is established, then only the presumption can be drawn else not.

37. Having considered the entirety of facts and material on record, I am of considered view that the learned Trial Court without considering the fact that the evidence against Veeri Singh were not enough to establish the charges and also to draw a presumption, therefore, learned Trial Court has erred in arriving at a conclusion of conviction against Veeri Singh.

38. When we consider the case of Bhim Singh, then the facts are quite clear that no work was pending with Bhim Singh. PW-9 Rajpal Singh clearly indicated that Bhim Singh was working under the instructions of Rajveer Singh, whereas verification and demand by Rajveer Singh was corroborated by PW-1 Munnal Lal, PW-7 Vishal Kumar and PW-14 Jankinandan. Further, PW-5 Mahesh Kumar Agarwal and PW-10 Ram Kumar Sharma also corroborated the fact that the after paying bribe money to Bhim Singh, PW-1 walked out with Bhim Singh and Bhim Singh sans the trap proceedings by ACB, tried to run away. The evidence on



record further suggests that he was caught and his hands were washed, resulting into pink coloured water establishing the presence of Phenolphalein.

39. Herein, the entire defence of Bhim Singh was that he was not having any pending work with him, but this fact was contradicted by PW-9 Rajpal Singh that Bhim Singh was working under Rajveer Singh and was under instruction from Rajveer Singh. Further, PW-1 Munna Lal also corroborated the fact that Rajveer Singh asked him to pay money to any person found in quarter in front of his quarter. Herein PW-1 Munnal Lal turned hostile and he deposed against Bhim Singh and this fact was further verified from deposition of eye-witness PW-5 and PW-10 as both were independent witnesses and it was Bhim Singh, to whom PW-1 paid the money though the money was not recovered from Bhim Singh. Now comes the question of recovery, the recovery was effected from Rameshwar Singh and Rameshwar Singh turned up at 3.30 p.m. on 10.06.1997 to return the money, which was seized, but the hands of Rameshwar Singh were not washed by the trap team.

40. Herein this case, the deposition of PW-5 Mahesh Kumar, PW-10 Ram Kumar and PW-7 Vishal Kumar clearly indicates that Rameshwar Singh was not knowing the fact about trap or bribe money. Herein, none of the witness, who was present at the spot had identified Rameshwar Singh taking money knowing fully well its a bribe money or a proceed of crime. Unless it is established that Rameshwar assisting in destruction of evidence or knowing the fact that the money, which was handed over to by Bhim Singh,





was bribe money, he cannot be held guilty under Section 201 IPC and learned Trial Court on the basis of evidence on record, did not found sufficient evidence to convict Rameshwar Singh.

41. We are considering the State' appeal against order of acquittal passed against Rameshwar, therefore, as an Appellate Court though we can very well interfere, but there are certain principles laid down by Hon'ble Supreme Court in considering order of acquittal by an Appellate Court.

42. Hon'ble Supreme Court in the cases of **Chandrappa & Ors. v. State of Karnataka : (2007) 4 SCC 415; Nagabhushan v. State of Karnataka : 2021 (5) SCC 222** and **Rajesh Prasad V. The State of Bihar & Anr.: (2022) 3 SCC 407**, specifically observed that in case of consideration of an appeal from order of acquittal, there is double presumption in favour of accused and these presumptions are - firstly, presumption of innocence under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless proved guilty by a competent court of law. Secondly, the accused having secured an order of acquittal, the presumption of innocence is certainly not weakened, but reinforced, reaffirmed and strengthened by the Trial Court.

43. Hon'ble Supreme Court in cases of **Atley v. State Of Uttar Pradesh : AIR 1955 SC 807; Sanwat Singh & Others v. State Of Rajasthan : 1961 AIR SC 715; M. G. Agarwal v. State Of Maharashtra : 1963 AIR SC 200; Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra : (1973) 2 SCC 793; Ramesh Babulal Doshi vs. State of Gujarat : (1996) 9 SCC 225; Ajit**





Savant Majagvai vs. State of Karnataka : (1997) 7 SCC 110
and Nepal Singh v. State of Haryana : (2009) 12 SCC 351,

have considered the role of Appellate Court in considering situation arising out of order of acquittal and settled the proposition that the Appellate Court has full power to review, re-appreciate and re-consider the evidence upon which the order of acquittal is founded, however, Appellate Court is duty bound to keep in mind to that there is double presumption in favour of accused.

44. Considering aforesaid principles of law, when we consider the case of Rameshwar Singh, the facts are quite clear that there was insufficient evidence and whatever was required to be adopted to make process foolproof, same were not adopted by the Trap Team or Investigating Officer. At this stage, the charge upon Rameshwar Singh was only under Section 201 IPC. The case of Rameshwar Singh is not about demand of bribe or acceptance of bribe, therefore, substituting opinion in present case is not a wise step in considering appeal against order of acquittal in case of insufficient evidence, therefore, the State' appeal is devoid of merit.

45. Now comes the question relating to Bhim Singh. Herein this case, having considered the fact that no work was pending with Bhim Singh, but Bhim Singh was working under the instructions of Rajveer Singh. Rajveer Singh was SHO of P.S. Sepau and PW-1 Munna Lal was in direct contact with Rajveer Singh. It is unfortunate on part of State that a person, who was kingpin of entire process, was not forwarded as an accused. We do not want to indulge ourselves in the reasons for not forwarding, but herein



this case, it is quite clear from the evidence on record that complainant was directed by Rajveer Singh, SHO to pay money to any person found in police quarter. Therefore, any person who received bribe money on behalf of someone, he is also guilty.

46. Herein this case, no work was pending with Bhim Singh, but being SHO, Rajveer Singh was competent enough to demand money on behalf of any of his subordinate, therefore, the person to receive bribe on behalf of Rajveer Singh was Bhim Singh and nobody else, hence, the role of Bhim Singh was the same as that of Rajveer Singh, therefore, no demand was necessary for Bhim Singh in the present matter. Similarly, the principle of pending work is also not applicable in case of Bhim Singh. Section 7 of PC Act makes it clear that bribe can be accepted by Public Servant for himself or for any other person.

47. Herein this case, aforesaid amount of Rs.2,000/- were not recovered from Bhim Singh, but same was handed over by Rameshwar Singh to the trap team and the fact is established from the evidence on record. The evidence on record further suggests that not only PW-5 and PW-10 had seen Bhim Singh in handing over money, but also the fact that PW-1 Munna Lal had also deposed against an unnamed person, which can be identified from other evidence, therefore, Bhim Singh accepted the bribe money knowing fully well that it was at the instance of Rajveer Singh, SHO aforesaid bribe money was offered/paid to settle the case against complainant pending in P.S. Sepau, District - Dholpur.

48. An objection to the prosecution sanction issued by PW-6 Narendra Kumar Patni was also raised by learned counsel for the



appellant, we have carefully considered the evidence of PW-6, the deposition of PW-6 clearly indicated that on the basis of record, aforesaid prosecution sanction was granted against Bhim Singh.

49. Learned counsel relied upon judgment of Hon'ble Apex Court in case of **CBI v. Ashok Kumar Aggarwal (supra)**. We have considered the judgment, the fact that whatever material was available the sanction was issued and no abnormality was found in sanction granted against Bhim Singh, therefore, the principle of law as referred by learned counsel for the appellant is not applicable in the present case.

50. In view of aforesaid, a presumption under Section 20 of PC Act can be drawn though in cases of **Neeraj Dutta (supra)**, **Union of India v. Purnandi Biswas (supra)**, **V. Venkata Subbarao (supra)** and **C.M. Girish Babu (supra)**, Hon'ble Apex Court while considering the provision of section 20 of PC Act clearly laid down that before presumption is drawn, the essential ingredient of offence are required to be proved by the prosecution beyond reasonable doubt. Aforesaid clearly indicate that we have considered each and every aspect of the case and, thereafter we have drawn our conclusion that essentials required to establish the case of prosecution were proved beyond reasonable doubt against Bhim Singh, therefore, presumption under Section 20 of PC Act can be drawn against Bhim Singh.

51. After the presumption nothing more is required to be established by the prosecution, therefore, the onus shifts on appellant-accused Bhim Singh to rebut the presumption. In this case, no direct evidence was led by Bhim Singh as he did not





opted to submit defence evidence. When he was examined under Section 313 Cr.P.C, he simply denied or showed ignorance about the evidence on record. The only defence was, he neither demanded nor accepted any bribe money and no bribe money was recovered from him.

52. We have considered this defence in aforesid discussions and we found that the appellant-accused Bhim Singh was working under the direct instructions of Rajveer Singh and same was established by the prosecution. Moreover, it was Bhim singh to whom the bribe money was delivered by PW-1, later on he handed it over to someone else after sensing the fact that trap proceedings were under way.

53. All other evidence were led by prosecution to establish culpability of Bhim Singh, therefore, it is immaterial whether Bhim Singh made a directed demand or not, but the money, which was paid to him was later recovered and it was established that Bhim Singh had once touched and accepted aforesaid Phenolphalein Powder Coated Currency Notes.

54. As regard to other discrepancies pointed during course of arguments such as *Malkhana* or FSL or any others, doesn't have any impact on evidence of prosecution, as same were not material to disbelieve the story of prosecution.

55. In view of aforesaid, the appeal preferred by State is liable to be dismissed, but appeal preferred by Veeri Singh is liable to be allowed, whereas, appeal preferred by Bhim Singh is liable to be dismissed.



As a result:

1. S.B. Criminal Appeal No. 408/2018 preferred by State against acquittal of Rameshwar Singh, is hereby dismissed;
2. S.B. Criminal Appeal No. 587/2016 preferred by appellant-Bhim Singh against order of conviction and sentence, is hereby dismissed and order of conviction and sentence is affirmed and Bhim Singh is directed to surrender before the learned Trial Court; and
3. S.B. Criminal Appeal No. 604/2016 preferred by appellant-Veeri Singh against order of conviction and sentence, is hereby allowed and the order of conviction and sentence dated 30.05.2016, is set aside and he is acquitted from charge under Sections 7 and 13(1)(d) read with Section 13(2) of PC Act. It is directed that Veeri Singh will submit a bail bond to the satisfaction of learned Trial Court under Section 437-A Cr.P.C., in case SLP is preferred by the State for appearance before Hon'ble Supreme Court.

Misc. application, if any, stands disposed of.

(ASHOK KUMAR JAIN),J

PKS/2-4