



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeal No. 06 of 2014

Reserved on: 29.08.2025

Decided on: 12.09.2025

State of Himachal PradeshAppellant.
Versus
Hari SaranRespondent.

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
¹ *Whether approved for reporting?* Yes.

For the appellant: Mr. Ankush Thakur, Ms. Swati Draik,
Deputy Advocates General and Mr.
Shalabh Thakur, Assistant Advocate
General.

For the respondents: Mr. Ajay Kochhar, Senior Advocate,
with Mr. Anubhav Chopra, Advocate.

Sushil Kukreja, Judge.

The instant appeal has been preferred by the appellant/State under Section 378 of the Code of Criminal Procedure against judgment, dated 09.09.2013, passed by learned Special Judge, Sirmaur District at Nahan, H.P., in Corruption Case No. 16-CC/7 of 2012, whereby the accused (respondent herein) was acquitted under Sections 7 & 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter called as the 'PC Act').

2. The facts giving rise to the present appeal, as per the

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

prosecution story, can be summarized as under:

2(a). The accused Hari Saran was posted as Block Forest Officer, Khodari Majari in the year 2010 and during that time Shri Shabir Ali (complainant) was engaged for felling and sawing of timber and Killour Majari beat was open for felling trees from the private land. It is the case of the prosecution that the accused used to contact the landowners and manage the permission from the forest department and also used to assign job of felling trees and marketing to the complainant. The accused prepared one permission in the name of Ram Lal, but three mango trees were got felled from the land of Dhanbir from the complainant by him. On 04.05.2010 the accused, in lieu of permission and for affixing export hammer on the timber, demanded Rs.3000/- from the complainant. The complainant was called by the accused in his office, but he was unwilling to pay the amount of bribe, therefore, he reported the matter to the vigilance team headed by Inspector Madan Lal. Inspector Madan Lal met him at Killour Majari, where the statement of the complainant under Section 154 Cr.P.C. was recorded, whereupon FIR was registered at Police Station, Anti Corruption Bureau & State Vigilance, Nahan. The complainant was given pre-trap demonstration of how to use phenolphthalein powder and sodium carbonate and subsequently the complainant

produced a currency note of Rs.1000/- and four currency notes of Rs.500/-. After treating these notes with phenolphthalein powder and noting down the serial number of these notes, the same were returned to the complainant and he was directed to hand over these notes to accused on demand and not to shake hand with anyone. Thereafter, the complainant went to the office of the accused alongwith Shri Atik Mohammad (shadow witness), who was instructed to give signal after bribe money was paid to the accused. The complainant and shadow witness went to a tea stall near the office of the accused, where the accused met and demanded bribe money from the complainant. The complainant gave a sum of Rs.3000/- to the accused and in turn the accused handed over permission to the complainant. On the signal of the shadow witness-Shri Atik Mohammad, the vigilance officials, who were already in position near the tea stall, entered the tea stall. The vigilance officials disclosed their identity to the accused and the accused was caught hold of by them from his both wrists and he was made to wash his hands with plain water, but its color did not change. When the hand wash was mixed with solution of sodium carbonate, it turned into pink. The accused, on being asked, produced the bribe money from his front pocket of shirt and serial number of the currency notes were tallied with the serial

numbers mentioned in the pre-trap memo. Thereafter, the pocket wash of the shirt of the accused was taken with plain water and its color did not change, but when this pocket wash was mixed with the solution of sodium carbonate, it turned into pink. Thereafter, the investigation ensued and during the investigation various documents relating to the case were taken into possession. After completion of the investigation, police presented the *challan* in the learned Trial Court.

3. The learned Trial Court framed the charges against the accused under Sections 7 & 13(1)(d) read with Section 13(2) of the PC Act. The accused did not plead guilty of the charges framed against him and claimed trial.

4. In order to prove its case, during trial, the prosecution examined 16 witnesses. After closure of the prosecution evidence, the accused when examined under Section 313 of the Cr.P.C., stated that he was innocent and had been falsely implicated in the case. The accused examined one witness in his defence.

5. On the basis of the evidence led on record by the prosecution, the learned trial Court, vide impugned judgment dated 09.09.2013, acquitted the accused for the offences punishable under Sections 7 & 13(1)(d) read with Section 13(2) of the PC Act, hence the instant appeal preferred by the appellant/State.

6. The learned Deputy Advocate General for the appellant/accused contended that the impugned judgment is against the law and facts, based upon surmises and conjectures, thus liable to set-aside. He further contended that learned Trial Court has appreciated the evidence in a slipshod and perfunctory manner and has failed to appreciate that the accused demanded and accepted an amount of Rs.3,000/- from the complainant. Therefore, the impugned judgment of acquittal passed by the learned Trial Court deserves to be quashed and set-aside by allowing the instant appeal and the accused be convicted.

7. Conversely, learned counsel for the accused/respondent supported the judgment of the learned trial Court and contended that since the charges against the accused have not been proved by the prosecution beyond reasonable doubt, the learned trial Court has rightly acquitted him on the basis of proper appreciation of evidence. He pointed out various contradictions and infirmities in the statements of the prosecution witnesses and contended that the prosecution has miserably failed to prove its case beyond the scope of reasonable doubt.

8. I have heard the Deputy Advocate General learned counsel for the appellant/State as well as the learned Senior counsel for the respondent/accused and also gone through the

record carefully.

9. The accused stood charged for commission of the offence under Sections 7 and 13 (1)(d) read with Section 13(2) of the PC Act as being a public servant, he allegedly demanded and accepted illegal gratification of Rs.3,000/- from the complainant. To substantiate the said charge and to bring home the guilt of the accused, the prosecution examined as many as sixteen witnesses. However, the case of the prosecution mainly rests upon the statements of PW-1 Shabir Ali (complainant) and PW-2 Atik Mohammad (shadow witness). These are the most material witnesses of the prosecution, who have been examined primarily to prove the guilt of the accused. In addition to the above important witnesses, the prosecution also examined PW-3 Shri Surat Singh and PW-4 Shri Kedar Singh, who were independent witnesses and their testimonies are also relevant.

10. The first point that arises for determination in this appeal is as to whether the mandatory requirements to bring the accused under the purview of Sections 7 and under Section 13(1)(d) read with Section 13(2) of the PC Act, have been followed or not?

11. I have carefully scrutinized the entire evidence on record. The complainant Sabir Ali appeared in the witness-box as

PW-1 and deposed that on 04.05.2010 the accused demanded bribe of Rs.3000/- from him for providing felling permission and fixing export hammer on the timber, which he had extracted by felling three mango trees from the land of one Shri Dhanbir. He further deposed that he was not interested to give bribe money to the accused, therefore, he reported the matter to the vigilance officials, who met him at Kallor Majari and his statement, Ex. PW-1/A, was recorded. He also deposed that he was given pre-trap demonstration by the vigilance officials and some powders were put in two glasses of water, but its color did not change and when both the solutions were mixed, its color turned pink. As per the version of this witness, he produced a currency note of Rs.1000/- and four notes of five hundred rupees to the vigilance officials and the same were treated with phenolphthalein powder. The said currency notes were treated with phenolphthalein powder and after noting down the serial numbers of the notes, the same were returned to him with instructions not to mix these notes with other notes and give the same to the accused on his demand. Subsequently, he, alongwith shadow witness Atik Mohammad (PW-2), went to a tea stall near the office of the accused. Later on, accused met them and they sat in the room of the tea stall, where on the demand of the accused he gave him Rs.3000/- and in turn

accused gave him permission. Thereafter, PW-2 signaled the vigilance officials, who entered the tea stall and caught hold of the accused and his hand wash was taken with plain water, but its color did not change and when another solution was added to it, it turned pink. He deposed that on demand of the vigilance officials, the accused produced the bribe money from his pocket of the shirt and serial numbers of the same were tallied with the serial numbers mentioned in the pre-trap memo. He further deposed that pocket wash of the shirt of the accused was also taken and when the same was mixed with another solution, it turned pink. He (PW-1) produced permission, Ex. PW-1/G, which was given to him by the accused, and it was taken into possession, vide memo Ex. PW-1/H. PW-1, in his cross-examination, denied that he alongwith shadow witness (PW-2), was engaged in the business of illicit felling and sale of timber. He admitted that PW-2 was his maternal uncle and a criminal case of illicit felling and transportation of 83 *deodar* scants was registered against him and PW-2, which was pending trial in the Court of JMIC (1) Paonta Sahib.

12. Atik Mohammad, who appeared in the witness-box as PW-2, is the shadow witness. He deposed that he was running auto electrician shop at Paonta Sahib and on 04.05.2010 he was associated by the vigilance officials and sent alongwith the

complainant (PW-1), as a shadow witness. He was instructed to give signal to the vigilance officials after the bribe money was given to the accused by the complainant. He further deposed that enroute to the office of the accused, he met them (vigilance officials) near the tea stall and thereafter they entered into the tea stall where the accused demanded Rs.3000/- from the complainant, who delivered the same to him. As per this witness, he came out of the tea stall and signaled the vigilance officials, who entered into the tea stall and caught hold of the accused by his wrists. The vigilance officials obtained the hand wash of the accused and when it was mixed with another solution, it turned pink. He further deposed that bribe money was also recovered from the accused and pocket wash of the shirt of the accused was also taken and when the same was mixed with another solution, it turned pink. This witness, in his cross-examination, admitted that he alongwith the complainant (PW-1), who was his nephew, were facing a trial qua illicit transportation of 83 *deodar* scants in the Court of learned JMIC (1), Paonta Sahib.

13. Shri Surat Singh and Shri Kedar Singh, alleged independent witnesses, stepped into the witness-box as PW-3 and PW-4, respectively and they deposed that they were joined by the vigilance officials to witness pre-trap and post-trap proceedings.

However, these witnesses did not support the prosecution case and denied that vigilance officials conducted pre-trap and post-trap proceedings in their presence. They stated that they were taken to Rest House at Dak Pather by Sabir Ali, where their signatures were procured on various documents. These witnesses were declared hostile and subjected to extensive cross-examination by the learned Public Prosecutor, but nothing favorable could be elicited from their cross-examination. Thus, the testimonies of these two independent witnesses are of no help to the prosecution, rather the perusal of their testimonies creates doubt about the veracity of the prosecution story.

14. It is a settled principle of law that mere recovery of the bribe money by itself cannot bring home the charge for the offences punishable under Section 7 or 13(2) read with Section 13(1) (d) of the PC Act against the accused, in the absence of any evidence to prove demand of bribe or to show that the accused voluntarily accepted the bribe money, as has been held in a catena of judgments passed by the Apex Court. It is also a settled principle of law that suspicion, however grave cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved".

15. In ***B. Jayaraj vs. State of Andhra Pradesh, (2014) 13***

SCC 55, the Hon'ble Supreme Court in paras 8 & 9 of the judgment held that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. Paras 8 & 9 of the judgment reproduced as under:-

- "8. *In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.*
9. *Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."*

16. In ***P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another, reported in (2015) 10 SCC 152***, it has been held that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. Paras 23 and 24 of the judgment read as under:-

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

24. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW 1 S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs 500 from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the Cr.Appeal (SJ). No.302 of 2020 learned counsel for the State to co-relate this statement of PW1 S.Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap 12 operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW 1 S.

Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3-10-1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4-10-1996. However, the testimony of PW 1 S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act against the appellant has been proved beyond reasonable doubt."

17. In **Krishan Chander vs. State of Delhi, (2016) 3 SCC 108**, the Hon'ble Supreme Court reiterated the settled principle of law regarding the ingredients of inter-alia Section 7 of the PC Act that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. Paras 35, 36 and 37 of the judgment read as under:-

"35. It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in the case of *B. Jayaraj (supra)*, *A. Subair (supra)* and *P. Satyanarayana Murthy (supra)* upon which reliance is rightly placed by the learned senior counsel on behalf of the appellant.

36. The relevant paragraph 7 from *B. Jayaraj case (supra)* reads thus "7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference

may be made to the decision in *C.M. Sharma v. State of A.P.* and *C.M. Girish Babu v. CBI.*" (emphasis supplied)

37. In the case of *P. Satyanarayana Murthy (supra)*, it was held by this Court as under:

"21. In *State of Kerala and another vs. C.P. Rao*, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained."

18. In ***N. Sunkanna vs. State of A.P., (2016) 1 SCC 713***,

the Hon'ble Supreme Court held that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non to constitute the said offence. Relevant portion of the judgment reads as under:-

"5.It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of the three-Judge Bench of this Court in *B. Jayaraj v. State of A.P.* [(2014) 13 SCC 55: (2014) 5 SCC (Cri) 543] and *P. Satyanarayana Murthy v. State of A.P.* [(2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11 : (2015) 9 Scale 724] "

19. In ***Mukhtiar Singh vs. State of Punjab, (2017) 8 SCC***

136, it has been held that in order to prove the charge under the above provisions, the prosecution has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Para-13 of the judgment reads as under:-

"13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair v. State of Kerala, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this 13 enunciation further, it was expounded in State of Kerala v. C.P. Rao that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained."

20. Thus, mere possession and recovery of currency notes from an accused without proof of demand would not enable the court to convict the accused. In the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality for an offence under Sections 7 and 13 of the PC Act. Qua Section 20 of the PC Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only

to an offence under Section 7 of the PC Act, such proof of acceptance of illegal gratification, could follow only if there was proof of demand. Axiomatically, it is true that in absence of proof of demand, such legal presumption under Section 20 of the PC Act could not be made.

21. Now, it is to be seen as to whether the prosecution has been able to successfully establish the demand of Rs.3,000/- by the appellant-accused and recovery of one currency note of Rs.1000/- and four currency notes of Rs.500/- from his possession.

22. The entire case of the prosecution revolves around the fact that complainant was working as Block Forest Officer and he demanded bribe of Rs.3,000/- from PW-1 (complainant) in lieu of providing him permission and also to affix export hammer on the timber.

23. Learned Senior Counsel for the respondent-accused contended that no independent shadow witness has been associated by the police during the investigation. He further contended that PW-3 Surat Singh and PW-4 Kedar Singh, alleged independent witnesses, who were joined by the vigilance officials to witness alleged pre-trap and post-trap proceedings, did not support the prosecution case as a result of which the entire

proceedings against the accused stand vitiated. In my opinion, these contentions raised by the learned Senior Counsel are not without any substance as it has been held by the Hon'ble Supreme Court in a catena of decisions that serious endeavor should be made by the Investigating agency to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court. In **Ram Parkash Arora vs. The State of Punjab, AIR 1973 SC 498**, while deprecating the practice of associating interested witnesses, it has been held by the Apex Court that the court may look for independent corroboration before convicting the accused.

Relevant portion of the judgment reads as under:-

"8.....It must be remembered that both Joginder Singh (bribe giver) and Dalbir Singh (shadow witness) P.Ws. were interested and partisan witnesses. They were concerned in the success of the trap and their 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....."

24. The Hon'ble Apex Court in **Som Parkash vs. State of Punjab, reported in AIR 1992 SC 665**, has held that witnesses forming part of the raiding party are not independent witnesses. Therefore, their evidence has to be considered like any other witnesses in the light of the other materials and the cumulative circumstances available on record. Para-2 of the judgment reads as under:-

“2. The High Court found that the witnesses who were associated in the conduct of the raid for recovery of tainted money from the appellant could not be termed as independent who could be associated with such raids. The High Court further expressed doubt about veracity of the witness who claimed that money was actually handed over in his presence. The High Court, however, drew an adverse inference against the appellant from the circumstance that the bill which was delayed for unreasonable period had suddenly been passed by the appellant. On an overall assessment the High Court entertained some suspicion about the credibility of the prosecution witnesses but at the same time did not find the suspicion to be strong enough to raise doubt about the guilt of the appellant. We agree with the learned Counsel for the appellant that in the face of the finding that the witnesses who formed part of the raiding party were not independent and the evidence regarding handing over money to the appellant being unbelievable, the conviction of the appellant cannot be sustained. The guilt of the appellant has not been proved beyond reasonable doubt and as such the benefit must go to him. Considering the above decisions, in the case of absence of independent and reliable corroborative evidence, other evidence not conclusive and found contradictory, benefit of doubt can be given to the accused. In such circumstances, I am of the view, there is no evidence to show that the respondent/accused has demanded illegal gratification, since P.W.2 has given total go by to the complaint. The trial Court has rightly held that the demand has not been proved by the prosecution beyond reasonable doubt and as such the benefit must go to him.”

25. In **Ganga Kumar Srivastava vs. State of Bihar, (2005) 6 SCC 211**, the Hon'ble Supreme Court in para-20 of the judgment held as under:-

“20. We must not forget that in a trap case, the duty of the officer to prove the allegations made against a Government officer for taking bribe is serious, and therefore, the officers functioning in the Vigilance Department must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court and the Court is not left in any doubt whether or not any money was paid to the public servant by way of bribe. It is also the duty of the officers in the Vigilance Department to safeguard for the protection of public servants against whom a trap case may have been laid.”

26. In the instant case, PW-1 Shri Hari Saran is the complainant, therefore, he is an interested witness as obviously he was interested in the success of the case against the accused. The shadow witness, i.e. PW-2 Shri Atik Mohammad who was associated in pre-trap and post-trap proceedings was not only having acquaintance with the complainant, but he was close relative of the complainant and accomplice of the complainant in a timber smuggling case, as such he was also an interested witness. Apart from this, the manner in which both complainant (PW-1) and shadow witness Atik Mohammad (PW-2) deposed in the Court to support the case of the prosecution also shows their interestedness to get success in the case. Thus, it cannot be said that the only independent witness, as portrayed by the prosecution, is in real sense an independent witness. The prosecution has not placed on record any plausible explanation for not associating any independent shadow witness despite having opportunity and availability.

27. Therefore, it would be safe to hold that no independent shadow witness was sent to hear the conversation between the complainant and the accused and for witnessing the delivery of the bribe money by the complainant to the accused, because as observed earlier, the only independent shadow witness, i.e. PW-2

Atik Mohammad was not only close relative of the complainant, but he was co-accused with the complainant in a timber smuggling case. Moreover, the prosecution did not even bother to give any plausible explanation for this omission. It is not the case of the prosecution that at that relevant time no independent witness was available or ready and willing to be a shadow witness. The perusal of the record further shows that PW-2 Surat Singh and PW-4 Kedar Singh were already joined by PW-16 Inspector Madan Lal before the complainant was sent by him to deliver bribe money to the accused. Thus, non-joining of the independent witness, as shadow witness, despite the availability, renders the prosecution case highly doubtful.

28. As per the case of the prosecution, the accused used to approach the land owners for the trees standing on their lands, for obtaining false felling permission of trees, for assigning work of felling trees and for marketing timber to the complainant (PW-1). However, all the above allegations could not be proved by the prosecution. PW 5 Dhanbir and PW-7 Moti Ram were examined to prove these allegations, but in their depositions both of them denied that the accused had approached them for felling trees from their lands. As per these witnesses, they had sold a mango tree each to the complainant.

29. Other limb of the prosecution case is that the complainant (PW-1) had cut mango trees from the land of PW-5 Dhanbir, but the accused had obtained permission for him in the name of Shri Ram Lal son of Shri Madan Singh, resident of village Kalatha, but in fact, no mango tree was cut from his land and felling permission, Ex. PW-1/G, was given by the accused to the complainant on 04.05.2010, only after receiving the bribe money. However, there is no evidence to demonstrate that the accused had procured the above permission. PW-8 Shri Suklap Kumar, the then R.O. Bhangani Range, who had granted the permission, clearly deposed that on 16.04.2010 Shri Ram Lal son of Shri Madan Singh, resident of village Kalatha, moved application, Ex. PW-7/A, seeking permission to cut three mango trees from his land and for sawing the timber. PW-7 Shri Mohan Singh, the then Forest Guard, deposed that application, Ex. PW-7/A, was marked by R.O. Bhangani to B.O. Majri, who, in turn, marked the same to him. He further deposed that he visited the spot on 28.04.2010 and after inspecting the spot he found that Shri Ram Lal had cut three mango trees from his land. He also deposed that after making the report, he returned the application to Shri Ram Lal, who had brought the application to him. This witness denied that on 20.04.2010 the accused gave him application, Ex. PW-7/A, and

directed him to make report immediately. He also denied that no tree was cut from the land of Shri Ram Lal and the trees, qua which he had made the report, were cut from the land of Shri Dhanbir (PW-5). Thus, from the testimony of PW-7 it is clear that Shri Ram Lal had actually cut three mango trees from his land and he had extracted 59 logs, which were detailed in report, Ex. PW-7/B. In this view of the matter, there was no occasion for the accused to permit the complainant (PW-1) to carry the timber extracted from the land of PW-5 Shri Dhanbir against the permission granted to Shri Ram Lal. Moreover, the prosecution did not examine Shri Ram Lal, who could have deposed that under what circumstances he parted with the permission letter, Ex. PW-1/G, and to whom he had handed over the same. Thus, in these circumstances, the prosecution case becomes doubtful that the accused came in possession of the letter, Ex. PW-1/G, which he had delivered to the complainant, after receiving the bribe money. It is only PW-1, who deposed that the accused gave him the letter, but his such deposition is not supported by any other prosecution witness. Shri Atik Mohammad (PW-2), shadow witness, did not support the version of the complainant and he remained silent about the delivery of permission letter, in his presence, by the accused to the complainant.

30. It is settled position of law that the statement of the complainant cannot be placed on a better footing than that of an accomplice and corroboration on material particulars connecting the accused with the crime must be insisted. In ***Pannalal Damodar Rathi vs. State of Maharashtra 1979 (4) SCC 526***, it has been held as under:

"8. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon."

31. In the instant case there is no legally admissible evidence of demand and acceptance. The recovery of the bribe money from the possession of the accused is also tainted with doubt, as PW-3 Shri Surat Singh and PW-4 Shri Kedar Singh, the alleged independent witnesses, did not support the prosecution story and remaining witnesses of the recovery of bribe money from the accused were interested witnesses. Therefore, the deposition of the complainant that the accused demanded money from him and also accepted the same cannot be believed in the absence of any cogent and satisfactory evidence.

32. It is a settled law that in the absence of proof of demand,

the presumption under Section 20 of the Prevention of the Corruption Act will not get attracted. In **V. Venkata Subbarao vs. State represented by Inspector of Police reported in (2006) 13 SCC 305**, the Hon'ble Supreme Court has held that in the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the PC Act provides for raising of a presumption only if a demand is proved. The relevant portion of the judgment reads as under:-

"24.....In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. It reads as under:

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

33. In **State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede, reported in (2009) 15 SCC 200**, the Hon'ble Supreme Court has made the following observations:-

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz., demand,

acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, 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. Even while invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.”

34. In the instant case, as observed earlier, demand by the accused-appellant from complainant could not be established by the prosecution, as such, in the absence of a proof of demand, the question of raising the presumption would not arise under Section 20 of the Act.

35. Hence, the inconsistencies, contradictions and discrepancies pointed out leads to an inference that the prosecution has miserably failed to prove its case of demand and acceptance of bribe. From the evidence adduced, nothing has been proved on record that the appellant demanded and accepted bribe from the complainant for providing permission and also to affix export hammer on the timber. In other words, neither demand nor acceptance of the bribe money has been proved. In the absence of demand of any illegal gratification and acceptance thereof, it is clear that the prosecution has failed to prove its case

beyond reasonable doubt and the learned trial court has rightly appreciated the evidence on record and acquitted the accused.

36. Therefore, in view of my aforesaid discussion, the prosecution has failed to prove its case against the accused beyond reasonable doubt. For all the reasons stated, the appeal is dismissed and the impugned judgment of acquittal, dated 09.09.2013, passed by learned Special Judge Sirmaur District at Nahan, H.P., in Corruption Case No. 16-CC/7 of 2012, is upheld. The bail bonds executed shall stand cancelled.

37. In view of the provisions of Section 481 of The Bharatiya Nagarik Suraksha Sanhita, 2023, the appellant is directed to furnish personal bond in the sum of Rs.50,000/- with one surety in the like amount, before the trial Court within a period of four weeks, which shall be effective for a period of six months, with stipulation that in the event of Special Leave Petition being filed against this judgment or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Supreme Court.

(Sushil Kukreja)
Judge

12th September, 2025
(virender)