Raj Kumar Vs. State of Delhi

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Court : Delhi

Decided On : Mar-26-2015

Judge : Vipin Sanghi

Appellant : Raj Kumar

Respondent : State of Delhi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:

10. 02.2015 Judgment delivered on:

26. 03.2015 CRL. APPEAL No.831/2008 RAJ KUMAR ..... Appellant Through: Mr. Dayan Krishnan, Senior Advocate along with Mr. M.L.Yadav, Advocate. versus STATE OF DELHI ..... Respondent Through: Mr. Lovkesh Sawhney, APP for the State. CORAM: HONBLE MR. JUSTICE VIPIN SANGHI

JUDGMENT
VIPIN SANGHI, J.

1. The present appeal is directed against the judgment dated 18.09.2008 passed in CC No.104/06/01 arising out of FIR No.65/2000 PS AC Branch under Section 7/13 of the Prevention of Corruption Act (P.C. Act) titled, State Vs. Raj Kumar, whereby the appellant was convicted of the offence punishable under Section 7 &

13(1)(d) read with Section 13(2) P.C. Act, and against the order on sentence dated 22.09.2008, whereby the appellant was sentenced to undergo rigorous imprisonment for one year with fine of Rs.4,000/- and on failure to pay the same, to undergo simple imprisonment for four months for the commission of offence punishable under Section 7 P.C. Act, and to undergo rigorous imprisonment for two years with fine of Rs.6000/- and on failure to pay the same, to undergo simple imprisonment for six months for the commission of offence punishable under Section 13(1)(d) read with Section 13(2) P.C. Act. Both substantive sentences were directed to run concurrently and the appellant/convict was given the benefit of Section 428 Cr.P.C.

2. The case of the prosecution was that on 27.12.2000, the complainant- Prakarti Kumar (PW-6) gave a hand-written complaint (Exhibit PW-6/A) at the Anti-Corruption Branch (ACB) to Inspector S.S.Sandhu, the Raid Officer (RO), PW-8. In the complaint, the complainant disclosed that he was having his office in the area of P.P.Govindpuri near Madina Masjid, Okhla Road, for the last 8 years and he was running his temporary office therein. There was some vacant land of DDA behind his office on which some persons had constructed their jhuggis. One of the said jhuggiwalas sold his jhuggi to one Liyakat. The said Liyakat wanted to have his direct passage from that jhuggi to the main road, Okhla. Liyakat wanted the complainant to remove his temporary office in which he had put up his table and chairs. At his instance, the accused Raj Kumar - who was in-charge of the said area, was threatening the complainant since 05.12.2000 to vacate his office, or else face false implication in a case. When the complainant requested the accused not to remove his temporary office, the accusedconstable Raj Kumar told him on 08.12.2000, that Liyakat had given him Rs. 3,000/- to get vacated the complainants office and, if the complainant would give him Rs. 5,000/-, his office would not be removed from there. The complainant further disclosed that he refused to give the bribe to the accused. The accused again came to the complainant on 16.12.2000 but the complainant put him off. On 21.12.2000, again the accused came to him and demanded Rs. 5,000/- from the complainant. Under compulsion, the complainant agreed to pay Rs. 2,000/-. The complainant further disclosed that the accused had asked him to arrange Rs. 2,000/- by 27.12.2000.

3. The further case of the prosecution was that on receipt of this complaint from the complainant, the R.O., PW-8 read the same to the panch witness Gurander Singh (PW-7) posted on official duty in the ACB and got his signatures on the complaint. Thereafter, the complainant produced eight G.C. notes of Rs. 500/- each and ten G.C. notes of Rs.100/- each - (Exhibit P-3). The R.O. recorded their numbers in the pre-raid report (Exhibit PW6/B). The panch witness (PW-7) tallied the numbers on the G.C. notes Exhibit P-3 with those recorded in Exhibit PW-6/B. The R.O. applied phenolphthalein powder on those GC notes and gave the required demonstration. The notes were returned to the complainant by the RO, who kept the same in the left pocket of his shirt. The R.O. instructed the complainant and the panch witness (PW-7) to remain together. The panch witness (PW-7) was further directed to give a pre-assigned signal by waiving his hand over his turban after the transaction of bribe was completed.

4. The prosecution claimed that at about 1.05 p.m., all the members of the raiding team - including the complainant and panch witness (PW-7) left the ACB in a government vehicle. They all reached near Madina Masjid, Okhla, main road, at about 2.05 p.m. The R.O. directed the complainant and the panch witness (PW-7) to go in the temporary office of the complainant, while the members of the raiding team took their suitable position.

5. The further case of the prosecution was that at about 2.50 p.m., the accused, wearing a leather jacket came on a two-wheeler and went inside the temporary office of the complainant. There, the accused demanded the agreed amount from the complainant. The complainant took the powder treated G.C. notes (Exhibit P-3) from the left pocket of his shirt, and gave the same to the accused who took it in his right hand. The panch witness Gurander Singh (PW-7), thereafter, gave the pre-assigned signal to the members of the raiding team. The R.O. along with other members of the raiding team reached at the spot. On the directions of the R.O., the panch witness (PW-7) recovered the GC notes Exhibit P-3 from the accused. The panch witness (PW-7) tallied the numbers on the GC notes Exhibit P-3 with those recorded in the pre-raid report (Exhibit PW-6/B), which tallied. Consequently, the accused was apprehended. The R.O. interrogated the panch witness who disclosed to him regarding the transaction of bribe, which was

recorded in the post raid proceedings (Exhibit PW-6/E). The R.O. seized the GC notes (Exhibit P-3) vide seizure memo (Exhibit PW6/C). Right hand wash of the accused was taken, which turned pink. The R.O. transferred the solution into clean bottles, sealed them with the seal of NS and fixed necessary labels marked as RHW-I and RHW-II. Those bottles were taken into possession by the police vide memo (Exhibit PW6/D). The R.O. prepared the Rukka (Exhibit PW-2/A) and handed over the same to constable Shailender (PW-2) for registration of the case vide FIR (Exhibit PW-2/B). The Investigating Officer (I.O.) Inspector N.S.Minhas (PW-9) was called at the spot who took over the investigation. During further investigation, I.O. Inspector N.S.Minhas prepared the site plan (Exhibit PW-9/A). He interrogated the accused and conducted his personal search vide memo (Exhibit PW-6/F), and arrested him. I.O. seized one twowheeler scooter used by the accused vide seizure memo (Exhibit PW-6/G). Accused was taken to Aruna Asif Ali Hospital for his medical examination. On reaching police station Civil Lines, the I.O. (PW-9) deposited the case property in the maalkhana and put the accused in the lock-up. During further investigation, I.O. got sent the sample sealed parcel and the sample seal to FSL, and in due course of time result was received. After completion of the investigation, he filed the challan in the court against the accused for commission of the aforesaid offences. The Court took cognizance of the offence punishable under Section 7/13(1)(d) P.C. Act vide order dated 13.12.2001. Vide order dated 03.02.2003, charges were framed under Section 7/13(1)(d) read with Section 13(2) P.C. Act. The accused pleaded not guilty to the charges, and claimed trial.

6. The prosecution examined ten witnesses who are as follows: PW1 - Inspector Durga Prashad - posted as ACP, Public Grievances Cell, South District. He proved the bio-data of the accused as furnished by him, i.e. Exhibit PW-1/A. PW2-Constable Shailender Singh - who joined the raiding party organized by the R.O. Inspector S.S. Sandhu, PW-8. PW3-Constable Mahinder Singh - The Assistant Malkhana Moharar, who testified about the deposit of the hand wash samples in two sealed bottles RHW-I and RHW-II sealed with the seal of N.S. along with the GC notes Exhibit P-3 and articles of personal search of the accused and the scooter vide entry in the Register No.19 vide Exhibit PW-3/A. PW4-H.C. Birju Singh - He deposed that on 03.01.2001, he taken the bottle marked RHW-I and

sample seal and one FSL form and deposited the same in FSL, Malviya Nagar after taking the same from the Malkhana of P.S. Civil Lines, on the same day. PW5- Constable Vinod Kumar - He deposed that on 30.04.2001, on the basis of an authority letter issued by the I.O. PW-9, he had collected one sealed bottle bearing seal of FSL and FSL Report in a sealed envelope; had deposited the said sealed bottle in the Malkhana of P.S. Civil Lines and handed over the sealed envelope containing the FSL result to the PW-9 - the I.O. PW6- Prakarti Kumar - the complainant PW7- Gurander Singh - the panch witness PW8- Inspector S.S. Sandhu - the R.O. PW9- Inspector N.S. Minhas - the I.O., and; PW10- P. Kamraj - DIG CBI, New Delhi - the sanctioning authority.

7. Statement of the accused was recorded under Section 313 Cr.P.C. The accused denied his involvement in the commission of offence. The plea of the accused was that he had been falsely implicated in the case and he never demanded, or accepted, any money from the complainant. There was no motive or occasion for the accused to demand any bribe from the complainant. The accused stated that there was some dispute between the complainant and one Liyakat @ Arshad for getting passage in between the jhuggi of the complainant and Liyakat. A written settlement was made between the complainant and Liyakat in his presence. Complainant agreed to make payment of Rs. 5,000/- to Liyakat in lieu of getting passage through the jhuggi. The complainant, however, did not pay the amount. Consequently, Liyakat complained to him and other beat constables. He stated that the complaint lodged by the complainant against him in the ACB was false. The accused examined Liyakat Ali as DW1 and HC Manoj Kumar as DW2 in his defence evidence.

8. The first submission of Mr. Dayan Krishnan, learned senior counsel for the appellant, is that in the present case though the appellant does not dispute the acceptance of the amount of Rs. 5,000/- from the complainant, the same was not on account of a conscious demand, or conscious acceptance of the said amount - knowing it to be bribe money. He submits that mere acceptance of money does not lead to an inference of guilt under Section 13(1)(d) of the P.C. Act. It is necessary that the accused should have consciously demanded a bribe or illegal gratification, which is not legal remuneration, and that he should have accepted

the same knowing it to be such gratification, for raising the mandatory presumption under Section 20 of the P.C. Act, and shifting the onus upon the accused.

9. Mr. Krishnan also refers to the answer given to Question No.44 by the appellant during his questioning under Section 313 Cr.P.C. The said question and answer read as follows:

Q44. Do you want to say anything else?. A. I am innocent and I never demanded and accepted any bribe from the complainant nor there was any motive or occasion to take the same. The real facts are that there was some dispute between the Liyakat @ Arshad and complainant Prakarti for getting passage in between the Jhuggis of Liyakat and thus in my presence a written settlement was made between the complainant and Liyakat and complainant agreed to make payment for a sum of Rs. 5,000/- to Liyakat in lieu of getting passage through jhuggis. Complainant did not pay the amount to Liyakat who complained the matter to me and other beat constable. As I was Beat Constable and used to remain present in my beat area. Complainant lodge a false complaint in ACB and get me trapped in a false case.

10. Mr. Krishnan submits that Liyakat Ali (DW1) had stated about the quarrel which took place between him and the complainant with regard to the passage. He also stated that some police official of that area, including the accused, got the matter compromised, and a compromise had taken place for the amount of Rs. 8,000/-. He had been paid Rs. 3,000/- by the complainant and gave an assurance that the rest of the amount of Rs. 5,000/would be paid within a week. However, he did not pay the same despite 2/3 assurances. Then DW1 Liyakat Ali requested the accused that the complainant had not paid to him the settled amount of Rs. 5,000/-. He further stated that upon the complainant being asked, he had informed that the accused had taken the money for giving it to him (Liyakat Ali).

11. Mr. Krishnan submits that, firstly, no presumption under Section 20 of the P.C. Act could have been raised, since it had not been established that the accused had received any gratification (other than legal remuneration) from the complainant. In any event, in the present case, the accused had led positive evidence of DW1 and DW2 to displace the statutory presumption raised under

Section 20 P.C. Act by bringing on record sufficient credible evidence to establish, with reasonable probability, that the money was accepted by him, not as gratification other than legal remuneration.

12. In support of his submissions, Mr. Krishnan has placed reliance on: i) C.M. Girish Babu v. CBI, Cochin, High Court of Kerala, (2009) 3 SCC779 para 18; ii) Rakesh Kapoor v. State of Himachal Pradesh, (2012) 13 SCC552 para 20 and 21; iii) State of Punjab v. Madan Mohan Lal Verma, (2013) 14 SCC153 para 11; iv) B. Jayaraj v. State of A.P., (2014) SCC Online SC268 paras 7 to 9; v) Mahavir Singh v. State, (2014) SCC Online Del 290; and vi) C.Sukumaran v. State of Kerala in Crl. Appeal No.192 of 2015, para 16 and 17.

13. Mr. Krishnan submits that the complainant did not support his own complaint, when examined in chief. He stated that he called the accused and asked him to receive the amount of Rs. 5,000/- which was as per the settlement arrived at between him and Liyakat. Mr. Krishnan submits that since the complainant turned hostile, he was cross-examined by the learned APP. In his cross-examination, the complainant denied having made the complaint against the accused - alleging that the accused had demanded a bribe of Rs. 5,000/-. He had stated that the said amount was given to the accused - the Beat Constable of the area, in respect of a settlement arrived at between the complainant and Liyakat (DW-1). On cross-examination by the accused, the complainant had stated that the accused had demanded Rs. 5,000/- on behalf of Liyakat as settled earlier between the complainant and Liyakat. He stated that he was giving the money for Liyakat to the accused and that the accused had told the complainant to pay the same to Liyakat. Thus, the accused had explained the events that led to the money being handed over to the accused. Mr. Krishnan submits that the complainant also explained the reason for his making the complaint when he stated, two/three persons advised me to approach Anti Corruption Department as I was not willing to pay Rs. 5,000/- to Liyakat.

14. Mr. Krishnan submits that merely because it was not a part of the official duty of the appellant to facilitate the settlement, it cannot lead to the inference that he had committed the offence under Section 13(1)(d) of the P.C. Act.

15. Mr. Krishnan submits that the panch witness Gurander Singh (PW-7) was a stock witness, since he admitted that he was on duty in the ACB on that day i.e. 27.12.2000. PW-7 did not even identify the accused, which puts a doubt whether the shadow/panch witness (PW-7) was at all present at the spot at the time of the raid. Mr. Krishnan submits that since PW-7 even failed to identify the accused, his whole testimony is liable to be rejected. PW-7 did not narrate about how the accused made the demand and how the money was consciously accepted by the accused, knowing it to be a bribe. Mr. Krishnan submits that PW-7 had stated that the complainant had told him that the money was in relation to a jhuggi. Upon reading the testimony of PW-7, with that of PW-6 - the complainant, and DW-1, it is clear that the amount was meant as a part of a settlement amount being paid to Liyakat. He submits that no tape recording was relied upon by the prosecution. Therefore, there is no corroborative evidence to support the testimony of the shadow/ panch witness.

16. In support of his submission that PW-7 was a stock witness, Mr. Krishnan submits that in his cross-examination, PW-7 stated that he reached the ACB at 9.30 a.m. He had also stated that he had appeared as a panch witness in one other case. Mr. Krishnan refers to the examination-in-chief of Inspector S.S.Sandhu (PW-8), who stated that on 27.12.2000, while he was posted as Inspector in ACB at about 11.30 a.m, the complaint of the complainant was referred to him by his senior officers regarding the demand of Rs. 5,000/- as bribe by the accused. Thus, it is submitted that the panch witness was already in readiness in the ACB to act as a panch witness even before the complaint in question had been received by the ACB. This, Mr.Krishnan submits, renders the testimony of PW-7 unbelievable. In this regard, he placed reliance on the following extract from the judgment of this Court in Ashish Kumar Dubey v. State thr. CBI in Cr. Appeal No.124 of 2008:

The above observations of the learned trial court would seem to imply that there are stock independent witnesses who are at the service of the CBI. This seriously undermines the socalled independence of these witnesses. This was too serious a matter for the learned trial court to be basing its views on surmises and conjectures as to how these two witnesses could already be present in the office

of the CBI even before the Complainant reached there with his written complaint.

17. Mr. Krishnan submits that PW- 9 Inspector N.S. Minhas, the I.O., has not exhibited the FSL report in his deposition. Though the I.O. speaks about the said report, he did not formally tender it in evidence by way of exhibiting the document. In spite of the same, the learned Special Judge has relied upon the said FSL report. He submits that while recording the statement of accused under Section 313 Cr.P.C., the learned Judge, for the first time, in question No.40, referred to the FSL report as exhibit marked 1 . He submits that it is not explained as to how the said FSL report was given an exhibit mark, when the same was not even tendered in evidence by the I.O., or any other prosecution witness. He refers to the said FSL report to submit that, in the results of examination, it refers to exhibit marked 1 and submits that reference to exhibit 1 in the question No.40 posed under Section 313 Cr.P.C. is to exhibit 1 referred to in FSL report only, and it does not tantamount to the FSL report being exhibited as admissible evidence in the case. He submits that even if the FSL report does not need to be proved by summoning the author thereof in the light of Section 293 Cr.P.C., the same has to be, at least, tendered in evidence before the Court. He submits that the said report was not so tendered in evidence. Consequently, the same could not be relied upon in view of the judgment in Dharampal & Anr. v. State, (2011) 525 DRL417at para 27. Even otherwise, a mere positive phenolphthalein test cannot lead to the inference of guilt. In this regard, reliance is placed on Mahavir Singh v. State, (supra) at para 23.

18. Mr. Krishnan submits that no suggestion - that the complainant, as well as the stock witness, have been won over by the accused, had been given to the witnesses. Also, there is no evidence on record to substantiate the same. The said argument is an argument purely of prejudice, which should not be accepted, when the burden of proof is squarely on the prosecution to prove its case beyond reasonable doubt.

19. Mr. Krishnan submits that the learned Sessions Judge has rejected the defence of the appellant on the premise that there was no written compromise. He submits that the same was of no consequence in view of the testimony of DW-1

Liyakat, and was irrelevant inasmuch, as, what is explained by the defence is the reason for the acceptance of money. It is submitted that the prosecution had failed to discharge its burden to show that the acceptance of money was made consciously as a bribe. He submits that the approach of the learned Sessions Judge is erroneous, as the entire burden has been placed on the defence to establish the innocence of the appellant. He submits that this is contrary to catena of judgments which have been cited by him. He submits that although the factum of the settlement was brought to the notice of the I.O., he has chosen not to investigate it. The said fact, itself, should lead to an adverse inference against the prosecution.

20. Lastly, Mr. Krishnan submits that the learned Special Judge has placed reliance on the suggestions put to the prosecution witnesses while coming to the conclusion of guilt. He submits that suggestions put to the prosecution witnesses in their cross-examination would not amount to an admission under Section 18 of the Indian Evidence Act. In this regard, he has placed reliance on Koli Trikam Jivraj & Anr. Vs. The State of Gujarat AIR1969 Guj 69 to submit that the plea or defence which the lawyer of the accused puts forward does not bind the accused. He submits that the approach of the trial court is misdirected in law, since the learned Special Judge has sought to infer admissions on the part of the accused.

21. On the other hand, Mr. Sawhney, learned APP has sought to place reliance on the testimonies of the prosecution witnesses, particularly PW-6 to PW-9. He submits that in the complaint (Exhibit PW-6/A), the appellant was named by the complainant. Even though the complainant turned hostile, he admits having made the said complaint (Exhibit PW-6/A). He submits that the complainant (PW-6) during his examination-in-chief conducted on 05.02.2007, stated, inter alia, that the appellant met him and threatened that the complainant would be involved in some cases, if he did not settle his disputes amicably with Liyakat. He also stated that an amicable settlement of dispute was reached with Liyakat, under which Liyakat demanded Rs.5,000/- from the complainant. He stated that Liyakat demanded the said amount 2/3 times, but he did not pay Thereafter, accused and his associates started demanding Rs.5000/- from me. He goes on to state that Liyakat did not press his demand but then police officers including Ct. Raj Kumar

told me that when the settlement had been arrived at between myself and Liyakat for Rs.5,000/- then I was not paying him this settled amount. Mr. Sawhney submits that this shows that the demand made by Liyakat did not survive, as he did not press the said demand of Rs.5,000/-. Thus, it could not be said that the demand made by the appellant, and the amount of Rs.5,000/- accepted by him in pursuance of the said demand, was on account of Liyakat. Mr. Sawhney submits that PW-6 exhibited the pre-raid proceedings (Exhibit PW-6/B); the treatment of GC notes (Exhibit P-3 Colly.) with the powder; the acceptance of the powder treated GC notes by the appellant from the complainant; the recovery of the same from the hands of the appellant, and; thereafter the apprehension of the appellant. He exhibited the memo vide which the GC notes were recovered from the appellant (Exhibit PW-6/C). He exhibited the samples of the handwash - which turned pink, and were collected in clean empty bottles (RHW-1 & RHW-2), the labels whereof were signed by him. He exhibited the memo vide which possession of the bottles were taken by the Police (Exhibit PW-6/D). He identified the bottles (Exhibit PW-1 & PW-2) in Court. He also identified the eight GC notes of Rs.500/- denomination each and ten GC notes of Rs.100/- denomination (Exhibit P-3 Collectively), each recovered from the appellant. He also exhibited post-raid proceedings (Exhibit PW-6/E); the search memo regarding the personal search of the appellant (Exhibit PW-6/F), and; the seizure memo of the scooter of the appellant (Exhibit PW-6/G). Mr. Sawhney submits that in his crossexamination by the learned APP (since the complainant had turned hostile), the complainant (PW-6) again established the demand made by the appellant of Rs.5,000/-. He stated that the appellant Raj Kumar had told him that Liyakat Kabadi had given Rs.3,000/- to him and if I would pay Rs.5000/- to him he would not get my office removed. Mr. Sawhney submits that in his cross-examination by learned counsel for the appellant/ accused, the complainant stated that the appellant had told him to pay the amount of Rs.5,000/- to Liyakat. Mr. Sawhney submits that, if that were so, there was no question of the complainant paying the said amount of Rs.5,000/- to the appellant for Liyakat, and there was no question of the appellant accepting the amount of Rs.5,000/- on behalf of Liyakat. PW-6 also denied the suggestion that the appellant did not demand bribe.

22. Mr. Sawhney submits that PW-7, the panch witness had stated that the name of Liyakat had not been mentioned in the conversation which took place between the complainant and the appellant in his presence. He also denied the suggestion that the complainant had told the appellant to accept the money on behalf of Liyakat. He had also denied the suggestion that the appellant refused to accept the same, saying that the money be given to Liyakat. Mr. Sawhney submits that the shadow witness has completely proved the case of the prosecution, except that he turned hostile with regard to the identity of the appellant. He submits that this, apparently, was on account of the lapse of seven years between the date when the incident took place, and the date when his statement was recorded. However, the same is not of any significance for the reason that the appellant does not deny the fact that he was indeed present at the spot - at the relevant time; that he accepted the amount of Rs.5,000/- from the complainant, and; that the said amount of Rs.5,000/- in GC notes (Exhibit P-3 Colly.) - which were treated with Phenolphthalein powder, were recovered from him at the spot. PW-7 had categorically stated that the person who came in the jhuggi of the complainant demanded the agreed money upon which the complainant took out the powdered GC notes from the left pocket of his shirt and gave the same to the said person who took it in his right hand. He also stated that the person who demanded and accepted the bribe from the complainant was apprehended by the raiding party. Mr. Sawhney submits that the only person apprehended by the raiding party was the appellant, and none else. His scooter was also seized from the spot. Thus, there can be no dispute that the person who accepted the bribe was the appellant, and none else. Mr.Sawhney submits that the said witness had also fully corroborated the statement made by the complainant with regard to the pre-raid and post-raid proceedings.

23. Mr. Sawhney points out that PW-7 was initially examined on 01.06.2007. However, since the accused was not present for his identification by the witness, the hearing was adjourned to 17.09.2007. He submits that the possibility of the witness (PW-7) being influenced, or won over during this period by the accused - who was a Police officer, cannot be ruled out. He submits that this could be a reason for PW-7 not identifying the appellant/ accused in Court when he came for his examination-in-chief and cross-examination on 17.09.2007.

24. Mr. Sawhney submits that the post-raid proceedings/ panchnama (Exhibit PW-6/E), which was also signed by PW-7 also corroborates the testimony of PW-7 about the demand and acceptance - it being a contemporaneous record of the events which took place before, during and after the trial. It being a former statement of the panch witness, the same can be used under Section 157 of the Evidence Act. He submits that the statement recorded in the panchnama is not a statement of the accused. It is a narration of events which happened in the past in the presence of panchas, seen and heard by them. It is not hit by Section 162 of Cr.P.C. and is admissible under Section 157 of the Evidence Act, as has been held by Division Bench of Gujarat High Court in Valibhai Omarji Vs. The State, AIR1963 Gujarat 145.

25. Mr. Sawhney submits that the place of arrest of the appellant has not been denied by him, namely the Jhuggi of the complainant (PW-6). There was no occasion for the appellant to visit the Jhuggi of the complainant unless he had gone there to demand there and accept the bribe money. He submits that the recovery of the GC notes (PW-3 Colly) was duly established vide recovery memo (Exhibit PW-6/C).

26. With regard to the FSL report, Mr. Sawhney submits that PW-8 had proved the FSL report regarding the handwash. He states that he had sent the sample of the handwash along with the samples seized to the FSL and received the result of the same, which were filed in the Court. The handwash of the appellant had given positive result with regard to the Phenolphthalein powder. Reliance was placed on the FSL report Exhibit PW Mark-I. Mr. Sawhney submits that in terms of Section 293 Cr.P.C., the FSL report/ result is admissible per se without examination of the expert witness. Merely because the same was not formally tendered in his testimony by the I.O., and was not given an exhibit mark during the examination of the I.O. PW-9, the said FSL report does not lose its evidentiary value.

27. Mr. Sawhney submits that while recording the statement of the appellant/ accused under Section 313 Cr.P.C., the said FSL report was specifically put to him in Question 40. The said question and its answer read as follows:

Q40: It is in evidence against you that as per FSL report on record exhibit marked 1 i.e. Pink colour solution with sediments gave positive tests for the presence of Phenolphthalein and sodium carbonate. What have you to say?. A. The FSL report is incorrect.

Thus, it cannot be said that the appellant was not confronted with the said FSL report. Consequently, he was not prejudiced in any manner.

28. Mr. Sawhney submits that there is complete link evidence available, supported by the FSL results and the evidence of the Raid Officer. He placed reliance on State of U.P. Vs. Zakaullah, (1998) 1 SCC557 wherein the Supreme Court observed, in relation to the testimony of the TLO/ Raid Officer, and the purpose of the Phenolphthalein test, that:

11. We must mind the fact that he had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer. He made arrangements to smear the phenolphthalein powder on the currency notes in order to satisfy himself that the public servant had in fact received the bribe and not that currency notes were just thrust into the pocket of an unwilling officer. Such a test in conducted for his conscientious satisfaction that he was proceeding against a real bribe taker and that an officer with integrity is not harassed unnecessarily.

12. The evidence of such a witness as PW4 can be acted on even without the help of any corroboration (vide Prakash Chand vs. State (Delhi Administration):

1979. (2) SCR330 Hazari Lal vs. Delhi Administration:

1980. (2) SCR1053.

13. The reasoning of the High Court that reliability of the trap was impaired as the solution collected in the phial was not sent to chemical Examiner is too puerile for acceptance. We have not come across any case where a trap was conducted by the police in which the phenolphthalein solution was sent to the Chemical Examiner. We know that the said solution is always used not because there is any such direction by the statutory public servant would have really handled the bribed

money. There is no material discrepancy in the evidence regarding preparation of recovery-memo and the minor contradiction mentioned by the learned single judge is not worth considering. (Emphasis supplied) 29. Mr. Sawhney submits that even if, for the sake of argument, the FSL result were to be ignored, the conviction of the appellant can be sustained on the basis of the evidence led by the other prosecution witnesses and, in particular, the panch witness (PW-7).

30. Mr. Sawhney submits that the judgment in C.Sukumaran (supra) was rendered by the Supreme Court in the particular facts found in that case, and it would have no application in the facts of the present case. A perusal of paragraph 17 of the said decision shows that the prosecution had failed to prove the demand of illegal gratification made by the appellant/ accused from the complainant and acceptance of bribe money by the appellant/ accused. It was in this background that the Court said that the Phenolphthalein test could not be said to be conclusive proof against the appellant. In that case the colour of the collected samples of the washes was pink and had remained so throughout. However, the lime solution, in which the appellants hand were dipped, did not show the same pink colour. The Supreme Court rejected the reasoning of the Trial Court that the colour could have faded by lapse of time, as the other samples taken by the I.O. had not lost their coloration and continued to retain the pink colour. In that case, the sample of the shirt worn by the appellant, produced before the Trial Court, did not show any colour change on the shirts pocket section where the bribe money was, allegedly, kept by him after the complainant had given him the alleged bribe money. Mr. Sawhney submits that the peculiar facts in C.Sukumaran (supra) are starkly different from the facts of the present case.

31. Mr. Sawhney submits that PW-7, the panch witness was not a stock witness. PW-7 had stated that he had appeared as a panch witness in one other case. It was not shown that the panch witness had acted as such in a very large number of prosecution cases. Mr. Sawhney submits that the observation made by this Court in Ashish Kumar Dubey (supra) were made in the facts and circumstance of that case, and could not be treated as a general proposition applicable in all cases. Merely because the panch witness may have been arranged even before the complaint had been received, it does not lead to the inference that the panch

witness was a stock witness. He submits that it is well known that the general public usually does not associate itself with such like cases. Consequently, Government officers who enjoy security of employment & status, and who would act objectively and independently, are roped in to act as panch/ shadow witness. He submits that the panch witness PW-7 had no animosity towards the appellant, and there was no reason for him to falsely implicate the appellant, he himself being a Government servant. He places reliance on the decision of the Supreme Court in Yakub Abdul Razak Memon Vs. State of Maharashtra, (2013) 13 SCC1 At page 762 paragraph 1974, the Supreme Court observed in this decision as follows:

1974. The panch witness Mohd. Ayub Mohammad Umar (PW72 could not be held to be a tutored witness or acting at the behest of the prosecution only on the ground that he had also been the witness in another case. It does not give a reason to draw inference that he was a stock panch witness, unless it is shown that he had acted in such capacity in a very large number of cases.

32. I have considered the rival submissions of learned counsel and examined and appreciated the evidence led in the present case, as also the decisions relied upon by learned counsel on either side.

33. The appellant/ accused in the present case has not disputed the fact that he had received the amount of Rs.5,000/- from the complainant (PW-6) on the fateful day, and at the fateful place and time. His case is that the said amount was not consciously accepted as a bribe, i.e. as gratification other than legal remuneration, but, as money payable by the complainant to Liyakat in terms of the settlement reached between the complainant and Liyakat. The appellant, thus, claims to have only acted as a courier to collect the amount of Rs.5,000/- from the complainant, to be delivered to Liyakat.

34. On this premise, Mr. Krishnan has sought to place reliance on, inter alia, Madan Mohan Lal Verma (supra), Rakesh Kapoor (supra), C.M. Girish Babu (supra), C.Sukumaran (supra) and B.Jayaraj (supra). There can be no quarrel with the proposition urged by Mr. Krishnan that a demand and conscious acceptance of gratification, other than legal remuneration, is a sine qua non to constitute the

offence under Sections 13 & 7 of the P.C. Act, and mere recovery of tainted money from the accused is not sufficient to convict the accused. Therefore, it needs examination whether there was a demand and conscious acceptance of the money by the appellant from the complainant as gratification, other than legal remuneration. In this regard, the testimonies of the complainant (PW-6) and the panch witness (PW-7) and the corroborative evidence needs examination.

35. Even though the complainant (PW-6) turned hostile inasmuch, as, he stated that he had called the appellant and asked him to receive the amount of Rs.5,000/- which was as per the settlement between me and Liyakat. Thereafter I handed over those powder treated notes to accused Ct. Raj Kumar, and upon cross-examination by the learned APP for the State, PW6 further stated that it is incorrect that I made a complaint that Ct. Raj Kumar had demanded a bribe of Rs.5,000/-. Vol. It was the amount which I had to give to Liyakat and was not the bribe amount demanded by Ct. Raj Kumar, his testimony insofar as it stands corroborated by other credible evidence can be relied upon by the prosecution. The complainant gave his complaint (Exhibit PW-6/A) - which he admitted in the earlier part of his statement recorded on 05.02.2007, to the ACB in the presence of one panch witness. He also exhibited the complaint as Exhibit PW-6/A and stated that the same bears his signatures at point A. However, subsequently, he denied having given the complaint (Exhibit PW-6/A) and was, accordingly, confronted with the relevant part of the said complaint in this regard by the learned APP for the State, wherein the appellant was named as the person demanding a bribe of Rs.5,000/- from the complainant.

36. PW-6 further deposed that that the appellant met him and threatened that the complainant would be involved in some cases, if he did not settle his disputes amicably with Liyakat; that an amicable settlement of dispute was reached with Liyakat, under which Liyakat demanded Rs.5,000/- from the complainant; Liyakat demanded the said amount 2/3 times, but he did not pay; Thereafter, accused and his associates started demanding Rs.5000/from me; Liyakat did not press his demand but then police officers including Ct. Raj Kumar told me that when the settlement had been arrived at between myself and Liyakat for Rs.5,000/- then I was not paying him this settled amount. Thus, from the testimony of the

complainant (PW-6), it is clear that the demand of Rs.5,000/- was being made by the appellant on his own account, and not on behalf of Liyakat, since Liyakat had stopped making the said demand after 2-3 times.

37. Furthermore, the complainant (PW-6) while deposing during his cross-examination by the learned APP for the State, again established the demand made by accused of Rs.5,000/-. PW-6 stated that the appellant had told him that Liyakat Kabadi had given him Rs.3,000/- and if I would pay Rs.5,000/- to him he would not get my office removed. The aforesaid deposition of the complainant PW-6 also shows that the demand was made by the appellant on his own account - as gratification other than as legal remuneration, so as to not remove the office of the complainant (as had been desired by Liyakat). The aforesaid deposition of the complainant stands corroborated by his complaint (Exhibit PW-6/A). It is well-settled that the evidence of a hostile witness, to the extent it supports the case of the prosecution, can be relied upon, if it is corroborated by other reliable evidence. The statements made by the complainant (PW-6), as noticed hereinabove, are corroborated by PW-6/A and these can be relied upon by the prosecution. This part of the testimony of PW-6 is also corroborated by the testimony of PW-7.

38. Pertinently, the panch witness has also spoken about the complaint (Exhibit PW-6/A) made in the ACB, which was signed by him at point P. Therefore, the factum of the complainant having made the complaint (Exhibit PW-6/A) regarding the demand of bribe made by the appellant stood corroborated by the statement of PW-7.

39. Pertinently, the complainant exhibited the pre-raid proceedings (Exhibit PW-6/B) and deposed regarding the treatment of GC notes [Exhibit PW-3 (Colly.)]. with Phenolphthalein powder. He also deposed regarding the acceptance of the powder treated GC notes by the appellant from him, and the recovery of the same from the hands of the appellant. He also exhibited the recovery memo (Exhibit PW-6/C) in respect of the GC notes and deposed regarding the apprehension of the appellant.

40. PW-7 the panch witness deposed that the name of Liyakat was not mentioned in the conversation which took place between the complainant and the appellant in

his presence. He also denied the suggestion that the complainant had told the appellant to accept the money on behalf of Liyakat, or that the appellant had refused to accept the same, saying that the money be given to Liyakat. This part of the testimony of PW-7 contradicts the testimony of PW-6 insofar as it supports the defence set up by the appellant. At the same time, this part of the testimony of PW-7 is in tune with the complaint (Exhibit PW-6/A).

41. In my view, the submission of Mr. Krishnan that the testimony of PW-7 could not be relied upon since he had failed to identify the appellant, has no merit. As noticed hereinabove, PW-7 was initially examined on 01.06.2007. On that day, the accused was not present for his identification by the witness. Consequently, the hearing was adjourned to 17.09.2007. On 17.09.2007, PW-7 expressed his inability to identify the appellant. The possibility of the panch witness (PW-7) being influenced, or being won over by the appellant - who was a Police officer, cannot be ruled out. In any event, the same could also be on account of the passage of about seven years between the date of the incident, and the time when PW-7 was examined on 17.09.2007.

42. I may also observe that the failure of the panch witness to identify the appellant is of no consequence, for the reason that the appellant does not deny the fact that he indeed visited the jhuggi/office of the complainant on the fateful day, at the place and time, and that he did accept the amount of Rs.5,000/- from the complainant. According to the appellant, the said acceptance was not conscious acceptance of bribe. It was acceptance as the amount payable under the settlement by the complainant to Liyakat. The acceptance was for and on behalf of Liyakat. Pertinently, PW-7 categorically states that the person who came in the jhuggi of the complainant demanded the agreed amount, upon which the complainant took out the powdered GC notes from the left pocket of his shirt and gave the same to the said person who took it in his right hand. He also deposed that the person who demanded and accepted the bribe from the complainant was apprehended by the raiding party. The only person apprehended by the raiding party was the appellant, and none else. His scooter was also seized from the spot. Thus, there can be no dispute with regard to the identity of the person who went to the jhuggi of the complainant; demanded and accepted the bribe of Rs.5,000/-,

and; who was apprehended. It was none other than the appellant.

43. Mr. Krishnan has submitted in relation to Exhibit PW-6/E, that the same is inadmissible in evidence in view of the bar of Section 162 Cr.P.C. The Gujarat High Court in Valibhai Omarji (supra) has observed in respect of the panchnama prepared by, or at the instance of the panchas, as follows:

19. In Mohanlal Bababhai v. Emperor, 43 Bom LR163: (AIR1941 Bom

149) Beaumont, C. J.

and Sen. J., observed thus: "A panchnama is merely a record of what a panch sees. The only use to which it can property be put is that when the panch goes into the witness box and swears to what he saw, the panchnama can be used as a contemporary record to refresh his memory."

As has been held in several cases Section 157 of the Evidence Act is controlled by Section 162 of the Code of Criminal Procedure and therefore if a statement, though falling under Section 157 of the Evidence Act, were also to fall under Section 162 of the Code, it would be Section 162 of the Code that would prevail and such a statement would be inadmissible. Reading Section 157 of the Evidence Act and Section 162 of the Code of Criminal Procedure together, it is clear that the word 'statement' in Section 157 of the Evidence Act has a wider connotation than the same word used in Section 162 of the Code. But in order that a previous statement of a witness falls under Section 162 of the Code, two conditions have to be fulfilled, viz., (i) that it b a statement to a police officer and (2) that it is made in the course of investigation under Chapter XIV, Criminal Procedure Code. The question therefore is whether a Panchnama is a record of a statement which falls within the ban of Section 162 of the Code?. In a case falling under Section 161 of the Penal Code or under Section 5 (i) (d) of the Prevention of Corruption Act, an offence thereunder is complete when an illegal gratification is accepted by an accused person. Generally a Panchnama produced in such a case falls into two parts viz., (i) the recording of what occurred before the acceptance of an illegal gratification and (2) what occurred at the time of the acceptance and subsequently. The first part of such a Panchnama obviously would not fall under

Section 162 of the Code, even if it were a statement to a police officer because it cannot be said to have been made in the course of investigation of a cognizable offence, no such offence having yet taken place. Does then the second part of the Panchnama fall under Section 162 of the Code?. As stated before, a previous statement of a witness complying with the conditions laid down in Section 157 of the Evidence Act b admissible. The exception is that if it fulfills the two conditions laid down in Section 162 of the Code, it becomes inadmissible thereunder, except for the limited purpose therein stated. The important words in Section 162 of the Code are "No statement made by any person to a police officer". Therefore the statement must be one to a police officer and unless it is to a police officer, it does not fall within the mischief of Section 162 of the Code. Therefore it is necessary that the statement in question must have the element of communication to a police officer. If a Panchnama is merely a record of facts which took place in the presence of panchas and of what the Panchas saw and heard, as observed in 43 Bom LR163: (AIR1941 Bom 149), but is not a record of a statement communicated to a police officer, it would be admissible under Section 157 of the Evidence Act and would not fall within the ban of Section 162 of the Code of Criminal Procedure. As its very name signifies, it is a document recording what the Panchas saw and heard. At the same time, if a Panchnama does contain a statement which amounts to a statement communicated to a police officer during the course of his investigation, it would fall within Section 162 of the Code. Therefore every time when a Panchnama is tendered in evidence, it would be the duty of the Court to ascertain whether any part of it falls within the mischief of Section 162 of the Code of Criminal Procedure and if it does fall, the Court should take out that portion from being admitted in evidence. It was urged, however, by Mr. Barot that in the instant case, the Panchnama was not recorded by the panchas themselves but its contents were dictated by them and it was the police officer investigating this case who wrote it out and kept the Panchnama in his custody until it was produced in the trial Court. The fact however that it was written out by the officer as dictated to him by the panchas would not, in our view, make any difference, for that is merely a mode in which the Panchnama is recorded, nor would the officer keeping that document with him make any difference. As held in Santa Singh v. State of Punjab, AIR 1956 SC526 the mere presence of a police

officer when a statement is made does not by itself render such a statement inadmissible. So long as a Panchnama is a mere record of things heard and seen by panchas and does not constitute a statement communicated to a police officer in the course of investigation by him, it would not fall within the mischief of Section 162 of the Code. This- very distinction appears to have been made in 1961-2 Guj LR664at page 673 of the report. Mr. Barot, in fact, was not able to point out any particular statement in the Panchnama which, according to the above test, would fall within the mischief of Section 162 of the Code. That being so the learned trial Judge was not in error in admitting the same in evidence and the contention raised by Mr. Barot must consequently fait.

(Emphasis supplied) 44. I have, therefore, carefully examined the recovery memo/ panchnama (Exhibit PW-6/E). When translated, it is to the following effect:

At 3:00 p.m., the panch witness gave a signal by hurling his hand over the pagadi after which the inspector and the raiding party reached the complainant and panch witness. The panch witness pointed towards a person, on inquiry, whose identity was disclosed as Constable Rajkumar S/o Sh. Prakash Chand, R/o Village and PO Katha, PS- dist- Bagpat U.P. posted at PP Govindpuri, New Delhi; and said that this person demanded bribe of Rs. 5000/- from the complainant. He accepted the bribe in his right hand and kept it in his right fist. The inspector disclosed his identity as being the inspector, A.C. Branch and caught hold of Ct. Rajkumar N.-1675/SD and challenged him that he demanded and accepted a bribe of Rs. 5,000/- from the complainant Prakarti Kumar. The inspector told Ct. Rajkumar that he has to be searched and if he wants then he can search the inspector as well as the panch witness. On this, Ct. Rajkumar got scared and his face became pale. He further refused to be searched and said, Galati hogayi maaf kiya jaye. On the directions of the inspector, the panch witness recovered the bribe amount of Rs. 5000/- from the right hand of Ct. Rajkumar, which were of the denomination of Rs. 500/- (8 notes) and Rs. 100/- (10 notes). The number of the 18 recovered notes were tallied by the panch witness with the number previously noted in the raid report and they were found to be the same. The recovered notes were seized as evidence and signatures of the witnesses were taken on the seizure memo. Thereafter, the right hand wash of accused Ct. Rajkumar with the colourless

solution of sodium carbonate was carried out which turned pink. The said solution was transferred into two clean bottles and the said bottles were sealed with the mark of N.S. and were marked as Exhibit RHW-I and RHW-II. The label bearing the signatures of the panch witness and the complainant were pasted on the said bottles. Thereafter, the sample seal N.S. was prepared on two separate white papers. The same was also got signed by the witnesses. Exhibit RHW-I and RHW-II as well as sample seal N.S. were seized by the police officer as evidence. The seizure memo was signed by the witnesses. The seal numbers used were handed over to the panch witness. The panch witness stated that as per the directions of the inspector, he went along with the complainant and sat on the chair near the office of the complainant. After about half an hour, a person wearing a leatherjacket came to us on the Cheetak scooter and parked it there. The complainant stood up and greeted ct. Rajkumar with a Namaste and asked, Rajkumarji kya haal hai?.. The accused Ct. Rajkumar responded to the greetings of the complainant. The complainant and Ct. Rajkumar sat on the chairs lying near me and thereafter, the complainant informed Ct. Rajkumar that he is going to Vaishno Devi the next day, to which Ct. Rajkumar inquired whether the complainant had arranged the pre-agreed amount. The complainant asked if he can reduce it from Ct. Rajkumar, to which the accused replied that he would take nothing less than Rs. 5,000/-. The complainant said that he had arranged the money with great difficulty and he took out Rs. 5,000/- from the left pocket of his shirt and offered it to Ct. Rajkumar. Ct. Rajkumar extended his right hand and accepted the money with his right hand and kept it in his fist. After this transaction, I signalled and then you along with the other members of the raiding party came at the spot of the incident and caught hold of/arrested the accused Ct. Rajkumar. The aforesaid proceedings were conducted. The statement of the panch witness was corroborated by the complainant.

(Emphasis supplied) 45. The aforesaid panchnama Exhibit PW-6/E is clearly in two parts. The first/opening part is in the form of a panchnama/memorandum recording the incident/events as they occurred contemporaneously. The second part (which has been underlined) is, on the other hand, the statement made by PW-7/panch witness to a police officer. Thus, while the first part of Exhibit PW-6/E can be used for purpose of corroboration of the testimonies of, inter alia, PW-6,

PW-7, the later part (which is underlined) cannot be used by the prosecution for any purpose, not provided by Section 162 Cr PC. Even if one were to exclude and ignore that part of the recording - wherein PW-7 appears to have made a statement to the R.O. - a Police officer, the same does not destroy the case of the prosecution. This is for the reason that the panchnama is only corroborative evidence. The primary evidence is the oral testimony of the witness before the Court. PW-7 has clearly established the demand and acceptance of bribe by the appellant from the complainant as discussed above.

46. With regard to the submission of Mr. Krishnan that FSL report was not tendered in evidence, I may notice that PW-3 Constable Mahender Singh had deposed that on 27.12.2000, he was posted as Assistant Malkhana Moharar at Police Station Civil Lines. On that day, Inspector N.S.Minhas deposited two bottles marked RHW-I and RHW-II along with GC notes and the bottles sealed with the seal of NS besides other articles found on personal search of appellant, and his scooter in the Malkhana about which he made the entry in the Register No.19. The same was exhibited as Exhibit PW-3/A. He further deposed that on 03.01.2001, one bottle marked RHW-I was handed over to Head Constable Birju, who took the same to the CFSL, Malviya Nagar vide R.C. No.4/21. Copy of the entry was exhibited as Exhibit PW-3/B. He further deposed that on 18.04.2001, he received one bottle duly sealed with the seal of FSL along with sample seal about which he made entry in the Register No.19. The entry was exhibited as PW-3/C. He deposed that all the entries were made in his handwriting and that so long as case property remained with him, the same was not tampered with. This witness was not cross-examined by the appellant.

47. PW-2 Birju Singh deposed that on 03.01.2001, he was posted as Constable in the ACB, Delhi. On that day, he had taken one bottle marked RHW-I and sample seal and one FSL form and deposited the same in FSL, Malviya Nagar after taking the same from the Malkhana from Police Station Civil Lines. He further deposed that he deposited the sample in FSL, Malviya Nagar on the same day, and so long as the sample remained with him, the said case property was not tampered with. He also deposed that he had taken the case property vide R.C. No.4/21 and the sample seal was of NS. Pertinently, even he was not cross-examined by the

appellant.

48. PW-5 Constable Vinod Kumar deposed that on 30.04.2001, he was posted at Police Station ACB, Delhi as Constable. On that day Inspector Minhas, the I.O. handed over an authority letter to him to collect the exhibits of this case and the FSL result from the FSL, Malviya Nagar. Accordingly, he went to FSL, Malviya Nagar and collected one bottle bearing seal of the FSL and the FSL result, which was sealed in envelope, and had deposited the aforesaid sealed bottled in the Malkhana of Police Station Civil Lines and had handed over the sealed envelope containing FSL result to Inspector Minhas. He deposed that so long as the case property remained in his custody, it was not tampered by anyone. Even this witness was not crossexamined by the appellant.

49. PW-9 Inspector N.S. Minhas in his deposition corroborates the testimonies of PW-3, PW-4 & PW-5. He, inter alia, stated that he got sent the sample sealed parcel and the sample seal to FSL, and in due course of time result was received. From the testimony of PW-9, it appears that the same falls short of exhibiting the FSL report. The said report was not tendered by the I.O. before the Court - to say that the FSL report produced before the Court is the one received from FSL pertaining to the sample of handwash of the appellant. The I.O. should have tendered the FSL report, if it was the same as that received from the FSL in a sealed cover, regarding the handwash test of the appellant. Not having done that, in view of the judgment of this Court in Dharampal (supra), the FSL report is not admissible in evidence. However, once again I am of the view that the absence of the FSL report is not fatal to the case of the prosecution.

50. The FSL report pertaining to the handwash, in any event, is not of much significance in the present case since the appellant himself admits to have accepted the money from the complainant in his hands. As noticed above, his defence is that it was not conscious acceptance of bribe money. With regard to the purpose of handwash, the Supreme Court in Zakaullah (supra) held that the Phenolphthalein powder test is conducted for the conscientious satisfaction of the Raid Officer that he was proceeding against the real bribe taker, and that an officer with integrity should not be harassed unnecessarily. Paragraph 13 of this decision

of the Supreme Court has already been extracted herein above. In Mahavir Singh (supra), the Court held that mere Phenolphthalein powder test being positive does not lead to inference of guilt, as such, it is only used as to corroborate the primary evidence. In the present case, sufficient primary evidence is on record to convict the accused.

51. Thus, even if there is no positive evidence with regard to the handwash, the accused could be convicted if there is sufficient primary evidence led before the Court with regard to the demand and acceptance of bribe by the accused.

52. The submission of Mr. Krishnan that Gurander Singh (PW-7) was a stock witness, since he admitted to be on duty in the ACB on the fateful day, i.e. 27.12.2000, and because he was present in the ACB even prior to the complainant (PW-6) arriving in the ACB, also has no merit. Merely because PW-7 had acted as a shadow/ panch witness in one other case, it does not make him a stock witness. Unless PW-7 acted as a shadow/ panch witness in numerous trap cases, and it were shown to the Court by leading evidence that in some other case he stood discredited and his testimony was not believed by the Court, in my view, the testimony of PW-7 could not be rejected by branding him as a stock witness. It is well-known that the general public does not like to get involved, as a witness in such like trap cases. Therefore, Government officers who enjoy security of service and status are assigned the duty to act as independent shadow/ panch witnesses. They are under no compulsion to depose in favour of the prosecution, and are free to depose according to their conscious with regard to the facts witnessed by them. Pertinently, PW-7 failed to identify the appellant/ accused in the present case. Had he been a stock witness, he would not have failed to identify the appellant/ accused in Court. This itself shows that PW7 deposed truthfully and naturally without being concerned with the outcome of his testimony. PW-7 was not shown to have any animosity towards the appellant. In his cross-examination, no suggestion to this effect was given to PW-7. The appellant also did not lead any evidence in this regard. Thus, the submission of Mr. Krishnan, founded upon Ashish Kumar Dubey (supra), has no merit. Pertinently, while rendering the said decision, this Court has not taken into consideration the judgment of the Supreme Court in Yakub Abdul Razak Memon (supra).

53. The submission of Mr. Krishnan with regard to the learned Special Judge treating as an admission, the plea/ defence set up by the lawyer of the appellant/ accused during the cross-examination of the prosecution witnesses and the reliance placed in this regard on the decision of the Gujarat High Court in Koli Trikam Jivraj (supra) is of no avail for the reason that independent of the said consideration, the evidence led in the present case establishes the guilt of the appellant beyond all reasonable doubt.

54. The appellant failed to rebut the statutory presumption which arose under Section 20 of the P.C. Act, since it stood proved that the appellant/ accused had obtained for himself gratification, other than legal remuneration, from the complainant (PW-6). Thus, the statutory presumption arose was that the appellant had accepted, or obtained the gratification of Rs.5,000/-, as a motive, or reward for forbearing to remove the jhuggi of the complainant.

55. In my view, the appellant could not prove to the contrary since the defence set up by him - that the amount of Rs.5,000/- was accepted on behalf of Liyakat, was not established even as a probable story. It is clear from the testimony of the complainant (PW-6) and the shadow/ panch witness (PW-7) that the appellant made a demand of Rs.5,000/- from the complainant for himself and on his own behalf, and not on behalf of Liyakat. The name of Liyakat was not found mentioned during the course of conversation which took place between the appellant and the complainant in the presence and in the hearing of the shadow witness (PW-7).

56. For all the aforesaid reason, I find no merit in this appeal and dismiss the same.

57. So far as the sentence is concerned, the appellant was let off rather lightly by the learned Special Judge by awarding RI for one year with fine of Rs.4,000/-, and on failure to pay the same, to undergo SI for four months for the offence under Section 7 of the P.C. Act; and to further undergo RI for two years with fine of Rs.6,000/-, and on failure to pay the same, to undergo SI for six months for the commission of offence punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act. The appellant, who was a Beat Constable, was found guilty of

committing criminal misconduct by exploiting his authority to force the complainant to pay him bribe. An officer entrusted the task of protecting the law, blatantly breached the same. Looking to the rampant corruption prevalent in the society, the sentence should, and could, have been harsher. I am, therefore, not inclined to reduce the sentence awarded by the learned Special Judge. The appellant shall surrender forthwith and undergo the remaining sentence. (VIPIN SANGHI) JUDGE MARCH26 2014 B.S. Rohella