

**Davinder Singh Vs. State**

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**Court :** Delhi

**Decided On :** Feb-11-1974

**Reported in :** ILR1974Delhi400

**Judge :** Jagjit Singh and; Prithvi Raj, JJ.

**Acts :** [Prevention of Corruption Act, 1947](#) - Sections 6; [Constitution of India](#) - Article 311(1)

**Appeal No. :** Criminal Appeal No. 165 of 1971

**Appellant :** Davinder Singh

**Respondent :** State

**Advocate for Pet/Ap. :** A.N. Mulla,; K.C. Nayar,; Y. Dayal and;

**Judgement :**

**Prithvi Raj, J.**

(1) This judgment will dispose of Criminal Appeals No. 165 of 1971 (in re : Davinder Singh v. State) 171 of 1971 (in rc : Suraj Mal v. State) and 48 of 1972 (in re : State- Delhi Administration v. Ram Narain) as these three appeals arise out of the judgment dated December 8, 1971, of Shri Muni Lal Jain, Special Judge, Delhi.

(2) Davinder Singh appellant in Cr. A. 165/71 who was working in August, 1969 as S.H.O. Police Station Sadar, Panipat, Suraj Mal appellant in Cr. A. 171/71, who was posted as constable in August, 1969, in Police Station Sadar, Panipat, and Ram Narain, respondent in Cr. A. 48 of 1972 who was working as Prosecuting Sub-Inspector in District Karnal, were tried by Shri Muni Lal Jain, Special Judge, Delhi, under section 5(l)(d) read with section 5(2) of the [Prevention of Corruption Act, 1947](#) and under section 161 Indian Penal Code read with section 34 Indian Penal Code on the allegation that Davinder Singh had accepted Rs. 150.00 and Suraj Mal and Ram Narain Rs. 100.00 each as illegal gratification other than legal remuneration from Prem Nath Sharma (PW 8) for showing him favor in a case registered against him and his co-accused under sections 343/366/342/376 Indian Penal Code of Police Station Panipat. The learned Special Judge found Davinder Singh and Suraj Mal guilty of the aforesaid charges and accordingly convicted and sentenced both of them to two years' rigorous imprisonment and a fine of Rs. 200.00 each under section 5(2) read with section 5(1) (d) of the Prevention of Corruption Act and further convicted and sentenced both of them under section 161 Indian Penal Code to two years' rigorous imprisonment each, by his judgment dated December 8, 1971. Both the substantive sentences of each of the said accused were directed to run concurrently. Ram Narain was given the benefit of doubt and was acquitted.

(3) Davinder Singh and Suraj Mal being aggrieved by their conviction and sentence have challenged the same by filing separate appeals being Criminal Appeals Nos. 165 of 1971 and 171 of 1971, while the State feeling dissatisfied with the acquittal of Ram Narain has challenged the same in Criminal Appeal No. 48 of 1972.

(4) Relevant facts pertaining to these appeals are as follows. At the instance of one Meena Kumari, reported to be of 19 years of age, a case under sections 363/366/342/376 Indian Penal Code was registered by Davinder Singh appellant against Prem Nath Sharma Public Witness and his companions Rajinder Kumar Malik, Tilak Raj and Baldev Raj at police station Sadar, Panipat, on August 9, 1969. Prem Nath and his companions were arrested on the said date. However, subsequently they were released on bail. For the investigation of the said case,

Davinder Singh, Suraj Mal and Ram Narain (who hereinafter will be referred to as the accused) visited Delhi on August 31, 1969 and contacted Prem Nath Sharma who lodged them in Aim-it Hotel, Fatehpuri. The accused demanded Rs. 2000.00 as bribe from Prem Nath Sharma on the promise of showing favor to him and his companions in the aforesaid case, further assuring that on the payment of the bribe money, they would not put up the challan in the said case in the court and will get the same filed, and that Prem Nath and his companions would be discharged from the court. Prem Nath expressed his inability to pay the said amount. The accused agreed to accept Rs. 1000.00 from Prem Nath. It was settled that to start with, Prem Nath would pay them Rs. 350.00 as bribe i.e. Rs. 150.00 to Davinder Singh and Rs. 100.00 each to Suraj Mal and Ram Narain in the afternoon of September 1, 1969, while the remaining amount of Rs. 650.00 was to be paid to them at Panipat after the discharge of Prem Nath and his companions in the above said case. Prem Nath having been forced to pay the amount of Rs. 350.00 as bribe made a complaint on telephone at 9.40 A.M. to Shri S.C. Katoch, Deputy Superintendent of Police stating that the accused were demanding bribe from him, as already noted above, and that action be taken in the matter. On receipt of the said information Shri S. C. Katoch along with some police officials left for 16/1, Arya Samaj Road, Karol Bagh, Delhi, being the place of Prem Nath where the accused were to come in the afternoon to receive the amount of Rs. 350.00 as bribe. On reaching 16/1, Arya Samaj Road, the Deputy Superintendent of Police recorded the statement. Exhibit Public Witness 8/A, of Prem Nath. He joined Sarvashri Shiv Narain Gupta and Sham Sunder, who happened to be present there as witnesses. Prem Nath produced currency notes worth Rs. 350.00; i.e. 3 currency notes of Rs. 100.00 each and five currency of Rs. 10.00 each before the Deputy Superintendent of Police to be paid as bribe as settled. He noted their numbers which were compared by the witnesses. The currency notes were treated with Phenol Phathalein powder and its significance was explained to the witnesses. These powder treated currency notes were handed over to Prem Nath with a direction that they be paid to the accused as bribe money. Both the witnesses were directed to remain by the side of Prem Nath. Shiv Narain witness was directed to give the agreed signal by passing his hand over his head after the giving and taking of money as bribe had taken place.

Prem Nath and the witnesses were left in the upper storey of premises No. 16/1, Arya Samaj Road, while the Deputy Superintendent of Police and the Police officials accompanying him took position in a nearby room. As settled, the accused came to 16/ 1, Arya Samaj Road at about 12.30 P.M. and after the amount of Rs. 350.00 according to the settled shares had been given as bribe to each of them and received by them as bribe, Shiv Narain came out of the room and gave the agreed signal. The Deputy Superintendent of Police immediately, with the other police officials, rushed inside the premises No. 16/1 and confronted the accused saying that they had accepted bribe from Prem Nath. Davinder Singh and Suraj Mal denied having taken any bribe while Ram Narain stated that Prem Nath had given him Rs. 100.00 for sweets for the children. It is alleged that in the meanwhile Davinder Singh appellant took out the bribe money from the left pocket of his bushirt and tried to throw it away after holding it into his right fist but the Deputy Superintendent of Police promptly secured him and recovered Rs. 150.00, the bribe money from his right hand fist. On the personal search of Ram Narain, one currency note of Rs. 100.00 was recovered from the right pocket of his bushirt while on the personal search of Suraj Mal, one currency note of Rs. 100.00 was recovered from the front left pocket of his bushirt. The numbers of the recovered currency notes tallied with numbers recorded in the raid report. On the above allegations the accused were tried by Shri Muni Lal Jain, Special Judge, Delhi, who finding accused Davinder Singh and Suraj Mal guilty of the charges convicted and sentenced them to imprisonment and fine as already noted above but acquitted Ram Nam Narain by giving him benefit of doubt.

(5) During the course of arguments on behalf of accused Davinder Singh a contention was raised challenging the competency of the Superintendent of Police to give sanction under section 6 of the Prevention of Corruption Act for his prosecution. To re-enforce the argument an application (Criminal Misc. No. 281 of 1973) under section 561(A) of the Criminal Procedure Code was filed seeking to place on record an original certificate dated April 21, 1973, issued by the Superintendent of Police, Ambala, to explain the post held by Davinder Singh. Davinder Singh filed another application (Cr. M. 316 of 1973) reiterating that he was promoted from the rank of Assistant Sub Inspector to the Officiating rank of Sub Inspector in pursuance to the order passed by the Deputy Inspector General

of Police, Ambala Range. On behalf of the State the stand taken by Davinder Singh was controverted. It was specifically averred that Davinder Singh was promoted to officiate as Sub Inspector by order passed by the Superintendent of Police, Hissar. Because of the divergent stands of the parties and with a view to ascertain the real position, we examined Shri Krishan Chander, Deputy Superintendent, of police, Karnal, and Shri Ranjit Singh, Superintendent, office of the Deputy Inspector General of Police, Ambala Range, as court witnesses. It is not necessary to recapitulate their evidence as the contention raised by Davinder Singh finds support from the documentary evidence brought on record. However, it may bear mention here that according to Ranjit Singh (CW 2), Shri Bhagwan Singh Rosha, the then Deputy Inspector General of Police, Ambala Range, passed the following order on the file in respect of Davinder Singh:-

'A.S.I. Davinder Singh No. 157/A : Has a satisfactory record. Should be promoted and posted to Hissar District.'

(6) He also ordered promotions of other officers to the rank of sub inspectors and Assistant Sub Inspectors. Accordingly a consolidated order dated April 17, 1961, copy Exhibit CW1/1 was issued whereby the Assistant Sub Inspector on list 'E' and Head Constables on list 'D' were promoted by him as Sub Inspectors and Assistant Sub Inspectors respectively, as mentioned in the notification indicating the chain of vacancies as also the Districts of their postings. Serial No. 4 of the notification relates to Davinder Singh, who was promoted to officiate as Sub Inspector and posted to Hissar vice Sub Inspector, Bhana Mat. By endorsement No. 7228-34 dated April 17, 1961, the Deputy Inspector General of Police forwarded a copy of the above notification to all Superintendents of Police in his Range with a direction that necessary gazette notifications be issued by them. Ranjit Singh (CW 2) had stated that the order of the Superintendent of Police dated 3-6-1961 (copy Exhibit CW2/1) was issued by him pursuant to the order of the Deputy Inspector General (Exhibit Cw I/I).

(7) A bare reading of the two orders leaves no manner of doubt that Davinder Singh was promoted to officiate as Sub Inspector by the order of the Deputy Inspector General of Police, Ambala Range. The order dated 3-6-1961, copy

Exhibit Cw 2/1, issued by the-Superintendent of Police, Hissar, was by way of compliance with the order, copy Exhibit Cw 1/1, passed earlier on 17-4-1961 by the Deputy Inspector General of Police, Ambala Range, promoting Davinder Singh from the rank of Assistant Sub Inspector to officiate as Sub Inspector in Hissar District. May be that the Superintendent of Police of a District, vide Punjab Police Rule 13.4(2), is competent to promote Assistant Sub Inspectors to officiate in the rank of Sub Inspectors but for the purpose of the present appeal what has to be seen is the factum of appointment. Sanction to prosecute as envisaged in section 6 of the Prevention of Corruption Act is to be given by an officer competent to remove from service the officer qua whom the sanction is given. Article 311(1) of the [Constitution of India](#) prescribes that:

'NO person who is a member of a civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed'.

(8) The irresistible conclusion from the perusal of the notification issued by the Deputy Inspector General of Police is that it was he who appointed Davinder Singh to officiate as Sub Inspector and ordered that he be posted in Hissar District. That being so, Davinder Singh could not be dismissed from the post of the Sub Inspector by the Superintendent of Police, being an authority subordinate to the appointing authority, viz. Deputy Inspector General of Police, Ambala Range. No doubt, according to the Police Rule, the Superintendent of Police of a District is competent to appoint a Sub Inspector but what has to be considered in the instant case is the factum of appointment and not the competent authority who could have appointed Davinder Singh to the rank of a Sub Inspector. The competency of authority to order removal or dismissal has to be determined with reference to the requirements of Article 311(1) which postulates that the authority that orders dismissal or removal should not be subordinate in rank to the authority which appointed the civil servant.

(9) In *Soma Sundaram v. The State of Madras* AIR 1956 Mad 419, it was observed that where any authority higher than the one entitled under the Statutory

Rules to order an appointment, in fact, ordered a valid appointment; it was the factum of that appointment that controls the scope of the guarantee conferred by Article 311(1) of the Constitution. Further, if such a civil servant was dismissed or removed from service by an authority without doubt competent under the Rules to order the appointment and also to order dismissal, which, however, was lower in rank than the authority which, in fact, made the appointment, such an order would contravene the provisions of Article 311(1) of the Constitution.

(10) Accused Davinder Singh having, in fact, been appointed by the Deputy Inspector General of Police, Ambala Range, the Superintendent of Police was not competent to accord sanction for his prosecution. The sanction being not in conformity with the requirement of law, the appeal filed by Davinder Singh (Cr. A. No. 165 of 1971) is accepted. Accordingly, his conviction and sentence are set aside. It would, however, be open to the prosecution to file fresh challan against him after obtaining proper sanction under section 6 of the Prevention of Corruption Act from the competent authority to prosecute him. [The rest of the judgment deals with the two of the connected appeals and the facts of each case, were dismissed and is not, therefore material for the purposes of this Report-Ed]

(11) Coming to the merits of the case, there is sufficient acceptable evidence on the record to sustain the conviction of Sura) Mal accused, appellant in Cr. A. No. 171 of 1971.

(12) Accused, Suraj Mal, Constable, was attached with Sub Inspector Davinder Singh during the investigation of the case Fir 140 dated 9-8-1969 under section 342/366/376 Indian Penal Code of Police Station Sadar, Panipat, registered against Prem Nath and his companions, as deposed by Paras Ram A.S.I. (Public Witness 3) from the Ziminis of the said case, recorded by Sub Inspector Davinder Singh, Badan Singh (Public Witness 4) proved copy of entry No. 24, dated 30-8-1969, Exhibit Public Witness 4/2A, from the Daily Diary Register of Police Station Sadar, Panipat, regarding departure report of Sub Inspector, Davinder Singh, along with Suraj Mal, Constable, for Delhi in connection with the investigation of case, Fir No. 140 of 1969. He also proved copy of entry No. 8, dated 2-9-1969, from the Daily Diary Register regarding the return report of Sub Inspector,

Davinder Singh, along with constable, Suraj Mal, from Delhi to Police Station Sadar, Panipat.

(13) The stay of the accused in Arnrit Hotel, Queen Road, Delhi, on September 1, 1969, is borne out from the testimony of Iqbal Narain (PW 7), Manager of the said hotel, who proved receipt, Exhibit P-15, issued by the late Manager of the hotel, Shri Kahan Chand, since dead. As per entry at Serial No. 7, dated 1-9-1969, copy Exhibit Pw 7/A, Iqbal Nath stated that Prem Nath along with the accused came to the hotel at 1.15 A.M. on 1-9-1969 and they left the hotel at 11 A.M. on the said date. Prem Nath, however, did not stay in the hotel during the night while the accused stayed. As per entry in the Register, the charges for the stay were paid by Prem Nath.

(14) It is in the testimony of Prem Nath Public Witness 8 that on 9th August, 1969, case F.I.R. No. 140 of 1969 under sections 363/366 Indian Penal Code . was registered against him and his friends at police station Sadar Panipat in which they were arrested on 9th August, 1969. Davinder Singh, S.H.O. Sadar Panipat, was investigating that case who along with Ram Narain and Suraj Mal came to him on the night of 31st August, 1969. They told him that they were investigating the case against him and others and that they could help a lot in the investigation and get the case filed as untraced if Prem Nath paid them Rs. 2000 as bribe. On Prem Nath's inability to pay the said amount, they finally agreed to do the needful on payment of Rs. 1000. They told Prem Nath that Davinder Singh needed Rs. 150, Ram Narain and Suraj Mal Rs. 100 each the following day. The said amounts were demanded as part of the bribe amount settled between them. They further told Prem Nath that balance amount of Rs. 650 shall be received by them at Panipat on Prem Nath's and his companions being discharged in the above-said case. Prem Nath arranged for their stay in Arnrit Hotel. On 1st September, 1969, Prem Nath contacted Shri S. C. Katoch, D.S.P. Anti-corruption on phone and told him to come at 16/1- Arya Samaj Road. The D.S.P. with the rest of the party at about 10 A.M. came to 16/1 Arya Samaj road and recorded the statement, Exhibit P.W. 8/A, of Prem Nath. The D.S.P. called Sham Sunder and Shiv Narain Gupta Public Witness s. in whose presence Prem Nath produced G. C. notes of Rs. 350, i.e., three of Rs. 100 each and five of Rs. 10 each. The G. C. notes were treated

with Phenol phathlien powder which were handed back to Prem Nath with a direction to pass them on to the accused on demand. On the notes having been passed on to the accused Shiv Narain Gupta was to give the agreed signal by passing his hand on his hand. The number of the G.C. notes and the instructions given by the D.S.P. were recorded in the raid report Exhibit Public Witness 6/A. Prem Nath and the Panch witnesses came to the first floor of the house of Prem Nath 16/1 Arya Samaj Road while the D.S.P. and the rest of the party took their seats in the adjacent room. The accused turned up at 12.30 P.M. They were greeted by Prem Nath and were served with sweets and fruit juice. Prem Nath handed over a sum of Rs. 150.00 to DavinSingh and Rs. 100 each to Ram Narain and Suraj Mal who accepting the respective amounts put it in their bush-shirt front pocket. Davinder Singh and Ram Narain accused asked Prem Nath to procure a certificate about the birth of the prosecutrix from the Corporation office and the attendance certificates of his companions to get the case filed against them. After the money was passed as bribe, Panch witness Shiv Narain Gupta went out and gave the agreed signal on which the D.S.P. with the rest of the party entered the room when the Panch witnesses pointed out towards the accused as the persons who had accepted the bribe. The D.S.P. after disclosing his identity challenged the accused for having accepted the bribe. Meanwhile, Davinder Singh accused took out the G.C. notes of Rs. 150 from his bush-shirt pocket and attempted to throw them away. The D.S.P. caught hold of his fist and recovered the notes from Davinder Singh. The recovery of Rs. 100 each was also made from the bush-shirt pocket of Ram Narain and Suraj Mal accused. The numbers of the notes recovered tallied with the numbers recorded in the raid report Exhibit Public Witness 6/A. Rupees 100 G.C. note Exhibit P/4 was recovered from Ram Narain and taken into possession vide memo. Exhibit Public Witness 6/C while the other Rupees 100 G.C. note Exhibit P/5 was recovered from Suraj Mal which was seized vide memo. Exhibit Public Witness 6/D. The D.S.P., Prem Nath stated, explained to the accused the significance of the tainted money having been treated with phenol phathalein powder. Solution of sodium carborate was prepared in two glass tumblers separately. The fingers of hands of accused Ram Narain and his bush-shirt pocket Exhibit P/9 were separately dipped therein. The solution of each glass turned into pink. The solutions were separately transferred to bottles

Exhibit P/10 and Exhibit P/11 which were sealed and seized vide memo. Exhibit P.W. 6/G and Exhibit Public Witness 6/H. Another solution of sodium carbonate in two glass tumblers was prepared. Fingers of hands of Suraj Mal accused and the inner lining of his bush-shirt pocket Exhibit P/10 were separately dipped therein, which turned its colourless shade to pink. These solutions were separately transferred to bottles Exhibits P/13 and P/14 which were sealed and seized vide memos Exhibits P. W. 6/J and Public Witness 6/K, respectively. The bush-shirt of Ram Narain and Suraj Mal, Exhibits P/9 and P/10 were seized vide memo. Exhibit Public Witness 6/M and Exhibit Public Witness 6/N, respectively. The accused were questioned about the colourless shade of the solution turning pink but they kept mum. Prem Nath produced cash Memo. Exhibit P/15. bill for Rs. 24.70, issued by Amrit Hotel which was seized vide Memo. Exhibit Public Witness 6/O. The uniform of Suraj Mal accused was seized vide Memo. Exhibit Public Witness 7/D.

(15) The two 'Panch' witnesses Shiv Narain Gupta Public Witness 6 and Sham Sunder Public Witness 9 corroborated the version stated by Prem Nath in material details. They were instructed by the D.S.P. to remain close with Prem Nath to hear the talk and satisfy themselves that the amount had passed on by way of bribe.

(16) It may be stated here that the Panch witnesses were cross-examined by the Public Prosecutor because of their stating contrary in the Court to the statements made to the police under section 161 Cr. P.C. regarding passing of the bribe money to Ram Narain and its recovery.

(17) D.S.P. Shri S. C. Katoch, Public Witness 11, fully corroborated the prosecution case in its entirety. He organized the raiding party. He recorded the statement of Prem Nath, Exhibit P. W. 8/A and prepared the raid report Exhibit Public Witness 6/A. He after making recoveries of the tainted money completed the raid report portion, Exhibit P.W. 11/A, and sent the same to police station Karol Bagh for registration of the case on receipt of which Kundan Lal A.S.I., Public Witness 2, recorded F.I.R. No. 386 of 1969, copy Exhibit Public Witness 2/A.

(18) From the perusal of the evidence, extracted above, it is established that Prem Nath and his companions were accused in case F.I.R. No. 140 of 1969 of police

station Sadar Panipat which case was being investigated by Davinder Singh accused. Suraj Mal was attached with him. Davinder Singh came to Delhi in connection with the investigation of that case on 31st August, 1969, accompanied by Ram Narain and Suraj Mal. All of them stayed at Amrit Hotel on the night between 31st August, 1969 and 1st September, 1969.

(19) Shiv Narain, Public Witness 6, Prem Nath, Public Witness 8, and Sham Sunder P.W. 9 have categorically stated that G. C. note of Rs. 100.00 was received by Suraj Mal as bribe which was recovered from the pocket of his bush-shirt and was seized vide memo. Exhibit Public Witness 6/D. Their testimony is corroborated by the D.S.P. Public Witness 11. There is the un rebutted testimony of these witnesses that after explaining the significance of phenol phathalein powder, solution of sodium carbonate was prepared in two glasses in which the fingers and the pocket lining of the bush-shirt of Suraj Mal were dipped. The shade of the colourless water turned pink. The solution so prepared was transferred to bottles Exhibits P/13 and P/14 which were sealed and seized vide memos. Exhibits Public Witness 6/J and Public Witness 6/H. Bush-shirt of Suraj Mal Exhibit P/12 and his uniform were taken into possession vide memos. Exhibits Public Witness 6/N and Public Witness 8/D. There is no rebuttal to the above evidence.

(20) Recovery of Rs. 100 G.C. note Exhibit P/5 is not denied by Suraj Mal though he pleaded that he told the D.S.P. that they had been trapped by the complainant party with a view to exerting pressure on them in the Panipat case and that he had been implicated falsely so that he may not come up as a defense witness against the prosecution in support of Davinder Singh.

(21) The amount of Rs. 100 having been passed as bribe to Suraj Mal and its recovery having been established presumption under section 4(1) of the Prevention of Corruption Act has to be drawn against him. In State v. Harbans Lal, 1969 D.L.T. 45, a Full Bench of this Court observed that after the presumption is raised under section 4(1) of the Prevention of Corruption Act, the effect is that the general burden of proving the case against an accused beyond a reasonable doubt no longer remains on the prosecution. In that connection it was observed at page 48 that when the presumption under section 4(1) is raised against an

accused the case against him is already deemed to be proved -beyond reasonable doubt. After that he cannot be acquitted by being given the benefit of doubt. He can secure acquittal only by disproving the prosecution case which he can do by showing that the defense case is itself more probable than the prosecution case in the sense, that according to the standard of proof applicable to the decision of a civil case, the defense case would be believed by the Court in preference to the prosecution case.

(22) Now the question to be determined is whether Suraj Mal disproved the prosecution case. He has led no defense. In his statement under section 342 Criminal Procedure Code . he alleged that the complainant party had overpowered him and his companions when they went to 16/1 Arya Samaj Road and that Prem Nath with a view to exerting pressure on Davinder Singh who had come to Delhi for investigation of the Panipat case against him and his companions had planned this false case against the accused and had implicated them with the help of his friends who are Public Witness s. in this case. Further, since the P.Ws. had to get S.I. Davinder Singh arrested, they falsely implicated him so that he may not come up as a defense witness in favor of Davinder Singh. Now according to Suraj Mal, S.I. Davinder Singh had come to Delhi for the investigation of the Panipat case. He accompanied Davinder Singh. It is not understood as to what investigation was to be made by them at 16/1 Arya Samaj Road. Neither Suraj Mal had stated what investigation was to be made at the said place. In the normal course of investigation, Davinder Singh should have solicited the help of the S.H.O. of the police station in Delhi within whose jurisdiction 16/1 Arya Samaj Road is situated if at all any investigation was to be made at Delhi. The reason for coming to Delhi as disclosed by Davinder Singh accused in his statement under section 342 Criminal Procedure Code . was for the purpose of the verification of the age of the prosecutrix, which could easily be done, and should have been done, by checking record of the birth register maintained by the Delhi Municipal Corporation and not to visit the shop of Prem Nath to procure the birth certificate from him. Besides, if Davinder Singh wanted Prem Nath to produce the said certificate, he could have very well directed him to produce the same before him at Panipat and thus spared himself of the trouble of undertaking the journey from Panipat to Delhi besides avoiding the obligation that they had to undertake in requisitioning the room in

Amrit Hotel and payment of the hotel charges as per bill Exhibit P/15. The plea of Suraj Mal that when questioned by the D.S.P. about the colourless shade of the solution turning pink, he told the D.S.P. that they (the accused) had been trapped by the complainant party with a view to exerting pressure on them in Panipat case, does not merit acceptance. If at all Prem Nath was anxious to seek favor from Davinder Singh he could not gain his end by trapping the police party and in having Davinder Singh arrested. That would not be the end of his trouble. The case against him and his companions would still proceed. Prem Nath and his companions were acquitted in that case on 10th September, 1971. Nothing has been brought on the record to show that Davinder Singh's removal from the scene of investigation was in any way a must for securing the acquittal in the Panipat case. It was of no consequence to the accused person in Panipat case whether 'A' investigating officer or 'B' investigating officer investigated the case. Taking the normal course of human conduct Prem Nath would not have antagonised Davinder Singh on the 1st September, 1969, when the Panipat case was still under investigation. The very fact that he was driven to make a complaint to Shri S. C. Katoch D.S.P. that the police party from Panipat was demanding bribe shows that he was under pressure from them to shell out money to them. From the proved facts on record we notice that only Shiv Narain Gupta, Prem Nath and Sham Sunder, viz., Public Witness s. 6, 8 and 9 were present in the room while on the other hand also were three police officers. There is not a shred of evidence that the other accused persons in the Panipat case were also present at that time, except for the bald assertion by the defense which had been denied by the prosecution witnesses. That being so, the physical strength of Prem Nath and the two Panch witnesses was equally matched by the three accused police officers. In the circumstances it is not believable that the police party could be overpowered and money could be foisted on them against their wishes and despite their resistance. Certain discrepancies and contradictions in the testimony of prosecution witnesses were brought to our notice which in our opinion, are not fatal to the prosecution case. The maxim falsus in uno falsus in omnibus has not been approved by courts in this country. Rather a duty is cast on the Courts to sift the grain from the chaff. That being so, all that is required is a need for caution and a more critical appraisal of the evidence. After going through the prosecution

evidence, which has been noted in an earlier part of this judgment, we find that the same is substantially correct. There is nothing on the record to brand the witnesses as liars. The mere fact that the witnesses were known to each other would not diminish their integrity or in any manner render the probability of their testimony less creditworthy. The fact is indisputable that in a solution of sodium carbonate when the hands and the internal lining of the pocket of the bush-shirt Exhibit P/12 of Suraj Mal were dipped, its colourless shade turned into pink. This scientific test is a telling circumstance of the guilt of the accused to which Suraj Mal had given no acceptable reply. Besides, in his statement under section 342 Criminal Procedure Code . the posture adopted by him was one of denial simplicities to the prosecution allegations on the record. In Parshadi v. State of Uttar Pradesh, : 1957 CriLJ328 it was observed that where the accused falsely denied the relevant facts which had been established on the record the Court would be justified in drawing an adverse inference from the denial of the accused in face of the facts which stood conclusively established on the record.

(23) In view of our discussion on various points, noted above, the conviction of Suraj Mal is unimpeachable and has to be maintained.

THIS brings us to the question of sentence. In Shri Durga Das v. State of H.P.. : 1973 CriLJ1138 the Court while dismissing the appellant's appeal against his conviction for offences under section 161 Indian Penal Code ., section 5(1) read with Section 5(2) of the [Prevention of Corruption Act, 1947](#), and section 420 I.P.C. and sentence of one years' rigorous imprisonment, considering the fact that the appellant was released on bail by the Supreme Court on 21st January, 1970, and he having undergone already the sentence of imprisonment for a period of more than six months, the offences having been committed on 13th April, 1964, did not think it proper in the said circumstances, to send the appellant to jail again. In taking the above-said view, the Court relied upon its earlier judgment in Jagdish Prasad v. State of West Bengal, : 1972 CriLJ1309 wherein it was observed that 'even when a statute prescribes a minimum sentence for an offence but gives a discretion to the Court to impose a lesser sentence for reasons to be given the fact that the accused was on bail for a pretty long period would be a relevant ground in exercising the discretion to impose a lesser sentence'. In the result the Supreme

Court confirmed the conviction of Durga Dass but reduced the sentence to the period of imprisonment already undergone by him.

(24) In the instant case Suraj Mal was convicted on 8th December, 1971, and was released on bail on 14th December, 1971. Since then he is on bail, i.e., for a period of more than two years. From the prosecution evidence, as discussed earlier, it is evident that Suraj Mal seeing his senior officers accepting the amount of bribe, succumbed to the temptation in accepting Rs. 100.00 for himself. He was enrolled as a constable in the police force on 2nd September, 1949, by Superintendent of Police, Rohtak. By now he has put in about 25 years of service. In view of the fact that we are maintaining his conviction he will be losing his service and the pension to which he would have been entitled on retirement but for his conviction. We have, as noted earlier, accepted the appeal of Davinder Singh on a technical ground and for reasons to be recorded hereafter we are declining to interfere with the acquittal of Ram Narain, two senior officers who were involved in this case with Suraj Mal, we are of the opinion that the ends of justice will be satisfied if the substantive sentence of two years awarded to Suraj Mal under both the charges, viz., section 5(2) read with section 5(l)(d) of the Prevention of Corruption Act and section 161 Indian Penal Code, is reduced to six months rigorous imprisonment. The sentence of fine in the sum of Rs. 200.00 is, however, maintained. With this modification in the matter of sentence. Criminal Appeal No. 171 of 1971 filed by Suraj Mal is dismissed. Suraj Mal, who is on bail, shall surrender his bail bond forthwith.

(25) We now proceed to deal with criminal appeal No. 48 of 1972 filed by the State against the acquittal of Ram Narain. On the evidence on record we find that the prosecution has failed to establish its case against Ram Narain, there being scope for reasonable doubt.

(26) Shiv Narain Gupta, Public Witness 6, stated in examination-in-chief that the bribe amount was passed on to the accused and that all the accused placed the respective amount given to them in the pockets of the bush shirts worn by them. When challenged by the D.S.P. Ram Narain accused was alleged to have explained that he had been given Rs. 100.00 for sweets for his children. In cross-

examination he, however, stated that Prem Nath offered the money to Ram Narain but Ram Narain declined it but on Davinder Singh's guying 'take it for sweets for children' Ram Narain accepted the money and put it in his pocket. He also stated that immediately after putting the money in his pocket Ram Narain himself brought out the money from his pocket and placed it on the table. Davinder Singh again forcibly put the money in the pocket of Ram Narian and the money remained in the pocket of Ram Narain. According to him the, D.S.P. recovered the money from the pocket of Ram Narain.

(27) On this aspect the testimony of Prem Nath Public Witness 8 in examination-in-chief is as follows. He handed over Rs. 100.00 G.C. note to Ram Narain who accepted the same in his hands and put it in his bush shirt front pocket. In cross-examination on behalf of Ram Narain he stated 'so far as I remember Rs. 100.00 G.C. note of which the recovery was shown from Ram Narain was taken by the police into possession from the table in front. In fact Ram Narain was not accepting the money.

(28) Sham Sunder Public Witness 9 in examination-in-chief had stated 'Ram Narain did not accept the money. The other two accused accepted it and put the money in their respective bush shirt pocket. Prem Nath then put the money of Ram Narain on the table'. He further stated 'Ram Narain, when questioned, told the D.S.P. that he was being given the money for sweets but had not accepted the same'. Sham Sunder also stated that 'Rs. 100.00 G.C. note was recovered from the table which related to Ram Narain'.

(29) This being the state of evidence qua Ram Narain the fact that his fingers and the inner lining of his bush shirt pocket when dipped in the solution of sodium carbonate the colourless water turned pink, would not be sufficient to set aside his acquittal; more so when it is on the record that when Prem Nath placed Rs. 100.00 G.C. note, which Ram Narain had refused to take, on the table, Davinder Singh picked up the same and put it in the pocket of the bush shirt of Ram Narain which was immediately taken out by Ram Narain from his pocket and placed on the table again. In that process, his fingers and the inner lining of the pocket of his bush shirt were stained with Phenol phathalein powder. On appreciation of the whole

matter we are of the opinion that there is scope for reasonable doubt, the benefit of which was rightly extended to Ram Narain by the trial Court. In this view of the matter Criminal Appeal No. 48 of 1972 filed by the State against the acquittal of Ram Narain, is dismissed.

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