

Mohar Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-26-1990

Reported in : 1992CriLJ449; 1990(1)WLN119

Judge : I.S. Israni, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1), 5(2) and 6(1); Indian Penal Code (IPC) - Sections 161; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Criminal Appeal No. 227 of 1982

Appellant : Mohar Singh

Respondent : State of Rajasthan

Advocate for Def. : L.K. Sharma, Public Prosecutor

Advocate for Pet/Ap. : B.K. Pathak, Adv.

Disposition : Appeal allowed

Judgement :

I.S. Israni, J.

1. This criminal appeal has been filed against the judgment and order dated June 16, 1982, passed by learned Special Judge, A.C.D. Jaipur, in Special Criminal

Case No. 24/1979, by which the accused appellant was sentenced to one year's rigorous imprisonment under Section 161 I.P.C. and also to a fine of Rs. 500/-. In default of payment of fine, the appellant has to undergo further simple imprisonment for three months. Under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act 1947, the accused appellant has been sentenced to one year's rigorous imprisonment and also to pay a fine of Rs. 500/-. In default of payment of fine, he will have to undergo three months further simple imprisonment. Both the substantive sentences are to run concurrently. !

2. It will suffice for the purposes of this appeal to state that on November 9, 1978, complainant Vishambhar Dayal resident of village Borni, Tehsil Kishangarhbas, district Alwar, lodged a report at Police Station Alwar to Deputy Superintendent of Police, A.C.D., Alwar, in which it was stated that some years ago, the complainant had purchased some agricultural land in his own name and in the names of his sons and registration of the sale deed was done at Tehsil. Thereafter all the said registries were given to appellant Mohar Singh Halqa Patwar Borni for mutation, who demanded Rs. 200/- for doing the same. This amount was paid to him last year. It was further alleged that the appellant returned four registries after entering the mutation, but the remaining registries have not yet been entered for mutation and are lying with him. On the previous day, when the complainant met the appellant at Kishangarhbas, the appellant demanded an amount of Rs. 50/- for sweets before the work was done. It was stated that the complainant does not want to pay illegal gratification and wants the appellant arrested red-handed.

On the aforesaid report, Ex.P. 1, the Deputy Supdt. of Police, Alwar, called two motbir witnesses P. W. 2 Shyama Kant Jaiman and P.W. 4 Gopal Prasad Sharma through one Prabhu Dayal Sharma. The complainant gave currency notes of Rs. 50/- to the Deputy Supdt. of Police containing a note of Rs. 20/- and three notes of Rs. 10/- denominations. The Deputy Supdt. of Police put his initials on the said currency notes and noted their numbers and got phenolphthalein powder rubbed on the said currency notes by a constable. The Deputy Supdt. of Police explained to motbirs and complainant with the procedure of the phenolphthalein powder and also gave demonstration to them. They Dy. S. P. handed over the signed currency notes to the complainant and directed him to give the said currency notes on

demand to the accused appellant and give an indication regarding the same by removing his turban from head and rubbing his head. The two motbirs were also directed to remain with the complainant and try to hear the conversation between the complainant and accused appellant and watch the transaction of money. All these proceedings were prepared and are marked as Ex P. 2.

Thereafter the Dy. S. P. along with the complainant, both the motbir witnesses and raiding party stated in a jeep from Alwar to Kishangarhbas. The raiding party reached Kishangarhbas at about 12.45 p.m. and sent the complainant and the two motbirs to go to the accused while the raiding party followed them and reached the bus stand Kishangarhbad and stayed in a hotel nearby. After sometime the Constable came back and informed that the accused appellant was not at Tehsil Kishanagarhbas but was at his residential quarter which is situated in bazar. He informed that the complainant and the two motbirs have already started towards the quarter of accused. They Dy. S.P. and the members of raiding party took their position in the bazar near about the residential quarter of the accused in a scattered manner and kept waiting for the signal to be given by the complainant. It is further stated that while the complainant was going to the quarter of accused, he happened to meet one Ganeshi Lal Sarpanch P.W. 5 on the way. The complainant asked him to accompany him to the house of accused appellant and recommend him for entering the mutation of the remaining four registries. Thereafter Ganeshi Lal also went along with them. The complainant and Geneshi Lal went to the quarter of accused appellant through a staircase and found appellant Mohar Singh and Kishorilal Patwari sitting there and doing some writing work. It is further stated that the complainant and the Sarpanch told the appellant to do the work of the complainant to which the accused replied that he would do the same and demanded Rs. 50/- for sweets. On this the complainant gave the currency notes of Rs. 50/- in the hands of the accused appellant which he put in the pocket of his shirt. Thereafter the complainant and Sarpanch came down and Sarpanch went away. The complainant gave signal by rubbing his head whereupon the Deputy Supdt. of Police and two motbir -- witnesses and members of the raiding party visited the room of the accused appellant. The Deputy Supdt. of Police enquired about the name and address of the accused and the person who was sitting with him. The appellant disclosed his name to be Mohar Singh and that of the other

person sitting with him as Kishorilal. The Deputy Supdt. of Police enquired from the appellant as to whether he had accepted Rs. 50/- from the complainant for entering the mutation. The appellant replied that the complainant did give him the currency notes but he did not accept and threw the same. The currency notes were lying on the floor which the Deputy Supdt. of Police took up and counted through P.W. 2 Shyama Kant Jaimen one of the motbir witness and found that there were three notes of Rs. 10/- each and one note of Rs. 20/-, which were marked as Articles 4 to 7. The notes bore the initials of the Deputy Supdt. of Police and the numbers of the notes were also tallied which were found to be correct. On being asked regarding the currency notes the complainant said on the spot to Deputy Supdt. of Police that these notes were given to him which he had put into the pocket of his shirt but on seeing them, he threw away the same.

Thereafter, a clean glass of water was brought and some sodium carbonate was mixed and there was no change in the colour. Thereafter finger of both the hands of accused were put into the water, whereupon the solution turned pink which was put into a clean bottle and got sealed, which bottle is marked Article 2. The same was sealed and the chit pasted on it was got signed by the complainant. Similarly both hands of Kishorilal were also put in the same process but there was no change and the water was put into a clean bottle, which was marked 'B' and the same was also sealed.

It is further stated that on asking, the accused appellant produced four registries from his room which were marked Exs. P. 6 to 9 and also produced the mutation and receipt book which were also seized from the accused vide Ex. P. 14. It is also stated that on that day Kishorilal was present in the room of appellant and took charge of the office of Patwar from the accused-appellant. Therefore, the Supdt. of Police seized the transfer order of accused and prepared the memo and marked Ex. P. 15. The other four registries were also summoned from the complainant and were marked Exs. P. 10 to 13. The bottles were sent for chemical analysis and according to its report Ex. P. 10, Articles 1 and 2 contain sodium carbonate and phenolphthalein powder and the bottle marked 'B' was found negative.

3. The learned Special Judge (A.C.D.), Jaipur, charged the accused under the Sections mentioned above who claimed to be tried. The prosecution examined as many as nine witnesses in support of the case including P.W. 8 Collector, Alwar, and P.W. 9 the Investigating Officer. The accused was examined Under Section 313, Cr; P.C. and also examined the witness in defence viz. Kishorilal as D. W. 1. After the completion of the trial, the accused appellant was convicted and sentenced as mentioned above. Hence this appeal.

4. The contention of learned counsel for the appellant Shri B. K. Pathak is that the trial court has erred on several counts and has failed to appreciate the evidence in proper perspective. It is pointed out that two motbir witnesses were instructed to remain with the complainant and see the passing over of the money to the accused appellant and also hear the conversation but they have failed to do so and, therefore, their evidence is of no consequence. It is further pointed out that these are evidently interested witnesses and unless their evidence is corroborated by an independent evidence/witnesses, reliance should not have been placed on the evidence of motbirs and the complainant himself. It is also contended that P.W. 5 Ganeshilal is a chance witness, who was picked up by the complainant himself and was not instructed to accompany the raiding party. In spite of all this, if his evidence is correctly analysed, he does not toe the line of prosecution and in fact supports defence in as much as he says that the accused appellant in the first instance did not accept the amount of Rs. 50/- offered by the complainant to the accused appellant. This, according to learned counsel is very crucial as the accused appellant did not demand any amount for illegal gratification and amount was offered by the complainant himself, which was refused and thereafter the complainant forcibly put the same in the pocket of the accused appellant, which the accused took out and threw on the floor. Therefore, it is natural that when the fingers of both the hands of the accused were chemically examined, the water turned pink. However, this does not prove that the accused appellant demanded illegal gratification from the complainant. The third contention of the learned counsel is that there was no occasion for the appellant to have demanded illegal gratification as he has been already transferred and had handed over the charge to Kishorilal, who was sitting at that time also in his room. The fourth contention of the learned counsel is that the prosecution has deliberately tried to suppress

independent evidence by not producing Kishorilal who had seen the complete episode as the prosecution feared that he may not toe its line. Therefore, he has been examined as D.W. 1 and the trial court has seriously erred in disbelieving this witness. Lastly, it is contended by the learned counsel that a very important fact was deliberately concealed from the Collector, D.W. 8 while obtaining sanction from him that the complainant had been already transferred and had handed over charge to Kishorilal. This fact is also admitted by P.W. 8 himself. This vitiates the whole trial.

5. The contention of Shri L. K. Sharma, learned Deputy Govt. Advocate is that prosecution has proved the case fully and completely. The Chemical Examination Report shows that the currency notes had been accepted by the accused appellant and he had put the same in his pocket. When his pocket was washed, the water turned pink, which is clear indication of his guilt. It is pointed out that the evidence of both the motbirs P.W. 2 and P.W. 4 is reliable and P.W. 5 Ganeshilal Sarpanch has also supported the prosecution in as much as he said that when the complainant offered the amount, the same was accepted by the accused appellant.

6. I have heard both learned counsel and also gone through the judgment of the trial court and the statement of witnesses and documents on record.

It will be necessary to discuss the statement of some of the witnesses. P. W. 1 is Vishambher Dayal complainant. He has stated in his examination-in-chief that 12-13 months had passed away but the appellant did not return the four remaining registries after entering the mutation. When he persisted in demanding the same back, the complainant demanded Rs. 50/- more for sweets, therefore, on the next day, he reported the matter to Dy. Supdt. of Police (A.C.D), who laid the trap. The report lodged by him is Ex. P. 1. He states that both motbir witnesses were instructed to remain with him when the amount of Rs. 50/- is passed over to the accused. He along with raiding party and motbir witnesses reached in jeep to Kishangarhbas, the jeep was stopped at the bus stand, he along with two motbir witnesses went on foot to Tehsil but the accused appellant was not there and he was told that he is at his house. While they were going to house of the accused,

Sarpanch Ganeshilal P.W. 5 met them on the Way and he requested him to accompany him to house of accused. He and Sarpanch both went to the house of accused which is on the first floor. The accused was sitting in his room along with Kishorilal Patwar. He told accused to do his work and Sarpanch also told him for the same. Thereupon, the accused told him that his work will be done after you give me sweets. Thereupon, the witness told him that he has brought his sweet and gave Rs. 50/-, to the accused appellant in his hand. The accused took the money and kept the same in pocket of his shirt which he was wearing. Thereafter, he and Sarpanch P.W. 5 came down the stairs. He also states that complainant told him that his work will be done in the next meeting. Thereafter, Sarpanch P.W. 5 went away. He gave signal to the Police Party waiting near the house of the accused, whereupon the witness, he himself, Constable and Deputy Supdt. of Police enquired from the accused regarding the notes, whereupon the accused told him that he has not accepted illegal (sic). He further states that the accused had thrown the currency notes on the floor. However, he did not remember, who picked up these notes. The accused also stated that the witnesses tried forcibly to give the money to him but he did not take the same. He further states that the other Patwar, meaning thereby who was also present in the room at that time, did not say anything to the witness. The hands of Kishorilal were also washed in the solution but the colour of the water did not change. He states that when the accused saw Dy. Supdt. of Police coming, he threw the notes on the floor. The accused took out four registries from his box and handed over the same to police, which were marked as Ex.P. 6 to Ex.P.9. Exs.p. 10 to 13 are the registries, the mutation of which had already been done by the accused. In cross-examination, he states that he had given all the eight registries at the same time to the accused about 12-13 months back. However, in cross-examination, again he says that he had given some registries to the accused at one time and some thereafter. He states that when the accused had demanded Rs. 50/- from him, none else was present at that time. He had not met Tehsildar or Sarpanch regarding getting the entry of mutation of the remaining registries. He states that the Deputy Supdt. of Police and other persons could not see me passing over the amount of Rs. 50/- from the place they were standing. The notes were picked up by Police people from floor in presence of accused. He also states that he did not see accused

throwing the currency notes on floor. When he entered the room, again along with police party, who picked up the notes from the floor, he could not say specifically. P.W. 2 is one of motbir witnesses viz Shyama Kant Jaimen. who is employed as L.D.C. in R.S.E.B., Alwar. This witness also endorses the statement of P.W. 1 and also states that they came from Alwar to Kishangarhbas in jeep and thereafter they went to Tehsil, where they did not find the accused appellant and thereafter went to his house. He states that the house of the complainant is situated over a shop in bazar. He states that one more person had gone upstairs in the room of the accused along with complainant. They came back in three and four minutes. They were standing 30-40 metres away from the house of the accused. After receiving signal from the complainant, all of them including the Dy. Supdt. of Police went upstairs where the accused was sitting in his room and one another person who gave out his name as Kishorilal was also sitting there. When enquired, the accused said he had not taken any illegal gratification. Fifty rupees were lying on the floor. He states that Deputy Supdt. of Police asked him to pick up the notes from the floor and had compared the numbers. He admitted to have signed Ex. 15. He further states that the accused had been transferred and the transfer order was also taken in possession by the police. He admits that he could not see what transpired between the complainant and the accused in the room.

P.W. 4 is another Motbir witness viz. Gopal Prasad, who is also working in R.S.E.B. He states that when complainant went inside the room of accused, they were standing outside when accused came back and gave signal, thereafter he along with Dy. Supdt. of Police and other members went inside the room. Another person was found sitting with the complainant who gave out his name as Kishorilal. When enquired by Deputy Supdt. of Police, whether he had taken any illegal gratification, the accused stated that the complainant had forcibly given the money to him and stated that he had thrown the same on the floor and pointed out towards the notes. In cross-examination, he states all of them went together in the room of accused and the currency notes were lying on the floor. He states that the talk of transfer of the accused had taken place. In the first instance, he has denied that the accused has stated that the complainant had given currency notes to him forcibly but thereafter again stated that the accused did tell at that time that the complainant had forcibly given the currency notes to him, which he had thrown on

the floor.

Ganeshilal P.W. 5 Sarpanch states that when they had reached the house of accused along with P.W. 1 complainant he found Kishorilal was also sitting there. Vishambhar Dayal complainant told the accused that he should make entry of mutation of his registries and take his sweets from him, thereupon the accused told him that he has been transferred and now this work will be done by another Patwar. Thereupon, complainant gave Rs. 50/- currency notes to the accused. In the first instance the accused did not accept the amount but hereafter accepted and kept the same in pocket of his shirt. In cross-examination, he states that it is correct that accused had told complainant that he had handed over the charge two days earlier to Kishorilal Patwar. The accused had stated this when complainant asked him to make entries of mutation in the record. He further states that when in the first instance the complainant wanted to give the amount to accused, he returned it and did not accept the same. Thereafter the complainant Vishambhar Dayal put the amount of Rs. 50/- in the pocket of the accused. He also states that the accused did not take out the amount from his pocket and throw the same in his presence. P.W. 7 Prabhu Dayal is A.S.I. in the Police Department. He states in his examination-in-chief that when Deputy Supdt. of Police enquired from the accused regarding acceptance of illegal gratification of Rs. 50/- the accused told him that he had not accepted any illegal gratification from complainant Vishambhar Dayal. But on the contrary, the complainant wanted to give Rs. 50/- to him for making mutation entries, which he did not accept, whereupon the complainant threw the money and went away. After the above version was given by the accused, Deputy Supdt. of Police enquired from Vishambhar Dayal as what he has to say regarding this. Thereupon, complainant said that he had given the amount of illegal gratification to accused in another room which the accused had kept in pocket of his shirt. He has further stated in the end of the cross-examination that earlier he had said by mistake that the accused stated at the time of trap that the complainant had thrown the money on floor and gone away. He stated that his version given in Ex. P. 17 is correct wherein he stated that when the matter was enquired from accused Mohar Singh Patwar, accused had stated that the amount of Rs. 50/- that was offered by the complainant as illegal gratification was lying on the floor and he had refused to accept the same and the accused had thrown the

same on the floor. P.W. 7 Prabhu Dayal is A.S.I. in Police Department. He has stated in cross-examination it was not correct to say that the accused when enquired at the time of raid, had stated that he had not accepted any illegal gratification from the complainant. Shri Prahlad Rai Sharma, P.W. 8 was posted as Collector, Ganganagar, at that time. He had given sanction for the prosecution of the accused appellant. In cross-examination he has admitted that this fact was not brought to his knowledge that accused Mohar Singh had handed over his charge before 9-11-1978. He further admits that so far as he can recall, this fact has not also been brought to his knowledge that before 9-11-1978, the charge was taken over by Kishorilal Patwar. He further states that if he had knowledge that the accused was not holding the charge of Patwari on 9-11-1978, he would not have sanctioned the prosecution against him. P.W. 9 Rishi Singh is Dy. Supdt. of Police, who had conducted the trap. In his examination-in-chief he states that he had given instructions to the motbir witnesses that they should remain with the complainant and try to hear the conversation between the complainant and the accused person and also see the handing over of the money to the accused. He states that when he enquired from accused whether he had accepted Rs. 50/- as illegal gratification from complainant Vishambhar Dayal, accused stated that Vishambhar Dayal wanted to give the amount of Rs. 50/ - to him but he did not accept the same and he had pointed out towards the currency notes lying on the floor. However, he again states that the accused when enquired had told that he had taken the amount of Rs. 50/-from the complainant but due to some doubts in his mind, he had taken out the same from the pocket of his shirt and thrown on the floor. He states that on that day, Kishorelal Patwar had to take charge from the accused and, therefore, he was present in his house. The transfer order had, therefore, been seized by him. He further states that 'Ghatna Bahi' Article. 9 was taken in possession by him and his signature is on page 5 in the writing 'C to D'. There is no mention of the time of handing over the charge. He further states that he had seized the charge list which is marked Ex.P. 15. In the charge-sheet filed by the police, there is no reference of the time when the charge was handed over by the petitioner. He admits that the entries 'C to D' in register Article P. 10 was made before them. He admits that from investigation, he has come to the conclusion that the accused had handed over charge to Kishorelal before they

reached the place on the day of occurrence. He also admits that when he enquired from Kishorilal, he told him that the accused had not accepted any illegal gratification in his presence. He also states that the complainant had told him that the accused person had thrown the notes on the floor when he saw the Police Party coming to his house. He also states that he had examined and taken statement of Kishorelal Patwar. He states that he does not know once the charge is handed over by Patwari, he cannot enter mutation in the record. He further admits that during the investigation the accused had told him that out of the four registries lying with him for mutation, entries regarding two registries had been already done and there were some defects in one registry, therefore, its mutation could not be done and that the fourth registry was given to him only about 1 1/2 months also. Therefore, it was not possible to make entries of mutation regarding the fourth registry, which was handed over to him only recently.

7. From the evidence discussed above, it is clear that even the prosecution witnesses accepted that when the police party reached the house of the accused, he told them that he refused to accept the illegal gratification from the complainant and told him that he was no more Patwar of the area and that one Kishorilal, who has taken over the charge of area will do his work. Even P.W. 5 the Sarpanch who was picked up by the complainant on his own to accompany him to the house of accused says that the accused did tell the complainant that he had handed over the charge to Kishorilal two days earlier than the day of incident when the complainant asked the accused to do entries of mutation of the registries. The accused also told him that now his work will be done by Kishorilal. He also said that in the first instance when the complainant wanted to give money to the accused person, he did not accept it and returned the same to him. He further states that thereafter Vishambhar Dayal put the money in the pocket of the shirt of the accused person. He also states that the accused did not throw the money on the floor in his presence.

8. It will be relevant at this stage to look into the statement of D.W. 1 Kishorilal, whose statement was recorded by the prosecution agency Under Section 161, Cr. P.C. but was not produced in Court even though he was the only witness who was present when the complainant is said to have passed the amount of illegal

gratification to the accused person. He states in his examination-in-chief that on the day of incident he had gone to the house of accused and after taking charge, was putting the official books in a 'Basta' at that time Visharnbhar Dayal P.W. 1 came and told accused to make his mutation entries and took Rs. 50/- - from him. Accused Mohar Singh told him that he has been transferred and he cannot do his work. Thereupon, Vishambhar Dayal put the amount of Rs. 50/- in the pocket of the shirt of the accused forcibly which was taken out from his pocket by the accused and thrown on the floor of the room. At that time Vishambhar Dayal was also present in the room. Few minutes thereafter, the Deputy Supdt. of Police and other people came there when Dy. Supdt. of Police enquired from the accused, he told him also that he had already handed over the charge and had not taken any illegal gratification. The accused also told him that Vishambhar Dayal complainant had forcibly put the money in his pocket and he had thrown on the floor.

When the accused was examined Under Section 313, Cr. P.C. (in answer to question No. 4), he has explained that four registries were given to him for mutation. He had already entered the two, there was defect in third, therefore, it could not be entered for mutation and fourth was given only about one month earlier to him. He has further stated in his statement that either nine days earlier than the day of incident Vishambhar Dayal complainant had come and threatened him that he should make mutation entries with regard to all the four entries otherwise he will put him into trouble. He was transferred by order dated November 4, 1978, thereafter had already taken charge of Halka Modhka on November 7, 1978. Before November 8, 1978, he had handed over charge of area of Borni to Kishorilal Patwari, which fact is also mentioned in the diary and the charge list was seized by the police on the day of incident itself. He further states that since he was no more Patwar of area Borni on November 9, 1978, question of taking illegal gratification for making any mutation entry in the record does not arise. Since there was defect in one registry and one registry was given to him a month earlier and as per law the mutation cannot be done before one month passes away. On account of this, the complainant forcibly put Rs. 50/- which I immediately took out and threw on the floor.

9. I do not find any reason why reliance cannot be placed on the statement of D. W. 1 who was present throughout and seen every thing and his version is also corroborated by P.W. 5 Ganeshilal Sarpanch. Even one of the motbir witness of the prosecution also states that the accused did tell Deputy Supdt. of Police at that time that he refused to take the money offered by the complainant and, therefore, threw it on the floor. It may also be mentioned that granting of sanction under Section 6(1)(c) of the [Prevention of Corruption Act, 1947](#) is not a mere formality. It is necessary that all the facts on which proposed prosecution is based must be proved to have been put before the sanctioning authority, and the burden of proving the same is squarely on the shoulders of the prosecution. If any material facts which go to the root of the whole matter and investigations are not brought to the knowledge of the Sanctioning Authority, it cannot be said that the Sanctioning Authority applied its mind before granting sanction for prosecution. In this case P.W. 8 Collector the Sanctioning Authority has clearly admitted that it was not brought to his knowledge that the accused was not having charge of the concerned area as Patwari on the day the trap was made. He also states that if he had known this, he may not have given sanction for prosecution. In the case of *Jaswant Singh v. State of Punjab*, AIR 1958 SC 124 : (1958 Cri LJ 265), this matter came up for consideration of the Apex Court. It was stated by their Lordships that the object of the provisions for sanction is that the authority giving the sanction should be able to consider for itself the evidence before it comes to the conclusion that the prosecution in the circumstances be sanctioned or forbidden. As stated above, it cannot be said that the Sanctioning Authority was able to apply its mind to all the relevant facts of the case in as much as the very important fact was withheld and was not conveyed to the Sanctioning authority regarding handing over the charge of the concerned area by accused to another Patwari before the day of incident on which the trap was organized. I, therefore, hold that the sanction is invalid and defective and improperly obtained without placing the important and relevant facts before the I Sanctioning Authority. Apart from this the | accused in his statement Under Section 313, Cr. P.C. has also explained the relevant circumstances. He has also explained that it is wrong on the part of prosecution to say that no mutation entries were done regarding the four registries which were handed over to him about 12 to 13 months earlier as

stated by complainant. It is in evidence that out of four registries, entries regarding mutation of two registries had been already done and mutation regarding third, could not be done on account of some deficiency and fourth had been given to him only a month before. Registries Exs. P. 6 and 7 were registered on July 31, 1971, Ex. P. 8 was registered on July 11, 1977 and Ex. P. 9 was registered on 29-5-1978.

In the case of *Darshan Lal v. The Delhi Administration* AIR 1974 SC 218 : (1974 Cri LJ 307), it was observed by the Apex Court that in cases under Prevention of Corruption Act, there should be independent and trust-worthy corroboration of evidence of trap witnesses. In this respect, not only there is no independent/trustworthy corroboration of evidence of trap witnesses but intact P.W. 5 Sarpanch Ganeshilal, does not support the version of the prosecution and substantially corroborates the version given by D.W. 1 Kishorilal who was the only witness present when the incident took place.

In *Ram Prakash Arora v. State of Punjab* AIR 1973 SC 498 : (1972 Cri LJ 1293), it was held by the Apex Court that in cases under Prevention of Corruption Act, evidence of interested and partisan witnesses who are concerned in the success of the trap must be tested in the same way as that of any other interested witness. In a proper case the Court may look for independent corroboration before convicting the accused persons. The version given by two motbir witnesses P.W. 2 and P.W. 4, cannot, therefore, be termed as evidence of independent witnesses. P.W. 1, the complainant himself is also an interested witness. When the evidence of this witness and the police officials is tested for corroboration from independent witnesses e.g. D.W. 1 and P.W. 5, there is no corroboration from the statement of these two witnesses, I am, therefore, of the considered opinion that the prosecution has failed to bring home guilt of the accused persons and has failed to prove the charges levelled against him.

In the result, the appeal is allowed. The conviction and sentence awarded to the accused-appellant are set aside. The accused is on bail and need not surrender to his bail-bonds.

