

Om Prakash Mathur Vs. the State

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Court : Rajasthan

Decided On : Feb-11-1974

Reported in : 1974WLN324

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Appeal No. 101 of 1971

Appellant : Om Prakash Mathur

Respondent : The State

Disposition : Appeal dismissed

Judgement :

K.D. Sharma, J.

1. The appellant, who was a Sub-Inspector of Railway Protection Force, Jaipur, has been convicted under Section 161, I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act by the learned Special Judge, Jaipur, and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default of payment of fine to undergo further rigorous imprisonment for three months.

2. The prosecution case against the appellant, shortly, stated, is that Om Prakash appellant was functioning as a Sub-Inspector in charge of Railway Protection

Force post attached to Western Railway, Jaipur, in the beginning of April, 1969. As Sub-Inspector of Railway Protection Force, it was one of his duties to make an investigation of a crime of unlawful possession of railway property punishable under Section 3 of the Railway Property (unlawful possession) Act, 1966. While investigating a case of unlawful possession of railway property (Cr. No. 9 of 1969) he required the attendance of one R.K. Malik, who was posted as Shunter, 'A' Great Locoshed, Jaipur, and who was temporarily working in that capacity at Loco-shed Phulera. The appellant, therefore, sent a telegram to Loco Foreman, Loco-shed, Phulera, on 20th April, 1969, to spare Shri R.K. Malik and to send him to Jaipur for interrogation in the said case. In response to that R.K. Malik came to Jaipur on 22nd April, 1969, in the forenoon. The appellant informed Shri R.K. Malik that there was a charge against him that he had pilfered and dropped two bags of coal belonging to the railway at railway crossing No 222 and that he would be arrested in that connection. The appellant further told him that he would be released on bail, provided he was prepared to produce a surety. Shri R.K. Malik thereupon brought Shri P.C. Mehta, who offered himself to stand surety for him, but the appellant refused to accept Shri Mehta's surety bind on the ground of his being a public servant. Shri Mehta then went away from there leaving behind Shri R.K. Malik and the appellant. After Shri Mehta had gone away, the appellant demanded a bribe of Rs. 1000/-, from Shri R.K. Malik as a reward for showing favour to him in the exercise of his official function. Shri R.K. Malik made entreaties to spare him as he claimed to be innocent and unable to meet the demand of bribe on account of his poverty. The appellant, thereupon, told Shri Malik that if the latter wanted to avoid arrest, he would have to make a part payment of Rs. 500/-, to the appellant for obtaining a release order and that the remaining sum of Rs. 500/-, would have to be paid by him later on for getting the case finally hushed up against him. Shri R.K. Malik then came to his residence and thought over the matter. He did not like to give any bribe to the appellant so he wrote a complaint and went to the office of the Special Police Establishment in the afternoon of 24th April, 1969. He met Shri Ram Chander, Deputy Superintendent of Police, Special Police Establishment in his office and produced before him the complaint along with currency notes of Rs. 800/-. Shri Ram Chander received the complaint and the currency notes. As he was busy with

some official work, he called Shri P.D. Ajmera, Inspector in his room and directed him to arrange a trap with the help of Shri K.L. Rao, P.N Shukla, Chunni Lal, A.S.I. and one Constable. Shri Ram Chandra made an endorsement on the written complaint and Ex P. 2 in this behalf and returned the five Government currency notes of the denomination of Rs. 100/-, each to Shri Malik. Shri P.D. Ajmera, Inspector, Special Police Establishment, then asked the Superintendent, post-offices on telephone to send some officer from his office for secret work. Then he contacted one Shri G.D. Sharma, Inspector, post-offices, Bharatpur, who had come to the Special Police Establishment Office in connection with some other work and requested him to be an eye witness to the trap. Shri G.D. Sharma agreed to play the role of a Motbir. After a short while, Shri Sudershan Chandra, Clerk of the office of the Superintendent, post offices, Jaipur, also came there. Shri P.D. Ajmera, informed him that he was required to eye witness the trap. Shri R.K. Malik was introduced to Sudetshan Chandra and the other two Inspectors. Shri P.D. Ajmera, then read over the contents of the complaint Ex. P. 2 to the witnesses in the presence of Shri Malik and the Inspectors. Shri R.K. Malik admitted the truth of the contents of the complaint. Shri P.D. Ajmera then smeared each of the five Government currency notes with phenol phethalein powder and gave them back to Shri R.K. Malik with a direction that the latter would hand them over to O.P. Mathur on his demand. He gave necessary instructions to Sudershan Chandra Sharma, G D Sharma and the Inspectors. Shri R.K. Malik was instructed to give a signal to the raiding party by moving his handkerchief as soon as the amount was accepted by O.P. Mathur. Shri Sudershan Chandra was directed to accompany Shri R.K. Malik to overhear the talk and to eye witness the payment of the bribe to Shri O.P. Mathur. Shri P.D. Ajmera then prepared a memorandum Ex. P. 3 and read it over to the members of the raiding party, who signed it after going through its contents at about 3 45 p. m The raiding party consisting of Sudershan Chandra, P.N Shukla, K.L. Rao, R.K. Malik, ASI., Chunni Lal and Foot Constable Ganpat Singh started from the office of the Superintendent of Police for laying a trap. An entry to this effect was made in the general diary after informing Deputy Superintendent of Police, Shri Rim Chandra. At about 4 pm. the raiding party leached the railway station, Jaipur and proceeded towards Goods Shed. Shri R.K Malik and Shri Sudershan Chandra were directed to go ahead and the other

members followed them keeping a safe distance. Shri Sudershan Chandra and Shri R.K Malik crossed the railway crossing and met O.P. Mathur, appellant, who was having a cycle with him and a pad of papers on its carrier. Sudershan Chandra stood nearby at a distance of 4 or 5 ft. from Shri R.K. Malik and the appellant. The other members of the raiding party went to the main gate of the Goods Shed after crossing Shri R.K Malik and the appellant en the road. After a short while, O.P. Mathur accompanied by R.K. Malik went towards the goods shed building & took a turn towards merchants waiting hall situated on the left side of the building. O.P. Mathur put the bicycle in front of the merchants waiting hall and after taking out some paper from the pad, he went towards the brake van along with R.K. Malik after crossing the A.M.I. godown. The raiding party also followed him and took positions near the steps of open courtyard of the goods shed office. Chunni Lal and Sudershan Chandra, however, reached near the AMI godown and took positions there near the brake van O.P. Mathur wrote a relieving letter and handed it over to R.K. Malik with its carbon copy. R.K. Malik signed the letter and gave it back to the appellant who kept the original with him and handed over the carbon copy of that letter to R.K. Malik. After receiving the relieving letter, R.K. Malik took out five hundred rupees currency notes and handed them over to O.P. Mathur The appellant counted them and put them in the upper right hand pocket of his bush-shirt along with with the original copy of the letter. R.K. Malik then gave the agreed signal to the raiding party by moving the handkerchief which he had placed below the collar of his shirt. The appellant and R.K. Malik then started towards the merchants waiting hall followed by the raiding party. The appellant went inside the merchants waiting hall and R.K. Malik remained outside. The raiding party rushed into the merchants waiting hall from different gates thereof and caught the appellant P.D. Ajmera disclosed his identity & showed identity card to O.P. Mathur He asked the appellant to produce Government currency notes of Rs. 500/-, which he had received as a bribe from R K. Malik. The accused gave no answer and tried to make good his escape. P D. Ajmera warned the appellant that he was under arrest and that he should not make an attempt to run away. (EX P. Mathur, however, tried to disengage himself from the grip of P.D. Ajmera and the two Inspectors of the Special Police Establishment by giving kicks and pushes At that time three 'Rakshaks' (Constables of the Railway Protection Force) came

there to the rescue of the appellant. P.D. Ajmera warned these persons also after disclosing his identity to them, not to intervene and make an attempt to help the appellant in making good his escape. O.P. Mathur, on the other hand, asked one of the Constables, namely, Madho Singh, to call for more Constables for his huff's. Thereupon all the three Constables went away from there. Madho Singh began to whistle for calling other Constables R.L. Rao, Inspector apprehended danger to the life and limb of the raiding party. So he rushed to the room of Chief Goods Clerk to inform the S.P. Office upon telephone. Meanwhile he sent a message to the S.P. Office for help and returned to the merchants waiting hall. He asked Chunni Lal and others to shut the doors of the office of the Chief Goods Clerk and the merchants waiting hall. While the doors were being closed, the appellant all of a sudden lay flat on the floor of the room after holding the pockets of his bush-shirt tight with his hands, P.D Ajmera and P.N. Shukla made an attempt to make him stand but O.P. Mathur bit P.N. Shukla in his arm. As the appellant was strong enough and physically heavy, P.D. Ajmera and P.N Shukla could not succeed in their attempts to make him stand on his legs. Shortly afterwards stones were thrown on the doors from outside and some Constables of the Railway Protection Force entered the merchants waiting hall from the gate of the Chief Goods Clerk. These Constables opened the doors and allowed the other Constables to enter the hall. They were armed with sticks, pieces of slippers and fire-wood. Their number was about 20 or 25. In spite of warnings given to them by the Inspectors, they assaulted Sarvashri P.D. Ajmera, P.N Shukla and K.L. Rao at the instance of O.P. Mathur and inflicted serious blows on their persons. As a result of the blows P.D. Ajmera and the two Inspectors Sudarshan Chandra, Ganpat Singh and Ganpat Lal received a good number of injuries. During this scuffle, O P. Mathur freed himself and after snatching a short stick from the hand of one of the Constables of the Railway Protection Force, dealt a blow with it on the head of Shri P.N. Shukla. The Constables of the Railway Protection Force pushed Shri P.D. Ajmera and the Inspectors out of the merchants waiting-hall. O.P. Mathur ran away from there into the room of the Chief Goods Clerk. He was followed by Shri K L. Rao. The Constables of the Railway Protection Force then began to beat Shri K.L. Rao. They pushed him also out of the merchants waiting hall. After a short while Shri Ram Chandra, Deputy Superintendent of Police arrived at the place of the

occurrence along with Mahendra Singh, Tejbahadur Singh and other members of his staff. At their sight, the Constables of the Railway Protection Force ran away from there. Shri Ram Chandra directed one of the staff members to remove the injured to the hospital immediately. He found Shri K.L. Rao lying on the ground in an injured condition outside the merchants waiting hall. He approached Shri Rao who informed the Deputy Superintendent of Police that O.P. Mathur had gone upstairs after making good his escape. Shri Ram Chandra then asked ASI Chunni Lal to bring another Motbir to eye-witness the recovery as he was told that Shri G. D. Sharma, Motbir had run away during the scuffle that ensued between the members of the raiding party and the appellant and his party, Shri Ram Chandra followed by the members of his staff, Sudarshan Chandra and Shri Malik went upstairs to find out the appellant. When he reached the court yard of the first floor, he saw O.P. Mathur entering a room. He rushed into the room but the appellant was not found therein. The next door of the room was open. Shri Ram Chander came out of that room from the next door and saw O P. Mathur climbing the stairs for going on the roof of that building. Shri Ram Chander chased him on the roof and found the appellant trying to enter in a 'Bukhari'. He caught hold of O.P. Mathur, who at first offered some resistance but on seeing other persons with Shri Ram Chander, completely surrendered himself and requested the Deputy Superintendent to tell his companions not to cause any harm to him. O.P. Mathur was nervous and perturbed. He had some injuries on his head and blood-stains on his hands. The Deputy Superintendent of Police brought O.P. Mathur down-stairs to the office room of the Chief Goods Clerk. There in the office of the Chief Goods Clerk A.S.I. Chunni Lal brought one person Shri Sheocharan Jha, Mechanical Inspector, Rajasthan Transport Department, to eye witness the recovery of the currency notes from the possession of the appellant. Shri Sheocharan Jha was introduced to Ram Chandra, Deputy Superintendent of Police, who began to explain to him the background of the case and the purpose for which he was brought there by Chunni Lal. While Shri Ram Chandra, Deputy Superintendent of Police was talking to Shri Sheocharan Jha, the appellant, all of a sudden, put off his bush-shirt and kept it on the table in front of it. Shri Ram Chandra asked the appellant why he had taken off his bush-shirt but the latter did not give any reply. Thereupon the Deputy-Superintendent of Police asked Shri Sudarshan Chandra to

search the right upper-band pocket of the bush-shirt of the appellant. Shri Sudarshan Chandra took search of the pocket and took out five Government currency-notes of Rs. 100/-, each with one letter. He searched the other three pockets of the bush-shirt but found nothing therein, Ram Chandra, Deputy Superintendent of Police tallied the number of the Government currency notes recovered from the pocket with the number mentioned in the memorandum Ex. P. 3 in the presence of Sarves Sri Sudarshan Chandra and Sheocharan Jha, who also compared the numbers of the notes with the numbers mentioned in the memorandum and found them tallying with each other. Thereafter the Deputy Superintendent sent for water and a tumbler and put sodium carbonate powder in it. He then got the right-hand upper pocket of the bush-shirt of O.P. Mathur from which the money and the letter were recovered dipped in the solution, the colour of which- after a short-while, turned purple. The purple coloured solution was put in a bottle and sealed properly. At the instance of the Deputy-Superintendent of Police Shri Mahendra Singh, Inspector prepared a recovery memo Ex P. 6 and read, it over to the witnesses, who themselves perused its contents and put their signatures to it. The Deputy-Superintendent also signed it there and then. The specimen of the impression of seal put to the bottle was fixed on the recovery-memo at five places. The seal was then handed over to Shri Sheo-charan Jha Motbir for safe custody. A copy of the recovery-memo was offered to O.P. Mathur but he declined to take it. An endorsement relating to the appellant's refusal to accept the copy was made in the recovery-memo and was signed by the Deputy Superintendent of Police, Shri Mahendra Singh, Shri R.K. Malik and others, The Deputy Superintendent of Police then directed Sudarshan Chandra to search the person of O.P. Mathur Upon search of a pocket of the pantaloons worn by O.P. Mathur being taken by Sudarshan Chandra, softie articles, e. g. one Government currency note of Rs. 10/-, two ball point pens, one green ink pen (plato), one handkerchief and one bunch of keys containing five keys were recovered. A memo of search containing details Of these recoveries was made on the spot by Shri Mahendra Singh Inspector, which is Ex. P. 8 on the record The memo was signed by the Deputy Superintendent Shri Ram Chandra. Mahendra Singh Inspector and the Motbirs. The Deputy Superintendent of Police then got the person of Shri R.K. Malik searched by Sudarshan Chandra. Upon search, a

carbon copy of the relieving order was recovered from his possession, which is Ex P. 9. This carbon copy was seized by the Deputy Superintendent of Police vide memo of search Ex. P. 10. An arrest memo was then prepared and O.P. Mathur was handed over to the custody of Station House Officer, Government Railway Police.

3. After the recovery was made, the Deputy Superintendent of Police along with his party came back to Special Police Establishment Office and prepared a raid report Ex. P. 13, recorded the first information report and handed over investigation of this case to Shri Mahendra Singh Inspector after making an entry of his return in the general diary. Mahendra Singh Inspector conducted the usual investigation into the case and, after obtaining sanction to prosecute the appellant, put up a charge-sheet against him in the court of the Additional Special Judge, Jaipur.

4 The learned Additional Special Judge, Rajasthan, Jaipur, charge-sheeted the appellant under Section 161, I.P.C. and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and recorded the prosecution as well as defence evidence. The prosecution examined as many as 21 witnesses at the trial to substantiate the charges against the appellant. The accused-appellant produced 8 witnesses to prove his innocence. The plea of the appellant was that he did not demand a sum of Rs. 1000/- as bribe from Shri R.K. Malik, nor did he inform Shri R.K. Malik that a part payment of Rs. 500/-, should be made to him for obtaining a relieving letter and the balance of Rs. 500/- might be paid to him after some days for getting the case finally hushed up against him. According to his version, the relieving letter was handed over by him to Shri R.K. Malik at his residence in the afternoon of 24th April, 1969. He further denied that five Govt. currency notes of Rs. 100/, each were kept by him in the breast pocket of his uniform bush-shirt along with the original relieving letter Ex. P, 7 and that they were recovered by Sudarshan Chandra upon search of his bush-shirt in his presence. He gave his own version by stating that when he was coming down stairs, Ram Chandra, Dy. S.P. met him at the last downward-step of the stair-case and took him to the gallery where he was made to sit on a chair and given a tumbler of water. Shri Ram Chandra and Shri Mahendra Singh then asked him to put off his bush-shirt which

he did and put it on the back of the chair. Then he was taken to the adjoining room and at his back the Government currency notes were planted in the pocket of his bush-shirt and were falsely shown to have been recovered from it. According to the appellant, he was entrapped in this false case by the Special Police Establishment and the Government Railway Police Officers, who were annoyed with him because he had not obliged them by dropping some criminal cases against their men. The learned Special Judge considered the entire evidence on the record and found the appellant guilty of both the charges. Hence this appeal.

5. I have carefully gone through the entire evidence--oral as well as documentary--on the record and heard the arguments at length. Firstly, it has been contended on behalf of the appellant that no valid sanction to prosecute him was obtained in this case. The learned Counsel for the appellant referred to *Madan Mohan v. State of Uttar Pradesh* : AIR 1954 SC637, *Mithan Lal v. The State* 1968 RLW 54, and *Gokul Chand Dwarka Das v The King* AIR 1948 PC 84, wherein it was observed that before according sanction the sanctioning authority must examine facts & thereafter considering the whole matter must make up its mind either to accord or withdraw the sanction for prosecution. On the basis of these authorities, the learned Counsel urged that in the present case, there is no satisfactory evidence on record from the side of the prosecution that the sanctioning authority before according the sanction had applied its mind to the evidence collected in the case. He invited my attention to the examination-in-chief of Mahendra Singh, Investigating Officer, wherein he merely stated that, on completion of investigation, he filed the charge-sheet after receiving sanction Ex P 1 from the Chief Security Officer, Western Railway, Bombay. According to the learned Counsel, he did not say that the latter sanctioned prosecution after taking into consideration all the facts and circumstances of the case including the evidence collected by the investigating agency. The above contention is devoid of substance, because all the essential facts constituting the offences were set out in the sanction Ex. P. 1. Such a sanction is valid in the eye of law. It is only where the sanction on the face of it does not contain the facts constituting the offences charged that the prosecution is bound to adduce evidence that all such essential facts were placed before the sanctioning authority. Consequently, I am unable to hold that there is a lacuna in the sanction, which should have been remedied by the prosecution in the

course of the trial by adducing specific evidence that all the essential facts constituting the offences charged were brought to the notice of the sanctioning authority. The authorities cited by the learned Counsel for the appellant are distinguishable on facts. In *Madan Mohan v. State of Uttar Pradesh* (supra) the facts constituting the offences were not set out in the letter of sanction, Their Lordships of the Supreme Court, therefore, relying on *Gokul Chand Dwarka Das v. The King* (supra) observed that it was the duty of the prosecution to prove by extraneous evidence that the essential facts constituting the offences were brought to the notice of the sanctioning authority before it sanctioned the prosecution. I may quote the relevant observations made by their Lordships in this behalf at page 641:

'In the present case the facts constituting the offence do not appears on the face of the letter Ex P.10. It was consequently incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority. This they did not attempt to do.

A question was put to Mr. Dikshit (P.W. 6) who gave evidence on this point as to whether the material facts were brought to the notice of the Excise Commissioner. The reply given by the witness is as follows:

A detail of this case has been sent to the Excise Commissioner. The said details, are in the confidential file at my place. I do not want to show these details. We think that the appellant is right in his contention that the prosecution instead of proving what facts were placed before the Commissioner deliberately withheld them from the Court. The sanction must therefore be held to be defective and an invalid sanction could not confer jurisdiction upon the court to try the case.

In the other Supreme Court case *Jaswant Singh v. State of Punjab* : 1958 CriLJ265 , their Lordships observed that the sanction is nor a mere formality and that the authority giving the sanction must consider the evidence before it makes up its mind to accord the sanction or to withhold it. After quoting the relevant observations of the Judicial Committee of the Privy. Council in *Gokul Chand Dwarka Das v. The King*, their Lordships further observed that from the sanction itself it should appear that the authority giving the sanction considered the

evidence before it and after taking into consideration all the circumstances of the case sanctioned the prosecution. The relevant observations may be quoted below:

It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case.

In the Rajasthan case of Mithan Lal v The State (supra), the Collector, who accorded the sanction, admitted in his deposition that the sanction was accorded by him after going through the factual report of the Anti-Corruption Department only and that he had not perused the statements of the witnesses, as they were not sent to him along with the factual report. In view of these facts, his Lordship Kan Singh, J. observed as follows:

On the face of it, the sanction is all right and if the matter had stood at that, perhaps there was very little that the learned Counsel for the appellant could urge. However, it appears that the Collector Mr. D.C. Joseph had appeared as a witness in the case as P. W 3 and he had stated the circumstances which led him to accord the sanction. He stated on the 1st October, 1964, the day on which he issued the order of sanction for prosecuting the appellant Mithan Lal, he was Collector at Sawai Madhopur. He stated that the sanction was issued by him after the perusal of the factual report of the Anti Corruption Department and after considering the same and on coming to the conclusion that there were grounds to believe that Mithan Lal Patwari had accepted illegal gratification from Kirori. He admitted in cross-examination that the factual report was received by him but he did not receive the statements of witnesses. The factual report that led the Collector to issue the sanction was, however, not brought on the record.

From a bare reading of paras 1 to 8 of the sanction Ex. P. 1, it appears that the sanctioning authority carefully examined the material before it in regard to the allegations made against O.P. Mathur appellant and after considering all the facts and circumstances accorded the sanction for his prosecution. The sanction

discloses when or at what period of time and at what place and in what manner and in whose presence the alleged offences were committed by the appellant. Hence to my mind, no fault can be found with the sanction in this case as all the material containing essential facts was before the sanctioning authority before it decided to lift the bar to the prosecution of the appellant.

6. Another contention put forward by the learned Counsel for the appellant is that O.P. Mathur never asked for a bribe, nor was there any occasion for demand of illegal gratification by him from Shri R.K. Malik. According to the learned Counsel, there was no case pending investigation against Shri R.K. Malik and, therefore, it was not within the powers of the appellant to show any favour to him and in these circumstances no money could have been paid to the appellant as a motive or reward for doing anything for Shri R.K. Malik. The above contention has no force, because there is reliable evidence on the record that the appellant sent a telegram Ex. P. 62 to Loco Foreman, Phuldra on 20th April, 1969, for securing the attendance of Shri R. K. Malik before him in connection with some investigation of a case (Cr. No. 9 of 1969). The telegraphic message reads as below:

Investigation delayed due to non-attendance of driver Malik R.K. Send driver Malik by first train.

Shri R.K. Malik stated on oath that in response to the telegraphic call he came to Jaipur from Ajmer on 22nd April, 1969 and met the appellant in the afternoon of 23rd April, 1969. On that day the appellant informed him that he would be arrested in case Cr. No. 9 of 1969 as there were allegations against him also that he pilfered and dropped two bags of coal at railway crossing No. 222 and that he could be released on bail, provided he produced a surety. Thereupon Shri R.K. Malik went away in search of a surety and after some time reappeared before the appellant along with Fakir Chand Mehta, P. W. 10, who offered himself to stand surety for Shri R.K. Malik, but the appellant refused to accept Shri Mehta's surety bond on the ground of his being a public servant. This part of the story given out by Shri R.K. Malik in his deposition is fully corroborated by the testimony of Shri Mehta PW 10, who is an independent witness having no enmity or personal grudge against the appellant. From his evidence it is established that on a flimsy

ground of his being a public servant the appellant refused to accept him as a surety and told him that the question of Shri R.K. Malik's bail would be considered later on, after his interrogation. In view of the evidence of Shri Fakir Chand Mehta the contention of the learned Counsel for the appellant to show any favour to Shri R.K. Malik loses its force, because if the appellant merely wanted to interrogate Mr. Malik in Cr. No. 9 of 1969 pending before him for investigation, he would not have directed Shri R.K. Malik to bring a surety and would not have told Shri Fakir Chand Mehta that the question of bail would be considered later on after interrogation.

7. Shri R.K. Malik further deposed that after Shri Fakir Chand Mehta had gone away from there the appellant demanded a bribe of Rs. 1000/-, from him for finally dropping the charge against him, Mr. Malik made entreaties to the appellant that he was innocent and unable to give any bribe and that he might be relieved to join his duty at Phulera. The appellant thereupon told Mr. Malik that if the latter wanted to be relieved immediately, he would have to make a part payment of Rs. 500/-, as bribe and the rest of the amount he could pay after some days for getting the case finally hushed up against him. This part of the version given out by Mr. Malik stands uncorroborated because, at that time when the appellant had first demanded the bribe from him, no other person was present, but this fact that there was a demand of bribe from the side of the appellant is fully corroborated by the evidence of Shri Sudarshan Chandra Sharma, PW 4, an eye witness to the trap laid, later on, by the Special Police Establishment Inspector on 24th April, 1969. Shri Sudarshan Chandra Sharma, PW 4, stated in his deposition that at about 4 p.m. when Shri R.K. Malik met O.P. Mathur at a place where the road leading from Ganpati Nagar joins the main road, the latter after getting down from his bicycle asked the former (Mr. Malik) whether he had brought the amount for him. Shri R.K. Malik gave the reply that he had brought Rs. 500/-, as desired by the appellant. Then Shri R.K. Malik requested the appellant that the relieving letter should be issued, so that he might go by evening train and join his duties. O.P. Mathur asked R.K. Malik to accompany him to the Goods Shed where relieving letter would be given to him. Thereafter both Shri R.K. Malik and the appellant went towards the Goods Shed Office after crossing the main gate of the Goods Shed. The evidence of Shri Sudarshan Sharma, PW 4, therefore lends assurance to the version given

out by Shri R.K. Malik that the appellant demanded bribe from him for issuing a relieving letter.

8. The contention of the learned Counsel for the appellant that it is not proved in the present case that the appellant could have made a demand of bribe as a motive or reward for doing or for forbearing to do an official act or for showing favour to Shri R.K. Malik in the exercise of his official functions is, therefore, devoid of substance, because for the purpose of obtaining illegal gratification from Shri R.K. Malik the appellant being an investigating officer could finally drop the charge of pilfering coal against him after receiving bribe. The prosecution need not prove in a case under Section 161, I.P.C. that the act for doing which the bribe was given should actually be performed or that the public servant demanding the bribe should be capable of performing it. It is sufficient in order to constitute an offence under Section 161, I.P.C. that a representation was made to the person from whom bribe was demanded that some favour would be shown to him in the exercise of official functions. If by making such representation a public servant obtains a bribe, he would be guilty of the offence under Section 161, I.P.C. Reference in this connection may be made to an authority of this Court reported as *State of Rajasthan v. Mohammed Habib* 1972 RLW 482, wherein their Lordships relying upon *Indur Dayal Das v. State of Bombay* : AIR1952 Bom58 and *State v. Sadhu Charan* : AIR1952 Ori73 and upon the explanation to Section 161, I.P.C. have made the following observations at page 488:

From the explanation and the illustration referred to above it appears to us that it is not necessary in order to constitute an offence under Section 161 that the act for doing which the bribe is given should actually be performed or that the public servant should be capable and competent of performing it. It is sufficient if a representation is made that it will be performed and a public servant obtaining a bribe by making such representation will be guilty of the offence punishable under this section even if he had no intention to perform that act. It can be urged with plausibility that a representation by a person that he will do an act impliedly includes a representation that it is within his power to do that act and it is immaterial whether the act which is the consideration for the bribe is or is not within the power of the public servant.

9. The prosecution has led cogent evidence to prove that the appellant obtained a bribe, of Rs. 500/-, from Shri R.K. Malik near the brake-van. Shri Sudarshan Chandra Sharma has clearly deposed to this fact. His evidence on this point is that when Shri R.K. Malik and the appellant went towards the Goods Shed office after crossing the main gate of the Goods Shed, he followed them. The other members of the raiding party had already reached the main gate of the Goods Shed. O.P. Mathur and Shri R.K. Malik stopped near the merchants waiting hall. The appellant kept his bicycle near the merchants waiting hall, and took out some papers from his pad, which was (sic) on the carrier of the bicycle and proceeded along with Shri R.K. Malik towards the railway line after crossing the A.M.I. godown and halted by the side of a brake van which was standing on the first railway line. Shri Sudarshan Sharma stopped near the A.M.I. godown along with A.S.I. Shri Chunni Lal, wherefrom he could easily see the appellant and Shri R. K Malik. Then after a short while Sudarshan Chandra Sharma saw that O.P. Mathur wrote something on a piece of paper and handed it over to Mr. Malik, who also wrote something on it and gave it back to the appellant. O.P Mathur then handed over one paper to R. K Malik, who immediately took out currency notes from the right side pocket of his pantaloons and handed them over to O P. Mathur. O.P. Mathur took those notes in his hand and put them in the right upper side pocket of his bush-shirt, The testimony of Sudarshan Chandra Sharma on the aspect of the acceptance of the bribe by O.P. Mathur finds support from the depositions of P. D Ajndera, P.W. 2 and K.L Rao, P.W. 11, P.N. Shukla P.W. 20 and Shri R.K. Malik in all essential particulars. Shri P.D. Ajndera was standing at a distance of 90 or 100 ft. from the brake van when the Government currency notes were given by Shri R.K. Malik to the appellant. He claimed to have seen O.P. Mathur appellant counting the currency notes but he could not see whether they were five in number. Likewise Shri K.L. Rao stated in his deposition that at the time of passing over of the money to the appellant, he was standing near Pucca Chowk at a distance of about 60 ft. from the brake van and that he saw R.K Malik handing over the Government currency notes after taking them out from his pocket to O.P. Mathur, who stretched his hands to accept the same and after counting them put them in the right side upper pocket of his uniform bush-shirt. Similar is the statement of Shri P.N. Shukla, PW 20 on this aspect of the case. He also claimed to have seen the

passing of the money from a distance of about 60 to 65 ft. Shri R.K Malik was the person who had given the bribe to O.P. Mathur. His evidence is that O P. Mathur accepted the five currency notes of Rs. 100/., cash from him and put the notes in the pocket of his bush shiri after counting them. The learned Counsel appearing on behalf of the appellant could not succeed in assailing the evidence of these persons on reasonable ground. Nothing material has been elicited from their cross-examination which may detract from the value or veracity of their version so far as it relates to the factum of acceptance of bribe by the appellant. The learned Counsel for the appellant, however, strongly contended before me that the trial court committed an error in relying upon their testimony without corroboration from independent source. According to his submission, these witnesses had made themselves agents for the prosecution and in their enthusiasm to entrap the appellant had spoken falsehood in spite of the fact that no bribe was accepted by O.P. Mathur near the brake-van, According to him their evidence being that of highly interested witnesses could not be relied upon without being corroborated by some independent evidence. In support of his above proposition he referred me to Shiv Bahadur Singh v. State of Vindhya Pradesh : 1954 CriLJ910 , Ram Krishna v. Delhi State : 1956 CriLJ837 , Dalpat Singh v. State of Rajasthan : 1969 CriLJ262 , and State of Bihar v. Basawan Singh : 1958 CriLJ976 wherein it has been held that the evidence of witnesses, who take part in the laying of a trap in case of bribery, cannot be treated as that of accomplices, but it can be regarded as evidence of partisan witnesses, because they are naturally interested in the success of the trap and their evidence cannot be acted upon without independent corroboration. In State of Bihar v. Basawan Singh (supra) which was relied upon in B.P. Arora v. State of Punjab : 1972 CriLJ1293 their Lordships made it clear that the decision in Bahadur Shingh v. State of Vindhya Pradesh (supra) did not lay down any invariable rule that the evidence of any person taking part in the raid must be brushed aside in the absence of independent corroboration. The correct rule laid down by their Lordships in their subsequent authorities is that if such witnesses are accomplices, their evidence would require confirmation as that of an accomplice would do, but if they are not accomplices but are interested in the success of the trap only, their evidence must be treated as that of interested or partisan witnesses and should be tested by all possible checks available on the

record of a particular case and that in a proper case it may not be acted upon without independent corroboration. The relevant observations made by their Lordships in *State of Bihar v. Baswan Singh* are quoted below:

AIR 1954 SG 322 did not lay down any inflexible rule that the evidence of the witnesses of the raiding party must be discarded in the absence of any independent corroboration. The correct rule is thus : if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices but if they are not accomplices but are partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application for diverse considerations which must vary from case to case, & in a proper case, the Court may even look for independent corroboration before convincing the accused person.

In the present case, the evidence of Sudarshan Chandra Sharma appears to be true and weighty. This witness had no relations with Shri R.K Malik, nor was he associated in any manner with the Special Police Establishment personnel. On 24th April, 1969, he was working as a clerk in the office of the Superintendent, post-offices. He was directed by the Superintendent, post-offices to proceed to the Special Police Establishment Office and contact Shri P.D. Ajmera, Inspector in connection with some confidential work. He accordingly left his office and reached the office of the Special Police Establishment, He contacted Shri P D. Ajmera in his office room and there he was informed that a trap was going to be laid and that his presence was required as a Motbir to eye-witness the transaction. Shri Sudarshan Chandra Sharma could not be said to have been under the influence of the Special Police Establishment personnel or Shri R.K. Malik, because he did not even know them previously. There is no reason to suppose that he was interested in falsely implicating the appellants in this case even if no bribe was accepted by the latter. Nevertheless there is independent corroborative evidence of Mahabir Singh, PW 18 on the record to lend assurance to the testimony of Sudarshan Chandra Sharma and the other members of the raiding party. Mahabir Singh stated on oath that on 24-4-1969, he was working as Dy. Chief Goods Clerk at railway station, Jaipur He went to the office of the Divisional Superintendent in the

after noon and came back at about 5 15 p m. He entered the merchants waiting hall and saw O.P. Mathur appellant coming into the hall followed by Special Police Establishment Inspectors. In his presence the Inspectors disclosed their identity to O P. Mathur and told him that, as he had accepted bribe, they wanted to arrest him. The Inspectors then asked O P. Mathur to produce the amount obtained by him as bribe. They showed their identity cards to the appellant but the latter did not produce the money and tried to make good his escape. The Special Police Establishment Inspectors, thereupon, caught hold of him. The appellant and the Special Police Establishment Inspectors began to struggle with each other. Meanwhile Madhu Singh Constable of the Railway Protection Force came into the hall. The Inspectors asked Madhu Singh not to intervene because they had caught hold of the accused in a bribe case. The inspectors then asked this witness to go away from there and to attend to his work. Mahabir Singh retired from there and occupied his seat. After Some time he saw a good number of persons armed with lathis and stones coming into the merchants hall and noticed that glass panes of the doors and windows were broken. One of the Special Police Establishment Inspector came to the Chief Goods Clerks room from the merchants waiting hall for making a telephonic call Later on he saw the Deputy Superintendent of Police of the Special Police Establishment coming there with some officers of his staff. This witness guarded his safe in which cash was lying while other Clerks of the office left their seats and went out of the room. The testimony of Mahabir Singh has not been shaken at all in cross-examination. The learned Counsel for the appellant could not assail his evidence before me also from his evidence which appears to be true and reliable, it is fully established that O P. Mathur was caught hold of by the Special Police Establishment Inspectors in the merchants waiting hall at about 6 15 p.m. and was asked to produce the money which he had accepted as bribe. The appellant, thereupon, did not say that he had not accepted the bribe. He, on the other hand, tried to make good his escape, but he was detained and caught hold of by the Special Police Establishment Inspectors, who had already disclosed their identity and shown identity cards to him. Had there been no bribe money with the appellant at that time, he would have surely denied the charge of acceptance of bribe and would have allowed the Special Police Establishment Inspectors to search his person His unusual conduct in avoiding the

arrest by trying to make good his escape from there may reasonably lead to an inference that the bribe money was with him at that time. The evidence of Shri P.D. Ajmera, K.L. Rao, P.N. Shukla and Sudarshan Chandra further goes to establish that O.P. Mathur used force in preventing these persons from making recovery of the currency notes which he had accepted from Shri RK Malik as bribe. According to their version, being physically stronger, O.P. Mathur kicked and gave jerks to Sarveshri P.D. Ajmera, K.L. Rao and P. N. Shukla to disengage himself from their grips-and hurled abuses on them. Sbn K L Rao apprehended immediate danger to the lives and limbs of the raiding party when he saw R P F Constables coming to the help of O.P. Mathur. He ran to the office of the Chief Goods Clerk to send telephonic message to the Special Police Establishment for help. The message given by Shri K.L. Rao upon telephone was recorded in the S.P.E. office in the general diary which is Ex.P.5, on the record. After making the call at 5 20pm Shri K.L Rao returned to the merchants-waiting-hall and directed Chunni Lal ASI to close the outer doors of the office of the Chief Goods-Clerk and the hall in order to prevent the Constables of the Government Railway Police to come in and help the appellant, because the appellant had asked Madhu Sing to call more Constables to get him freed. On finding the doors being closed O.P Mathur lay himself flat on his belly on the floor of the hall and put his both hands on the pockets of his bush-shirt. The Inspectors of the Special Police Establishment tried in vain to make him stand on the ground by catching hold of his arms. Thereafter a number of Constables of the Railway Protection Force entered the merchants-waiting-hall through the room of the Chief Goods-Clerk and began to beat the Inspectors at the instigation of the appellant in spite of the warning given to them by the latter. As a result of the beating, Sarveshri P.N. Shukla, K.L. Rao and P.D. Ajmera received injuries on different parts of their bodies. O P Mathur meanwhile, freed himself and after snatching a short stick from one of the Constables of the Railway Protection Force inflicted a blow with it on the head of Shri P.N. Shukla. The Constables of the Railway Protection Force pushed Shri P D. Ajmera, Shri P.N. Shukla out of the merchants waiting hall. The appellant slipped away into the room of the Chief Goods Clerk. On seeing him making good his escape, Shri K L. Rao ran away after him but he was assaulted and pushed out of the hall. In this manner the appellant made every effort to

prevent the raiding party from making recovery of bribe money from his person. Had he been innocent, he would not have taken recourse to the use of force and would not have directed the Railway Protection Force Constables to beat Special Police Establishment Inspectors for the purpose of enabling him to make good his escape. The evidence of Sarvashri P.D. Ajmera, K.L. Rao and P.N. Shukla that they had received injuries on their person during the scuffle is corroborated by the testimony of Dr. S.N. Dugar, who upon medical examination of their bodies had detected a good number of injuries. Consequently I have no hesitation in holding that O.P. Mathur accepted bribe from R.K. Malik at the time and place and in the manner alleged by the prosecution.

10. There is a reliable evidence on the record to prove that the bribe money, i. e. five currency notes of Rs. 100/-, each were recovered from the pocket of the bush shirt of the appellant in the presence of Ram Chandra, Deputy Superintendent of Police, Sudarshan Chandra Sharma, Mahendra Singh, Sheocharan Jha and Radha Krishna Malik. The learned Counsel appearing on behalf of the appellant vehemently contended before me that the currency notes were planted in the pocket of the bush-shirt of the appellant while it was laying on a table in the gallery of the merchants waiting hall. The above contention has no force, because the recovery was made in the office of the Chief Goods Clerk after the appellant was brought down stairs by Ram Chandra and his party and was made to sit in that room on a chair. The currency notes accepted by the appellant as bribe would have been recovered from the bush shirt of the appellant while he was wearing it, if the appellant on getting an opportunity had not taken it off all of a sudden and has not put it on the table lying in front of him. The evidence of Shri Ram Chandra, Deputy Superintendent of Police, Shri Sudarshan Chandra Sharma and Shri Sheocharan Jha on the point of recovery is that when Shri Ram Chandra, Deputy Superintendent of Police was talking to Shri Sheocharan Jha in the room of the Chief Goods Clerk, O.P. Mathur took off his bush shirt and put it on the table lying in front of him. Shri Ram Chandra asked the accused why he had taken off his bush shirt and placed it on the table. The appellant did not give any answer and kept quiet. The Deputy Superintendent of Police then asked Shri Sudarshan Chandra Sharma to give his search to the appellant. O.P. Mathur searched the person of Shri Sudarshan Chandra Sharma and did not find anything. Then Shri

Ram Chandra, Deputy Superintendent of Police asked Shri Sudarshan Chandra to search the bush-shirt of the appellant. Shri Sudarshan Chandra searched the bush-shirt of the appellant and recovered five Government currency notes of the denomination of Rs. 100/, each and one letter from its upper right side pocket and compared the numbers of the note⁹ with the numbers mentioned in memo Ex. P 3. On comparison the numbers of the Government currency notes recovered from the pocket of the appellant tallied with the numbers recorded in memo Ex. P. 3. Thereafter Shri Ram Chandra, Deputy Superintendent of Police and other witnesses to the recovery also made comparison and found that the number of Government currency notes were the same as mentioned in the memorandum Ex. P. 3. The Deputy Superintendent of Police then called for a tumbler of water which was brought. He mixed sodium powder in the water and prepared a solution which was colourless. He then dipped the upper right pocket of the bush-shirt of the appellant, wherefrom five Government currency notes were recovered, in that solution. Upon the pocket being dipped therein, the solution changed colour and turned purple. The purple coloured mixture was filled in an empty bottle, which was thereafter sealed properly. Specimen impression of the seal was also embossed on the recovery memo, which was prepared at the spot after the recovery. There is no merit on the contention of the learned Counsel for the appellant that the currency notes were planted into the pocket of the bush-shirt of the appellant by Mahendra Singh or the Deputy Superintendent of Police, in the absence of the appellant. It does not stand to reason, nor does it fit in with the probabilities of the case that the Deputy Superintendent of Police or Mahendra Singh had openly planted the currency notes in the pocket of the bush shirt of the appellant when, according to the learned Counsel, there were many outsiders who were watching the recovery. The evidence of Shri Sheocharan Jha relating to recovery of the Government currency notes from the pocket of the bush-shirt of the appellant cannot be brushed aside, because he was not a member of the raiding party from the start. It was only when Shri G.D. Sarma Motbir had run away from there during the scuffle that ensued between the Inspectors of the Special Police Establishment and the appellant and his party, the Deputy Superintendent of Police Shri Ram Chandra asked Shri Chunni Lal, ASI. to bring some other respectable person to eye-witness the recovery. Shri Sheocharan Jha was a

Mechanical Inspector in the office or the Regional Transport Officer, Jaipur. He was going from his office towards Ajmer Road. When he passed by the Railway Goods Shed, he heard some noise and saw some injured persons being taken towards hospital. Out of curiosity he stopped there for a while. At that time Shri Chunni Lal, A.S.I. requested him to play the role of a witness. When he reached the room of the Chief Goods Clerk, nobody was there in the room. After a short while, Shri Ram Chandra, Deputy Superintendent of Police brought the appellant from upstairs and made him to sit on a chair in the room. Shri Sheocharan Jha had no enmity with the appellant, nor he was interested in the success of the trap. If the currency notes were not recovered in his presence from the pocket of the appellant, he being a disinterested witness, would not have falsely deposed to this fact. Even if the evidence of the Deputy Superintendent of Police Shri Ram Chandra, Shri Mahendra Singh and Shri R.K. Malik is excluded from consideration on account of their being partisan witnesses and interested in entrapping the accused, the testimony of Shri Sheocharan Jha proves the factum of recovery of the bribe money beyond reasonable shadow of doubt especially when it has not been shaken at all in lengthy cross-examination on behalf of the appellant.

11. The learned Counsel for the appellant has strenuously urged before us that the evidence led by the defence proves the innocence of the appellant, and that it was lightly brushed aside by the trial Judge on imaginary & flimsy grounds. He further submitted that the defence version about planting of currency notes in the pocket of the bush-shirt of the appellant is probablistic by the testimony of Makhan Lal, PW 12 and Shri Om Prakash DW 2 whose presence at the spot had been admitted even by the prosecution. I have given my anxious consideration to the above contention. At the outset I may observe that the appellant has produced eight witnesses to show that the relieving order was given to Shri R.K. Malik at his residence in the afternoon of 23rd April, 1989 without demanding any illegal gratification from the latter and that later on the Special Police Establishment personnel being annoyed with the appellant caught him in the gallery of the merchants waiting hall and in his absence planted the five currency notes of the denomination of Rs. 100/-, each in the pocket of his bush shirt which was laying on the back of his chair. The evidence of these witnesses is highly incredible because they claimed to have been the planning of the currency notes by Ram Chandra

and Mahendra Singh in the pocket of the bush-shirt of the appellant in the gallery at about 9 p. m on 24th April, 1969 It is proved by oral as well as documentary evidence that the whole of the incident was over at 7 15 pm It is highly unbelievable that the Special Police Establishment Officers would openly plant currency notes in the pocket of the bush shirt of the appellant in the latter's absence when according to the appellant a goods number of persons-strangers as well as his relatives--were present there and were closely watching all that was happening. The evidence of Makhan Lal PW 12 is entirely untrustworthy. He was declared hostile by the prosecution, because of his leanings towards the appellant. He claimed to have searched the pockets of the bush-shirt of the appellant in order to find out the bunch of keys but this part of his story is contradicted by the fact that the bunch of keys was recovered upon search of the person of the appellant from the pocket of his pantaloons which he was wearing at the time of his search. The recovery memo Ex P 6 of the articles which were recovered from the person of the appellant, definitely reveals that the bunch of keys was lying in the pantaloons pocket and not in the bush-shirt Hence the story invented by the defence that there were no currency notes in the pocket of the bush-shirt is falsely and highly incredible. It is not understandable why Makhan Lal, PW 12 did not take the bunch of keys out of the lower right hand pocket of the bush -shirt of the appellant when he was asked by the appellant to take it out. He gave an unconvincing explanation that it was a police case and, therefore, he thought that he should not take the bunch of keys out of the pocket of the appellant. If this was the fear in his mind, then why did he put his hand into the pocket of the bush-shirt of the appellant? Apart from this, it is not believable that the Deputy Superintendent of Police Shri Ram Chandra and the Special Police Establishment Inspectors would have allowed him to search the pockets of the bush shirt of the appellant without their permission before the recovery was made. Shri Makhan Lal admitted in his cross examination that he did not tell about this incident to any other person till he was examined at the trial. He further admitted that the Investigating Officer interrogated him in this case about some record of his office, but he did not consider it necessary to say anything about this incident to the Investigating Officer, although he knew that these facts within his knowledge had an important bearing on the merits of the case under investigation. This

witness appears to be highly interested in the appellant, because he produced letter Ex P 13/X dated 24th April, 1969, saying it to be the original letter which he wanted to deliver to O.P. Mathur without being required to produce it by the court of by the prosecution or by the defence. He admitted in his cross examination that he took out the original letter from the file of his office without bringing it to the notice of his superior offices that he had taken this letter out of the office file. Likewise, the evidence of Shri Prem Prakasb Mathur, DW 1, Om Prakash, Photographer, DW 2, Lachmi Naram, DW 4, Dinesh Kumar, DW 5, K.N. Mathur, DW 7 and Gulab Singh, DW 8 does not inspire confidence. According to these witnesses the Government currency notes were planted in the pocket of the bush shirt of the appellant at about 9 p. m. on 24th April, 1969, but it is established beyond doubt by the evidence adduced by the prosecution that the raiding party started for laying trap on 24th April, 1969 at 3 45 p. m. There is an entry to this effect in the general diary of the Special Police Establishment, which is Ex. P 4 At 5 20 p. m a message for help was received upon telephone by the Special Police Establishment Office as is evident from the entry Ex. P. 5 made in the general diary. Upon receiving this message, Deputy Superintendent of Police, Shri Ram Chandra and his party rushed to the merchants waiting hall to help Shri P.D. Ajmera, Shri K.L Rao and others. There is another entry Ex. P 14 made in the general diary of the Special Police Establishment which further" shows that the Deputy Superintendent of Police and his party returned at 8 p. m. to the office of the Special Police Establishment after making the recovery of the Government currency notes from the appellant. Shri Ram Chandra recorded the first information report of this case as the Superintendent of Police, S.P.E. was out of station An entry to this effect is made in the general diary at 9 p.m. These entries are fully proved by the evidence of Shri Ram Chandra, Deputy Superintendent of Police The timings mentioned in these entries appear to be correct, because Shri Sheocharan Jha definitely staled in his deposition that he left the Goods Shed premises by 7.30 or 8 p.m. after the recovery of the currency notes was made and the necessary memos were prepared. If the recovery of the currency notes had been made before 8 p m. it was highly improbable that the aforesaid defence witnesses would have 3een planting of the currency notes into 'he pocket of the bush-shirt at or after 9 p.m. Om Prakash, Photographer, DW 2, on whose evidency

much reliance has been placed by the learned Counsel for the appellant, stated on oath that at 9 p.m. one Hanuman Singh had come to his shop Amar Photo Studio and requested him that his services were required for taking some photos in the merchants waiting hall. If his evidence is accepted to be true, then, according to him, the planting of currency notes in the pocket of the bush shirt of the appellant was made by Mahendra Singh and Deputy Superintendent of Police Shri Ram Chandra after 9 p.m. It is no doubt true that Om Prakash took some photos at the instance of the Special Police Establishment personnel but his evidence that he was called upon to take photos at 9 p.m. is highly incredible. He produced an entry Ex. D 3 in the register mentioned at his shop wherein the time of his departure was shown to be 9 p.m. but this entry has not been made by him. The person who had made this entry has not been produced by the defence. In his cross-examination he admitted that in the register in which entry Ex. D 3 was made, no time of taking photographs was recorded against other entries except the two entries, out of which one is Ex. D 3. He could not say why time was recorded against another entry No. 5256. He merely stated that the Manager could not say about the reason. The entry Ex. D 3 is, therefore, not free from suspicion. As stated earlier, these witnesses in their zeal to save O.P. Mathur from the clutches of law invented a false story that Makhan Lal had searched the pockets of the bush-shirt of the appellant for taking out a bunch of keys and that nothing was found in the pocket. There is definite evidence from the side of the prosecution that the bunch of keys was later on recovered from the pantaloons of the appellant, which he was wearing at that time. Besides the evidence of these persons is highly contradictory. Some of these witnesses even go to the length of saying that the officers of the Government Railway Police and Special Police Establishment themselves damaged the merchants waiting hall by breaking the window panes, throwing wooden pieces and by spitting betel on the floor so as to create evidence that there was a fight between them and the party of the appellant, and that the Constables of the Railway Protection Force caused serious injuries to their party. Dinesh Kumar Srivastava, DW 5, gave out a false version by stating that the injuries caused to the S.P.E. staff were inflicted on their bodies by their own companions when they were making an attack on the accused and the Railway Protection Force staff. Apart from this, Lachmi Narain and Dinesh Kumar were

chance witnesses having no business to be present there. According to Lachmi Narain, he was informed on 24th April, 1969 at Chandpol Market by Dinesh Kumar, DW 5, that his nephew Basanti Lal who was serving a Jamadar in the Railway Protection Force had been transferred from Bharatpur to Jaipur Goods Shed. As he wanted to see him, he asked Dinesh Kumar to reach the Goods Shed at about 4 30 p m. and both of them went to the Goods Shed and waited for Basanti Lal. In his cross-examination he admitted that as soon as he reached the Goods Shed, he and Dinesh Kumar made inquiries about the transfer of Basanti Lal but they were informed that he had not come to Jaipur. He admitted in his cross-examination that he inquired about the transfer of Basanti Lal from some railway employees and coolies and was informed that Basanti Lal had not come, there. He further admitted that Basanti Lal has not yet been transferred from Bharatpur to Jaipur and is still serving at Bharatpur. Dinesh Kumar further admitted that after they were informed that Basanti Lal had not come there from Bharatpur, they waited for making further inquiries about his arrival. If they knew it well from inquiries that Basanti Lal had not come there, there was no reason why they chose to remain there for long. It appears from their evidence that they have introduced this false story of Basanti Lal's transfer from Bharatpur to Jaipur in order to dispel all doubts about their presence at that time. Shri Prem Prakash Mathur, on the other hand, gave a different version by stating that Lachmi Narain on being questioned informed that he had come to Goods Shed for business purposes. Upon careful review of the evidence of the defence witnesses, I have come to the conclusion that it is highly untrustworthy and that the trial court rightly disbelieved it.

12. Lastly, it was contended on behalf of the appellant that the prosecution could not afford any reasonable explanation why the fingers of Om Prakash accused were not dipped in the solution of sodium carbonate and why: the pocket or the bush-shirt, which was dipped in the said solution did not change colour. According to his submission, if the Government currency notes discoloured with phenol phthalain powder were accepted from Shri R.K. Malik by the appellant in his hand, the fingers, if dipped into solution of sodium carbonate, must have changed colour of the solution and if such notes were put by the appellant in the pocket of his bush-shirt, the pocket must have changed its colour upon being dipped in the

solution. The above contention is devoid of substance, because according to the prosecution the fingers of Om Prakash appellant were not dipped into the solution, as he had blood-stains on his fingers and as his fingers had come into contact with other objects during the scuffle that ensued between him and the S.P.E. personnel. The explanation given out by the prosecution appears to be reasonable and convincing. No useful purpose could have been served by dipping the fingers of Om Prakash into the solution as there is reliable evidence on the record that he used his hands in snatching a 'Danda' from one of the Constables of the R.P.F. and inflicting a blow with it on the head of Shri K.L. Rao and that his fingers had come into contact with other objects while he was lying on the ground in the merchants waiting hall with his hands tightly holding the pockets of his bush-shirt. There is further cogent evidence from the side of the prosecution that the pocket of the bush shirt from which the currency notes were recovered changed the colour of the solution of sodium carbonate on being dipped into it. If no currency notes bismearred with phenol phthalain powder had been kept in the pocket of the bush-shirt, it would not have caused the colour of the solution changed into a purple one. The mere fact that the pocket of the bush-shirt, from which currency notes were recovered, did not turn purple on being dipped into the solution of sodium carbonate, does not necessarily lead to an inference that currency notes bismearred with phenol phthalain powder were not kept in it, especially when there is credible evidence on the record that Om, Prakash Mathur accepted the currency notes from Shri R K. Malik and put them into the pocket of his bush shirt and that those very currency notes were recovered from his pocket in the presence of Motbirs. It was possible that the colour of the pocket, which contained the currency notes bismearred with phenol phthalain powder, did not change on being dipped into the solution because of meagre quantity of phenol phthalain powder left in it after the notes were taken out of it.

13. The prosecution has succeeded in proving both the charges under Section 161. IPC and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act beyond reasonable shadow of doubt against the appellant. The sentence parsed against him is not severe. There are no mitigating circumstances to justify a lenient sentence.

14. The appeal, therefore, fails and is hereby dismissed. The appellant is on bail. He shall surrender to his bail bonds. As he is not present today in court, District Magistrate, Jaipur, is directed to get him arrested and send to jail for serving out the sentence awarded to him by the learned Special Judge, Rajasthan, Jaipur.

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