

**Kitab Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Mar-26-1999

**Reported in :** 1999CriLJ3590; 2000(1)WLC75; 1999(1)WLN390

**Judge :** Mohd. Yamin, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 161 and 435; [Prevention of Corruption Act, 1947](#) - Sections 4 and 5(1); Code of Criminal Procedure (CrPC) - Sections 107, 164, 182 and 313

**Appeal No. :** Crl. Appeal No. 254 of 1990

**Appellant :** Kitab Singh

**Respondent :** State of Rajasthan

**Advocate for Def. :** L.R. Upadhyaya, Public Prosecutor

**Advocate for Pet/Ap. :** M.L. Garg, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Mohd. Yamin, J.**

1. Appellant Kitab Singh was convicted for offence under Section 161 IPC and Section 5(1)(d)(2) of the Prevention of Corruption Act by learned Special Judge,

Udaipur on 16-8-1990. He was sentenced to six months imprisonment with a fine of Rs. 500/- and in default to 15 days imprisonment under each count.

2. The case of the prosecution in brief is that appellant was posted as Station House Officer, Delwara District Udaipur on 24-3-1984 and 25-3-1984. Bagh Singh complainant reported to the Additional S.P., Anti Corruption Department on 24-3-1984 at 3:30 p.m. that on 1-3-1984 the officers of Excise Department raided the houses of Mohapat Singh, Vijay Singh and Bhanwar Singh Rajput in his village. Illicit liquor was recovered. These Rajputs had a suspicion that complainant Bagh Singh arranged the raid. These persons quarreled with Bagh Singh and threatened that they would kill him. Then they burnt. agriculture implements lying at his field during night and also removed other articles. He reported the matter at Police Station Delwara on 2-3-1984. At that time Shri Kanhaiyalal ASI was the incharge of police station. He would not hear him and demanded Rs. 700/-. The complainant paid him Rs. 500/- but he was transferred next day to police lines. Thereafter the appellant had come at the police station who sent Ramlal constable to him as well as to summon the Rajputs. The complainant and his witnesses reached Delwara police station but the appellant did not examine his witnesses Lal Singh and Nirbhay Singh and asked him to come next day. On 23-3-1984 when complainant reached the police station, appellant was not available. Appellant met him on 24-3-1984 and statements of Lal Singh were recorded in the morning. The appellant asked him whether he had brought money? The complainant refused and then the appellant demanded a sum of Rs. 200/- and told that the work would be done only afterpayment was made. The appellant was to go somewhere. He asked the Head Moharir to make the complainant sit and further asked that he may not allow the complainant to go any where till he returns. The complainant then asked the Head Moharir to permit him to go to take his food and then he went to the Additional S.P. He also informed that the appellant was out of police station on that day and that he would be available on the next day. The Additional S.P. directed him to come at 7:00 a.m. on 25-3-1984 alongwith Rs. 200/-. He also arranged for some witnesses.

3. At 7:00 p.m. on 25-3-1984 Bagh Singh came to out post. Shri Mohd. Hussain, Shri Bhopal Singh were introduced to the complainant. He handed over two

currency notes to the Additional S.P. on which he put his initials. Then phenolphthalein powder was smeared upon them by Ramesh Chandra constable No. 202. The notes were handed over to Bagh Singh with the direction that the same may be handed over to the appellant when he demands and that he should give a signal by putting his hand on his head. That would be an indication that the money has been handed over. Proceedings were recorded. At 9.30 a.m. the trap party started but after five minutes the jeep became out of order. When it was standing on the road the appellant was seen going from Udaipur to Delwara. It was Dashrathlal, a member of trap party, who identified him. After the jeep was repaired the trap party reached near Perfect Thread Mill, Amberi. Appellant was inside the mill. The complainant was asked to meet the appellant in the mill itself and the trap party was made to wait in hiding. Then the complainant went inside the mill. At 1:20 p.m. Bagh Singh gave signal which was seen by Jitendra Kumar constable. Jitendra Kumar and Nojaram then caught hold the appellant by hands. Appellant tried to run away even after he came to know that it was the trap party of the Prevention of Corruption Department. Constable Jitendra Kumar had seen appellant accepting currency notes from a distance of about 40 feet. Bagh Singh told that the appellant was present in the room of Security Officer from where he came out and inquired if he had brought money. Then Bagh Singh replied in affirmative. Appellant demanded the money which was handed over to him. The appellant put the currency notes in the front of pocket of his shirt. The Additional S.P. inquired from the appellant and he told that he did not accept any money and that there was no case file or no inquiry pending with him and that the inquiry was pending with Jamnalal Head Constable. Then the right hand of the appellant was washed in water which contained sodium carbonate. It changed its colour. Hand wash was sealed in bottles. The pant of the appellant was taken in possession. Prosecution case is that when appellant tried to run away and was stopped, an uproar was made during which appellant threw away the currency notes from his pocket and the same were collected from the ground by Loom Singh who kept them in his pocket. Appellant was arrested then and there.

4. During the investigation it was found that Bagh Singh lodged a report at police station Delwara on 2-3-1984 on the basis of which a case under Section 435 IPC was registered. The allegations were that at 2'o clock in the night on 1-3-1984 the

articles lying in his field were burnt by Gopal Singh and Nahar Singh. The case was being investigated by Jamnalal who was incharge of out post Kailashpuri and proceedings were taken up by Kanhaiyalal ASI. On 3-3-1984 the case came under the charge of appellant who submitted final report on 18-3-1984. On 12-3-1984 Bagh Singh dissatisfied with the investigation complained to the Dy.S.P. Nathdwara who forwarded the complaint to the Station House Officer, Delwara. Kitab Singh then summoned Bagh Singh through Ramlal constable and asked him to produce his witnesses on 22-3-1984 and 24-3-1984. But on 24-3-1984 Bagh Singh lodged the FIR under the Prevention of Corruption Act to the Additional S.P. on the basis of which trap was arranged as stated above. After investigation and obtaining sanction, challan was submitted against the appellant before the Special Judge, Anti Corruption Cases, Udaipur. The learned Special Judge framed and read over and explained charges Under Section 161 IPC and Section 5(1)(d)(2) of the Prevention of Corruption Act on 6-5-1985. Appellant denied his indictment and claimed trial. Then prosecution examined as many as 14 witnesses. Then the appellant was examined Under Section 313 Cr. P.C. He produced a witness in defence. Learned Special Judge heard both the parties. Arguments were submitted in written as well, before him and he convicted and sentenced the appellant as stated above.

5. I have heard the learned counsel for the appellant as well as learned Public Prosecutor at length and have perused the record very carefully.

6. Learned counsel for the appellant submitted that there is evidence to the effect that Bagh Singh lodged a report Under Section 435 IPC but the police had submitted final report and that no work was pending with the appellant. As such there could be no basis to ask for bribery by the appellant. He submitted that the allegation of Bagh Singh is that it was Kanhaiyalal ASI who had demanded Rs. 700/- out of which Rs. 500/- were paid to him but Kanhaiyalal was later on transferred to police lines and an amount of Rs. 200/- was to be paid to Kanhaiyalal and not to appellant Kitab Singh. So Bagh Singh became desperate and, therefore, he lodged false complaint to trap appellant. He submitted that there was no demand on the part of the appellant for Rs. 200/- and the story has been cooked up. He submitted that it is proved from the evidence that the appellant

never demanded the bribe. He also submitted that there is no evidence of acceptance of bribery by the appellant. He also submitted that no recovery was made from the appellant and that presence of phenolphthalein powder in the hand wash and on pocket wash has been explained even by the prosecution witnesses. He has submitted that the prosecution has miserably failed to prove its case.

7. On the other hand, learned Public Prosecutor has tried to support the judgment of the trial Court.

8. It is not controverted that the appellant was a public servant, that he was posted as Station House Officer of police station Delwara on the date when he was trapped. The first and foremost question arises whether any work was pending with the appellant and he could have demanded money for the purpose?

9. The positive case of the prosecution is that appellant demanded money for some work in relation to case in FIR No. 15/84 for offence under Section 435 IPC. PW-3 Bagh Singh is the most relevant witness for the purpose. According to him it was on 1-3-1984 that Excise Department raided in his village and recovered illicit liquor from Mohabbat Singh, Vijay Singh and Bhanwar Singh. On the same night Gopal Singh, Nahar Singh, Amar Singh, Jaswant Singh and Bhanwar Singh burnt his property lying on his well under the impression that it was under his instigation the Excise Department had raided and caught illicit liquor. Then Bagh Singh reported the matter to police. It was Kanhaiyalal SHO whom he narrated the story and who demanded a sum of Rs. 500/- from him. He paid a sum of Rs. 500/- to Kanhaiyalal after two days. Story of setting fire to implements is corroborated by Ex.P/10 report which was lodged at police station Delwara on 2-3-1984 on the basis of which FIR No. 15/84 was registered. It is found from Ex.P/9 that the police decided to submit final report and information to that effect was sent to Bagh Singh and the matter was closed on 18-3-1984 when he received the information. The FIR lodged to the Additional S.P. mentions that Kanhaiyalal had demanded a sum of Rs. 700/- out of which he had paid a sum of Rs. 500/- to him. This report is Ex.P/3 which clearly mentions that a demand of Rs. 700/- was made by Kanhaiyalal but this witness Bagh Singh stated on oath that Kanhaiyalal had demanded only a sum of Rs. 500/- and not Rs. 700/-. This demand was fulfilled by

him after two days when he paid a sum of Rs. 500/- to Kanhaiyalal. So right from very beginning it appears that Bagh Singh is in habit of changing version.

10. We proceed further and find that Kanhaiyalal had submitted final report and information was sent to Bagh Singh to that effect. However, Bagh Singh was not satisfied and went to police station again. He says that he met the appellant who told that Kanhaiyalal had not completed the investigation and that in case he gives Rs. 500/- to him then he will proceed further. He has further stated that Mohabbat Singh, Vijay Singh, Amar Singh, Jaswant Singh, Gopal Singh and Nahar Singh had come to his house and broken gates of his door. The site was seen by Kitab Singh. This was done according to him either on 10th or 11th of March, 1984. He has further stated that the appellant assured that the proceedings under Section 107 would be taken against these persons in case he pays him a sum of Rs. 500/-. So according to the witness it was either on 10th or 11th of March, 1984 that the appellant made a demand of Rs. 500/- and that too to take action Under Section 107 Cr. P.C. Then the witness again changes his version and says that he went to the Dy. S.P., Nathdwara whom he submitted an application and brought some order from him. When he submitted the same to the appellant, the appellant was not happy and gave bad names and stated that if he gives Rs. 500/- then only work will be done. It is Ex.P/7 which was submitted to the Dy. S.P., wherein it is prayed that life and property of Bagh Singh may be saved as he had apprehension from Mohabbat Singh and others. According to the learned Public Prosecutor it is this application which was pending with the appellant and he was to submit a report to the Dy. S.P. as ordered by him. He submitted that the appellant issued a letter Ex.P/ 8 to the appellant on 22-3-1984 to produce his witnesses on 24-3-1984 at 8.00 a.m. and it was in relation to this work that the demand of bribery was made. This letter is not signed by appellant. Neither it is in his handwriting. In view of the positive case of prosecution stated above, it cannot be the work pending for which demand might have been made.

11. I will now again come to the evidence of PW-3 Bagh Singh. He has stated in examination in chief that he went to the Dy.S.P. Nathdwara and obtained order on his application. This document shows that it was received in the office of the Circle Officer on 12-3-1984 and an order was passed on 20-3-1984 and sent to the

Station House Officer, Delwara. It is PW-13 Kundanlal, Investigating Officer, who has stated that this was the work pending with the appellant. But it cannot be accepted in view of the positive case of the prosecution that demand was made in relation to work to be done in case based on FIR No. 15/ 84. PW-9 Jamnalal has stated that the appellant joined at police station Delwara on 10-3-1984 and he ordered that the complainant and the accused persons be summoned on 11-3-1984 and this witness sent Modiram to village Kotri who brought Bagh Singh and his witnesses to the police station. He also stated that apart from it Bagh Singh had reported to Dy.S.P. in relation to a case Under Section 107 Cr.P.C. and its inquiry was to be made by the appellant. It is evident from the record that the final report was made in case No. 15/84 by Investigating Officer Kanhaiyalal and that case was never investigated by the appellant. PW-10 Kanhaiyalal has stated that he registered case No. 15/84 on 3-3-1984 and recorded statements of witnesses, visited site and was of the opinion that the occurrence taken place. But since he was transferred he left the case at the police station. PW-9 Jamnalal has stated that Kanhaiyalal was transferred to police lines as on 8-3-1984 he was not available at the time of inspection of Superintendent of Police. The case was handed over to him and he in turn handed over to the appellant. But it is clear from Ex.P/9 that the final report was given in FIR No. 15/84 and complainant was informed on 18-3-1984. Case No. 15/84 was not pending with the appellant.

12. PW-9 Jamnalal says that on 11-3-1984 Kitab Singh ordered him to produce complainant Bagh Singh and his witnesses in case No. 15/84. To say that case No. 15/84 was pending on the, date of trap, is not correct because Kitab Singh had already submitted final report with recommendation to prosecute Bagh Singh under Section 182 Cr. P.C. But it appears correct that when the appellant took charge of police station case FIR No. 15/84 was pending at the police station but its investigation was with other officer and final report was given on 18-3-1984.

13. Now the question arises as to whether appellant made a demand of bribery from Bagh Singh? PW-3 Bagh Singh stated that he went to police station and reported to Kanhaiyalal who made a demand of bribery from him. According to PW-10 Kanhaiyalal it was on 3-3-1984 that Bagh Singh reported a case under Section 435 IPC and FIR No. 15/84 was registered by him. Kanhaiyalal was cross

examined but he would not admit that he had accepted some money though PW-3 Bagh Singh says that he paid Rs. 500/- to Kanhaiyalal. That is a closed chapter so far as this case is concerned. The allegation against the appellant is that he demanded a sum of Rs. 200/- and the same was paid by Bagh Singh. In FIR Ex. P/3 it is stated by Bagh Singh that on 22-3-1984 Ramlal constable came to him and took him to the police station alongwith his witnesses Lal Singh and Nirbhay Singh and on that date at about 6.00 P.M. he was conveyed a message that he should come next day all alone. He went to police station on 23-3-1984 but Kitab Singh appellant was not available. It was in the morning of 24-3-1984 that he met the appellant who recorded statement of Lal Singh and then went to investigate some other case. At that time he asked Bagh Singh whether he had brought the money. At that time the appellant asked to bring a sum of Rs. 200/- and pay to him and then only he would proceed with the matter. He also asked the Head Moharir that Bagh Singh may be made to sit at the police station till he returns and then he went away from the police station. Bagh Singh then took permission of Head Moharir by making a pretext to go for lunch and then came and reported the matter to the Additional S.P., Anti Corruption. Thus, from the FIR it is clear that the appellant, for the first time, demanded a sum of Rs. 200/- on 24-3-1984 in the morning hours. It may be stated that by that time final report had been submitted in case No. 15/84 and that case was definitely not pending.

14. Bagh Singh PW-3 has further stated that Kanhaiyalal did not take any action on his report No. 15/84 and kept it pending. But this is not correct because the final report had already been given on 18-3-1984 and witness was informed by notice Ex. P/8 which bears his signature. In his statement he said that the appellant saw the site on 10th or 11th of March, 1984 and assured him to take action. He said that he went to Dy. S. P. Nathdwara and brought some order on application by which the appellant was angry and then asked him to pay a sum of Rs. 500/- and to come with his witnesses and money on 24-3-1984. Ex. P/7 shows that it was despatched to the Station House Officer, Delwara vide No. 729 on 20-3-1984. Though the witness does not tell the date yet it may be taken that it could not have been before 20-3-1984. However, even if it is taken to be 20-3-1984, it is a different date than what is stated in the FIR itself. So there is a material contradiction in the date of demand of bribery. According to Ex. P/3 it was in the

morning of 24-3-1984 that appellant asked him to pay a sum of Rs. 200/-. But according to the version given by Bagh Singh the demand was made when he met the appellant alongwith application Ex. P/7 and the date comes to be 20-3-1984. Yet there is another version about the date of demand. PW-3 Bagh Singh first stated that Kitab Singh appellant came to the site in his village on 10th or 11th of March, 1984 and at that time made a demand. Then second time demand was made when Bagh Singh went with the application. There is no mention of these two dates in the FIR instead Bagh Singh has stated in the FIR that the demand was made for the first time on 24-3-1984. The version in the FIR Ex. P/3 that Bagh Singh did not know the name of appellant also cannot be believed in view of the evidence that Bagh Singh's field was inspected by appellant on 10th or 11th March and demand was made for the first time at that time.

15. So far as date is concerned, Jamnalal PW-9 has stated that the appellant took over charge of police station Delwara on 10-3-1984 and says that he brought Bagh Singh and a witness and at that time a sum of Rs. 200/- was settled between Bagh Singh and appellant on 11-3-1984. It is unbelievable that the appellant would ask Bagh Singh to pay bribery before Jamnalal who was head constable subordinate to him. Even if it is so believed, he contradicts the date of demand as the prosecution has come with various dates. This witness has maintained even in the cross examination that the demand was made in his presence in relation to case No. 15/84 under Section 435 IPC and the date, on which the amount was demanded, was 11-3-1984.

15 A. There is contradiction about the amount as well. Report Ex, P/3 mentions that the appellant asked for Rs. 200/- while PW-3 Bagh Singh says that the appellant demanded a sum of Rs. 500/- when he met for the first time. He reiterated the demand of this amount till Ex. P/7 was submitted. He further says that he went to the police station on 18-3-1984 and then settled the amount to Rs. 200/-. This fact is not mentioned in the FIR, hence it cannot be believed. The lone eye witness of demand PW-9 Jamnalal does not say about hackling. According to him there was a demand of Rs. 200/- from the side of the appellant and that was to in relation to case No, 15/84. Needless to say that the appellant could not have done anything in case No. 15/84 as final report had been submitted on 18-3-1984

and the question of demand of money in relation to that case did not arise. The demand cannot be said to have been proved in view of this contradictory evidence led by the prosecution itself.

16. Demand of bribe is very material in such cases. It is here that the case germinates. It is here that the presumption under Section 4 of the [Prevention of Corruption Act, 1947](#) is raised because the section provides that wherein any trial of an offence punishable under Section 161 IPC it is proved that an accused person has agreed to accept any gratification as a motive or reward, that presumption under the section may be raised. It has been held in *Laxman Prasad v. State of Rajasthan* 1992 Raj Cri C 422 that once story of demand falls through, the authenticity of the trap becomes highly doubtful because acceptance of bribe germinates through demand. Failure to prove demand renders prosecution case highly suspicious. There are many loop holes in the case of the prosecution in relation to demand of bribery by the appellant and the same cannot be accepted.

17. Now I will take up the evidence regarding acceptance of money by the appellant and its recovery. Again it is PW-3 Bagh Singh who is a material witness in this respect. He has stated that the tainted currency notes were kept by him in his pocket after picking them up. Then he had washed his hands. He alongwith Additional S.P. accompanied by staff went in police vehicle. He told the Additional S. P. that the appellant would be available either at Ameri or Delwara. In the way the jeep went out of order and he saw the appellant going on a motorcycle towards Ameri. When the jeep became alright, the trap party alongwith Bagh Singh reached Ameri. The witnesses of the prosecution were in civil dress and he was directed by the Additional S. P. to pass on money to the appellant and then put his hand on his head in order to give a signal. He further says that he reached near the Thread Mill and asked chowkidar if the appellant was available there. The chowkidar first disallowed him but later on allowed him to meet the appellant. The witness further says that he saluted the appellant who asked whether he had brought the money. Then the appellant moved and reached near corner of Security Office. The witness was ahead of him and there the appellant asked him to hand over the money. At that stage the witness passed on the money to the appellant who kept it in his pocket of shirt. Then both of them came towards the

gate, the chowkidar opened it and then three or four employees of the Anti Corruption Department caught hold the appellant. Then the appellant made hue and cry. At that stage Loom Singh, Vijay Singh and Khatu arrived. Then the Additional S. P. reached and introduced himself. The witness says that at that time he saw that appellant passing the money to Loom Singh but the currency notes fell on the ground and Loom Singh picked up the currency notes and kept them in pocket of his pant. He told the Additional S. P. at that time that the currency notes were picked up by Loom Singh. Then the right hand of the appellant was washed in the water mixed with sodium carbonate which turned pink. But when the left hand was washed the colour of water did not change. He has further stated that the pocket of his shirt was also washed in the same manner and the water turned pink. But this story of passing of money to Loom Singh is not supported by other witnesses. It is PW-4 Bhopal Singh who was brought for the purpose of beholding the passing of money but he says that when he reached he found Jitendra Singh had caught the appellant alongwith constable Npjaram and appellant was trying to rescue himself. At that time Bagh Singh told that he had passed over money to the appellant five minutes before but did not tell that currency notes were tried to pass over by appellant to Loom Singh and during it they fell down. The witness admitted that the money was not available with the appellant and that he alongwith Mohd. Hussain and Kalyan Prasad searched out the currency notes which were not available. Then the Additional S. P. ordered the head guard of the factory that he may collect all the members of his staff and at that time one of the guards told the head moharir that the currency notes were with him which he had lifted from a place near anicut. This was Loom Singh. Surprisingly Loom Singh has neither been challenged nor produced as a witness. Had he been produced as a witness against the appellant he would have been in a position to tell as to how the currency notes reached him. So far as version of Bagh Singh that as soon as the appellant passed over money to Loom Singh is concerned, it is not supported by PW-13 Kundanlal. Instead he says that Bagh Singh told him that the appellant had put currency notes in his pocket. He has further stated that when he inquired from the appellant he hold that no work of Bagh Singh was pending with him and that he denied the factum of accepting the money from the appellant. This witness has stated that it was Loom Singh guard of the factory who told that an amount of Rs.

200/- was lying near the post and he picked up from there and Kept in his pocket. The witness has further developed the story that during the investigation the complainant told that as soon as police party introduced itself to the appellant, appellant wanted to give money to Loom Singh and then threw the currency notes. There is no explanation by the prosecution as to why he has not been challenged or, produced as witness. His evidence would have been material. Prosecution has withheld him. The presumption would be in favour of appellant. Had he been produced he would not support the case of prosecution.

18. So far as passing of money is concerned, it is PW-3 Bagh Singh who said that the tainted currency notes were given by him to the appellant but it is a fact that same were not recovered from the possession of the appellant. PW-5 Bal Kishan did not see the passing of money. However, PW-6 Jitendra Kumar has stated that he saw the transaction taking place and at that time he was about 30-40 feet away. But surprisingly the site plan Ex. P/6 does not show as to where this witness was standing. In such cases it is very material. According to the site plan, 'A' is the place where money was given to the appellant and Jitendra Kumar was about 30-40 feet away from this place. But the site land does not mention as to where he was standing. Had the place been shown in map, it would have been inferred whether he was in a position to see or not. However, he is an interested witness as he is a constable with the Anti Corruption Department and is definitely interested to see the success of the trap. He admitted that the tainted amount was recovered from Loom Singh one or 1 1/4 hours afterwards. It is he who first caught the appellant but he cannot be relied for the reason that he is interested and then there are many loop holes in his statement. Kalyan Prasad PW-7 was ASI with Anti Corruption Department and has stated that when Bagh Singh gave a signal. Nojaram and Jitendra Kumar constable reached at the spot first and he followed them. It is he who brought Loom Singh to the Additional S. P. and to whom Loom Singh told that he picked up money from the road. But he does not say that he had seen the appellant accepting money from Bagh Singh. Nojaram has not been produced on behalf of the prosecution. No other witness says that he had seen the appellant accepting money from Bagh Singh.

19. So far as presence of phenolphthalein powder on the right hand of appellant is concerned, I would like to quote from the statement of PW-1 Ram Pratam Singh who has stated as follows:--

^ml fnu Hkh gkftj vnkyr Fkkusnkj vk;s Fks AfothVjl jftLVj esa ukekadu djus ds ckn ;g esjs ikl vk;s A FkksMh nsj cSBus dsckn ckxflag vk;s Fks A gkFk tksM+dj ogFkkusnkj lk- ls cksyk A D;k cksyk og le> esa ugh vk;k D;ksafd yksdyHkk'kk Fkh A Fkkusnkj mls ckgj ys x;k gkFk feyk dj ckgj ys x;k A og nksuksauhps pys x;s mlds ckn D;k gqvk eq>s /;ku ugha A\*\*

20. The witness has again reiterated in the cross examination that:--

^tSls nks vkneh gs UM 'ksd djrs gS ml izdkjckxflag o fdrkcflag us gkFk feyk;k Fkk A\*\*

21. It is proved from his statement that Bagh Singh shook hand with the appellant. It appears from the statement of Bagh Singh, who was examined by prosecution after statement of Ram Pratap Singh was recorded in Court, that he tried to say that there was no trace of phenolphthalein powder on his hands as he had washed his hands by soap after keeping the money in his pocket in the office of the Additional S. P. Had it been true, the proceedings should have stated so. But the proceedings do not state that he had washed his hands with the help of soap after the money was kept in his pocket on 25-3-1984 nor it was so stated in his statement under Section 164 Cr. P.C. It clearly means that it is an after thought and has been introduced so that the presence of phenolphthalein powder on the right hand of the appellant may be proved to have him up. When Bagh Singh himself shook hand with the appellant, the presence of phenolphthalein powder on the right hand of the appellant is explained by the prosecution itself and will not be treated as a circumstance against the appellant as the appellant was going to be implicated in a false trap.

22. So far as presence of phenolphthalein powder on the pocket of the appellant is concerned, it may be stated that Kundanlal PW-13 stated that the appellant stated at the time of trap that a farewell party of some constables was organised in the same morning where 'gugal' was sprinkled. When investigated, it was found proved

that Kitab Singh appellant had himself used the 'gulaal' in the party and sprinkled on constables. But my attention was drawn by learned Public Prosecutor to the statement of PW-9 Jamnalal who stated that in the party which was organised in the morning to give farewell to Prem Singh and Magh Singh constables, appellant did not sprinkle 'gulaal' on them. There is a reason for giving such statement by Jamnalal. He is interested in getting the appellant convicted. He is not a witness of sterling worth. I have already discussed his statement to say so. The Investigating Officer PW-12 has stated that during the investigation it transpired that 'gulaal' of pink colour was not used instead it was green colour but there is nothing in statement of other witnesses to support it. However, when it is admitted by the Investigating Officer himself that during the investigation he came to know that a party took place in morning of 25-3-1984 to give farewell to some constables where 'gulaal' was sprinkled on the constables by the appellant himself to give farewell (it is a tradition in Rajasthan), the presence of pink colour on the shirt of the appellant is, thus, explained. In view of all, what I have stated above, it is clear that the presence of colour in wash of the shirt might be due to presence of 'gulaal' on the shirt.

23. Then it was submitted that pocket wash contained phenolphthalein powder as per report Ex. P/23 and it was not possible unless currency notes were put in the pocket of Kitab Singh appellant. Needless to say that a scuffle took place when the appellant was caught. It may be possible that during that scuffle the hands of Bagh Singh might have touched even the dress of appellant and hence when Bagh Singh had touched the currency notes and his hands, were smeared with phenolphthalein powder, the same might have touched the pocket of the appellant. Thus the presence of phenolphthalein in the wash is explained.

24. It is admitted that the amount was not recovered from the appellant. Bagh Singh has stated that he saw the appellant handing over the currency notes to Loom Singh but the currency notes fell down. This he has improved as it was not the case of the prosecution at all. Bagh Singh was desperate to involve the appellant as he had earlier suffered a loss of Rs. 500/- by paying the same to Kanhaiyalal and even then his work was not done. So he could involve the appellant falsely. None of other witnesses saw it. Loom Singh, as stated earlier,

has not been produced either as a witness. He was neither challaned. There is no evidence that the appellant might have asked Loom Singh to keep the money on his behalf. Thus, recovery of the amount from the appellant is not proved.

25. So far as presumption Under Section 4 of the Prevention of Corruption Act is concerned, it cannot be drawn in the facts and circumstances of this case because the prosecution has not been able to prove that the accused has accepted or obtained or had agreed to accept or attempted to obtain for himself gratification from Bagh Singh. This presumption could have been drawn for the purpose of Section 161 IPC but such a presumption cannot be drawn as the facts have not been proved as stated above. In view of above discussion appellant deserves acquittal.

26. In the result, the appeal is hereby allowed and conviction of appellant Kitab Singh for offence under Section 161 IPC and Section 5(1)(d)(2) of the Prevention of Corruption Act is set aside and he is acquitted of the charges levelled against him.