HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No: CRA No. 5/2017

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Daleep Kumar Bhat

….Petitioner(s)….

Through: Mr. P.N.Raina, Sr. Advocate with
Mr. J.A.Hamal, Advocate

v/s

State of J&K …..Respondent(s)

Through: Mr. Raman Sharma, Sr. Advocate
with Ms. Saliqa Sheikh, Advocate
Ms. Jagmeet Kour, Advocate
Mr. Kartikay Sharma, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The present appeal is directed against judgment dated 18.02.2017 passed by the learned Special Judge, Anti-Corruption, Jammu (hereinafter referred to as the "trial court"), whereby the appellant has been convicted for offences under Section 5(1)(d) read with Section 5(2) of the Jammu & Kashmir Prevention of Corruption Act (hereinafter referred to as the "P.C. Act") and Section 161 RPC. By the

impugned judgment, the appellant has been sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs. 10,000/- in respect of each of the offences. In default of payment of fine, the appellant has been sentenced to undergo further imprisonment for a period of three months for each offence. Both the sentences have been directed to run concurrently.

2. As per the prosecution case, on 14.06.2010, the complainant, PW Parmanand, lodged a written complaint before the Vigilance Organization, Jammu, alleging therein that he had applied for and obtained sanction of loan for an amount of Rs. 1.00 lakh from Jammu Rural Bank (J&K Grameen Bank), Pargwal, and had received the first instalment to the tune of Rs. 35,000/-. It was further alleged that, for release of the second instalment of Rs. 65,000/-, the appellant-accused, who was posted at the relevant time as Manager of Jammu Rural Bank, Pargwal, demanded Rs. 7,000/- as illegal gratification from him. It was further stated in the complaint that, after persuasion, the appellant agreed to release the loan instalment if an amount of Rs.5,000/- was paid to him as illegal gratification and that, in this regard, the appellant approached the complainant thrice at his shop. It was further stated that the complainant had arranged an amount of Rs. 5,000/- to be

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paid to the appellant-accused. He further stated in his complaint that, on 14.06.2010, the appellant-Manager would come to his shop to collect the bribe money. The complainant sought action against the appellant-accused.

3. On the basis of the aforesaid complaint, FIR No. 17/2010 for offences punishable under Section 5(1)(d) read with Section 5(2) of the P.C. Act and Section 161 RPC came to be registered at Police Station, Vigilance Organization, Jammu, and investigation of the case was conducted. The trap team comprising officers/officials of the Vigilance Organization, Jammu, was constituted for laying a trap against the appellant-accused. The services of two independent witnesses, namely, PW-4 Sanjeev Gupta, Assistant Engineer, PWD R&B Division-II, Jammu, and PW-5 Madan Singh, Assistant Engineer, PWD R&B Division-II, Jammu, were also requisitioned, and they were associated with the trap proceedings. The complainant is stated to have produced Rs. 5,000/-, comprising six currency notes of Rs. 500/- denomination each and 20 currency notes of Rs. 100/- denomination each, before the members of the trap team.

4. After conducting the pre-trap demonstration, the complainant, along with other members of the trap team, proceeded to Main Bazaar, Pargwal. On reaching there, the complainant

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opened his shop, whereas PW Madan Singh, the shadow witness, kept on watching from a nearby shoe shop. The other members of the trap team took their respective positions in the vicinity of the complainant's shop. At about 1605 hours, the appellant reached the shop of the complainant, who offered him a cold drink. After taking the cold drink, the appellant sat in front of the counter of the shop and demanded bribe money from the complainant, who handed over the bribe amount of Rs. 5,000/- to the appellant, whereafter the shadow witness gave the pre-fixed signal to the members of the trap team, who gathered outside shop of the complainant.

5. The trap laying officer, PW H.K. Nazar, introduced himself to the appellant, who tried to throw away the accepted bribe money from the right back pocket of the pant worn by him. However, he was caught hold of by the members of the trap team by his wrists. The local police was also called to the spot, as a large number of people had gathered outside the shop of the complainant. A solution of sodium carbonate was prepared, and the appellant was made to wash his hands in the said solution, which turned pink. Similarly, the right-side back pocket of the pant worn by the appellant was also washed with a solution of sodium carbonate, its colour also turned pink. These solutions were put in bottles, and the same

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were sealed on the spot. Thereafter, the appellant was arrested, and during his personal search, the bribe money of Rs. 5,000/- was recovered from back pocket of the pant worn by him. In addition to this, a wallet containing Rs. 550/, a PAN card and an Aadhaar card were also recovered. Besides this, a Nokia mobile set containing an Airtel SIM was recovered from his belt. Two long keys of Godrej make, one key of a Hero Honda motorcycle, and a golden-coloured Timex wristwatch were also recovered. It has been submitted that, during recovery of the bribe money from the right back pocket of the pant worn by the appellant, he pushed the independent witness, PW Madan Singh, and the recovered notes fell on the floor from the hands of PW Madan Singh. It is also stated that the appellant tried to clean his hands and he poured some drinking water on the right back pocket of his pant, from where the bribe money was recovered, he became arrogant and vulgar and tried his best to destroy the evidence on the spot.

6. The Investigating Agency seized the file relating to the complainant's loan case and prepared the post-trap memo and other documents on the spot. The statement of the complainant under Section 164 Cr.P.C. was recorded, and the statements of other witnesses conversant with the facts of the

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case were also recorded. After investigation of the case, the offences punishable under Section 5(1)(d) read with Section 5(2) of the P.C.Act and Section 161 RPC were found established against the appellant, and the challan was laid before the Court.

7. Vide order dated 12.07.2011, the learned trial court framed charges for offences under Section 5(1)(d) read with Section 5(2) of the P.C. Act and Section 161 RPC against the appellant, who denied the charges and claimed to be tried. Accordingly, the prosecution was directed to lead evidence in support of the charges. In order to prove the charges, the prosecution, besides examining the complainant, PW Parmanand, and the shadow witness, PW Madan Singh, also examined the independent witness, PW Sanjeev Gupta, and members of the trap team, namely, PW H.K. Nazar, Dy. SP, PW Mohd. Aslam, Inspector, PW Deepak Tufchi, Inspector, PW Narinder Kumar, SGCT, and PW Neeraj Sharma, Constable. The prosecution also examined PW Bhushan Lal, Pawan Abrol, Assistant Scientific Officer, FSL, Jammu, Harnam Singh, Clerk, J&K Grameen Bank, Pargwal, PW Raja Abdul Latief, Chairman, J&K Grameen Bank, was also examined as witness by the prosecution for proving the sanction order.

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8. After completion of the prosecution evidence, the incriminating circumstances appearing in the prosecution evidence were put to the appellant-accused for seeking his explanation. Accordingly, his statement under Section 342 of J&K Cr.P.C. was recorded on 31.05.2016. The appellant stated in his defence that, after the release of the first instalment of the loan amount of Rs. 35,000/-, the complainant started making demands for the release of the balance loan amount, but he was told that unless he installed the machinery and produced the purchase bills, which were to be verified by the appellant in his capacity as Manager, the balance amount cannot be released in his favour. He further stated that, in the month of June 2010, the complainant came to the branch of the Bank and demanded release of the balance loan amount, to which the appellant-accused responded by saying that he had cheated the Khadi Board as well as the Bank, as he had not utilized the first instalment of the loan amount for installation of the machinery. On this, the complainant got annoyed, and on 14.06.2010, when he was working in the Bank, the complainant came to him and asked him to verify installation of the machinery. Thereafter, he proceeded to the shop of the complainant, but he could not see any machinery installed there. The complainant offered to

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settle the matter, but when he refused, when he was leaving the shop, the complainant tried to thrust some money into the pocket of his pant. The appellant plucked the complainant's hand with his hand, and in the process the amount fell down on the ground. In the meantime, two officials of the Vigilance Organization came there and caught hold of him by his hands. Other members of the Vigilance Team also reached there. The appellant denied that PW-Madan Singh had conducted the search of his pocket and recovered the bribe money. The appellant claimed that the currency notes were collected from the ground and that he had been falsely implicated. He further claimed that the entire proceedings took place inside the Police Post, Pargwal, and not on the spot.

9. The appellant entered his defence and examined DWs Rajinder Singh Manhas, Nishi Kant and Ganesh Dass as witnesses in his defence. After completion of the defence evidence, the case was set down for final arguments.

10. The learned trial court, vide impugned judgment dated 18.02.2017, after analysing the evidence on record, came to the conclusion that the prosecution had successfully proved that the trap was genuinely laid on the basis of the written complaint lodged by the complainant, who was compelled by the appellant to pay bribe. It has been further observed by

the learned trial court that the complainant had no axe to grind against the appellant and that his testimony clearly showed that the appellant had demanded and accepted the bribe money, which fact was corroborated by the statements of other witnesses. The learned trial court, after recording the finding that the bribe money, demanded and accepted by the appellant, was recovered from his possession, concluded that presumption under Section 4 of the P.C. Act is to be drawn that the appellant had accepted the said money as illegal gratification. The learned trial court also found that the defence put forth by the appellant was not acceptable. On the basis of these findings, the learned trial court recorded the impugned judgment of conviction and sentence against the appellant, which is under challenge in the present appeal.

11. The appellant has challenged the impugned judgment on the grounds that the learned trial court has not appreciated the evidence on record in its right perspective. It has been contended that, in the present case, the prosecution has not established the essential ingredients of demand, acceptance and recovery of illegal gratification. It has been further stated that there is sufficient material on record to show that the appellant has been falsely implicated and that the trial

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court has expressed misplaced sympathy towards the complainant by observing that he is a villager dealing with agricultural activities. It has been contended that the shadow witness, PW Madan Singh, has not supported the prosecution case and has turned hostile; therefore, no conviction could have been recorded against the appellant on the basis of the uncorroborated testimony of the complainant. It has been further contended that the very genesis of the complaint lodged by PW Parmanand is false because he had not installed the machinery in his shop, which was pre-condition for release of second instalment of loan and when the appellant refused to release the instalment, he lodged a false complaint against him with a view to pressurize him to release the loan amount.

12. I have heard learned counsel for the parties and perused the impugned judgment, the grounds of appeal, the evidence on record and the record of the trial court.

13. The charge against the appellant-accused, which was the subject matter of the trial, is that he, in his capacity as Manager of the Jammu Rural Bank (J&K Grameen Bank), demanded illegal gratification from the complainant, PW Parmanand, for release of second instalment of the loan that had been sanctioned in his favour. It is the case of the

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prosecution that, when the trap was laid on 14.06.2010, the appellant demanded and accepted tainted currency notes amounting to Rs. 5,000/-, which were later on recovered from the right back pocket of his pant.

14. The first contention raised by learned Senior counsel appearing for the appellant is that, in the present case, the officer who has accorded sanction for prosecution of the appellant, has not applied his mind to the relevant material. It has been submitted that PW Raja Abdul Latief, Chairman, J&K Grameen Bank, has, in his cross-examination, admitted that the seized loan file of the complainant was not forwarded to him, meaning thereby that he was not aware of the terms and conditions of the loan sanctioned in favour of PW Parmanand. It has been contended that, in the absence of knowledge about the terms and conditions of the loan sanctioned in favour of PW Parmanand, it was not possible for PW Raja Abdul Latief to accord sanction for prosecution. This, according to learned Senior counsel, exhibits non-application of mind on the part of the sanctioning authority; therefore, the sanction order itself is vitiated.

15. In the above context, it is to be noted that an order of sanction can be proved by the sanctioning authority either by

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producing the original sanction order, which itself contains the facts constituting the offence and the grounds of satisfaction, or by adducing evidence to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. In the present case, the prosecution has placed on record the original sanction order dated 03.03.2011. The said sanction order has been approved by PW Raja Abdul Latief, who has admitted its contents and identified his signatures. It is true that, during his cross-examination, the said witness has deposed that the loan file was not forwarded to him, but he has clearly stated that the terms and conditions on which the loan was granted to the complainant, the amount of subsidy, and the scheme under which it was granted, etc., were examined by him. Merely because the seized loan file was not forwarded to the sanctioning authority, it cannot be stated that there has been non-application of mind on the part of the sanctioning authority, particularly when the witness has clearly stated that he examined the terms and conditions of the sanction and recorded his satisfaction in the sanction order before according sanction for prosecution against the appellant.

16. The order granting sanction for prosecution against the appellant, which is on record, is a detailed order running into

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sixteen paragraphs, which clearly reflects the application of mind by the sanctioning authority. Therefore, the contention of learned senior counsel for the appellant in this regard is misconceived.

17. The next question raised by learned senior counsel appearing for the appellant, on which much emphasis has been laid by him, is that, the complainant had not completed the formalities for the release of the second instalment of the loan, as such, there was no occasion for the appellant to release any further amount of the loan in his favour. Thus, the complaint lodged by PW Parmanand is based upon falsehood. It is being contended that, because the appellant refused to release the second instalment of the loan on account of non-fulfilment of formalities by the complainant, this gave the complainant a reason to lodge a complaint against him. It is contended that the respondent investigating agency and the members of the trap team did not conduct any verification before registering the FIR and proceeding to lay a trap against the appellant. Learned Senior counsel, while relying upon the judgment of the Supreme Court in the case of **Mir Mustafa Ali Hasmi v. State of A.P., 2024 (10) SCC 489,** has contended that it was incumbent upon the Trap Laying Officer to get independent verification of the

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alleged demand conducted, as the said fact assumes prominence in ascertaining whether or not the complainant bore a grudge against the appellant.

18. The issue whether the complainant was actually entitled to get the second instalment of the loan released in his favour and whether or not he had completed the requisite formalities for release of the second instalment of the loan in his favour may not be of much relevance to the present case. The fact of the matter remains that the loan was sanctioned in favour of PW Parmanand and the first instalment of the loan amount had already been released in his favour. He was awaiting the release of the subsequent instalments of the loan. The appellant was in a position and he had the authority to release the second instalment in his favour. Whether the complainant had actually completed the formalities in this regard is not of much relevance when the facts on record clearly show that the appellant-accused, in his capacity as a public servant, was in a position to confer a benefit upon the complainant and, therefore, was in a position to extract illegal gratification from him. It is not only the doing of a legal act by illegal means that would fall within the purview of misuse of official position, but doing an illegal act with a view to confer a benefit upon a person

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would also amount to misuse of official position. Therefore, even if the appellant-accused had demanded bribe money from PW Parmanand for release of the second instalment of the loan amount, despite the fact that the complainant had not completed the requisite formalities, the demand made by the appellant would fall within the purview of misuse of his official position, thereby attracting the provisions of Section 5(1)(d) read with Section 5(2) of the P.C. Act and Section 161 RPC.

19. Learned senior counsel appearing for the appellant has laid emphasis on the contention that, in the present case, the demand for illegal gratification by the appellant from the complainant at the time of the trap proceedings has not been established. It has been contended that the shadow witness, PW Madan Singh, has categorically stated that neither did he see the exchange of bribe money nor did he hear the conversation between the appellant and PW Parmanand. He has further contended that the other prosecution witnesses, who were present on the spot at the time of the alleged transaction of bribe money between the complainant and the appellant, neither witnessed the transaction nor did they overhear the conversation between the two.

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20. According to learned Senior counsel, in the absence of corroboration, the statement of the complainant with regard to demand and acceptance of tainted money by the accused during the trap proceedings cannot be relied upon. It has been contended that the complainant in a trap case has to be treated as an accomplice and his uncorroborated testimony cannot be relied upon.

21. It has further been contended that, in the present case, there is evidence on record to show that the tainted money was recovered from the ground and not from the pocket of the appellant-accused. Therefore, the defence of the appellant that the complainant attempted to thrust the money into the back pocket of his pant, stands established. On this basis, it has been contended that the essential ingredients of demand and acceptance of tainted money by the appellant during the trap proceedings have not been established, and even the recovery of tainted money from the possession of the appellant-accused is highly doubtful.

22. Before dealing with the aforesaid contentions of learned senior counsel appearing for the appellant, it would be necessary to survey the legal position as to whether a conviction can be based on the uncorroborated testimony of the complainant in a trap case. In the present case, PW

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Madan Singh, the shadow witness, has turned hostile by stating that he has neither witnessed the transaction involving the exchange of bribe money between the appellant and the complainant nor did he overhear the conversation between the two. Thus, we are left with the statement of the complainant so far as direct evidence on aforesaid aspect is concerned.

23. The Supreme Court has, in the case of **Prakash Chand vs. State Delhi Administration,** (1979) 3 SCC 90, while dealing with the issue as to whether conviction can be based on uncorroborated testimony of a trap witness, held that a trap witness may perhaps be considered as a person interested in the success of trap and that may entitle a Court to view his evidence as that of an interested witness. The Court further held that where the circumstances justify it, a Court may refuse to act upon the uncorroborated testimony of a trap witness but on the other hand, a court may well be justified in acting upon the uncorroborated testimony of a trap witness if the court is satisfied from the facts and circumstances of the case that the witness is a witness of truth.

24. In **M. O. Shamsudhin vs. State of Kerala,** (1995) 3 SCC 351, the Supreme Court has, while dealing with the

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argument that statement of a bribe giver being in the nature of an accomplice cannot be relied upon without corroboration, explained the legal position on the issue in the following manner:

> ***11.*** *Since this is an argument which is frequently put forward in all cases of bribery, we would like to examine the scope, nature and extent of corroboration that is necessary in such cases. The word 'accomplice' is not defined in the Evidence Act. However, it is accepted that the word is used in its ordinary sense which means and signifies a guilty partner or associate in a crime. Illustration (b) to Section 114 in a way cautions the court to bear in mind the presumption that an accomplice is not worthy of credit unless he is corroborated in material particulars. Section 133 of the Act, however, declares that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice. The relation between Section 133 which is a rule of law and Illustration (b) to Section 114 which is a rule of prudence has been the subject of comment in a large number of decisions. However, it has emerged that a conviction based on the uncorroborated testimony of an accomplice is not illegal though an accomplice may be unworthy of credit for several reasons. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together, the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the*

accused. The reasons for requiring corroboration of the testimony of an accomplice are that an accomplice is likely to swear falsely in order to shift the guilt from himself and that he is an immoral person being a participator in the crime who may not have any regard to any sanction of the oath and in the case of an approver, on his own admission, he is a criminal who gives evidence under a promise of pardon and supports the prosecution with the hope of getting his own freedom.

12. *Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous tests which are generally applied to a case of an approver. Though bribe-givers are generally treated to be in the nature of accomplices but among them there are various types and gradations. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving the trap cannot succeed. When there is such a demand by the public servant from a person who is unwilling, and if to do public good approaches the authorities and lodges a complaint, then in order that the trap succeeds he has to give the money. There could be another type of bribe-giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is a particeps criminis in respect of the crime committed and thus is an accomplice. Thus, there are grades and grades of accomplices*

and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of 'accomplices' by reason of their being bribe-givers, in the first instance, the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances.

13. *The word 'corroboration' means not mere evidence tending to confirm other evidence. In DPP v. Hester , Lord Morris said:*

> *"The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible; and corroborative evidence will only fill its role if it itself is completely credible...."*

In DPP v. Kilbourne , it was observed thus:

> *"There is nothing technical in the idea of corroboration. When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements or circumstances relating to the particular matter; the better it fits in the more one is inclined to believe it. The doubted statement is corroborated to a greater or lesser extent by the other statements or circumstances with which it fits in."*

14. *In R. v. Baskerville , which is a leading case on this aspect, Lord Reading said:*

> *"There is no doubt that the uncorroborated evidence of an accomplice is admissible in law…. But it has long been a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices, and, in the discretion of the judge, to advise them not to convict upon such evidence; but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence…. This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal Act, 1907, came into operation this Court has held that, in the absence of such a warning by the judge, the conviction must be quashed…. If after the proper caution by the judge the jury nevertheless convicts the prisoner, this Court will not quash the conviction merely upon the ground that the testimony of the accomplice was uncorroborated."*

15. *In Rameshwar v. State of Rajasthan, Bose, J., after referring to the rule laid down in Baskerville case with regard to the admissibility of the uncorroborated testimony of an accomplice, held thus:*

> *"That, in my opinion, is exactly the law in India so far as accomplices are concerned and it is certainly not any higher in the case of sexual offences. The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a judge without the aid of a jury. In these cases it is necessary that the judge should give some indication in his judgment that he has had this rule of*

caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case."

Justice Bose in the same judgment further observed thus:

"I turn next to the nature and extent of the corroboration required when it is not considered safe to dispense with it. Here, again, the rules are lucidly expounded by Lord Reading in Baskerville case at pages 664 to 669. It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent the rules are clear.

First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says —

'Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony.'

All that is required is that there must be 'some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it'.

Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that —

> *'a man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all…. It would not at all tend to show that the party accused participated in it.'*

Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, 'many crimes which are usually committed between accomplices in secret, such as incest, offences

with females' (or unnatural offences) 'could never be brought to justice'. "

16. *We shall now refer to some of the judgments wherein the rule of corroboration has been considered in respect of the bribery cases. In Rao Shiv Bahadur Singh v. State of Vindhya Pradesh there are observations to the effect that the evidence of the trap witnesses cannot be taken on its face value thereby indicating that their evidence cannot be relied upon without independent corroboration. In State of Bihar v. Basawan Singh a Bench of five Judges considered this "corroboration requirement" and after referring to the observations made in Rao Shiv Bahadur Singh case explained them in the following manner:*

> *"If the witnesses are not accomplices, what then is their position? In Shiv Bahadur Singh case (A) it was observed, with regard to Nagindas and Pannalal, that they were partisan witnesses who were out to entrap the appellant in that case, and it was further observed: 'A perusal of the evidence ... leaves in the mind the impression that they were not witnesses whose evidence could be taken as its face value.' We have taken the observations quoted above from a full report of the decision, as the authorised report does not contain the discussion with regard to evidence. It is thus clear that the decision did not lay down any universal or inflexible rule of rejection even with regard to the evidence of witnesses who may be called partisan or interested witnesses. It is plain and obvious that no such rule can be laid down; for the value of the testimony of a witness depends on diverse factors, such as, the character of the witness, to what extent and in what manner he is interested, how he has fared in cross-*

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examination etc. There is no doubt that the testimony of partisan or interested witnesses must be scrutinised with care and there may be cases, as in Shiv Bahadur Singh case (A), where the Court will as a matter of prudence look for independent corroboration. It is wrong, however, to deduce from that decision any universal or inflexible rule that the evidence of the witnesses of the raiding party must be discarded, unless independent corroboration is available."

This Court in the above case concluded thus:

"The correct rule is this: 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 is treated; 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 of diverse considerations which must vary from case to case, and in proper case, the Court may even look for independent corroboration before convicting the accused person."

It was further concluded thus:

"As was observed by Lord Reading in Baskerville (C) even in respect of the evidence of an accomplice, all that is required is that there must be 'some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it'. In Rameshwar at p. 385 (B), to which we have referred in an earlier paragraph, the nature and extent of

corroboration required, when it is not considered safe to dispense with it, have been clearly explained and it is merely necessary to reiterate that corroboration need not be direct evidence that the accused committed the crime; it is sufficient even though it is merely circumstantial evidence of his connection with the crime."

17. *In a later case namely Major E.G. Barsay v. State of Bombay it was held by this Court that though a trap witness is not an approver he is certainly an interested witness in that he is interested to see that the trap laid by him succeeds and he could at the most be equated with the partisan witnesses which needs corroboration. Relying on the ratio laid down in Basawan Singh case a Bench of three Judges in Bhanuprasad Hariprasad Dave v. State of Gujarat held thus:*

"Now coming back to the contention that the appellants could not have been convicted solely on the basis of the evidence of Ramanlal and the police witnesses, we are of opinion that it is an untenable contention. The utmost that can be said against Ramanlal, the Dy SP, Erulker and Santramji is that they are partisan witnesses as they were interested in the success of the trap laid by them. It cannot be said — and it was not said — that they were accomplices. Therefore, the law does not require that their evidence should be corroborated before being accepted as sufficient to found a conviction. This position is placed beyond controversy by the decision of this Court in State of Bihar v. Basawan Singh wherein this Court laid down, overruling the decision in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh that where the witnesses are not accomplices but are merely partisan or interested witnesses

who are concerned in the success of the trap, their evidence must be tested in the same way as any other interested evidence is tested and in a proper case, the court may look for independent corroboration before convicting the accused person. We are unable to agree that any different rule was laid down in E.G. Barsay v. State of Bombay. It must be remembered that the decision in Basawan Singh case was given by a Bench of five Judges and that decision was binding on the Bench that decided Barsay case . Some of the observations in Barsay case no doubt support the contention of the appellants. But those observations must be confined to the peculiar facts of that case. It is now well settled by a series of decisions of this Court that while in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is corroborated in material particulars but as regards the evidence of a partisan witness it is open to a court to convict an accused person solely on the basis of that evidence, if it is satisfied that that evidence is reliable. But it may in appropriate case look for corroboration. In the instant case, the trial court and the High Court have fully accepted the evidence of Ramanlal, the Dy SP, Erulker and Santramji. That being so, it was open to them to convict the appellants solely on the basis of their evidence. That apart, their evidence is substantially corroborated by the evidence of Dahyabhai, Sanghvi and Sendhalal. In the case of partisan witnesses, the corroboration that may be looked for is corroboration in a general way and not material corroboration as in the case of the evidence of accomplices."

18. *In Dalpat Singh v. State of Rajasthan , this Court after referring to Basawan Singh case observed thus:*

> *"We are unable to accept the contention of the learned counsel for the appellants that PWs 1, 2, 3, 4 and 17 and other prosecution witnesses to whose evidence we shall presently refer, should be considered as accomplices and therefore their evidence is required to be corroborated in material particulars before being accepted. On the proved facts, even those who gave illegal gratification to the appellants cannot be considered as accomplices as the same was extorted from them. Though PWs 1, 2, 4 and 17 can be considered as interested witnesses as regards their evidence relating to trap, as a matter of law, it is not correct to say that their evidence cannot be accepted without corroboration. See State of Bihar v. Basawan Singh ."*

19. *In Maha Singh v. State (Delhi Admn.) this Court held thus: (SCC p. 652, paras 33 and 34)*

> *"This also leads to the question whether all witnesses, who are called upon to assist detection of a bribery case by laying a trap, should be considered unreliable as accomplices or at any rate partisan witnesses. There is no rule of law that even if a witness is otherwise reliable and independent, his association in a pre-arranged raid about which he had become acquainted makes him an accomplice or a partisan witness. In absence of anything to warrant a contrary conclusion, conviction is not untenable merely because it is based on the testimony of such a witness.*

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We are also not prepared to dub every witness of a raiding party to be an accomplice per se or even as an interested witness in total absence of materials justifying such an inference. While PW 4 will be a highly partisan witness in this case in his own interest to oblige the police, nothing was shown against PW 3. PW 7, the Inspector, cannot be considered as an absolutely partisan witness because he is a police officer who took immediate action on the complaint. Nothing unusual is suggested against him. We have no hesitation in accepting the testimony of PWs 3 and 7 on their own. They do corroborate the complainant."

20. *In Hazari Lal v. State (Delhi Admn.) , Chinnappa Reddy, J. speaking for the Bench while repelling the contention that the evidence of trap witness namely the police officer should not be accepted unless corroborated observed thus: (SCC p. 395, para 9)*

"We, however, wish to say that the evidence of PW 8 is entirely trustworthy and there is no need to seek any corroboration. We are not prepared to accept the submission of Shri Frank Anthony that he is the very police officer who laid the trap should be sufficient for us to insist upon corroboration. We do wish to say that there is no rule of prudence which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts

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and circumstances of another case the Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance. We are forced to say this because of late we have come across several judgments of Courts of Session and sometimes even of High Courts where reference is made to decisions of this Court on matters of appreciation of evidence and decisions of pure question of fact."

21. *From the above resume of various decisions, the following principles are deducible. Section 133 of the Evidence Act lays down that an accomplice is a competent witness against an accused person. The conviction based on such evidence is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, there is a rider in Illustration (b) to Section 114 of the Act which provides that the court may presume that the accomplice is unworthy of credit unless he is corroborated in material particulars. This presumption is in the nature of a precautionary provision incorporating the rule of prudence which is ingrained in the appreciation of accomplice's evidence. Therefore, the courts should be guarded before accepting the accomplice's evidence and look for corroborating evidence. The discretion of the court upon which the rule of corroboration rests must be exercised in a sound and reasonable manner. Normally the courts may not act on an uncorroborated testimony of an accomplice but whether in a particular case it has to be accepted without corroboration or not would depend on an overall consideration of the accomplice's evidence and the facts and circumstances. However, if on being so satisfied the court considers that the sole testimony of the*

accomplice is safe to be acted upon, the conviction can be based thereon. Even if corroboration as a matter of prudence is needed it is not for curing any defect in the testimony of the accomplice or to give validity to it but it is only in the nature of supporting evidence making the other evidence more probable to enable the court to satisfy itself to act upon it.

22. *Now coming to the witnesses in trap cases, as held in Basawan Singh case by a Bench of five Judges, if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charge, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices in that sense but are only 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 which may vary from case to case and the corroboration in the case of such interested witnesses can be in a general way and not as one required in material particulars as in the case of an approver. Therefore, in seeking corroboration for the evidence of trap witnesses a distinction has to be drawn where participation of an individual in a crime is not voluntary but is the result of pressure. In such a case the element of mens rea to commit the crime is not apparent and (sic) cannot strictly be classified as an accomplice and at any rate he cannot be treated as being on the same footing. Where a bribe has already been demanded from a man and if without giving the bribe he goes to the police or magistrate and brings them to witness the payment it will be a legitimate trap and in such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the court depending upon the facts and circumstances of each case. However, as a*

rule of prudence, the court has to scrutinise the evidence of such interested witnesses carefully.

23. *Now coming to the nature of corroborating evidence that is required, it is well-settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The court should weigh the evidence and then see whether corroboration is necessary. Therefore, as a rule of law, it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case. In a case of bribe, the person who pays the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about the bribe and it is not possible to get absolutely independent evidence about the payment of bribe. However, it is cautioned that the evidence of a bribe-giver has to be scrutinised very carefully and it is for the court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon it or not in those given circumstances."*

25. The aforesaid ratio has been followed by the Supreme Court in the case of **Ramesh Kumar Gupta vs. State of MP,** (1995) 5 SCC 320.

26. In yet another decision in the case of **Meena Vs. State of Maharashtra 2000(5) SCC 21**, the Supreme Court has held as under:-

> *"The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case. Even the other panch witness, PW 5 categorically admitted that even as the Inspector of Police, PW 6 arrived, the appellant gave the same version that PW 1 tried to force into her hands the currency note which she turned down by pushing it away, and his evidence also does not lend credibility to the case of the prosecution. The contradictory version of PW 1 of the very incident when earlier examined in departmental proceedings renders his testimony in this case untrustworthy. PW 3, the Head Copyist, seems to be the brain behind all this and that PW 1 as well as Jagdish Bokade appear to be working as a group in this affair and despite the blunt denial by PW 3, his closeness to PW 1 and Jagdish Bokade stands well substantiated. All these relevant aspects of the case seem to have been completely overlooked by the courts below."*
>
> *We do not find any substance in the submission of Mr. Rai. The word accomplice has not been defined under the Evidence Act and therefore presumed to have been used in the ordinary sense. A person concerned in the commission of crime, a partner in crime and associate in guilt is an accomplice. He takes part in the crime and is privy to the criminal intent. In our opinion a witness forced to pay on promise of doing or forbearing to do any official act by a public servant, is not a partner in crime and associate in guilt and therefore cannot be said to be accomplice. It has long been rule of practice, which has become equivalent to rule of law, that the evidence of an accomplice is admissible but to be acted upon, ordinarily requires corroboration. Contractor who gave bribe, therefore, cannot be said to an accomplice as the same was extorted from him. Reference in this connection can be*

made to a decision of this Court in the case of Dalpat Singh and another v. State of Rajasthan, (AIR 1969 SC 17), in which it has been held as follows:

"We are unable to accept the contention of the learned counsel for the appellants that PWs 1, 2, 3, 4 and 17 and other prosecution witnesses to whose evidence we shall presently refer, should be considered as accomplices and therefore their evidence is required to be corroborated in material particulars before being accepted. On the proved facts, even those who gave illegal gratification to the appellants cannot be considered as accomplices as the same was extorted from them. Though PWs 1, 2, 4 and 17 can be considered as interested witnesses as regards their evidence relating to trap, as a matter of law, it is not correct to say that their evidence cannot be accepted without corroboration, see State of Bihar v. Basawan Singh 1959 SCR 195 : (AIR 1958 SC 500) (underlining ours).

27. In **C.M. Sharma Vs State of A.P., AIR 2011 SC 608**, the Supreme Court has explained that the categories of cases in which corroboration of evidence of witnesses is required in the following manner:-

*"**12**. Further corroboration of evidence of a witness is required when his evidence is not wholly reliable. On appreciation of evidence, witnesses can be broadly categorized in three categories viz., unreliable, partly reliable and wholly reliable. In case of a partly reliable witness, the court seeks corroboration in material particulars from other evidence. However in a case in which a witness is wholly reliable, no corroboration is necessary. Seeking corroboration in all circumstance of the evidence of a witness forced to give bribe may lead to absurd result. Bribe is not taken in public view and, therefore, there may not be any person who could see the giving and taking of bribe. As in the present case, a shadow witness did accompany the contractor but the appellant did not allow him to be present in the chamber. Acceptance of this submission in abstract will*

encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of prosecution. Law cannot countenance such situation. In our opinion it is not necessary that the evidence of a reliable witness is necessarily to be corroborated by another witness. Not only this corroboration of the evidence of a witness can be found from the other materials on record. Here in the present case there does not seem any reason to reject the evidence of the contractor PW.1, M. Venka Reddy. His evidence is further corroborated by the evidence of the shadow-witness PW.2, G.T. Kumar. The shadow-witness has stated in his evidence that when he entered in the chamber, appellant was asked by the Inspector as to whether he had received any amount from the contractor, he denied and then removed the currency notes 14 from his trouser's pocket and threw the same. He had further stated that sodium carbonate test was conducted in which the solution turned pink when the appellant's fingers and the right side trouser's pocket were rinsed. From the aforesaid one can safely infer that the evidence of the contractor is corroborated in material particulars by the shadow-witness.

28. Recently, a Constitution Bench of the Supreme Court in the case of **Neeraj Dutta vs. State (Govt. of N.C.T of Delhi),** (2023) 4 SCC 731, while answering the question as to whether in the absence of direct or primary evidence of demand of illegal gratification, is it not permissible to draw an inferential deduction of culpability/ guilt of a public servant under Section 7 and Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution, surveyed the legal precedents on the issue laid down by the

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Supreme Court in previous past and summarized the legal position in the following manner:

> *(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*
>
> *(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*
>
> *(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*
>
> *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*
>
> > *(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*
> >
> > *(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is*

an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case

by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) Inso far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.

29. From the foregoing analysis of the legal position on the subject, it emerges that there is no abstract rule that uncorroborated testimony of a bribe giver should not be accepted. It is also clear that a bribe giver can be termed as a partisan witness who is interested in the success of trap and his statement has to be analysed and scrutinized in the same manner in which the statement of any other partisan witness is to be analysed and scrutinized before placing reliance upon it. It is further beyond any cavil that corroboration to the statement of a complainant can be by way of direct evidence or by way of circumstantial evidence and it is not necessary that corroboration to his statement has to be by direct

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evidence only. The quantum of evidence corroborating the testimony of a trap witness would depend upon its own facts and circumstances which would include nature of the crime and the character of the trap witness. The Court, on the basis of the facts and circumstances of each case, will have to weigh the evidence and see whether corroboration is necessary.

30. In the face of the aforesaid legal position, let us now advert to the facts of the present case.

31. If we have a look at the statement of PW Parmanand on the aspect of the transaction involving the bribe money at the time of the trap proceedings, he has stated that the appellant came to his shop at about 4 p.m. and he got cold drink for him. While the appellant was sipping cold drink, he asked him whether he had arranged the money. Thereafter, he demanded the money and told him that he has to pay it. The complainant further stated that he took the tainted amount and handed it over to the appellant, who, after counting the same, put it in the right-side back pocket of his pant. Thereafter, PW Madan Singh gave the pre-fixed signal to the other members of the trap team. Later on, however, he stated that the tainted money was recovered from the left-side

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pocket of the appellant. He further stated that PW Madan Singh conducted the search of the appellant's pocket and, when he took out the tainted money from the appellant's pocket, the appellant tucked the currency notes with his hand, as a result of which two currency notes fell down on ground, whereafter PW Madan Singh picked them. In his cross-examination, he denied that he had thrust the money into the appellant's pocket under the directions of PW Deepak Tufchi, Inspector. He also denied the suggestion that the currency notes were recovered from the ground and not from the possession of the appellant.

32. So far as the shadow witness is concerned, initially, he supported the prosecution case, but then he stated that the appellant was offered cold drink by PW Parmanand, whereafter he handed over the bribe money to the appellant because the appellant had demanded it from him. He further stated that the appellant kept the bribe money in the right-side back pocket of his pant, whereafter he passed on the pre-fixed signal. He, however, stated that the bribe money was lying on the ground and the same was picked up by PW Sanjeev Gupta. The witness was declared hostile. During his cross-examination, he stated that he did not hear the conversation between the appellant and the complainant. He

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further stated that the currency notes fell down between the bench and the counter. He further stated that he did not see the currency notes falling down, but he stated that the currency notes had fallen down during the search and not from his hand.

33. So far as the other members of the trap team are concerned, their consistent statements regarding the transaction involving the bribe money at the time of the trap proceedings are that, when PW Madan Singh conducted the search of the right-side back pocket of the pant worn by the appellant and when he was taking out the tainted notes from his pocket, the appellant pushed him, as a result of which the currency notes fell down on the ground. These notes were picked up and tallied with the serial numbers noted on the slip. The independent witness, PW Sanjeev Gupta, has also deposed on similar lines. However, he has stated that the appellant turned violent when he was caught and that the tainted money was recovered from the right-side back pocket of the pant worn by the appellant.

34. There is consistent evidence on record to show that the appellant had demanded illegal gratification from PW Parmanand and he accepted the same during the trap proceedings. Even the hostile witness, PW Madan Singh,

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has clearly stated that the demand emanated from the appellant, pursuant to which the tainted money was handed over by the complainant to the appellant. He has resiled from his statement made to the investigating agency only to the extent of the recovery of tainted money from the possession of the appellant. He stated that he saw the tainted money falling on the ground, from where it was picked up by PW Sanjeev Gupta. So far as the transaction involving the bribe money between the appellant and the complainant is concerned, he has confirmed the said fact and, to that extent, he has corroborated the statement of PW Parmanand. Thus, it cannot be stated that the finding of the learned trial court, that there was a transaction involving tainted money in the form of demand and acceptance at the time of the trap proceedings, is based only on the uncorroborated testimony of the complainant. In fact, the statement of PW Madan Singh corroborates the statement of PW Parmanand in its material particulars except to the extent of recovery of tainted money. Regarding recovery of tainted money from the possession of the appellant, the statement of the complainant is corroborated by all the members of the trap team.

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35. Even otherwise, the law is well settled that, in reaching a conclusion, the Court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. The law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. This discretion is clearly envisaged in Section 114 of the Evidence Act. In the present case, it has been established that the tainted currency notes were handed over to PW Parmanand during the trap proceedings and that these currency notes were recovered from the back pocket of the pant worn by the appellant upon his search after the trap proceedings. There is also evidence on record to show that the hand wash and pant wash of the appellant turned pink immediately after the trap. From these proved facts, a presumption can be drawn that the appellant had willingly received the currency notes. Therefore, the finding of the learned trial court that the prosecution has succeeded in proving that the appellant had demanded and accepted the tainted currency notes, which were recovered from his possession, on the basis of which the presumption under Section 4 of the J&K P.C. Act has to follow, appears to be well-founded.

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36. It has been contended by learned senior counsel appearing for the appellant that there was no occasion for the appellant to be in the shop of the complainant at the relevant time and that he had gone there only with a view to verify whether the complainant had installed the machinery. Therefore, his defence that the money was thrust by the complainant into the back pocket of his pant to falsely implicate him appears to be probable, which is supported by the statements of defence witnesses who have stated that the appellant was being falsely implicated and that they had seen the currency notes lying on the ground at the spot.

37. In the above context, it is to be noted that it is the defence of the appellant that the complainant had not purchased the machinery and he had not produced the purchase bills before him. If the complainant had not produced the purchase bills before the appellant, there was no occasion for him to visit the shop of the complainant to verify whether or not the machinery had been installed. The fact that the appellant visited the shop of the complainant at the time of the trap proceedings leads to an inference that he had gone there with a view to collect the bribe money that he had demanded from the complainant but unfortunately for him, he was trapped there. So far as defence witnesses are concerned,

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they have clearly stated in their cross-examination that they had no knowledge of what had happened in the shop of the complainant before they reached the spot. According to them, they reached the spot when the appellant had already been apprehended by the team of the Vigilance Organization. Thus, their statements regarding the events that had taken place prior to the apprehension of the appellant cannot be relied upon.

38. The contention of the appellant that verification of the complaint made by PW Parmanand was not conducted by the trap laying officer and other members of the trap team, is without any substance. In this regard it is to be noted that all the members of the trap team including independent witnesses have categorically stated that the complainant was questioned about the veracity of the allegations made in the complaint and he was also questioned so as to ascertain whether he had any grudge against the appellant.

39. From the forgoing discussion and analysis of the material on record, it can safely be concluded that the prosecution has been able to prove all the ingredients of the offence for which the appellant has been charged. The evidence on record regarding demand, acceptance and recovery of the

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tainted money is cogent and convincing. Hence there is no reason to discard the same.

40. For what has been discussed hereinbefore, I do not find any ground to interfere with the well-reasoned judgment passed by the learned trial court. Accordingly, the impugned judgment of conviction is upheld. However, having regard to the fact that the appellant has undergone trial for about six years and that the present appeal has remained pending before this Court for the last nine years, the quantum of sentence of imprisonment imposed upon the appellant by the learned trial court deserves to be reduced. Accordingly, the sentence of imprisonment imposed upon the appellant by the learned trial court is reduced from two years to one year for each of the offences.

41. The present appeal against the judgment of conviction is accordingly dismissed. However, the order of sentence is modified to the extent that the appellant shall, besides paying a fine of rupees 10,000/- in each of the offences for which he has been convicted, undergo simple imprisonment for one year in each of the offences.

42. The appellant shall surrender before the learned trial court within a period of one month from today to serve the sentence. Upon the appellant's surrender, the learned trial

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court shall send him to jail to serve the balance sentence. In case the appellant does not surrender before the trial court within the aforesaid period, coercive measures shall be taken to secure his presence before the said court. The trial court record, along with a copy of this judgment, be transmitted to the learned trial court.

(Sanjay Dhar)
Judge

Jammu
05.11.2026
Madan Verma-Secy

Whether order is speaking? Yes/No
Whether order is reportable? Yes/No

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