

Delhi District Court

Cc No.43/2019 State vs . Yashbir Singh on 23 December, 2020

CC No.43/2019

State Vs. Yashbir singh

IN THE COURT OF MS. KIRAN BANSAL,  
SPECIAL JUDGE (PC ACT) (ACB)-01, RADC, NEW DELHI

CC No.43/2019  
CNR No.DLCT11-000239-2019

State (Govt. of NCT of Delhi)

VERSUS

Yashbir Singh  
S/o Sh. Rambir Singh  
R/o E-50, Gali No. 2, East Vinod Nagar  
Seelampur, Delhi.

Permanent Address : Village Mukimpur, P.O. Jatpura,  
District Bulandshahar, U.P.-203001.

FIR No. : 01/2017  
U/S : 7/13(i) (d) Prevention of Corruption Act, 1988  
PS : Vigilance

Date of institution : 04.01.2019  
Judgment reserved on : 17.12.2020  
Judgment delivered on : 23.12.2020

JUDGMENT

1. Brief facts of the case are that on 17.02.2017, complainant Shailender Kumar approached the Vigilance Branch and filed a complaint alleging that he is an auto-rickshaw driver having Delhi, Ghaziabad and Noida permit to ply auto- rickshaw. He further stated in his complaint that one HC Shyambir alongwith another police official, (known as Fauji) demanded Rs. 19,000/- monthly for permitting his vehicle to ply on the road and told the complainant that if he did not pay Rs. 19,000/- monthly to them, they would not allow the auto-rickshaw of the complainant to run on the route. It is further stated that the amount of bribe for plying auto-rickshaw was scaled down to Rs.9,000/-. On 17.02.2017, CC No.43/2019 State Vs. Yashbir Singh on the complaint of the complainant, a raid was conducted by Insp. Anand Singh alongwith his staff and panch witness Sh. Raj Singh and at about 6.30 pm, near Mother Dairy Chowk Jhuggi Camp, Delhi, the complainant handed over an amount of Rs. 9,000/-(i.e. four currency notes of Rs.2,000/- and two currency notes of Rs.500/- denomination) to Ct. Yashbir Singh (Fauzi) which he accepted and thus, the accused was caught red-handed at the spot by police and the bribe amount of Rs.9,000/- was also recovered from his possession in the presence of complainant and panch witness. Thereafter, the present FIR was registered after completion of raid proceedings. During the course of investigation, statement of the complainant was also got recorded U/s 164 Cr.P.C. on 05.07.2018. Co-accused

Shyambir Singh was not chargesheeted since he was not present at the spot at the time of raid nor any other evidence is stated to be found against him except oral allegations as per the chargesheet. Sanction U/s 19 of PC Act was also obtained against accused during investigation.

2. After completion of the investigation, charge-sheet was filed under Section 7/13 of Prevention of Corruption Act, 1988 and cognizance for the offences was taken against the accused vide order dated 19.01.2019. Thereafter, accused was summoned and charge for the offences under Section 7 and Section 13(1)(d) of POC Act, 1988 was framed against the accused on 18.04.2019 to which accused pleaded not guilty and claimed trial.

3. Prosecution, thereafter, examined 19 witnesses in order to prove their case.

PW-1 Ct. Mahender Kumar proved the FIR No. 1/17 which is EX.PW1/A and certificate U/s 65B Indian Evidence Act is EX.PW1/B. This witness was not cross-examined by Ld. Counsel for the accused.

4. PW-2 HC Tara Chand deposed that on 17.02.2017, he was posted at PS Vigilance and at about 04:30 pm, he accompanied Insp. Anand Singh, Panch Witness Raj Singh, complainant Shailender and other staff and reached near CC No.43/2019 State Vs. Yashbir Singh Mother Dairy, Yamuna Par, Jhuggi Camp for conducting a raid and at about 06:30 pm, he alongwith Insp. Anand Singh apprehended accused Yashpal. He further deposed that from the right hand of accused Yashpal, four currency notes of Rs.2,000/- and two currency notes of Rs.500/- denomination were recovered. He further deposed that at about 08:00 pm, he was given Rukka by Insp. Anand Singh on the basis of which, he got registered the present FIR at PS Vigilance. PW-2 correctly identified the accused Yashpal who was present in the court. He further deposed that the accused might be Yashpal or Yashbir @ Fauji, however, he is the same person who was present in the court.

5. PW-2 was cross-examined by Ld. Addl. PP for the State as he had not disclosed the complete facts of the case. During the cross-examination by Ld. Addl. PP for the State, PW-2 deposed that the number of currency notes recovered from the right hand of the accused were tallied with the pre-raid report and the same matched with the numbers mentioned in the pre-raid report. During his cross-examination, he identified his signature on the seizure memo EX.PW2/A vide which currency notes were sealed. He has also identified his signatures on EX.PW2/B i.e. seizure memo of right hand wash of accused. He further admitted that after registration of FIR when he came back to the spot, he had given copy of FIR and tehrir to Insp. Vijay Singh instead of Insp. Anand Singh. He has also identified the currency notes EX.P1 to EX.P6 i.e. four currency notes of Rs.2,000/- and two currency notes of Rs.500/- which were recovered from the right hand of the accused. He has also identified the bottle EX.P7 which was containing the right hand wash of the accused.

6. During the cross-examination by Ld. Counsel for the accused, PW-2 deposed that in his presence no call was made from Vigilance Department to fix the time and place where the bribe money was to be handed over. He further stated that there was constant traffic flow on the road at the spot when they CC No.43/2019 State Vs. Yashbir Singh reached. He further stated that the accused was alone when he was apprehended and no one ran away at the time of apprehension of the accused and

accused had come on his motorcycle. However, he could not state whether motorcycle was taken into possession or not by the IO. He further stated that at the time of apprehension there was traffic noise due to movement of the vehicles. He further stated that there were some kiosks near the spot and that local SHO was not informed about the raid and no entry regarding arrival and departure was made at the local PS. He further stated that he had signed the seizure memo of currency notes Ex.PW2./A and seizure memo of seal and right hand wash of the accused Ex.PW2/B after he came to the spot with the FIR and that the seizure memos were prepared in his presence but thereafter, he changed his version and stated that he signed the same before leaving the spot alongwith the rukka. He further stated that the RO prepared the documents while sitting on the stool which belonged to one of the kiosk owner at the spot.

7. PW-3 Raj Singh, panch witness deposed that on 17.02.2017 he was posted as Junior Assistant in NDMC and he was called at Barakhamba Vigilance Office where complainant Shailender met him who deposed that bribe for plying auto was demanded from the complainant. He further deposed that the complainant had brought Rs.9,000/- which was settled between the complainant and the person who was demanding bribe. He further deposed that pre-raid demo was given to him by Insp. Anand Singh and currency notes after applying phenolphthalein powder were given to the complainant. He further deposed that thereafter, they proceeded from Vigilance office in two vehicles and reached near Mother Dairy Chowk near Vinod Nagar. He further deposed that he heard that Fauji was demanding money and said that henceforth the complainant would not face any difficulty, however, he could not hear the entire conversation due to noise of auto rickshaws. PW-3 has correctly CC No.43/2019 State Vs. Yashbir Singh identified the accused who was present in the court. He further deposed that the complainant gave bribe money to accused Fauji and then PW-3 gave signal to police by hurling his right hand and thereafter, police apprehended accused Fauji. He further deposed that bribe money of Rs.9,000/- i.e. four currency notes of Rs.2,000/- and two currency notes of Rs.500/- denomination were recovered from the possession of the accused. He further deposed that hand wash of the accused was taken and colour of solution turned pink.

8. PW-3 was also cross-examined by Ld. Addl. PP for the State as he had not disclosed the complete facts. During his cross-examination by Ld. Addl. PP for the State, PW-3 admitted that complainant Shailender had told in Vigilance Office that HC Shyambr and another police official known by the name of Fauji were demanding bribe of Rs.19,000/- monthly for plying auto rickshaw. PW-3 further admitted that in his presence, Insp. Anand recorded statement of complainant Shailender wherein he had told that due to pressure of the police officials, he had become ready to give Rs.9,000/- to them. PW-3 has identified his signature on the statement of the complainant Ex.PW3/A. He further admitted that serial numbers of the GC notes produced by the complainant were recorded in the proceedings after recording statement of the complainant Ex.PW3/A. He further admitted that after the demo proceedings, sodium carbonate solution which turned pink was thrown and his hands were got cleaned with soap and water. He further admitted that Insp. Anand had briefed him to remain with the complainant so that he could see and hear the conversation between the complainant and accused. He further admitted that Insp. Anand had directed the complainant to hand over the bribe money to accused only after his demand. He further deposed that he could not hear completely the words due to traffic sound, therefore he could not say about the exact words spoken by the accused were "le aaya paise, mujhe paise doge to hi auto chalne

doonga". He further admitted that CC No.43/2019 State Vs. Yashbir Singh accused Fauji had accepted bribe money of Rs.9,000/- by holding the same in his right hand and the bribe money was recovered from right hand of the accused. He further admitted that serial numbers of the GC notes which were recovered from the right hand of the accused were got tallied with the pre-raid report. PW-3 has identified his signatures on seizure memo Ex.PW2/A and Ex.PW2/B. He further admitted that after proceedings of seizure memo of the hand wash and currency notes, Insp. Anand had prepared tehrir and gave the same to HC Tara Chand for registration of FIR. He further admitted that at about 08:00 pm, Insp. Vijay Singh came to the spot and custody of accused Fauji, sealed parcels etc. were handed over to him by Insp. Anand. He further admitted that in his presence, Insp. Vijay arrested the accused and conducted his personal search. PW-3 has identified his signatures on personal search memo Ex.PW3/B and raid proceedings Ex.PW3/C. He has also identified the bottle Ex.P7 which was containing right hand wash of the accused which was taken on the date of raid at the spot. He has also identified GC notes of Rs.9,000/- and after going through the seizure memo and raid report, he submitted that these currency notes Ex.P1 to Ex.P6 are the same currency notes which were accepted by the accused as bribe from the complainant in his presence and the same were recovered from the right hand of the accused.

9. During the cross-examination by Ld. Counsel for the accused, PW-3 deposed that he had received the instructions on the evening of 16.02.2017 to report at PS Vigilance on the next day and when he had reported at PS Vigilance, the complainant was already present. He further stated that no call was made to HC Shyambir or Fauji in his presence before proceedings for the raid. He further stated that father of the complainant had accompanied the complainant at PS Vigilance but father of the complainant had not gone to the spot for the raid. He stated that accused had reached the spot on foot alone and nobody else was accompanying the accused. He admitted that there was CC No.43/2019 State Vs. Yashbir Singh noise of traffic at the spot and auto rickshaws were standing there. He further stated that accused and the complainant had met behind a TSR. He denied the suggestion that the complainant had shook hand with the accused when they both met or that the complainant had stealthily kept/thrust the money inbetween the palm of the complainant and the accused during the handshake. He further stated that he does not remember whether there were any kiosk or not. He stated that he had left the spot alongwith Insp. Vijay Singh at around 09:00 pm for PS Vigilance and had left for home and had not went inside the PS Vigilance after returning from raid. He further stated that in his presence no addition or alteration was done in the documents at the spot and the documents were prepared on the road side where the vehicles were parked by the RO.

10. PW-4 ASI Surender Singh proved the DD No. 5A regarding recording of FIR and handing over original rukka to him which is Ex.PW4/A. He further deposed that original rukka and FIR were handed over to HC Tara Chand and investigation was marked to Insp.Vijay Singh. He also proved the DD no. 7A dated 17.02.2017 Ex.PW4/B.

11. During his cross-examination by Ld. Counsel for the accused, he admitted that FIR Ex.PW4/A was not typed in his presence rather it was typed by CIPA operator in his room. He further deposed that he does not know how to operate computer. The certificate U/s 65B Indian Evidence Act Ex.PW4/DA bears his signature.

12. PW-5 Ct. Ranjeet Singh deposed that on 07.02.2018, he was posted at SIP Branch, East District, Delhi and he had handed over the posting details of Ct. Yashbir Singh which were seized vide memo Ex.PW5/A and posting details are Ex.PW5/B. PW-5 was not cross-examined by Ld. Counsel for the accused.

13. PW-6 Jitender Kumar, Senior Scientific Officer, deposed that on 18.01.2018, he was posted as SSO, FSL, Rohini and exhibits were received in the FSL on CC No.43/2019 State Vs. Yashbir Singh 08.03.2017 through ASI Kailash and on that day one sealed parcel bearing the seal of RRK was received by him for examination. He further deposed that on chemical TLC examination, exhibit RHW was found containing sodium carbonate and phenolphthalein. His report is Ex.PW6/A. During his testimony, he has identified his signatures on glass bottle Ex.PW2/P7.

14. During his cross-examination by Ld. Counsel for the accused, PW-6 deposed that he had done complete TLC examination including the iodine fume treatment and that the result of iodine fume treatment are mentioned in his worksheet, though the same are not separately mentioned in the report Ex.PW6/A. He further stated that the bottle was resealed after examination by the lab attendant in his presence and under his supervision. He denied the suggestion that he was not competent to perform the tests.

15. PW-7 ASI Narender Kumar deposed that on 17.02.2017, he was posted at PS Vigilance as Duty Officer from 08:00 am to 08:00 pm. He further deposed that on that day, Insp. Vijay had made DD entry no. 25B Ex.PW7/A. PW-7 was not cross-examined by Ld. Counsel for the accused.

16. PW-8 ASI Kailash deposed that on 08.02.2007, he was posted at PS Vigilance and on the directions of IO, he had taken the sealed exhibits from the MHC(M) alongwith road certificate and sample seal i.e. RRK and deposited the same at FSL, Rohini. He further deposed that after depositing the exhibits at FSL, Rohini, he had brought the acknowledgment of the same and deposited the same with MHC(M). He further deposed that till the case property remained with him, the same was not tampered with.

17. During the cross-examination by Ld. Counsel for the accused, he denied the suggestion that the case property was tampered with or that he was deposing falsely.

18. PW-9 Ct. Manoj deposed that on 12.02.2018 while he was posted at PS Vigilance, on the instructions of the IO, he went to FSL, Rohini and collected CC No.43/2019 State Vs. Yashbir Singh the exhibits of the present case alongwith the FSL result and deposited the same in the Malkhana, PS Vigilance. He further deposed that the exhibits of the present case remained intact till they remained in his custody. PW-9 was not cross-examined by Ld. Counsel for the accused.

19. PW-10 Shailender Kumar Tiwari deposed that he is an auto driver by profession and Sh. Shyambir and Yashbir used to harass and used to damage his auto. He further deposed that Yashbir is also known by the name Fauji and that he had met both the said persons when they stopped his vehicle and had demanded Rs.19,000/- monthly. The demand was scaled down to Rs.9,000/- by both the accused after negotiations. He further stated that when the demand of Rs.19,000/- was

made by accused Yashbir, Shyambir was standing beside him. He further stated that thereafter on 16.02.2017, he had approached the PS Vigilance and met ACP Yadav who asked him to come on 17.02.2017. He further stated that he had reached PS Vigilance at around 12:00 noon on 17.02.2017 and had signed the documents before leaving PS Vigilance for the Mother Dairy at PS Mandawali. He further stated that he handed over four currency notes of Rs.2,000/- and two currency notes of Rs.500/- were given to the IO who had applied some powder on the same and thereafter, the currency notes were kept in his right side pocket of his trouser. He further stated that his father had also accompanied him at that time and panch witness was also present. He further stated that the accused came at the spot at around 04:45 pm and the accused had seen him and called him and then he alongwith the panch witness went to the accused and accused asked him whether he had brought the amount to which he told that he had brought the amount and handed over the same to the accused. Thereafter, panch witness gave signal to the police officials who apprehended the accused. He further deposed that Shyambir was also at the spot but he was a little behind the accused Yashbir and therefore, he managed to run away from the spot.

CC No.43/2019 State Vs. Yashbir Singh He further deposed that handwash of accused Yashbir turned pink, the handwash was put in one bottle which was sealed on the spot and had signed the bottle. He further deposed that the money which he had given to the accused was also recovered from him by the IO. He further deposed that search of the bike of the accused was also taken from where a diary was recovered. Thereafter, they had come back to PS and the IO made enquiries from the accused. He further stated that "paise pe sign karaye the". Again said, "jo paise seal kiye the unpe sign karaye the, mauke pe sign karaye the". The complainant identified his signatures on the various search memos and arrest memos as well as seizure memos. He also identified the bottle containing the right hand wash of the accused Ex.P7 and the currency notes Ex.P1 to Ex.P6. The complainant further stated that after applying the powder on the currency notes, his handwash was taken in a tumbler which turned pink. He further stated that after he had given the money to the accused Yashbir, he had spoken to Shyambir telephonically and told him that he had given the money to Yashbir and Shyambir said it is ok. He further stated that he had given the money behind the TSR. He further stated that the accused alongwith HC Shyambir had met him several times and whenever accused Yashbir used to demand money, Shyambir also supported him. The complainant identified his signature on the statement under section 164 Cr.P.C. Ex.PW10/E.

20. During the cross-examination by Ld. Defence counsel, the complainant stated that he has four auto rickshaws and all the four auto rickshaws have registration number of Ghaziabad, U.P. having permit of NCR and that on 14.02.2017, the accused and Shyambir had damaged his auto for the first time and he had made a call at 100 number. He further admitted that his vehicle was impounded under section 66 D.P. Act by the accused and Shyambir and that he had made a complaint against Ct. Ravi Balyan also in PS Vigilance as CC No.43/2019 State Vs. Yashbir Singh well as to the ACP and DCP office. He admitted that there is no sanctioned auto stand near Mother Dairy. He further stated that his statement was recorded by the RO Insp. Anand Singh on 16.02.2017. He also admitted that an FIR No. 924/15 against his brother Babloo was lodged on the complaint of the accused. He further stated that he had got recorded his statement under section 164 Cr.P.C. that accused as well as HC Shyambir were demanding Rs.19,000/- monthly from him and he was confronted with his statement wherein instead of Rs.19,000/-, demand of Rs.20,000/- is

mentioned to which the complainant stated that "bole to 19 the, ho sakta hai mistake ho gai hogi". He further stated that he had got recorded in his statement under section 164 Cr.P.C. EX.PW10/E that the demand was scaled down to Rs.9,000/- and he was confronted with his statement wherein it is not so recorded. The complainant further stated that though the panch witness was called on 17.02.2017 but he has signed his statement on 16.02.2017 itself. He further stated that though his father had accompanied him to PS Vigilance but had left from outside and had not gone inside.

21. During his further cross-examination, the complainant deposed that on 14.02.2017, HC Shyambir had talked to him and had demanded Rs.19,000/- and on the same day negotiations had taken place with HC Shyambir. He further stated that he had met ACP Yadav as well as RO Insp. Anand Singh on 16.02.2017 and had produced currency notes of Rs.19,000/- and phenolphthalein powder was also applied by Insp. Anand Singh and demo proceedings were also conducted on 16.02.2017. He further stated that on 16.02.2017, Insp. Anand Singh had not asked him to call accused or HC Shyambir. He admitted that his vehicles were impounded by accused and HC Shyambir several times. He admitted that several cases were registered against him though, he stated that the same are false and fabricated. The list of details of about 18 cases were given during cross-examination and the witness CC No.43/2019 State Vs. Yashbir Singh admitted the following cases registered against him :-

(i) FIR No.54/15, U/s 308/186/332/341/353/34 IPC, PS Mandawali.

(ii) FIR No. 448/17, U/s 365/323/506/34 IPC, PS Kalyan Puri.

(iii) FIR No.246/17, U/s 324, PS Mandawali.

(iv) FIR No. 117/18, U/s 323/341/34 IPC, PS Ghazipur.

22. He further stated that the complaint lodged by him with PS Vigilance was a typed complaint and on the typed complaint he, panch witness and the RO had signed. He further stated that on 17.02.2017 also phenolphthalein powder was used and the remaining phenolphthalein powder was also kept in a bag by Insp. Anand Singh which was taken to the spot. He further stated that the demo of use of phenolphthalein was not given on 17.02.2017. He further stated that he had visited the PS Vigilance on the next day also and had stayed there for around 20 minutes when his signatures were obtained on one paper. He further stated that after apprehension of the accused they had left the spot from PS Vigilance in between 05:30 pm to 06:00 pm and they were relieved from PS Vigilance at around 10:00 pm. He further stated that Insp. Anand Singh had prepared the documents after they had reached PS Vigilance. He further stated that the documents Ex.PW3/B i.e. personal search of the accused, Ex.PW10/A i.e. arrest memo, Ex.PW2/B seizure memo of the sample seal and the right hand wash of the accused and Ex.PW2/A i.e. seizure memo of the currency notes were prepared by Insp. Anand Singh at PS Vigilance and that his signatures on the pulandas were also obtained at PS Vigilance. He further stated that he had signed the bottle after the raid. He further stated that he does not remember the place whether he had signed on bottle. He further stated that all the officials who had gone for the raid returned back together and none of them remained at the spot. He stated that after reaching at the spot on the day CC No.43/2019 State Vs. Yashbir Singh of

the raid after 10 minutes of the reaching the spot, he had seen HC Shyambir. He stated that he had spoken to Shyambir as well as to the accused and had offered the money to them as demanded. He stated that at that time he alongwith panch witness sat in an auto when accused had demanded money and he had given the money inside the auto in the presence of the panch witness. He stated that the accused was not apprehended while sitting in the auto and that they had started walking when the accused was apprehended. He had stated that HC Shyambir and accused both had come to the spot on separate motorcycle and the motorcycle of the accused was also taken to PS Vigilance and HC Shyambir had fled away on his motorcycle. He further stated that the owner of the auto in which they had sat was not present at the spot. He denied the suggestion that he had any handshake with the accused or had stealthily kept or thrust the currency notes in the hand of the accused without any demand during the handshake. He admitted that several cases are registered against his brother and he is a declared BC of PS Ghazipur but thereafter, again stated that he was not aware as to whether his brother is declared BC of PS or not. He denied that three cases were registered against his father at PS Kalyanpuri and one case is registered at PS Ghazipur. Several FIRs were also put to him by Ld. Defence counsel and the complainant stated that he is not aware of any of these FIRs registered against his brother. He denied the suggestion that he had got the false case registered in order to take revenge against the accused or that he had got present case registered with a view to build pressure upon the police officials to not to restrain him from illegally parking and plying autos from mother dairy area.

23. After the cross-examination by Ld. Defence counsel, Ld. Addl. PP for the State has re-examined the complainant on material points and during re- CC No.43/2019 State Vs. Yashbir Singh examination, the complainant admitted that nowhere he stated in the documents that phenolphthalein powder was applied on 16.02.2017 or that he had nowhere stated that accused and the complainant sat in the auto at the spot and in the auto accused demanded money from him and he gave money to the accused inside the auto. The complainant again changed his stand and stated that phenolphthalein powder was applied on currency notes on 17.02.2017 and not on 16.02.2017. He also changed his version and stated that transaction of bribe had not taken place inside the auto and rather had taken place behind the auto.

24. Thereafter, the complainant was re-crossexamined by Ld. Defence counsel during which he denied that he is well versed with the court proceedings as he was facing several criminal trials and he is in touch with the defence lawyers. He denied that in order to strengthen his false case against the accused, he admitted the suggestion given by Ld. Prosecutor during his re-examination.

25. PW-11 ASI Mahender Kumar deposed that on 02.08.2017, on the instructions of the IO, he went to Idea Mobile Phone Service Provider, Noida and collected CAF of mobile phone no. 9911960064, CDR and certificate U/s 65B Indian Evidence Act and handed over the same to IO ACP Vijay Singh. He further deposed that on 12.10.2017, on the instructions of the IO, he again visited Idea Mobile Service Provider office and collected CDR and location ID chart running into two pages and handed over the same to IO ACP Vijay Singh. The aforesaid total eleven pages are EX.PW11/A (colly).

26. During the cross-examination by Ld. Counsel for the accused, he deposed that IO had given him a request letter addressed to Idea Mobile Service Provider but he was not given any separate

authorization letter mentioning his name therein. He denied the suggestion that he did not join the investigation in the present case.

27. PW-12 SI Sagar Singh deposed that on 17.02.2017, Insp. Vijay Singh CC No.43/2019 State Vs. Yashbir Singh deposited the case property i.e. sealed bottle containing handwash, GC notes and personal search articles of accused in Malkhana and PW-12 made entry in the Register no. 19. He further deposed that on 08.03.2017, on the instructions of the IO ACP Vijay Singh the aforesaid sealed bottle was given to ASI Kailash for depositing the same at FSL, Rohini. He further deposed that on 12.02.2018, Ct. Manoj brought the FSL result alongwith the case property which was kept in the Malkhana and FSL result was given to the IO. The relevant entries running into 12 pages is EX.PW12/A and photocopy of the relevant part of the register no. 21 is EX.PW12/B and photocopy of acknowledgment of case property/FSL receipt is EX.PW12/C. He further deposed that on 11.10.2017, IO ACP Vijay Singh checked and noted the IMEI number of mobile phone which was deposited in the Malkhana and PW-12 made endorsement in this regard in Register no. 19.

28. During the cross-examination by Ld. Counsel for the accused, PW-12 deposed that signature of IO was not obtained on the Register no. 19. He denied the suggestion that all the entries made in the Register no. 19 and 21 related to the present case are ante-dated and ante-timed. He further deposed that no permission in writing was obtained from any higher officials when IO checked the IMEI number of the mobile phone.

29. PW-13 Ct. Ravish Kumar deposed that on 17.02.2017, he was posted at PS Mandawali and was working as Chitha Munshi. He further deposed that vide DD no. 27B at around 12:50 PM, some police officials of PS Mandawali including Ct. Yashbir had proceeded for some encroachment removal programme in the jurisdiction of PS Mandawali. He further deposed that in the evening he came to know that Ct. Yashbir had been arrested by Vigilance department. He further deposed that on the request of IO, he provided copy of DD No. 27/B dated 17.02.2017 and copy of Chitha Register dated 17.02.2017 which are EX.PW13/A and EX.PW13/B respectively. PW-13 has correctly CC No.43/2019 State Vs. Yashbir Singh identified the accused who was present in the court.

30. During the cross-examination by Ld. Counsel for the accused, he deposed that at around 06:30 pm, an information was received in PS regarding apprehension of Ct. Yashbir by Vigilance department and SHO had proceeded to the spot after receipt of the information.

31. PW-14 Insp. Subhash Chander deposed that on 17.02.2017, he was posted as SHO, PS Mandawali. He further deposed that on 17.02.2017 there was some encroachment removal programme on the instance of Delhi Urban Shelter Improvement Board at Shishu Vatika and several police officials of PS Mandawali including Ct. Yashbir had proceeded to provide assistance. He further deposed that at around 07:30 pm, he came to know that Ct. Yashbir has been apprehended by police officials.

32. During the cross-examination by Ld. Counsel for the accused, he admitted that autos illegally used to be parked and plied from Mother Dairy area. He further deposed hat he had knowledge that an FIR No. 924/15 was lodged by accused at PS Mandawali. He denied the suggestion that beat staff

of PS Mandawali used to refuse to be posted in the beat of mother dairy area out of fear of complainant and they used to state that if they will take action against such autos, they would be falsely implicated.

33. PW-15 Ms. Nupur Prasad is the sanctioning authority who granted prosecution sanction against accused Ct. Yashbir for his prosecution under section 7 & 13 P.C. Act. She deposed that she accorded sanction against the accused vide her detailed order EX.PW15/A after perusing entire material and applying her mind. The request letter of Addl. C.P., Vigilance alongwith summary of facts of the present case is EX.PW15/B.

34. During her cross-examination by Ld. Counsel for the accused, she deposed that the writing with red ink on second page of EX.PW15/A is not her handwriting. She further deposed that she does not remember whether she CC No.43/2019 State Vs. Yashbir Singh had specifically perused the statement recorded under section 164 Cr.P.C., however, she had perused the statements. She further deposed that in statement EX.PW10/D, the demand of bribe is mentioned to be of Rs.20,000/-. She admitted that as per sanction order EX.PW15/A, the demand of bribe is mentioned to be of Rs.19,000/-. She further deposed that she did not raise any query from Vigilance or she herself got conducted any inquiry qua HC Shyambir as to why he was not arrested or what action has been taken against him. She further deposed that she had no jurisdiction qua HC Shyambir. She admitted that in the statement EX.PW3/A, there is reference of HC Shyambir. She further deposed that she had not mentioned in her sanction order the time of raid and time of arrest of accused. She further deposed that she had not visited the spot and therefore, she could not say whether there is any road leading towards Kotla Mubarakpur. She further deposed that no draft sanction order was sent to her alongwith the request for grant of sanction. She denied the suggestion that she had granted sanction in mechanical manner without due application of mind or she had copied the exact replica of the draft of sanction order received from Vigilance.

35. PW-16 ACP Anand Singh is the raid officer and he deposed that on 17.02.2017, he was posted at PS Vigilance as Inspector. He further deposed that on 17.02.2017, he was called by ACP, Vigilance in his office where he met the complainant Shailender and recorded his statement EX.PW3/A in the presence of panch witness Raj Singh. He further deposed that the complainant was apprised about the detailed procedure of the trap proceedings and during this procedure, phenolphthalein powder was applied on hand of panch witness and demo was given regarding change of colour of solution. He further deposed that the complainant had produced Rs.9,000/- (4 currency notes of Rs.2,000/- each and two currency notes of Rs.500/- each) to be used in the trap proceedings on which phenolphthalein powder was applied and GC CC No.43/2019 State Vs. Yashbir Singh notes were given to complainant. He further deposed that he gave instructions to the complainant that he should accompany the panch witness and he should give the bribe money to the accused only on his demand. He further deposed that panch witness was also briefed to remain close with the complainant to overhear the talks between the complainant and accused. He further deposed that the complainant had told that the time fixed for giving bribe was 05:00 pm at Mother Dairy Chowk, under Flyover. He further deposed that at about 04:00 pm, he alongwith panch witness, complainant and other staff of Vigilance proceeded from the office of Vigilance in two vehicles including one private vehicle and at around 04:45 pm, they reached at the spot and took position

around the spot. He further deposed that at around 06:30 pm, panch witness gave pre-decided signal and immediately, they overpowered the accused Ct. Yashbir and bribe money of Rs.9,000/- was recovered from the right hand of the accused. He further deposed that panch witness told him that in his presence accused came and demanded bribe from the complainant and complainant gave bribe money to the accused. He further deposed that the serial numbers of the recovered currency notes were tallied with the serial numbers recorded in the pre-raid report. He further deposed that bribe money which was recovered from the right hand of the accused was seized vide seizure memo Ex.PW2/A and were sealed with the seal of RRK. He further deposed that right hand wash of the accused was taken in a glass bottle and sealed with the seal of RRK, vide memo Ex.PW2/B. He further deposed that thereafter, he prepared rukka for registration of the FIR. He further deposed that after some time Insp. Vijay came to the spot and custody of the accused, case property and various memos were handed over to him. Endorsement for registration of the FIR is Ex.PW16/A. During his statement in the court, he identified the case property i.e. one brown colour envelope Ex.PW16/B containing four currency notes of Rs.2,000/- each and two currency notes of Rs.500/- each. Currency notes are EX.P1 to EX.P6. He has also identified glass CC No.43/2019 State Vs. Yashbir Singh bottle Ex.P7 having pink colour solution.

36. PW-16 was cross-examined by Ld. Addl. PP for the State and his attention was drawn to pre-raid proceedings Ex.PW3/C and during his cross-examination by Ld. Addl. PP for the State, he admitted that during demo proceedings at Vigilance Office, phenolphthalein powder was applied on the currency notes and thereafter right hand of the panch witness was got touched with the currency notes and wash of the right hand of the panch witness was taken in colourless solution of sodium carbonate, which turned pink. He further admitted that the hand of the panch witness was got cleaned and hand wash was thrown away. He further admitted that he had inadvertently stated in his chief examination that phenolphthalein powder was applied on the hand of the panch witness during demo proceedings. He further admitted that after the signal of the panch witness when he overpowered the accused Yashbir, panch witness told that accused Ct. Yashbir had obtained bribe money of Rs.9,000/- from complainant as consideration to allow him to ply his TSR and not to challan his TSR. He further admitted that he had inadvertently stated in his aforesaid examination that after the recovery of bribe money, he had offered search of raiding team. He further admitted that after the recovery of the bribe money from the right hand of the accused, hand wash of the right hand of the accused was taken in colourless solution of sodium carbonate which turned pink. He further deposed that seal after use was handed over to panch witness Raj Singh.

37. During the cross-examination by Ld. Counsel for the accused, PW-16 deposed that he had refreshed his memories before his examination in chief and that he had met the complainant on 17.02.2017 at about 01:00 pm and had not met the complainant on 16.02.2017 nor the complainant had given any complaint on 16.02.2017. He further stated that he had not asked the complainant to make any telephonic call to HC Shyambir or to the accused to verify the claims. He CC No.43/2019 State Vs. Yashbir Singh admitted that the place of meeting is not mentioned in the complaint Ex.PW3/A though the complainant had told him about the place of meeting. He further stated that he had not checked the visitors' register to check whether the complainant had visited the Vigilance Office on 16.02.2017 nor he had verified from the complainant how many TSR the complainant owned or about their route of plying. He had also not verified from the complainant as to how many

times the accused or HC Shyambir had impounded or challaned the TSR of the complainant. The RO admitted that the spot is busy place and that there was noise due to traffic. He further deposed that he had taken the trap kit at around 01:30 pm and stated that phenolphthalein powder was handed over back to MHC(M) after application on the currency notes and the bottle containing phenolphthalein powder was not taken at the spot. His attention was drawn to his statement Ex.PW16/DA where it is recorded that the bottle containing phenolphthalein powder was taken to the spot and also to Ex.PW3/C wherein also it is recorded that the bottle containing phenolphthalein powder was taken to the spot in the raid box but the witness just stated that he had not taken phenolphthalein powder to the spot. He admitted that he had personally not heard any alleged demand of bribe by the accused nor he had seen any transaction or alleged acceptance. He further stated that there might be kiosks around the spot but he does not remember where there was any kiosks or not. He also stated that not much public persons or auto drivers had gathered at the spot at the time of apprehension of the accused nor he had seen any other police officials at the spot or HC Shyambir. He further stated that the complainant had not informed him that HC Shyambir had come to the spot and had run off. As per the RO, he remained at the spot till 10:30 pm and Insp. Vijay reached at the spot at around 08:00 pm. He further stated that all the team members including RO had left the spot for Vigilance Office at around 10:45 pm. CC No.43/2019 State Vs. Yashbir Singh He admitted that the seal of RRK does not belong to him and the same was belonging to ACP Raghu Raj Khatana who was not the team member nor he had gone to the spot. He further stated that it took him around 1½ hours to prepare documents at the spot. He further stated that the particulars of FIR on the documents prepared by him are not in his handwriting and he does not remember when the said particulars were incorporated in the documents. He denied that when he had apprehended the accused, the complainant was holding the hand of the accused in handshake mode and money was stealthily thrust in the palm of the complainant during handshake. He denied the suggestion that the accused had revealed him that several cases were pending against the complainant and his family members and the complainant was having grudge against the accused.

38. PW-17 Ajit Singh, Alternate Nodal Officer, Vodafone-Idea Ltd. has proved the CAF Ex.PW11A of mobile no. 9911960064 which was issued in the name of Yashbir Singh. He has also proved the call details record of the aforesaid mobile number from 11.02.2017 to 17.02.2017, certificate under section 65B Indian Evidence Act, location chart which are Ex.PW11/A. He further deposed that original CAF pertaining to the aforesaid mobile number has already been burnt and same could not be produced.

39. During the cross-examination by Ld. Counsel for the accused, he deposed that the server of the computer is in Pune and is not under his control. He denied the suggestion that nodal officer is not competent to tender evidence or furnish CDR. He further denied the suggestion that certificate under section 65B Indian Evidence Act given by him is false.

40. PW-18 Ct. Pradeep Raj Singh deposed that on 25.05.2018, he was posted as Assistant Record Clerk at HACR Branch, District Shahdara and on the instructions of the IO, he provided copy of original character roll and copy of application form of Ct. Yashbir to IO which is Ex.PW18/A and attested copy CC No.43/2019 State Vs. Yashbir Singh of application form of Ct. Yashbir Singh is Ex.PW18/B. This witness was not cross-examined by Ld. Counsel for the accused.

41. PW-19 ACP Vijay Singh is the IO who deposed that at around 07:30 pm on 17.02.2017, he had reached the spot and had found that accused Yashbir was apprehended by Insp. Anand Singh and his staff. He further deposed that the complainant was also there and he interrogated the accused and arrested him vide Ex.PW10/A. He had also recorded the statement of the witnesses under section 161 Cr.P.C. at the spot and the RO Insp. Anand Singh had handed over him the exhibits which were sent to FSL for examination and the result of the FSL was obtained. He also deposed that about other investigation carried out by him regarding the sending of the exhibits to FSL, obtaining of result, collecting of duty roster, preparation of site plan, collecting of CDRs and CAFs etc. of the mobile phone of the accused and also regarding obtaining sanction from the competent authority. He further stated that the exhibits, seizure memo Ex.PW2/A and Ex.PW2/B were also handed over by the RO alongwith the case property and that he had mentioned the particulars of FIR number on the seizure memo later on after the registration of the FIR.

42. During the cross-examination by Ld. Defence counsel, he admitted that he had refreshed his memory before deposition in the court and had gone through the court file. He further stated that he cannot say whether the remaining phenolphthalein powder after use was returned back to Malkhana or not by the RO. Though, it is mentioned in Ex.PW3/C that the bottle of phenolphthalein powder was kept in the raid box and was taken to the spot. He volunteered that he had not seen phenolphthalein powder at the spot and that bottle of phenolphthalein powder was empty and empty bottle might have been taken for keeping the hand washes. He also admitted that at the spot an illegal auto stand was in operation and stated that there were some autos parked at the spot when he had reached but he had not noticed any kiosk. He CC No.43/2019 State Vs. Yashbir Singh denied that he had met any kiosk owner or public persons at the spot on the day of the incident. He admitted that the complainant had a mobile phone on the day of the raid. Though he denied that the complainant had informed him that he had made a call to Shyambir after he had run away from the spot. He admitted that he had not obtained the CDR and location chart of the mobile phone of the complainant and HC Shyambir despite the fact that the complainant in his statement under section 164 Cr.P.C. had also stated that HC Shyabir was present at the spot and had run away at the time of the incident. He admitted that during investigation he came to know that several criminal cases were registered against the complainant and his brother Babloo Tiwari as well as their father and that they were bad characters. He further admitted that the statement under section 164 Cr.P.C. was recorded after obtaining sanction from the competent authority and that the same was not sent to the sanctioning authority for perusal. He admitted that the complainant had stated that the demand was of Rs.20,000/- monthly before the Ld. MM in his statement under section 164 Cr.P.C. He had sought clarifications for the same and had recorded supplementary statement of the complainant EX.PW19/DA wherein the complainant had stated that the demand was of Rs.19,000/- only. He further stated that he had not handed over the case file to the complainant to go through the same and get his statement recorded under section 161 Cr.P.C. in accordance with the case file and that the complainant was remembering the denomination of the currency notes and their numbers when he got recorded his statement under section 161Cr.P.C. and that even the RO and the panch witness remembered the numbers of GC notes when they got recorded their statements under section 161 Cr.P.C. He further stated that he had not recorded the statement of ACP Raghu Raj Khatana qua the seal being handed over and being used in the present case. He further stated that after returning to PS Vigilance, he had conducted the CC No.43/2019 State Vs. Yashbir Singh proceedings for about

1½ hours. He further stated that the complainant and the panch witness were also present at PS Vigilance at that time and thereafter, they had left the PS. He further deposed that he had got the accused medically examined at government hospital nearby but had not placed the MLC of the accused on record. The MLC of the accused Ex.PW19/B during the cross- examination of IO was taken on record from the police file. He further stated that the accused was first medically examined and then put in lockup on the intervening night of 17/18.02.2017.

43. After completion of the prosecution evidence, statement of accused was recorded U/s 313 Cr.P.C. wherein all the incriminating evidence was put to him which he denied as false and incorrect and further stated that he is innocent and he has been implicated in the present case. He further stated that the complainant was keeping grudge against him as the accused had got registered an FIR no. 924/15, PS Mandawali, U/s 279/186 IPC against the brother of the complainant. He further stated that the complainant and his family members are having criminal antecedents and they had conspired in getting the accused implicated in this case. He further stated that the complainant and his family members and auto drivers who used to ply their vehicle illegally were asked not to park their vehicles near/around Mother Dairy as the same resulted into traffic congestion and the accused was instructed by his seniors to stop illegal parking and illegal plying of vehicles. He further stated that he had never demanded or accepted any bribe amount from the complainant.

44. The accused has led evidence and got examined 16 witnesses in his defence.

DW-1 ASI Satish Chand has proved the FIR no. 364/07, U/s 279/337 IPC which is Ex.DW1/A. During his cross-examination by Ld. Addl. PP for the State, he deposed that he has no personal knowledge about the facts mentioned in the aforesaid FIR as well as of the present case.

CC No.43/2019 State Vs. Yashbir Singh

45. DW-2 Insp. Arun Kumar Chaudhary has brought the history sheet of Shailender @ Rajesh @ Pinku @ Sharma S/o Bhram Dutt Tiwari i.e. the complainant and got exhibited the copy of the same Ex.DW2/A running into 10 pages. During the cross-examination by Ld. Addl. PP for the State, he deposed that he has no personal knowledge about the facts mentioned in the aforesaid FIR as well as of the present case.

46. DW-3 HC Om Singh has proved the DD no. 40A dated 04.05.2015 Ex.DW3/A regarding registration of FIR Ex.DW3/B.

47. DW-4 HC Harish Chand had brought the previous conviction/involvement report of Shailender Kumar Tiwari @ Rajesh @ Pinku @ Sharma S/o Sh. Bhram Dutt Tiwari which is Ex.DW4/A.

48. DW-5 ASI Raj Kumar was posted as duty officer on 15.01.2015 and he proved the FIR No.54/15 Ex.DW5/A as well as FIR No.924/15 Ex.DW5/B.

49. DW-6 Retired ASI Singh Raj Bhati proved the FIR No.355/11 Ex.DW6/A which was registered by him on 28/29.11.2011.

50. DW-7 SI Hari Om proved the FIR No.148/11 registered by him on 04.08.2001, copy of the same is Ex.DW7/A.

51. DW-8 Retired SI Naresh Singh proved the FIR no. 6/99 registered by him on 10.01.1999 Ex.DW8/A.

52. DW-9 Retired SI Phool Singh deposed that on 01.03.2008 while he was posted as Duty Officer had registered the FIR No.8/08 Ex.DW9/A.

53. DW-10 W/ASI Sunita deposed that on 29.11.2002 while she was posted as Duty Officer had registered the FIR No.327/02 Ex.DW10/A.

54. DW-11 SI Rajender Singh deposed that on 28.11.2002 while he was posted as Duty Officer had registered the FIR No.383/02 Ex.DW11/A.

55. DW-12 ASI Raj Kumar deposed that on 22.07.2017 while he was posted as Duty Officer had registered the FIR No.246/17 Ex.DW12/A.

CC No.43/2019 State Vs. Yashbir Singh

56. DW-13 ASI Satvir Singh proved the (i) FIR No.346/14 Ex.DW13/A registered on 23.05.2014, mentioning the name of the complainant/informant Amar Singh S/o Ram Swarup, (ii) FIR No.635/15 E x .DW13/B registered on 02.07.2015, mentioning the name of the complainant/informant Mahavir and name of suspect as Bablu Tiwari, (iii) FIR No.117/18 Ex.DW13/C registered on 31.03.2018, mentioning the name of the complainant/informant Amit Arya and name of suspect as Kallu and Shailender, and (iv) FIR No.190/12 Ex.DW13/D registered on 17.05.2012, mentioning the name of the complainant/informant Rani.

57. DW-14 W/SI Chanchal deposed that on 04.09.2001 while she was posted as Duty Officer had registered the FIR No.289/2001 Ex.DW14/A.

58. DW-15 HC Anil Kumar has brought the original FIR register and proved the FIR No.135/2011 dated 06.04.2011 Ex.DW15/A registered against Shailender @ Pinku S/o Bhram Dutt Tiwari.

59. All the Dws during their cross-examination deposed that they have no personal knowledge about the facts mentioned in the FIRs.

60. DW-16 HC Satya Narayan proved the several FIRs which are as under :

(i) FIR No. 593/03 Ex.DW16/A, registered on 20.12.2003 mentioning the complainant/informant name as SI Ishwar Singh against Babloo S/o Bharam Dutt Tiwari.

(ii) FIR No. 140/09 EX.DW16/B, registered on 06.06.2009 mentioning the complainant/informant name as Kiran Pal against Babloo Tiwari and Kallu Tiwari.

(iii) FIR No. 344/07 EX.DW16/C, registered on 20.05.2007 mentioning the complainant/informant name as Smt. Geeta against Babloo and others.

(iv) FIR No. 259/03 EX.DW16/D, registered on 27.06.2003 mentioning the complainant/informant name as Harender Singh against Bharm Dutt Tiwari and Babloo.

CC No.43/2019 State Vs. Yashbir Singh

(v) FIR No. 413/01 EX.DW16/E, registered on 08.11.2001 mentioning the complainant/informant name as Raj Kumar against Bharm Dutt Tiwari and Rejeshwari Devi.

(vi) FIR No. 448/06 EX.DW16/F, registered on 31.08.2017 mentioning the complainant/informant name as Chander against Babloo Tiwari, Shailender Tiwari and Sumit.

(vii) FIR No. 211/2007 EX.DW16/G, registered on 01.04.2007 mentioning the complainant/informant name as Kiran Pal against Babloo, Shailender and others.

(viii) FIR No. 4/07 EX.DW16/H, registered on 04.01.2006 mentioning the complainant/informant name as Uma Shankar against Bharm Dutt and Brijesh Tiwari.

(ix) FIR No. 652/2006 EX.DW16/I, registered on 08.11.2006 mentioning the complainant/informant name as Kali Charan against Shailender.

(x) ) FIR No. 478/04 EX.DW16/J, registered on 05.10.2004 mentioning the complainant/informant name as Ct. Jai Parkash against Babloo, Sunil and Tinku, all sons of Bharm Dutt Tiwari.

61. The defence through all the 16 witnesses has proved the various FIRs registered against the complainant and his family members.

62. I have heard arguments of ld. Addl. PP for State and ld. Counsel for accused and also perused material available on records.

63. Ld. Addl. PP for the State has argued that from the statement of the complainant, independent public witness, other witnesses who remained associated in the proceedings conducted by investigating agency and other materials on record including positive FSL report, it has been duly proved that accused Yashbir demanded and accepted bribe from the complainant.

64. Ld. Addl. PP further argued that a trap was laid and during trap accused was caught red handed at the spot while accepting bribe money i.e. Rs.9,000/- CC No.43/2019 State Vs. Yashbir Singh pursuant to his demand. He further argued that in respect of proof of prior demand, complainant has stated in his testimony and also mentioned in his complaint that accused made demand of Rs.19,000/- from him to allow plying of his auto rickshaw on several occasions and specifically on the preceding day of the raid, regarding which he made complaint in ACB office. It has also been argued that this portion of testimony of complainant remained unshaken during cross-examination.

65. Also, it has been argued by Ld. Addl. PP for the State that minor contradictions appearing in the testimony of witnesses are normal and natural and can be ignored as the testimony of witness put together are establishing the demand and acceptance of bribe by accused. He has further argued that defence taken by accused about the complainant shaking hand with him at the spot and stealthily passing recovered currency notes in his palm is afterthought as it is not supported by conduct (subsequent) of accused at the spot or way of cross-examination of any witness to the recovery/trap.

66. Ld. Addl. PP further argued that the defence of stealthily passing of currency notes in the hand of accused indicates presence of the complainant and other witnesses including accused at the spot and conducting of trap proceeding, resulting in apprehension of accused with the alleged currency notes/bribe amount. It has also been argued that defence has not brought on record any evidence sharing any enmity between accused and independent public witness or other members of raiding party including the IO/Raid Officer.

67. It has also been argued by Ld. Addl. PP for the State that a criminal can be also a victim of crime and registration of several criminal cases against complainant has nothing to do with merits of this case. Ld. Addl. PP for the State has relied upon following judgments

(i) Mangal Lal Vs State of Punjab, 2001(4) AICLR 442, 447 (P&H).

(ii) Harabolly Kariappa Vs State of Karnataka, 1996(2), Crimes 167.

CC No.43/2019 State Vs. Yashbir Singh

(iii) Nathu Ram Vs State of Haryana, 1994 Cr.L.J., 1095 SC.

(iv) Baba Sahab Apparao Patil Vs State of Maharashtra, Crl. Appeal no. 1264/2005.

68. Ld. Counsel for the accused in support of his arguments relied upon following judgments :

(i) Suresh Kumar Srivastav Vs. State of M.P.1994 Cri. L.J 3738, wherein it has been held that mere recovery of money from accused is not sufficient to raise any presumption against him.

(ii) Rao Saheb Vs. State of Maharashtra 1996 (2) Crimes 80 Bombay High Court, wherein it has been held that where the act attributed to the accused i.e. demanding bribe in front of a stranger was

against the normal course of human behaviour, a reasonable doubt arises in the prosecution story entitling accused to benefit of doubt.

(iii) Abdul Rashid Ansari Vs. State of U.P. 1993 (2) Crimes 261 Allahabad High wherein it was observed that false implication of accused due to enmity could not be ruled out and appellant was acquitted of charges.

(iv) Sunil Kumar Sharma Vs. State (CBI)2007 (2) JCC 1315 Delhi, wherein it has been held that it was the duty of the court below to have seen whether the essential pre-requisites of a Corruption case i.e. demand & acceptance have been proved beyond doubt or not as per settled legal norms for proving a criminal case of corruption. It is sufficient if the accused is able to prove its case by the standard of preponderance of probability as a result of which he succeeds not because he proves his to the hit but because probability of his version throws doubt on the prosecution case.

(v) Om Parkash Vs. State 1998 Rajdhani Law Reporter 478 Delhi, wherein it has been held that if witness of the prosecution do not fully support their case, then it creates doubt and suspicions. Material contradiction in the testimony CC No.43/2019 State Vs. Yashbir Singh of witnesses entitles accused to acquittal.

(vi) Nepal Singh Rawal Vs. CBI, 2011 (3) JCC 2278 Delhi, the accused was acquitted as demand for illegal gratification has not been established by prosecution and there was no consistency in statements of witness.

(vii) Suraj Mal Vs. State, AIR 1979 SC 1408, it has been held that where witnesses make two inconsistent statements in their evidence either at one stage or at two stage, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.

(viii) Prem Singh Yadav Vs. CBI, 2011 (2) JCC 1059, wherein it has been held that by preponderance of probability, the accused has been able to create doubt in the prosecution case. A suspicion is raised against the prosecution case, more so in view of the fact that complainant might be having a grudge against the accused for challaning him on previous occasions. It is difficult to hold that the prosecution has proved its case beyond reasonable doubt. The recovery of tainted money alone is not sufficient to record to conviction. The burden of proof placed upon the accused person against whom the presumption is made under section 20 is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

(ix) N. Sunkanna Vs State of Andhra Pradesh, Criminal Appeal No.1355 of 2015 decided by Supreme Court of India on 14.10.2015, wherein it has been held that mere possession and recovery of the currency notes from the accused without proof of demand not sufficient for conviction. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. In the absence of proof of demand and acceptance, presumption U/s 20 of P.C. Act. 1988 cannot be drawn.

(x) Selvaraj Vs State of Karnataka, Crl. Appeal No.1172 of 2008 decided by Supreme Court of India on 18.08.2015 and A. Subair Vs. State of Kerala [2009 (6) SCC 587] it has been held that this Court has laid down that illegal CC No.43/2019 State Vs. Yashbir Singh gratification has to be proved like any criminal offence and when the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest the conviction on such evidence.

(xi) State of Kerala &anr. Vs. C.P. Rao {2011 (6) SCC 450} wherein it has been laid down that recovery of tainted money is not sufficient to convict the accused. There has to be corroboration to the testimony of the complainant regarding the demand of bribe and when the complainant is not available for examination during the trial, Court has to be cautious while shifting the evidence of other witnesses.

(xii) In Parmanand Vs CBI Crl Appeal 132/04 decided on 03.07.2013 it has been held that this is a material contradiction in the testimony of the only witness with regard to demand. Hence, the prosecution had not been able to prove the demand at the time of raid beyond reasonable doubt.

(xiii) Sunil Kumar Sharma Vs State (CBI), 2007 (3) Crimes 160 Delhi, it has been held that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case. It was further observed that it is sufficient if the accused is able to prove his case by the standard of preponderance of probabilities as envisaged by Section 5 of the Evidence Act as a result of which he succeeds not because he proves his case to the hilt but because probability of his version throws doubt on the prosecution case.

(xiv) B Jayaraj vs State of A.P., 2014 [3] JCC 1552, wherein it has been held that Mere recovery of currency notes cannot constitute the offence under Sec.7 P.C. Act unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. Presumption permissible to be drawn under such presumption can only be in respect of the offence under Sec.7 and not the offence under section 13(1)(d)(i)(ii) of the Act.– It is only on proof of acceptance of illegal gratification that such gratification was received for doing or forbearing to do any official act. It was CC No.43/2019 State Vs. Yashbir Singh further observed that proof of acceptance of illegal gratification can follow only if there is proof of demand.

(xv) Ramesh Vs. State 2013 (2) LRC 237 Delhi, wherein it has been held that statement of complainant not only suffer from discrepancies but also not in line with story of prosecution and also makes whole prosecution story doubtful and suspicious. Fact of entire proceedings conducted on spot not corroborated by complainant. Admission of complainant in his cross examination that he was briefed by police officials outside the court as to what statement he was to give in Court. Cumulative effect of all discrepancies entitles appellant to benefit of doubt.

(xvi) Pyare Lal Vs. State, 149 (2008) DLT 425 Delhi, DB, wherein it has been held that PW3 caused dent in prosecution case instead of advancing it further on the way to success by claiming in his evidence that all writing work after raid was carried out at anti–corruption branch and even diary was sealed there and not at the spot.

(xvii) State Vs. K. Narsimhachari, AIR 2006 SC 628, wherein it has been held that despite there being provision of presumption U/s 20 of the P.C. Act, the concept of "two views theory" is applicable to P.C. Act cases also. It was further observed that the defence had brought on record only one theory by way of preponderance of probabilities in favour of accused i.e. Innocence of the accused, and if this view is in favour of the accused, the court should accept this view.

#### SANCTION :

69. Ld. Defence counsel has argued that sanction in the present case stands vitiated in as much as statement of the complainant under section 164 Cr.P.C.

was not placed before the sanctioning authority and after the statement of the complainant under section 164 Cr.P.C., a supplementary statement of the CC No.43/2019 State Vs. Yashbir Singh complainant EX.PW19/DA was also recorded and the same was also not placed before the sanctioning authority and it is settled law that the entire material should have been placed before the sanctioning authority.

70. As regards application of mind by sanctioning authority in 2013 (8) SCC 119 State of Maharashtra through CBI Vs Mahesh Jain, following principles were culled out :- "14.1 It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

Grant of sanction is only an administrative function and the sanctioning authority is required to prime facie reach the satisfaction that relevant facts would constitute the offence.

The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

It was further held that :

"True it is, grant of sanction is a sacrosanct and sacred act and is intended to provide a safeguard to the public CC No.43/2019 State Vs. Yashbir Singh servant against vexatious litigation but simultaneously when there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused."

71. Thus, grant of sanction is an administrative function and only prima facie satisfaction of the sanctioning authority is needed. The adequacy or inadequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order and when there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. Also, flimsy technicalities cannot be allowed to become tools in the hands of accused.

72. In Mansukhlal Vithaldas Chauhan Vs State of Gujarat, decided on 03.09.1997 by the Hon'ble Supreme Court of India, on the issue of sanction, it has been observed that :

"The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows, that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external CC No.43/2019 State Vs. Yashbir Singh force by acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

73. There is nothing on record to suggest that PW-15 was under any obligation or compulsion to grant sanction or had not applied her independent mind. The sanction order Ex.PW15/A, gives details about the facts of the present case and is expressive.

74. The accused has also not been able to show that the discretion vested in the Sanctioning Authority was affected by any extraneous consideration or that the mind of sanctioning authority was under pressure from any corner.

75. Also, in Ashok Kumar Tshering Bhutia Vs State of Sikkim, 2011 (3) LRC 93 (SC) on the point of sanction, it was held as follows:

" . In the absence of anything to show that any defect or irregularity therein caused a failure of justice, the plea is without substance. A failure of justice is relatable to error, omission or irregularity in the sanction. Therefore, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19 (1) of the PC Act 1988 is a matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the Court under Cr.P.C., it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance. "

76. The object behind the requirement of grant of sanction to prosecute a public CC No.43/2019 State Vs. Yashbir Singh servant under the POC Act are designed as a check on frivolous and unscrupulous attempts to prosecute honest public servant for acts arising out of due discharge of their duties. Also, this court is of the view that accused failed to show that failure of justice had occasioned by any error, omission or irregularity in the sanction.

77. PW-15 has denied the suggestion that she had not applied her mind. There is nothing established on record to suggest that any draft sanction order was placed before competent authority before grant of sanction and therefore, it cannot be said that there is any non-application of mind.

78. In view of the above discussion, it cannot be said that the order of sanction for prosecution of accused is not valid or illegal.

#### DEMAND & ACCEPTANCE :

79. Ld. Counsel for the accused has stated that the demand in the present case does not stand proved as it is admitted by PW-2 that there was traffic noise due to movement of vehicles at the spot. Even the panch witness PW-3 has deposed that he could not hear the entire conversation due to noise of auto rickshaws. He further argued that even when this fact was suggested by Ld.Adll. PP for the State that the accused had uttered the words "Le aaya paise, mujhe paise doge to hi auto chalne dunga", panch witness stated that he did not hear the words or whether these were the exacts words spoken by the accused. Even the RO PW-16 Insp. Anand Singh has admitted that there was traffic noise at the spot due to moving traffic.

80. It is further argued by Ld. Counsel for the accused that the statement of the panch witness PW-3 that he was told by the complainant that the accused and HC Shyambir were demanding bribe amount of Rs.19,000/- monthly from him for plying of the auto rickshaw and the recording of the statement of the complainant in the form of complaint Ex.PW3/A is a hearsay statement and is CC No.43/2019 State Vs. Yashbir Singh inadmissible. In fact, PW-3 has not uttered a word regarding

the same rather he has admitted the suggestion of Ld. Addl. PP for the State in stereotype manner. It is further argued that the complainant has also deposed that Shyambir and accused used to harass him and used to damage his auto and that when the demand of Rs.19,000/- was made by the accused Yashbir, Shyambir was standing beside him at that time. Whereas in the statement under section 164 Cr.P.C., the complainant has stated that Shyambir and Yashbir had threatened that if they are not given Rs.20,000/- monthly then they will impound his autos. The complainant during his further examination had stated that HC Shyambir had talked to him and had demanded Rs.20,000/- from him and negotiations took place between the complainant and HC Shyambir, whereas initially he had stated that negotiations took place with the accused Yashbir and Shyambir was standing beside him. Again the complainant had stated that he had seen Shyambir but had not met Shyambir but later on he gave contradictory statement stating that he had spoken to HC Shyambir as well as to the accused at the time of raid and had offered the demanded money to them.

81. It is further argued that the quantum of bribe amount demanded is also not clear as the complainant initially has stated that Rs.19,000/- monthly was demanded whereas in the statement under section 164 Cr.P.C. he had stated that Rs.20,000/- was demanded. It is argued that even in the supplementary statement of the complainant Ex.PW19/DA he has not tendered any explanation as to why he had mentioned before Ld. MM that the demand was of Rs.20,000/-.

82. Ld. Defence counsel has further argued that PW-3 Raj Singh has stated that the accused reached the spot on foot whereas the complainant had stated that the accused came to the spot on motorcycle and even on the search of motorcycle of the accused was taken from where diary was recovered. PW-3 CC No.43/2019 State Vs. Yashbir Singh has not deposed anything about the search of the motorcycle of the accused. The complainant moreover has stated that the accused was asking the auto drivers to move away from the spot on the day of incidence but no such fact is deposed by the panch witness PW-3.

83. It is further argued by Ld. Defence counsel that PW-10 has stated that he had spoken to Shyambir as well as to the accused at the time of raid and offered the demanded money to them. But PW-3 has not deposed about any such talks between the complainant and HC Shyambir or even about meeting of HC Shyambir and the complainant. It is also argued that neither the seal nor any seizure took place at the spot and signatures of the witnesses were taken on the documents at later stage after making manipulations and also statements under section 161 Cr.P.C. are fabricated and anti-timed in as much as the complainant during his cross-examination has stated that he does not know what was written on the documents nor anyone had read over the contents of the documents to him. Moreover, the complainant has clearly stated that the documents were prepared after they reached at the PS Vigilance and before they were relieved. Even the currency notes produced in the case were seized by the RO in the PS Vigilance as per the statement of PW-10. It is further argued by Ld. Defence counsel that the complainant PW-10 has also stated that the panch witness has signed the documents at the same time when he had put his signatures on the said documents and pulandas and therefore, as per the statements of the complainant even the panch witness had signed all the documents and pulandas at PS Vigilance.

84. It is also argued by Ld. Defence counsel that in the statements of the complainant, panch witness as well as the RO under section 161 Cr.P.C., the denomination and the serial numbers of the GC notes are clearly mentioned. PW-19 has stated that he had not handed over the case file to the complainant before recording their statements under section 161 Cr.P.C. and it is not CC No.43/2019 State Vs. Yashbir Singh possible for any human memory to remember the numbers of the GC notes and to mention the same in the statements under section 161 Cr.P.C. without referring the same from any documents in which the said numbers are mentioned. It is further argued that the statements under section 161 Cr.P.C. of the panch witness, the complainant as well as the RO are thus, recorded by the IO himself in mechanical manner. It is further argued by Ld. Defence counsel that the complainant has stated that he had given a typed complaint whereas this typed complaint given by the complainant on 16.02.2017 has not been placed on record and has been concealed. The complainant has stated that his statement was recorded on 16.02.2017, when he had signed the same. Moreover, as per the complainant the currency notes were also treated with phenolphthalein powder on 16.02.2017 itself. The proceedings/documents related to the proceedings on 16.02.2017 have not been placed on record and have been concealed from the court.

85. It is also argued by Ld. Defence counsel that the motorcycle of the accused was neither seized nor shown as the case property though PW-3 has stated that the accused had come on motorcycle and that the complainant has also stated that search of the motorcycle of the accused was taken from where a diary was recovered. As per the statement of the complainant, motorcycle of the accused was taken to the PS Vigilance after the raid. But PW-2 HC Tarachand has stated that he was not aware as to whether the motorcycle was taken over into possession or was handed over to any person by the RO. As per PW-2, the hand wash of the accused was put in two bottles whereas as per the testimony of PW-3 and the complainant, the handwash of the accused was kept only in one bottle. Again PW-3 stated that during demo proceedings, his hand was touched with sodium carbonate solution and thereafter, his hand was washed. Whereas the complainant stated that after applying the powder on the currency notes, his hand wash was taken in a tumbler. But thereafter, the complainant had stated that the handwash of the panch witness was taken in a tumbler.

CC No.43/2019 State Vs. Yashbir Singh

86. Ingredients of Section-7 being relevant are reproduced hereinbelow :

"7. Public servant taking gratification other than legal remuneration in respect of an official act - whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which

may extend to five years and shall also be liable to fine."

87. Ingredients of Section-13 (1)(d) being relevant are reproduced hereinbelow :

"(1) A public servant is said to commit the offence of criminal misconduct –

(d) if he –

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

88. As regard Section 7 and 13(1)(d) of the P.C. Act, Hon'ble Supreme Court in C.K. Damodaran Nair Vs Govt. of India, (1997) 9 SCC 477, observed as below :

"Before we proceed to consider whether the prosecution CC No.43/2019 State Vs. Yashbir Singh has, in fact, succeeded in proving that the appellant demanded bribe from the Hospital authorities it will be necessary to ascertain whether such demand is an essential ingredient of the offences in question. To sustain the charge under Section 161 IPC [since omitted from the IPC and incorporated in Section 7 of the Prevention of Corruption Act, 1988 ('1988 Act' for short) with certain modifications] against the appellant the prosecution was required to prove that :

(i) the appellant was a public servant at the material time;

(ii) the appellant accepted or obtained from PW9 and gratification other than legal remuneration; and

(iii) the gratification was for exempting the Hospital in question from its liability to pay statutory provident fund contributions.

So far as the other offence is concerned, section 5(1)(d) of the Act (now replaced by Section 13(1)(d) of the 1988 Act) lays down that if a public servant, by corrupt or illegal means or by otherwise abusing his position as a public servant obtained for himself or for any other person any valuable thing or pecuniary advantage he would be guilty of 'criminal misconduct' and Section 5(2) thereof (which corresponds to Section 13(2) of the 1988 Act) speaks of the punishment for such misconduct. The other Section which requires reproduction is Section 4(1) of the Act (it corresponds to Section 20(1) of the 1988 Act). It reads as under :

"Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code or of an offence referred in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof it is proved that an accused person has accepted or obtained or has agreed to accept or attempt to obtain for himself, or for any other person any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing as the case may be as a motive or reward such as is mentioned in the said Section 161 or as the case may be without consideration or for consideration which he knows to be inadequate."

CC No.43/2019 State Vs. Yashbir Singh From a combined reading of Section 161 IPC and Section 4(1) of the Act it is evident that if, in the instant case, the prosecution has succeeded in proving that the appellant was a public servant at the material time and that he had 'accepted' or 'obtained' Rs.1,000/- from PW9 as gratification not only the first two ingredients of the former would stand proved but also the third, in view of the presumption under the latter which the Court is bound to draw unless, of course, the appellant, in his turn, has succeeded in rebutting that presumption.

According to Shorter Oxford Dictionary 'accept' means to take or receive with a 'consenting mind'. Obviously such a 'consent' can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to 'acceptance' within the meaning of Section 161 IPC. It cannot be said, therefore, as an abstract proposition of law, that without a prior demand there cannot be 'acceptance' The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused 'obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Sections 5(1)(a) and (b) - and not under Section 5(1)(c), (d) or (e) of the Act. 'Obtain' means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either 'acceptance' - or 'obtainment'.

CC No.43/2019 State Vs. Yashbir Singh

89. In Ram Krishan & Anr. Vs State of Delhi, 1956 SCR 183, Hon'ble Supreme Court has observed that :

"..... The word "obtains", on which much stress was laid does not eliminate the idea of acceptance or what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. One may accept money that is offered, or

solicit payment of a bribe, or extort the bribe by threat or coercion; in each case, he obtains a pecuniary advantage by abusing his position as a public servant..... "

90. As regards raising of presumption under section 20 of the PC Act, it was held in *Mukut Bihari Vs State of Rajasthan* 2012 (11) SCC 645 as under :– The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification but the burden rests on the accused to displace the statutory presumption raised under section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interest and partisan CC No.43/2019 State Vs. Yashbir Singh witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused persons."

91. Also in *Madhukar Bhaskarrao Joshi Vs State of Maharashtra* (2000) 8 SCC 571, Hon'ble Supreme Court observed as under:– "The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification of any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

92. The presumption under section 20 of the PC Act is rebuttable either through cross–examination of witnesses of prosecution or by adducing reliable evidence as held in *C. M. Girish Babu vs CBI*, Cochin High Court of Kerala (2009) 3 SCC 779.

93. In order to attract presumption under section 20 of the Prevention of Corruption Act, the prosecution has to prove that there was demand or acceptance of gratification. The proof of demand of illegal gratification is also sine qua non and the burden of proving the demand of proving is on prosecution. On analyzing the testimony of PW–3 the panch witness, it has not CC No.43/2019 State

Vs. Yashbir Singh been established that there was any demand of any bribe amount by the accused in as much as the PW-3 has clearly stated that he could not hear the entire conversation due to noise of auto rickshaw. In fact even when Ld. Addl. PP suggested to him that the accused had uttered the words "le aaya paise, mujhe paise doge to hi auto chalne doonga", the panch witness stated that he had not heard any such words or could not say that these were the exact words spoken by the accused. In the absence of any demand by the accused, mere recovery of tainted money from the hands of the accused is not sufficient to convict him. The testimony of PW-3 does not establish that the money was paid as bribe or was taken voluntarily by the accused as bribe.

94. Moreover, there are material contradictions in the testimony of the complainant as well as the panch witness. The complainant has been repeatedly changing his stand as at one point he deposed that the amount was paid behind the auto but later on deposed that the amount was given to the accused while sitting in auto. The testimony of the complainant is highly inconsistent and the complainant is not a reliable and trustworthy witness. In fact, the complainant has stated that in his statement under section 164 Cr.P.C. that the amount demanded by Shambir and Yashbir was Rs.20,000/- monthly whereas in his complaint he has stated that the amount demanded by him was Rs.19,000/- which was scaled down to Rs.9,000/-. The complainant again has been changing his version as somewhere he deposed that Shyambir used to make demand and Yashbir was supporting him, but during the cross- examination, he deposed that the demand of Rs.19,000/- was made by Yashbir and Shyambir was standing beside him at that time. The complainant had also initially stated that he had seen Shyambir but had not met Shaymbir and had not spoken to him and Shyambir was standing at a distance from Yashbir and had run away. But later on he stated that he had spoken to Shyambir as well as to the accused when he had offered the demanded money to them. The version CC No.43/2019 State Vs. Yashbir Singh of the complainant as well as panch witness is also contradictory on the point as to how the accused had reached the spot. As per panch witness PW-3, the accused had come to the spot on foot whereas as per PW-2 and PW-10, the accused had come to the spot on motorcycle and even the search of the motorcycle of the accused was taken. The fact of the search of motorcycle of accused is nowhere mentioned in the entire chargesheet.

95. This fact also cannot be ignored that the RO in his pre-raid report has mentioned that he had kept phenolphthalein powder after use in the raid box and had taken phenolphthalein powder to the spot alongwith the raid box. Though the RO has denied that he had taken the bottle of phenolphthalein powder to the spot during his cross-examination but this fact cannot be ignored that he has mentioned this aspect of taking of phenolphthalein powder in the raid box to the spot in two documents i.e. pre-raid proceedings as well as in the statement Ex.PW16/DA and hence, there is a possibility that the bottle containing phenolphthalein powder was taken to spot, thus, vitiating the trap/raid proceedings.

96. As per the complainant the entire documents after the raid were prepared at PS Vigilance and this also vitiates the raid proceedings. As per the testimony of PW-2, the RO had prepared the documents while sitting on the stool owned by kiosk owner. But this fact has not been stated by the RO himself. In fact the RO had stated that there might be some kiosk around the spot but he does not remember whether there was any kiosk or not. In fact as per testimony of PW- 3, the documents

were prepared by RO on the road side where the vehicles were parked by the RO. These contradictions lead to an inference that documents i.e. various seizure memos etc. were not prepared at the spot but were prepared at the PS Vigilance.

97. The complainant has also contradicted himself whereas at one point of time he deposed that his father had accompanied him to PS Vigilance and raid CC No.43/2019 State Vs. Yashbir Singh proceedings took place in the presence of his father. But later on he deposed that his father had only accompanied him to PS Vigilance and had left from outside and had not gone inside the PS. On the other hand, panch witness had deposed that father of the complainant was present at the time of pre-raid proceedings. The complainant has also contradicted himself when he had stated that he had given a typed complaint on 16.02.2017 at PS Vigilance as no such typed complaint is available on record.

98. IO in the present case, IO has not collected the CDRs of the complainant which was very material and has only collected the CDR of accused Yashbir. Ideally the CDR of the complainant should also have been collected by the IO but no reasons have been given as to why the CDR, CAF etc. of the mobile phone of the complainant was not obtained from the concerned service provider. In all probabilities, the CDR would have implicated other alleged person Shyambir as the complainant has clearly stated that he had telephonic conversation with Shyambir and therefore, the court has no hesitation in saying that in order to shield alleged Shyambir, the IO has not obtained the CDRs, CAFs etc. of the complainant as well Shyambir and has only collected the CDR, CAF etc. of Yashbir. As far as, the CDRs, CAFs etc. of Yashbir is concerned, there is nothing incriminating in the said evidence against accused Yashbir as he had no telephonic conversation with the complainant during the said period.

99. The RO has used seal of ACP Raghu Raj Khatana but has not recorded the statement of the said ACP in this respect nor any reasons have been given by the RO as to why the RO had not used his own seal. Also it is not possible for human memory to remember the serial number of the currency notes and to get them recorded in his statement under section 161 Cr.P.C. without referring any document. Also there is a doubt regarding pre-raid proceedings in as much as both the panch witness and the RO stated that hand of the panch witness was CC No.43/2019 State Vs. Yashbir Singh touched with the phenolphthalein powder during demo proceedings. But when cross-examined by Ld. Prosecutor, both RO and panch witness deposed that hand of panch witness was touched with the currency notes and not with phenolphthalein powder. Thus, a doubt is created on the demonstration of pre-raid proceedings. Again as per the complainant the phenolphthalein powder was applied on currency notes on 16.02.2017. As the prosecution has not been able to prove the facts that demand and acceptance of illegal gratification, presumption under section 20 of PC Act is not attracted in the present case. Also, the prosecution has failed to establish that the accused had made any demand of illegal gratification from the complainant.

100. It is settled law that the prosecution has to prove the charge beyond reasonable doubt under the Prevention of Corruption Act also, like any other criminal offence and the accused has to be considered innocent till it is established by cogent evidence regarding demand and acceptance of illegal gratification which are vital ingredients. In State of Kerala & Anr. Vs C.P. Rao (2011) 6 SCC

450, Hon'ble Supreme Court held that mere recovery by itself would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

101. In B. Jay Raj Vs State of Andhra Pradesh, (2014) 13 SCC 55, Hon'ble Supreme Court observed that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under section 7 as well as 13(1)(d)(i) and (ii) of the Act and it was further observed that in the absence of proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Section 7 and 13 of the Act.

CC No.43/2019 State Vs. Yashbir Singh It was further held that in the absence of proof of demand, such legal presumption under section 20 of the Act would also not arise. It was held that such proof of acceptance of illegal gratification could follow only if there is proof of demand.

102. In P. Satyanarayana Murthy Vs District Inspector of Police & Anr., 2015 AIAR (Criminal) 1008, Hon'ble Supreme Court has held that :

"..... The proof of demand of illegal gratification, thus, is the gravamen of the offence under section 7 and 13 (1)(d)(i)(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act....."

103. The testimony of complainant has not been consistent and reliable and hence the demand of illegal gratification by the accused has not been proved in the testimony of the complainant. The testimony of the complainant has to be discarded in totality as he is not a trustworthy, reliable and consistent witness and has been changing his stand off and on. After discarding the testimony of the complainant now only the testimony of panch witness remains and panch witness has not spoken any word having been spoken by the accused to establish that the accused was harassing the complainant or was demanding illegal gratification from the complainant.

104. Due to contrary deposition made by the panch witness and complainant and the fact that the panch witness has not deposed about any specific words being spoken by the accused to indicate demand, it has not been proved on record that the accused had demanded any illegal gratification from the complainant.

CC No.43/2019

State Vs. Yashbir singh

Miscellaneous Arguments :

105. Ld. Defence counsel has argued that the panch witness PW-3 has clearly stated that no addition or alteration was done in the documents at the spot and thus, FIR number was already mentioned by the Raid Officer at the time of preparation of various seizure memos which establishes that all the proceedings were conducted while sitting in the PS Vigilance. Alternatively he has argued that addition of FIR numbers etc. by the IO later on amounts to interpolation of the documents.

106. In the case Bilal Ahmed vs State decided by Hon'ble Delhi High Court on 13 January, 2011, a similar contention was raised and it was observed :

"It is further contended that the case of the prosecution is also falsified because the FIR Number is mentioned on the documents which were prepared when the FIR was not registered. PW7 has stated that FIR number was put on the seizure memo after the registration of the FIR and this fact is corroborated by the testimony of PW3 who has stated that at the time of handing over of seizure memo, FIR number was not mentioned. Even otherwise subsequently mentioning the FIR number on the document does not vitiate the proceedings. Reliance is placed on Radhey Shayam vs. State of Haryana, 2001 (10) SCC 206 and Ramesh Kumar Rajput @ Khan vs. State, MANU/DE/0786/2008.

"As regards mentioning of the FIR number on the seizure memo is concerned, the witnesses Inspector Jeewan Singh PW3, HC Baljeet Singh PW5 have clarified in their cross- examinations that when the seizure memos were prepared, CC No.43/2019 State Vs. Yashbir Singh the FIR number was not mentioned. PW7, SI Rakesh Kumar has clarified that FIR number was added on the seizure memo after the FIR was registered. Subsequent adding of FIR number on the document for procedural convenience would not amount to tempering of the document. This Court in Ramesh Kumar Rajput vs. State MANU/DE/0786/2008 relying on Radhey Shyam vs. State of Haryana 2001(10) SCC 206, held that mere writing of the FIR number on the arrest and search memos cannot entirely falsify these documents."

107. Thus, mentioning of FIR number on the seizure memos later by the IO is neither addition to the seizure memos nor interpolation.

108. It is further argued by Ld. Defence counsel that the complainant has falsely implicated the accused out of grudge after hatching conspiracy as the accused had got registered a criminal FIR No. 924/15 Ex.DW5/B against his brother and had also got their autos impounded and because of the fact that the accused used to restrain illegal parking of the autos from Mother Dairy due to traffic congestion. In support of his arguments, Ld. Counsel for the accused has argued that PW-10 has rather admitted that accused as well as Shyambir damaged his auto on 14.02.2017 and accused and Shyambir have booked and impounded his vehicle under section 66 D.P. Act. The complainant has also admitted that an FIR No. 924/15 was registered on the complaint of the accused against the brother of the complainant. The complainant has also admitted that during his cross-examination that his vehicles were impounded by HC Shyambir and accused several times by taking the same at PS.

109. Though the complainant himself admitted four FIRs lodged against him but the various FIRs as well as history sheet proved on record during defence evidence against the complainant and his family members established that the complainant and his brother are declared BC of the area and have several cases CC No.43/2019 State Vs. Yashbir Singh lodged against them. In such circumstances, the possibility that the complainant had hatched a plan to implicate the accused as well as Shyambir to take revenge cannot be ruled out. Moreover, the complainant in his initial complaint has only stated the name of the accused as Fauji but during his cross-examination he had admitted that the accused had got registered a criminal FIR No.924/15 against his brother and thus, the complainant must have been knowing the complete name of the accused but still he had not given his name as Yashbir and had only mentioned him as Fauji. The complainant was having grudge against the accused and it seems that the complainant wanted to get Shyambir implicated in the present case. The fact that Shyambir and accused used to take action against illegal parking of the vehicles of the complainant and his family members established a motive for the complainant to falsely implicate the accused as well Shyambir.

#### CONCLUSION :

110. The investigation done in the present case is sketchy and not satisfactory. The prosecution has thus, failed to establish its case and to bring home the guilt of the accused because of the following grounds :

- (i) the testimony of the complainant is unreliable, inconsistent and untrustworthy ;
- (ii) no specific words spoken by the accused to indicate demand are proved on record in the testimony of panch witness ;
- (iii) the documentation work after the raid proceedings i.e. preparation of seizure memos, seal of the case property and handwash not having been conducted at the spot but have been conducted at PS Vigilance ;
- (iv) use of seal of other police official by the IO as well as RO without reasonable and sufficient explanation;
- (v) the possibility that the accused was implicated by the complainant because of grudge due to the fact CC No.43/2019 State Vs. Yashbir Singh that the accused had lodged an FIR against the brother of the complainant not ruled out ;
- (vi) the possibility that the phenolphthalein powder was taken to spot cannot be ruled out, thus, vitiating raid/trap proceedings.

111. If the evidence adduced by the prosecution is of such a nature that room still exists for taking the view that every reasonable possibility of his innocence has not been excluded, the accused would be entitled to benefit of doubt. Therefore, in view of the aforesaid discussion, I am of the view that prosecution failed to prove its case

against the accused for the offences under section 7 & 13 (1)(d) of Prevention of Corruption Act 1988 beyond reasonable doubt, so the accused Yashbir Singh is given benefit of doubt and therefore, acquitted of above offences.

112. His bail bond is cancelled and surety discharged. The accused Yashbir Singh is directed to furnish bail bond with surety under section 437A Cr. P. C. File be consigned to record room.

Announced in the open court  
on this 23.12.2020

KIRAN  
BANSAL

Digitally signed  
by KIRAN  
BANSAL  
Date:  
2020.12.23  
16:49:25 +0530

(Kiran Bansal)  
Special Judge (PC Act) (ACB)-01  
RADC, New Delhi  
23.12.2020