Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 554 OF 2012

Vinod Kumar ... Appellant

Versus

State of Punjab ... Respondent

J U D G M E N T

Dipak Misra, J.

If one is asked a question, what afflicts the legally requisite criminal trial in its conceptual eventuality in this country the two reasons that may earn the status of phenomenal signification are, first, procrastination of trial due to non-availability of witnesses when the trial is in progress and second, unwarranted adjournments sought by the counsel conducting the trial and the unfathomable reasons for acceptation of such prayers for adjournments

by the trial courts, despite a statutory command under Section 309 of the Code of Criminal Procedure, 1973 (CrPC) and series of pronouncements by this Court. What was a malady at one time, with the efflux of time, has metamorphosed into malignancy. What was a mere disturbance once has become a disorder, a diseased one, at present.

2. The instant case frescoes and depicts a scenario that exemplifies how due to passivity of the learned trial Judge, a witness, despite having stood embedded absolutely firmly in his examination-in-chief, has audaciously and, in a way, obnoxiously, thrown all the values to the wind, and paved the path of tergiversation. It would not be a hyperbole to say that it is a maladroit and ingeniously designed attempt to strangulate and crucify the fundamental purpose of trial, that is, to arrive at the truth on the basis of evidence on record. The redeeming feature is, despite the malevolent and injurious assault, the cause of justice has survived, for there is, in the ultimate eventuate, a conviction which is under assail in this appeal, by special leave.

3. The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question, is it justified for any conscientious trial Judge to ignore the statutory command, not recognize "the felt necessities of time" and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracizing the concept that a civilized and orderly society thrives on rule of law which includes "fair trial" for the accused as well as the prosecution.

4. In the aforesaid context, we may recapitulate a passage from ***Gurnaib Singh V. State of Punjab***.[1]

> "..... We are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. The cross-examination of the witnesses was deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracised from his memory that a criminal

[1] (2013) 7 SCC 108

> trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in *Talab Haji Hussain* v. *Madhukar Purshottam Mondkar*[2] wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction."

5. Be it noted, in the said case, the following passage from ***Swaran Singh V. State of Punjab***[3], was reproduced.

> "It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice."

6. In this regard, it is also fruitful to refer to the authority in ***State of U.P. V. Shambu Nath Singh***[4], wherein this Court deprecating the practice of a Sessions

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[2] AIR 1958 SC 376
[3] (2000) 5 SCC 668
[4] (2001) 5 SCC 667

Court adjourning a case in spite of the presence of the witnesses willing to be examined fully, opined thus:

> "*9.* We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty."

7. With the aforesaid concern and agony, we shall presently proceed to adumbrate the necessitous facts. We have already stated that despite the impasse, there is a conviction by the trial Judge and an affirmation thereof by the High Court. Elucidating the factual score, be it noted, the instant appeal is directed against the judgment and order dated 13.10.2011 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.

1280-SB of 2001 (O&M) wherein the learned Single Judge has given the stamp of approval to the judgment and order dated 24.10.2001 passed by the learned Special Judge, Patiala whereby he had convicted the appellant under Section 7 and 13(2) of the Prevention of Corruption Act, 1988 (for brevity, 'the Act') and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- with a default clause.

8. The prosecution case, as has been unfurled, is that Baj Singh, PW-5, used to bring earth in tractor trolley within the municipal area of Rajpura. The appellant, at the relevant time, was posted as Octroi Inspector and he demanded Rs.20/- per trolley for permitting him to enter into the municipal area. Eventually, a deal was struck that the accused-appellant would be paid Rs.500/- per month for the smooth operation. As the prosecution story further unfolds, on 25.1.1995, Baj Singh met Jagdish Verma, PW-7, and disclosed before him the fact about the demand of the accused for permitting the entry of the tractor trolley inside the municipal area and thereafter, as he was not

desirous of obliging the accused, he narrated the entire story to DSP Vigilance, who in his turn, with the intention to lay the trap, explained it to Baj Singh, PW-5, and Jagdish Verma, PW-7 about the procedure of the trap. As alleged, Baj Singh gave five notes of Rs.100/- to the DSP Vigilance who noted the numbers of the notes and completed other formalities like applying phenolphthalein powder on the currency notes. Thereafter, they proceeded to the place of the accused and a trap was laid. Eventually, currency notes amounting to Rs.500/- were recovered from the trouser of the appellant and were taken into possession. The statements of the witnesses were recorded and after completing the investigation chargesheet was placed for the offences punishable under Sections 7 and 13(2) of the Act.

9. To bring home the charges against the accused-appellant, the prosecution examined eight witnesses. PW-1 to PW-4 are formal witnesses. PW-5, the complainant resiled from his previous statement and was cross-examined by the prosecution. Sher Singh, PW-6, a

clerk in the office of Tehsildar, Rajpura had joined the police party as an independent witness. He supported the case of the prosecution in detail. Jagdish Verma, PW-7, in his examination-in-chief, supported the prosecution case in all aspects, but in cross-examination, resiled from his examination-in-chief. The witness, PW-7, was declared hostile on a prayer being made by the Public Prosecutor and was re-examined. Narinder Pal Kaushal, PW-8, DSP of Vigilance Bureau who had led the raiding party on 25.1.1995, in his deposition, deposed in detail about the conducting of the raid and recovery of the amount.

10. The accused, in his statement under Section 313 CrPC, denied the allegations and took the plea of false implication due to party faction and animosity. It was his further stand that he was brought from his office and was taken to the office of the Tehsildar and thereafter to the Vigilance office.

11. The learned trial Judge, on the basis of the evidence brought on record, came to hold that though the complainant had not supported the case of the prosecution

yet prosecution had been able to prove the demand and acceptance of the bribe and the recovery of the tainted money from the accused and, therefore, the presumption as envisaged under Section 20 of the Act would get attracted and accordingly convicted the accused and sentenced him, as has been stated hereinbefore.

12. In appeal, it was contended before the High Court that when the testimony of Baj Singh, PW-5, and Jagdish Verma, PW-7, the shadow witness, was absolutely incredible, the same could not have been pervertedly filtered by the learned trial Judge to convict the accused-appellant for the crime in question. It was also urged that mere recovery of the currency notes would not constitute the offence under Section 7 of the Act. It was also propounded that the offence under Section 13(2) of the Act would not get attracted unless the demand and acceptance were proven. Non-involvement of any independent witness in the raid was also seriously criticised. The High Court posed the question whether the prosecution had been able to prove the factum of demand

of bribe, its acceptance and the recovery of the money from the possession of the accused. With regard to demand of bribe, the High Court placed reliance on the testimony of the independent witness Sher Singh, PW-6, and the examination–in-chief of Jagdish Verma, PW-7, and came to hold that the demand of bribe had been proven. It appreciated the deposition of PW-7 and the documents, especially, the Chemical Examiner's report of the hand wash liquid and came to hold there had been acceptance of bribe. Relating to the recovery of the tainted money, the High Court took note of the fact that the ocular testimony had been duly corroborated by the documentary evidence and hence, the recovery had been proved.

13. Be it noted, the High Court placed reliance upon ***Raghubir Singh V. State of Haryana***[5] and ***Madhukar Bhaskarrao Joshi V. State of Maharashtra***[6] and eventually came to hold that the prosecution had proven its case to the hilt and resultantly affirmed the conviction and order of sentence passed by the trial Court, but reduced the sentence of 2 years' rigorous imprisonment to one year.

[5] (1974) 4 SCC 560
[6] (2000) 8 SCC 571

14. Criticizing the conviction as recorded by the learned trial Judge and affirmed by the High Court, it is submitted by Mr. Jain, learned senior counsel for the appellant that when the informant had not supported the case of the prosecution, it was not justifiable on the part of the learned trial Judge to record a conviction against the accused. It is his submission that on the basis of the testimony of PW-6 to PW-8, the conviction could not have been recorded, for Sher Singh, PW-6, is not a witness either to the demand or acceptance of the bribe by the appellant and further the version PW-7 requires careful scrutiny, regard being had to the fact that he is a hostile witness. It is also urged that the evidence of PW-8 deserves to be discarded as he is an interested witness. To bolster the aforesaid submissions, learned senior counsel has drawn inspiration from ***B. Jayaraj V. State of Andhra Pradesh***[7] and ***M.R. Purushotham Vs. State of Karnataka***[8].

15. Apart from above, it is further put forth by him that as PW-7 has not supported the prosecution story and stated to have been tutored to give statement, his whole

[7] (2014) 4 SCALE 81
[8] (2014) 11 SCALE 467

testimony should have been thrown out of consideration and no reliance should have been placed on it. It is contended by him that the High Court has failed to appreciate the importance of cross-examination of PW-7 and hence, the judgment affirming the conviction is absolutely flawed. To buttress the said submission, reliance has been placed on ***Sat Paul V. Delhi Administration***[9]. It is the further stand of Mr. Jain, learned senior counsel that the evidence of the trap witnesses, PW-6 and PW-8 should have been wholly ignored as they are partisan witnesses and their statements could not have been given any credence to inasmuch as there has been no corroboration. In this context, he has commended us to the authorities in ***State of Bihar V. Basawan Singh (CB)***[10], ***Major E.G. Barsey V. State of Bombay***[11], ***Bhanupratap Hariprasad Dave V. State of Gujarat***[12] and ***MO Shamshuddin V. State of Kerala***[13].

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[9] (1976) 1 SCC 727
[10] (1959) SCR 195
[11] (1962) 2 SCR 195
[12] (1969) 1 SCR 22
[13] (1995) 3 SCC 351

16. Learned senior counsel would contend, solely on the basis of evidence of recovery, a conviction is not sustainable and in the obtaining factual matrix, the presumption under Section 20 of the Act would not be attracted. To substantiate the said proposition, strength has been drawn from ***C.M. Girish Babu V. C.B.I., Cochin***[14] and ***Benarsi Das V. State of Haryana***[15].

17. The last plank of submission of Mr. Jain, is that in the instant case, the prosecution was launched by Narinder Pal Kaushal, PW-8, who has investigated into the case and, therefore, the concept of fair investigation, has been totally marred as a consequence of which, the trial is vitiated. Learned senior counsel would contend that a person who is a part of the trap party is an interested witness and he would be enthusiastic to see that the trap is sustained in every manner and in such a situation, it is *per se* an unfair and biased investigation that frustrates the essential principle inhered under Article 21 of the Constitution and eventually the trial.

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[14] (2009) 3 SCC 779
[15] (2010) 4 SCC 450

18. Mr. Madhukar, learned senior counsel appearing for the State of Punjab, per contra, would contend that the view expressed by the learned trial Judge and the High Court cannot be found fault with, for a conviction under the Act can be based on the evidence of trap witnesses, if they are trustworthy and the ingredients of the offence are satisfied and in the case at hand, the High Court on x-ray of the evidence has so recorded. It is urged by him that neither the learned trial Judge nor the High Court has fallen into error by applying the principle of presumption as engrafted under Section 20 of the Act. It is canvassed by Mr. Madhukar that the evidence of the hostile witness can be placed reliance upon by the prosecution and in the obtaining factual matrix, the testimony of PW-7, one of the shadow witnesses, renders immense assistance for establishing the case of the prosecution. He has with great pains, taken us through the evidence to substantiate the stand that the conviction recorded against the appellant is totally defensible.

19. Keeping in abeyance what we intend to say on the facet of anguish expressed by us in the beginning, we shall proceed to deal with the proponement of Mr. Jain that when the investigation conducted by Mr. Narinder Pal Kaushal, PW-8, is vitiated on the foundation that he has lodged the FIR, the trial is also vitiated. Though the said submission has been raised and taken note of by us as the last plank, yet we think it seemly to deal with it first as it goes to the root of the matter. On a perusal of the material on record, it is manifest that PW-8 is a part of the raiding party, a shadow witness, and admittedly had also sent the complaint through a Constable to the concerned police station for lodging of FIR. This being the factual score, we are required to take note of certain authorities in this regard. In ***Basawan Singh*** (supra), the Constitution Bench, after referring to the decision in ***Shiv Bahadur Singh V. State of Vindhya Pradesh***[16], opined that the said decision does not lay down an invariable rule that the evidence of the witness of the raiding party must be

[16] AIR 1954 SC 322

discarded in the absence of any independent corroboration. The larger Bench proceeded to state thus:

> "……The correct rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse consideration which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness."

20. In ***Major E.G. Barsey*** (supra), while dealing with the evidence of a trap witness, the court opined that though a trap witness is not an approver, he is certainly an interested witness in the sense that he is interested to see that the trap laid by him succeeds. The Court further laid down that he can at least be equated with a partisan witness and it would not be admissible to rely upon his evidence without corroboration, but his evidence is not a tainted one.

21. In ***Bhanupratap Hariprasad Dave*** (supra), the Court observed that the police witnesses can be said to be partisan witnesses as they are interested in the success of the trap laid by them, but it cannot be said that they are accomplices. Thereafter, the Court proceeded to state that their evidence must be tested in the same way as any other interested witness is tested and in an appropriate case, the Court may look for independent corroboration before convicting the accused person. The three-Judge Bench reiterated the principle thus:

> "....It is now well settled by a series of decisions of this Court that while in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is corroborated in material particulars but as regards the evidence of a partisan witness it is open to a court to convict an accused person solely on the basis of that evidence, if it is satisfied that that evidence is reliable. But it may in appropriate case look for corroboration".

22. In ***MO Shamshuddin*** (supra), the Court, after referring to the decisions in ***DPP V. Hester***[17] and ***DPP V. Kilbourne***[18], made a distinction between accomplice and an interested witness. The Court, referred to the authority

[17] (1972) 3 All ER 1056
[18] (1973) 1 All ER 440

in ***Basawan Singh*** (supra) at length and eventually adverted to the concept of corroborating evidence. In that context it has been ruled thus:

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

From the aforesaid authorities it is clear that a trap witness is an interested witness and his testimony, to be accepted and relied upon requires corroboration and the corroboration would depend upon the facts and

circumstances, nature of the crime and the character of the trap witness.

23. There is no doubt that the status of PW8 is that of an interested witness. There is no cavil over the fact that he had sent the FIR and conducted the investigation, but the question posed is whether the investigation by him is vitiated. In this context we may, with profit, refer to the decision in ***Bhagwan Singh V. State of Rajasthan***[19], where one Ram Singh, who was a Head Constable, was the person to whom the offer of bribe was alleged to have been made by the appellant therein and he was the informant who had lodged the First Information Report for taking action against the appellant. He himself had undertaken the investigation. In that factual backdrop the Court ruled thus:

> "Now, ordinarily this Court does not interfere with concurrent findings of fact reached by the trial court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial court and the High Court and that has resulted in serious miscarriage of justice calling for interference from

[19] (1976) 1 SCC 15

> this Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation of the case. How could the complainant himself be the investigator? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the first information report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case".

24. In ***Megha Singh V. State of Haryana***[20], the Court noticed the discrepancy in the depositions of PW-2 and PW-3 and absence of independent corroboration. Be it noted, the Court was dealing with an offence under Section 6(1) of the Terrorist and Disruptive Activities (Prevention)

[20] (1996) 11 SCC 709

Act, 1985. In that context the Court observed that the testimony of the said witnesses did not inspire confidence about the reliability of the prosecution's case. Proceeding further, the Court held:

> "…. We have also noted another disturbing feature in this case. PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation".

25. In this regard, it is useful to refer to the pronouncement in ***State vs. V. Jayapaul***[21] wherein the Court posed the question whether the High Court was justified in quashing the criminal proceedings on the ground that the police officer, who had lodged/recorded the FIR regarding the suspected commission of certain cognizable offence by the respondent should not have investigated the case. The case against the accused was

[21] (2004) 5 SCC 223

that he was indulging in corrupt practices by extracting money from the drivers and owners of the motor-vehicles while conducting check of the vehicles and making use of certain bogus notice forms in the process. The charge-sheet was filed under Sections 420 and 201 I.P.C. and Section 13(2) read with Section 13(1)(d) of the Act. The Court referred to the decision in the ***State of U.P. V. Bhagwant Kishore Joshi***[22], wherein it has been ruled thus:

> "Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of a police station in respect of the commission of a cognisable offence. Section 156 thereof authorises such an officer to investigate any cognisable offence prescribed therein. Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise."

26. After reproducing the said paragraph, the Court proceeded to state thus:

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[22] AIR 1964 SC 221

"Though there is no such statutory bar, the premise on which the High Court quashed the proceedings was that the investigation by the same officer who "lodged" the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal

> course of discharge of their official duties will then be vulnerable to attack."

Be it noted, the Court distinguished the decisions in ***Bhagwant Kishore Joshi*** (supra) and ***Megha Singh*** (supra).

27. At this juncture, it would be fruitful to refer to ***S.Jeevanatham V. State (through Inspector of Police, T.N.)***[23]. In the said case, the appellant was found guilty under Section 8(c) read with Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. One of the contentions that was canvassed was that PW-8, who lodged the FIR had himself conducted the investigation and hence, the entire investigation was vitiated. The Court referred to the decision in ***Jayapaul*** (supra) and opined thus:

> "In the instant case, PW 8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellants was narcotic drug and the counsel for the appellants could not point out any circumstances by which the investigation caused prejudice or was biased against the appellants. PW 8 in his official capacity gave the information, registered the case and as part of his official duty later investigated the case and filed a charge-sheet. He was not in any way personally

[23] (2004) 5 SCC 230

> interested in the case. We are unable to find any sort of bias in the process of investigation."

28. In the instant case, PW-8, who was a member of the raiding party had sent the report to the police station and thereafter carried the formal investigation. In fact, nothing has been put to him to elicit that he was anyway personally interested to get the appellant convicted. In our considered view, the decision in ***S. Jeevanatham*** (supra) would be squarely applicable to the present case and, accordingly, without any reservation we repel the submission so assiduously urged by Mr. Jain, learned senior counsel for the appellant.

29. The next aspect which requires to be adverted to is whether testimony of a hostile evidence that has come on record should be relied upon or not. Mr. Jain, learned senior counsel for the appellant would contend that as PW-7 has totally resiled in his cross-examination, his evidence is to be discarded in toto. On a perusal of the testimony of the said witness, it is evincible that in examination-in-chief, he has supported the prosecution story in entirety and in the cross-examination he has taken

the path of prevarication. In ***Bhagwan Singh V. State of Haryana***[24], it has been laid down that even if a witness is characterised has a hostile witness, his evidence is not completely effaced. The said evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable evidence. In ***Khuji @ Surendra Tiwari V. State of Madhya Pradesh***[25], the Court after referring to the authorities in ***Bhagwan Singh*** (supra), ***Rabindra Kumar Dey V. State of Orissa***[26] and ***Syad Akbar V. State of Karnataka***[27], opined that the evidence of such a witness cannot be effaced or washed off the record altogether, but the same can be accepted to the extent it is found to be dependable on a careful scrutiny thereof.

30. In this context, we think it apt to reproduce some passages from ***Rammi @ Rameshwar V. State of Madhya Pradesh***[28], where the Court was dealing with the purpose

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[24] (1976) 1 SCC 389
[25] (1991) 3 SCC 627
[26] (1976) 4 SCC 233
[27] (1980) 1 SCC 30
[28] (1999) 8 SCC 649

of re-examination. After referring to Section 138 of the Evidence Act, the Court held thus:

> "There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when the ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.
>
> Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the court. If the court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions".

31. We have reproduced the aforesaid paragraphs to highlight that when the prosecution has such a right in the process of re-examination, as a natural corollary, the testimony of a hostile witness cannot be brushed aside. On the contrary, both the prosecution and the defence can rely for their stand and stance. Emphasis on re-examination by the prosecution is not limited to any answer given in the cross-examination, but the Public Prosecutor has the freedom and right to put such questions as it deems necessary to elucidate certain answers from the witness. It is not confined to clarification of ambiguities, which have been brought down in the cross-examination.

32. Mr. Jain, learned senior counsel has propounded that testimony of PW7 deserves to be discredited, and the learned trial Judge as well as the High Court having not ignored have committed a grave error. We will be dealing with the aspect whether the evidence of PW-7 should be totally ignored or not while we will be dwelling upon the credibility and acceptability of his testimony.

33. As a contention has been raised that once the informant has resiled totally from his earlier statement no conviction can be recorded on the basis of evidence of the trap witnesses, it required to be carefully dwelled upon. In this regard, reference to the authority in ***Hazari Lal v. State (Delhi Administration)***[29] would be apt. In the said case a police Constable was convicted under Section 5(2) of the Prevention of Corruption Act, 1947 on the allegation that he had demanded and received Rs.60/- from the informant who was examined as PW-3 and had resiled from his previous statement and was declared hostile by the prosecution. Official witnesses had supported the prosecution version. Keeping in mind the evidence of the official witnesses the trial Court had convicted the appellant therein which was affirmed by the High Court. A contention was raised that in the absence of any direct evidence to show that the police constable demanded or accepted bribery no presumption under Section 4 of the Act, 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police

[29] (1980) 2 SCC 390

constable. Chinnappa Reddy, J. speaking for the two-Judge Bench observed as follows:-

> "...It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW 3. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW 3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW 3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted."

34. It is pertinent to note here that in the aforesaid case the decision rendered in ***Sita Ram v. State of Rajasthan***[30] was pressed into service. In the case of ***Sita Ram*** (supra) the complainant had turned hostile in the court of Special Judge. However, the trial Judge convicted the accused who was tried along with another accused, namely, Vikram Singh. The High court on appreciation of the evidence acquitted Vikram Singh but maintained the conviction against Sita Ram. This Court opined that the presumption under Section 4(1) of the 1947 Act could not be drawn in the facts of the case. The question, whether the rest of the evidence was sufficient to establish that the accused had obtained the money from the complaint was not considered. The Court in ***Hazari Lal*** (supra) distinguished the pronouncement in ***Sita Ram*** (supra) by stating thus:-

> "...The question whether the rest of the evidence was sufficient to establish that the accused had obtained the money from the complainant was not considered. All that was taken as established was the recovery of

[30] (1975) 2 SCC 227

> certain money from the person of the accused and it was held that mere recovery of money was not enough to entitle the drawing of the presumption under Section 4(1) of the Prevention of Corruption Act. The Court did not consider the further question whether recovery of the money along with other circumstances could establish that the accused had obtained gratification from any person. In the present case we have found that the circumstances established by the prosecution entitled the court to hold that the accused received the gratification from PW 3. In *Suraj Mal* v. *State* (*Delhi Admn.*)[31], also it was said mere recovery of money divorced from the circumstances under which it was paid was not sufficient when the substantive evidence in the case was not reliable to prove payment of bribe or to show that the accused voluntarily accepted the money. There can be no quarrel with that proposition .but where the recovery of the money coupled with other circumstances leads to the conclusion that the accused received gratification from some person the court would certainly be entitled to draw the presumption under Section 4(1) of the Prevention of Corruption Act. In our view both the decisions are of no avail to the appellant and as already observed by us conclusions of fact must be drawn on the facts of each case and not on the facts of other cases."

35. In this context it would be germane to understand what has been stated in ***M. Narsinga Rao v. State of A.P***[32]**.** In the said case, allegations against the accused-

[31] (1979) 4 SCC 725
[32] (2001) 1 SCC 691

appellant were that one Satya Prasad, PW1 therein was to get some amount from Andhra Pradesh Dairy Development Cooperative Federation for transporting milk to or from the milk chilling centre at Luxettipet (Adilabad District). He had approached the appellant for taking steps to enable him to get money disbursed. The appellant demanded Rs.5000/- for sending the recommendation in favour of payment of the amount due to PW1. As the appellant persisted with his demand PW1 yielded to the same. But before handing over the money to him he lodged a complaint with DSP of Anti-Corruption Bureau. On the basis of the said complaint all arrangements were made for a trap to catch the corrupt public servant red-handed. Thereafter the Court adverted how the trap had taken place. The court took note of the fact that PW1 and PW2 made a volteface in the trial court and denied having paid any bribery to the appellant and also denied that the appellant demanded the bribe amount. The stand of the accused before the trial court under Section 313 of CrPC was that one Dr. Krishna Rao bore grudge and had

orchestrated a false trap against him by employing PW1 and PW2. Be it stated, in his deposition PW1 had stated that he had acted on the behest of one Dr. Krishna Rao. It was further the stand of the accused-appellant that the tainted currency notes were forcibly stuffed into his pocket. The trial court and the High Court had disbelieved the defence evidence and found that PW1 and PW2 were won over by the appellant and that is why they turned hostile against their own version recorded by the investigating officer and subsequently by a Magistrate under Section 164 of CrPC. The Special Judge ordered the witnesses to be prosecuted for perjury and the said course suggested by the trial Judge found approval of the High Court also. While dealing with the controversy this court took note of the fact that the High Court had observed that though there was no direct evidence to show that the accused had demanded and accepted the money, yet the rest of the evidence and the circumstances were sufficient to establish that the accused had accepted the amount and that gave rise to a presumption under Section 20 of the Prevention of

Corruption Act that he accepted the same as illegal gratification, particularly so, when the defence theory put forth was not accepted. It was contended before this court that presumption under Section 20 of the Act can be drawn only when the prosecution succeeded in establishing with direct evidence that the delinquent public servant had accepted or obtained gratification. It was further urged that it was not enough that some currency notes were handed over to the pubic servant to make it acceptance of gratification and it was incumbent on the part of the prosecution to further prove that what was paid amounted to gratification. In support of the said contention reliance was placed on ***Sita Ram*** (supra) and ***Suraj Mal v. State (Delhi Admn.)***[33]**.** The three-Judge Bench referred to Section 20(1) of the Act, the pronouncements in ***Hawkins v. Powells Tillery Steam Coal Co. Ltd***[34] and ***Suresh Budharmal Kalani v. State of Maharashtra***[35] and adverted to the facts and came to hold as follows:-

[33] (1979) 4 SCC 725
[34] (1911) 1 KB 988 : 1911 WN 53
[35] (1998) 7 SCC 337

> "From those proved facts the court can legitimately draw a presumption that the appellant received or accepted the said currency notes on his own volition. Of course, the said presumption is not an inviolable one, as the appellant could rebut it either through cross-examination of the witnesses cited against him or by adducing reliable evidence. But if the appellant fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the appellant received the said amount."

36. It is apt to note here the three-Judge Bench referred to the observations in ***Hazari Lal*** (supra) and opined thus:-

> "The aforesaid observation is in consonance with the line of approach which we have adopted now. We may say with great respect to the learned Judges of the two-Judge Bench that the legal principle on this aspect has been correctly propounded therein."

37. In this regard Mr. Jain has placed reliance on the authority ***B. Jayaraj*** (supra). In the said case the complainant did not support the prosecution version and had stated in his deposition that the amount that was paid by him to the accused was with a request that it may be deposited in the bank as fee for renewal of his licence for

the fair price shop. The court referred to Section 7 of the Act and observed as follows:-

> "Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgment of this Court. By way of illustration reference may be made to the decision in *C.M. Sharma v. State of A.P.*[36] and *C.M. Girish Babu v. C.B.I.*[37]"

After so observing, the court proceeded to state thus:-

> "In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself has disowned what he had stated in the initial complaint (exbt. P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and contents of Exbt. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of

[36] (2010) 15 SCC 1
[37] (2009) 3 SCC 779

> the demand allegedly made by the accused. We are, therefore, inclined to hold that the Ld. Trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact, such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any 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 of pecuniary advantage cannot be held to be established."

38. The said principle has been followed in ***M.R. Purushotham v. State of Karnataka***[38]**.** On an attentive and cautious reading of the aforesaid decisions it is noticeable that the court disbelieved the story of the prosecution as no other evidence was brought on record. In ***N. Narsinga Rao case*** the accused was charged for the offences punishable under Sections 7 read with Section 13(1)(d) & (2) of the Act. The court, as we have stated

[38] 2014 (11) SCALE 467

earlier, had referred to section 20(1) of the Act and opined that from the proven facts the court can legitimately draw a presumption that the delinquent officer had received and accepted money. As we notice, the authorities in ***B. Jayaraj*** (supra) and ***M.R. Purushotam*** (supra) do not lay down as a proposition of law that when the complainant turns hostile and does not support the case of the prosecution, the prosecution cannot prove its case otherwise and the court cannot legitimately draw the presumption under Section 20 of the Act. Therefore the proposition, though industriously, presented by Mr. Jain that when Baj Singh, PW5, the complainant, had turned hostile the whole case of the prosecution would collapse is not acceptable and accordingly hereby rejected.

39. Presently, we shall refer to the evidence of PW6, a clerk in the office of Tehsildar, Rajpura. He has deposed that on 25.1.1995, on the day of the raid, he joined the police party headed by Narinder Pal Kaushal, DSP, on the instruction of Tehsildar. He was introduced to Baj Singh, the complainant and Jagdish Verma, a shadow witness.

Thereafter, the complainant and the shadow witness, Jagdish Verma, were sent to the octroi post and he stopped at some distance along with Narinder Pal Kaushal who was waiting for signal and on receiving signal they went inside the octroi post. As per his testimony Narinder Pal Kaushal introduced himself as DSP and thereafter a glass of water was procured and sodium was added to it. Both the hands of the accused were dipped in the glass of water and the water turned pink. On search of the accused Rs.500/- in the denomination of Rs.100/- were recovered. The numbers tallied with the numbers mentioned in the memo, Ex. PE. The notes were taken into possession vide Ex. PH. As is manifest that the said witness has supported the story of the prosecution in toto. The submission of Mr. Jain is that he is merely a witness to recovery and solely on the basis of recovery no conviction can be recorded. There can be no quarrel over the proposition that on the basis of mere recovery an accused cannot be found guilty. It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there

is evidence that bribe had been demanded or money was paid voluntarily as bribe. In the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery would not alone be a ground to convict the accused. This has been so held in ***T. Subramanian v. The State of Tamil Nadu***[39]***, Madhukar Bhaskarrao Joshi v. State of Maharashtra***[40]***, Raj Rajendra Singh Seth v. State of Jharkhand and Anr.***[41]***, State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede***[42]***, C.M. Girish Babu v. C.B.I., Cochin***[43]***, K. S. Panduranga v. State of Karnataka***[44] and ***Satvir Singh v. State of Delhi***[45]**.** The fact remains that PW6 has supported the recovery in entirety. He has stood firm and remained unshaken in the cross-examination and nothing has been elicited to dislodge his testimony. His evidence has to be appreciated regard being had to what has been deposed by Jagdish Verma, PW7. In examination-in-chief he has deposed that he had met the DSP, Narinder Pal

[39] AIR 2006 SC 836
[40] (2000) 8 SCC 571
[41] AIR 2008 SC 3217
[42] (2009) 15 SCC 200
[43] AIR 2009 SC 2011
[44] (2012) 3 SCC 721
[45] (2014) 13 SCC 143

Kaushal who had introduced him to Sher Singh, PW6. He has further stated that he and PW5, Baj Singh, went inside the octroi post where Vinod Kumar demanded bribe from Baj Singh whereupon Baj Singh gave Rs.500/- to him, and at that juncture, he gave the signal to the vigilance party to come inside where after and they came and apprehended the accused. Apart from stating about the demand and acceptance he had also stated that the hands of the accused were dipped in that water and the colour of the water had turned light pink. It was transferred into a quarter bottle and was sealed and was taken into possession vide recovery memo Ex.PG which was attested by him and Baj Singh. The amount of Rs.500/- was recovered from right side pant pocket of the accused. After making the arrangement for the pant of the accused, the right side pocket of the pant of the accused was dipped in the mixture of water and sodium and its colour turned light pink. It was also transferred into a quarter bottle which was duly sealed and was taken into possession vide recovery memo Ex.PJ. The pant was also taken into

possession vide recovery memo Ex.PJ. The notes recovered from the accused were compared with the numbers mentioned in the memo and those tallied. The notes were taken into possession vide recovery memo Ex.PF. A sum of Rs.310/- was recovered from the further search of the accused which was taken into possession vide recovery memo Ex.PK. Thus, from the aforesaid testimony it is absolutely clear that he has supported in entirety about the demand, acceptance and recovery of money. It is necessary, though painful, to note that PW7 was examined-in-chief on 30.9.1999 and was cross-examined on 25.5.2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would

have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the public prosecutor this witness has accepted about the correctness of his statement in the court on 13.9.1999. He has also accepted that he had not made any complaint to the Presiding Officer of the Court in writing or verbally that the Inspector was threatening him to make a false statement in the Court. It has also been accepted by him that he had given the statement in the Court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13.9.99 after going through and admitting it to be correct. It has come in the re-examination that he had not

stated in his statement dated 13.9.99 in the Court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

40. Reading the evidence in entirety, his evidence cannot be brushed aside. The delay in cross-examination has resulted in his pre-varication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the vigilance department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the

re-examination. The evidence of PW6 and PW7 have got corroboration from PW8. He in all material particulars has stated about the recovery and proven the necessary documents pertaining to the test carried with phenolphthalein powder. The fact remains that the appellant's pocket contained phenolphthalein smeared currency notes when he was searched. It is apt to take note of the fact that the currency notes that have been recovered from the right side of the pant pocket were actually prepared by PW8 by smearing them with phenolphthalein powder. The appellant was caught red-handed with those currency notes. In is statement recorded under Section 313 of CrPC he has taken the plea that he is innocent and has been falsely implicated due to animosity. No explanation has been given as regards the recovery. Therefore, from the above facts, legitimately a presumption can be drawn that the accused-appellant had received or accepted the said currency notes on his own volition. The factum of presumption and the testimony of PW6 and 7 go a long way to show that the prosecution has

been able to prove demand, acceptance and recovery of the amount. Hence, we are inclined to hold that the learned trial Judge and the High Court have appositely concluded that the charges leveled against the accused have duly been proven by the prosecution. It is not a case that there is no other evidence barring the evidence of the complainant. On the contrary there are adequate circumstances which establish the ingredients of the offences in respect of which he was charged.

41. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to

be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not

all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness

at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.

42. In the ultimate analysis, we perceive no merit in the appeal and consequently the same stands dismissed. As the appellant is on bail, his bail bonds are cancelled. He be taken into custody forthwith to suffer the sentence.

.....J.
[DIPAK MISRA]

.....J.
[ROHINTON FALI NARIMAN]

NEW DELHI
JANUARY 21, 2015.