Krishan Chander vs State Of Delhi on 6 January, 2016

Equivalent citations: AIR 2016 SC 298, 2016 (3) SCC 108, 2016 CRI. L. J. 1079, AIR 2016 SC (CRIMINAL) 291, 2016 (2) ADR 98, 2017 CALCRILR 3 433, (2016) 63 OCR 630, (2016) 1 CURCRIR 121, (2016) 1 SCALE 143, (2016) 2 RAJ LW 1173, (2016) 226 DLT 292, (2016) 5 MH LJ (CRI) 578, (2016) 158 ALLINDCAS 208 (SC), (2016) 1 CRILR(RAJ) 1, (2016) 1 RECCRIR 806, (2016) 1 ALD(CRL) 434, (2016) 1 CRIMES 29, 2016 CRILR(SC MAH GUJ) 1, 2016 CRILR(SC&MP) 1, (2016) 1 DLT(CRL) 662, (2016) 2 BOMCR(CRI) 756, 2016 (1) SCC (CRI) 725, AIR 2016 SUPREME COURT 298

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Bench: V. Gopala Gowda, T.S. Thakur

Non- Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 14 OF 2016
(Arising out of SLP (Crl.) No.703 of 2015)

KRISHAN CHANDER …APPELLANT

Versus

STATE OF DELHI …RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

This criminal appeal is directed against the impugned judgment and order dated 7.11.2014 passed by the High Court of Delhi at New Delhi in Crl. Appeal No. 634 of 2008 wherein the High Court has dismissed the appeal filed by the appellant and upheld the order of conviction and sentence passed

against the appellant by the court of Special Judge, Delhi (for short the "trial court") in CC No. 21 of 2005. The trial court convicted the appellant vide its judgment dated 14.7.2008 for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short "the PC Act") and vide order dated 15.7.2008 sentenced him to undergo rigorous imprisonment for two years with fine of Rs.5,000/- for the offence punishable under Section 7 of the PC Act and in default to undergo simple imprisonment for two months. For the offences punishable under Section 13(2) of the PC Act, he was further sentenced to undergo rigorous imprisonment for two years with fine of Rs.5,000/- and in default to undergo simple imprisonment for two months. Both the sentences imposed upon him for the above said offences were to run concurrently.

Brief facts of the case are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:-

> The prosecution case before the trial court was that on 29.7.2004, an FIR No. 662 of 2004 was registered at Police Station, Nangloi, Delhi under Sections 279 and 337 of Indian Penal Code (for short "IPC") against one Krishan Kumar (PW-9), the brother of the complainant-Jai Bhagwan (PW-2). Krishan Kumar was arrested on 29.7.2004 in connection with the alleged offences referred to in the above said FIR.
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> The complainant-Jai Bhagwan (PW-2) had approached Assistant Sub-Inspector (ASI) Ranbir Singh (PW-11), the Investigating Officer of the said case for release of Krishan Kumar on bail. The Investigating Officer is stated to have accepted the bail bond for release of Krishan Kumar and directed the appellant (a constable at the said Police Station) to release him on bail in connection with the alleged offences referred to supra.

The appellant alleged to have demanded a bribe of Rs.5000/- from the complainant-Jai Bhagwan for releasing his brother Krishan Kumar on bail. It is alleged that under duress, complainant-Jai Bhagwan (PW-2) paid Rs.4,000/- as bribe to the appellant. Thereafter, Krishan Kumar (PW-9) was released on bail and the appellant asked the complainant-Jai Bhagwan to pay him the balance amount of Rs.1,000/- on 30.7.2004 between 6.00 p.m. and 7.00 p.m. at Ditchau Kalan Bus Stand, Najafgarh.

The complainant-Jai Bhagwan (PW-2) approached the office of Anti Corruption Branch on 30.07.2004 and made a written complaint regarding the demand of bribe by the appellant from him. The said written complaint was recorded by Sunder Dev (PW-12) in presence of Anoop Kumar Verma (PW-6).

The complainant-Jai Bhagwan took with him two Government Currency notes (for short the "GC notes") in the denomination of Rs.500/- each and handed over the same to Inspector Sunder Dev (PW-12) who noted down the serial numbers of the said GC notes. Thereafter, phenolphthalein powder was applied to the said GC notes and recorded in the pre-raid proceedings and its effect was demonstrated. The tainted GC notes were given to the complainant-Jai Bhagwan, who kept the same in the left pocket of his shirt.

As per the instructions, panch witness- Anoop Kumar Verma (PW-6) was directed to remain close to complainant-Jai Bhagwan to overhear the conversation between the complainant-Jai Bhagwan and the appellant. He was further instructed to give a signal to the raiding party by hurling his hand over his head when bribe amount had actually been given by the complainant-Jai Bhagwan.

On 30.07.2004, at around 4.30 p.m., the complainant-Jai Bhagwan, panch witness- Anoop Kumar Verma, Inspector Sunder Dev (PW-12), Sub-Inspector B.S. Yadav (PW-10) and Constable Rajiv Kumar (PW-5) along with other members of the raiding party left for Ditchau Kalan Bus Stand in a government vehicle and reached the spot at around 5.45 p.m. At around 7.00 p.m., appellant reached the spot and had conversation with complainant-Jai Bhagwan. Both the complainant and the appellant moved towards a water trolley, had water and again continued their conversation. Panch witness- Anoop Kumar Verma followed them. After sometime, the complainant-Jai Bhagwan took out the tainted GC notes from the left pocket of his shirt and gave them to the appellant which he took with his right hand and kept the same in the left pocket of his shirt. Soon after the said transaction, panch witness- Anoop Kumar Verma gave the pre-determined signal to the raiding team upon which the team rushed to the spot.

Anoop Kumar Verma informed the raiding team that the appellant had demanded and accepted the bribe money of Rs.1000/- from the complainant-Jai Bhagwan. Inspector Sunder Dev introduced himself as Inspector from Anti Corruption Branch to the appellant upon which he immediately took out the tainted GC notes from the pocket of his shirt with his left hand and threw the same on the ground. The said GC notes were then picked up from the ground by panch witness-Anoop Kumar Verma on the instructions of Inspector-Sunder Dev. The serial numbers of the recovered GC notes were matched with those noted in the pre-raid proceedings. The wash of right and left hand of the appellant as well as the wash of left pocket of his shirt was taken in colorless solution of sodium carbonate which turned pink. The solution was transferred into clean glass bottles which were sealed and labeled. Thereafter, the appellant was arrested and FIR No. 36 of 2004 was registered against him for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the PC Act.

The learned Special Judge after examining the evidence on record convicted the appellant vide its judgment dated 14.7.2008 for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act and vide order dated 15.7.2008 sentenced him to undergo rigorous imprisonment for two years with fine of Rs.5,000/- for the offence punishable under Section 7 of the PC Act and in default to undergo simple imprisonment for two months. For the offence punishable under Section 13(2) of the PC Act he was further sentenced to undergo rigorous imprisonment for two years with fine of Rs.5,000/- and in default to undergo simple imprisonment for two months. Both the sentences imposed upon him for the above said offences were to run concurrently.

Aggrieved by the decision of the learned Special Judge, the appellant filed Crl. Appeal No.634 of 2008 before the High Court of Delhi at New Delhi urging various grounds. The High Court vide its judgment and order dated 07.11.2014 upheld the decision of the learned Special Judge. The correctness of the same is questioned in this appeal urging various grounds.

Mr. Sidharth Luthra, the learned senior counsel on behalf of the appellant contended that the High Court has failed to appreciate the fact that Krishan Kumar (PW-9) at the time of occurrence was already released on bail in connection with the case registered in FIR No. 662 of 2004 by the appellant as per the directions of Ranbir Singh, ASI (PW-11). Thus, the demand of bribe money of Rs.1000/- by the appellant from the complainant- Jai Bhagwan is highly improbable.

It was further contended by him that the demand of illegal gratification by the accused is a sine qua non for constitution of an offence under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. A mere production of the tainted money recovered from the appellant along with positive result of phenolphthalein test, sans the proof of demand of bribe is not enough to establish the guilt of the charge made against appellant. In support of the above legal submission, he placed reliance upon the judgments of this Court in the cases of B. Jayaraj v. State of Andhra Pradesh[1], A. Subair v. State of Kerala[2] and State of Kerala & Anr. v. C.P. Rao[3], wherein this Court, after interpreting Sections 7 and 13(1)(d) of the PC Act, has held that the demand of bribe money made by the accused in a corruption case is a sine qua non to punish him for the above said offences. The learned senior counsel has also placed reliance upon the three Judge Bench decision of this Court in the case of P. Satyanarayana Murthy v. The Dist. Inspector of Police, State of Andhra Pradesh & Anr.[4], in which I was one of the companion Judges, wherein this Court, after referring to the aforesaid two Judge Bench judgments on the question of necessity of demand of bribe money by the accused, has reiterated the view stated supra.

It was further contended by him that the High Court has failed to appreciate the fact that the complainant-Jai Bhagwan turned hostile during his examination before the trial court and did not support the prosecution case that the demand of Rs.1000/- as illegal gratification was made by the appellant from him for release of Krishna Kumar (PW-2) on bail.

It was further contended by the learned senior counsel that the High Court has failed to re-appreciate the evidence on record that Panch witness- Anoop Kumar Verma was directed by the official of Anti Corruption Branch to remain close to the complainant-Jai Bhagwan in order to hear the conversation and see the transaction between the appellant and the complainant-Jai Bhagwan. He further submitted that the learned Special Judge as well as the High Court have arrived at an erroneous finding without considering the fact that the appellant after reaching the spot walked with the complainant-Jai Bhagwan for about 15 to 20 steps while conversing with each other. Thereafter, both moved towards water trolley and after taking water proceeded ahead. Around that time the complainant- Jai Bhagwan took out the tainted GC notes from his pocket and gave it to the appellant. From the said evidence, it is clear that panch witness- Anoop Kumar Verma did not hear the conversation between the appellant and the complainant-Jai Bhagwan. Therefore, there was no occasion to reach the conclusion that the appellant demanded any bribe from the complainant-Jai Bhagwan.

He further contended that Ranbir Singh, ASI who was Investigating Officer in the case in which the arrest of Krishan Kumar was made, accepted his bail bond and directed the appellant to release him. It is an admitted fact that Krishan Kumar was released on bail in the presence of and as per the directions of Ranbir Singh, ASI. Therefore, there was no occasion for the appellant to demand any

bribe money from the complainant-Jai Bhagwan.

It was further contended that the High Court has failed to appreciate the fact that the alleged demand and the acceptance of amount of Rs. 1000/- is not corroborated by any independent witness despite the fact that the transaction alleged to have taken in a public place.

On the other hand, Mr. P.S. Patwalia, the learned Additional Solicitor General (ASG), on behalf of the respondent-State sought to justify the impugned judgment and order passed by the High Court which is on proper appreciation of evidence on record and it is well reasoned and therefore not vitiated in law. Hence, he would submit that no interference with the same is required by this Court in exercise of its appellate jurisdiction.

He has submitted that the High Court has rightly re-appreciated the evidence of the complainant-Jai Bhagwan and other prosecution witnesses and concurred with the findings recorded on the charges. Further it was submitted by him that the trial court while appreciating the evidence of the complainant-Jai Bhagwan relied upon the decision of this Court in the case of Sat Paul v. Delhi Administration[5], paragraphs 41 and 51 of which decision in recording the finding on the charges against the appellant, are extracted hereunder:

> "41. The fallacy underlying this view stems from the assumption that the only purpose of cross-examination of a witness is to discredit him; it ignores the hard truth that another equally important object of cross- examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party with the leave of the court, confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering round to his former statement. Thus, showing faultness of the memory in the case of such a witness would be another object of cross- examining and contradicting him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross- examination or in a leading form to his own witness is relaxed not because the witness has already forfeited all right to credit but because from his antipathetic altitude or otherwise, the court feels that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way.
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> 51. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony.

If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto." It was further submitted that the trial court by placing reliance upon the Sat Paul's case (supra) found a part of the complainant-Jai Bhagwan's testimony reliable and held that the demand of bribe money by the appellant from the complainant-Jai Bhagwan to release his brother Krishan Kumar (PW-

9) can be said to be proved. He has placed reliance on the following finding and reasons recorded by the trial court, which relevant portion from para 16 reads thus:

> "16...It is true that complainant has not testified entirely in terms of his statement recorded u/s 161 Cr.P.C and he was declared hostile and was cross examined with the leave of the court. But simply because he did not testify strictly as per the prosecution case does not mean that his statement is altogether effaced from the record." Therefore, he would submit that the decision of the trial court on the charges framed against the appellant is based on proper evaluation of the evidence on record which has been rightly accepted by the High Court. Therefore, the same cannot be termed as erroneous in law and need not be interfered with by this Court in exercise of its appellate jurisdiction.
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> It was further contended by him that though the complainant-Jai Bhagwan turned hostile witness and he has deposed before the trial court by stating that he had inserted the tainted GC notes in the left pocket of appellant's shirt. The trial court has held that evidence of Anoop Kumar Verma and inspector-Sunder Dev have supported the case of the prosecution who have demolished the version given by the complainant-Jai Bhagwan (PW-2) in his examination-in-chief.
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> He has further submitted that as far as proof of demand of Rs.1000/- as illegal gratification made by the appellant is concerned, the trial court has rightly recorded the finding of fact holding that the appellant was caught red-handed accepting the bribe money at the Ditchau Kalan Bus Stand at Najafgarh and this evidence was sufficient enough to show that the complainant-Jai Bhagwan (PW-2) was asked by the appellant to bring the said amount as illegal gratification for having released Krishan Kumar (PW-9) on bail.
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> We have carefully heard Mr. Sidhartha Luthra, the learned senior counsel on behalf of appellant and Mr. P.S. Patwalia, the learned Additional Solicitor General on behalf of respondent-State. On the basis of factual and legal aspects of the case and evidence on record produced in the case, it is clear that the High Court has recorded the concurrent findings on the charges framed against the Appellant in the impugned judgment and order. It has also failed to re-appreciate the evidence on record

properly and consider the law on the relevant aspect of the case. Therefore, the said findings are not only erroneous in law but also suffer from error in law. Hence, the same is liable to be set aside.

We are of the view that as the complainant-Jai Bhagwan in his examination- in-chief before the trial court has categorically stated that it was Ranbir Singh, ASI (PW-11) who demanded Rs.5000/- for release of his brother, Krishan Kumar (PW-9) in connection with the offences registered against him in FIR No.662 of 2004, the trial court has wrongly accepted a part of testimony of the complainant-Jai Bhagwan while recording such findings on the charges to convict the appellant when there is nothing on record to show that it is the appellant who had demanded bribe money from the complainant-Jai Bhagwan. In his examination-in-chief before the trial court, he categorically stated thus :-

".....One Police Officer who was in civil uniform, who was the IO of that case, met me in the Police station told me that I would have to spend Rs.5000/- for the bail of my brother.....On the directions of that IO, I had given Rs.4000/- to accused Krishan on account of duress. That IO asked me that he would send accused Krishan to collect balance amount of Rs.1000/- to Najafgarh." During the trial, the said witness did not support the prosecution version and therefore he was declared as hostile witness and thereafter, he was cross-examined by Mr. Alok Saxena, the learned Additional Public Prosecutor to the following effect:

"I did not mention in my complaint that one ASI Ranbir Singh asked Constable Krishan Kumar to release my brother and he himself went for some other work and I requested Constable Krishan Kumar to release my brother and he demanded Rs.5000/- from me for releasing my brother (confronted with portion A to A of his complaint Ex. PW2/A.....It is incorrect to suggest that accused Krishan Kumar had demanded Rs.5000/- from me and today I am giving a false exception that one IO had demanded Rs.5000/- from me in order to save the accused.....I did not tell to the police that after receiving signal from the panch witnesses, Raid Officer came near me and challenged the accused that he had taken Rs.1000/- as bribe from me on which accused became perplexed and he took out those treated GC notes from his pocket and threw the same on the ground (confronted with portion B to B of his statement-ExPW-2/H recorded).

He has further stated that:

"It is wrong to suggest that accused Krishan had accepted bribe from me in his right hand and kept the same in his pocket and after seeing raiding party. It is further wrong to suggest that I am deposing falsely." The High Court has also erroneously appreciated the same and held thus: "23. ...As regards the demand of bribe of Rs.1000/- its conscious acceptance by the appellant, as already noticed, has been proved by PW-6 and fully corroborated by PW-12." Adverting to the evidence of

Ranbir Singh, ASI (PW-11) who is the Investigation Officer in the above case registered against Krishan Kumar; in his examination-in-chief before the trial court, he stated as under :- ".....After getting Sri Kishan medically examined, the accused brought him to PS Nangloi. No surety of Sri Kishan was present in the PS at that time. After about one hour one Jai Bhagwan brother of Sri Kishan came to P.S. Nangloi and presented the bail bond of his brother Sri Krishan. I accepted the bail bond of Sri Kishan at 10.00 pm and gave instruction to the accused to release Sri Kishan. I reported back at P.S. Nangloi at 11.55 pm and made the entry vide DD NO. 29/A dated 29.7.2004. I also recorded about the arrest and release of Sri Kishan in this very DD, although I accepted the surety bond of Sri Kishan in this very DD, although I accepted the surety bond of Sri Kishan at 10.00 PM on 29.7.2004." From the aforesaid admitted facts stated in his statement of evidence, it is very clear that it was Ranbir Singh, ASI, who directed the appellant to release Krishan Kumar. Therefore, at the time of his releasing on bail, there was no occasion for the appellant to demand bribe money from the complainant-Jai Bhagwan as he was already released on bail in the above criminal case by Ranbir Singh, ASI, (PW-11).

We are unable to agree with the above contentions urged by the learned ASG that the complainant-Jai Bhagwan turned hostile witness in the case before the trial court, however, the statement of evidence of Anoop Kumar Verma (PW-6) and inspector-Sunder Dev (PW-12) was sufficient to support the case of the prosecution with regard to acceptance of bribe amount by the appellant from Jai Bhagwan (PW-2). This Court is of the view that whenever a prosecution witness turns hostile his testimony cannot be discarded altogether. In this regard, reliance is placed by the ASG on the decision of this court in the case of Rabindra Kumar Dey v. State of Orissa[6]. The relevant para 12 of the aforesaid case reads thus:

"12. It is also clearly well settled that the mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness so as to exclude his evidence from consideration altogether. In Bhagwan Singh v. State of Haryana Bhagwati, J., speaking for this Court observed as follows:

"The prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The 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." (emphasis supplied) However, in the instant case, from the material on record, it is amply clear that the complainant-Jai Bhagwan turned hostile on two important aspects namely, demand and acceptance of bribe by the appellant which is sine qua non for constituting the alleged offence under Sections 7 and 13(1)(d) read with 13(2) of the PC Act convicting the appellant and sentencing him for the period

and fine as mentioned above.

As far as the evidence of Panch witness- Anoop Kumar Verma (PW-6) is concerned, in his examination-in-chief, he stated thus:

"...Thereafter, the complainant and the accused walked for 15-20 steps and had some talk with the complainant and the complainant took out those GC notes from his pocket and gave in the right hand of accused which he kept in the left pocket of his shirt..." Anoop Kumar Verma (PW-6) in his examination-in-chief has not deposed as to the exact conversation that took place between the appellant and the complainant-Jai Bhagwan at the time when he had approached him to give bribe money. He has simply mentioned about "some talk" had taken place between them but has failed to bring to light the factum of demand of bribe money by the appellant from the complainant-Jai Bhagwan. Thus, it is amply clear that panch witness-Anoop Kumar Verma did not hear the conversation between the appellant and the complainant-Jai Bhagwan. Therefore, there was no occasion for both the courts below to reach the conclusion that the appellant demanded any bribe from the complainant-Jai Bhagwan.

The Investigation Officer (PW-10) in his evidence, has not at all spoken of the contents of the statement of the complainant-Jai Bhagwan (PW-2), recorded by him under Section 161 of the Cr.P.C. Further, PW-2 in the light of the answers elicited from him in the cross-examination by Public Prosecutor, with regard to the contents of 161 statement which relevant portions are marked in his cross-examination and the said statements were denied by him, the prosecution was required to prove the said statements of the PW-2 through the Investigating Officer to show the fact that PW-2 Jai Bhagwan in his evidence has given contrary statements to the Investigation Officer at the time of investigation and, therefore, his evidence in examination-in-chief has no evidentiary value. The same could have been used by the prosecution after it had strictly complied with Section 145 of the Indian Evidence Act, 1872. Therefore, the I.O. should have spoken to the above statements of PW2 in his evidence to prove that he has contradicted in his earlier Section 161 statements in his evidence and, therefore, his evidence cannot be discarded to prove the prosecution case.

It becomes amply clear from the perusal of the evidence of PW-10, I.O. in the case that the same has not been done by the prosecution. Thus, the statements of PW-2 marked from Section 161 of Cr.P.C. in his cross- examination cannot be said to be proved in the case to place reliance upon his evidence to record the findings on the charge. The position of law in this regard is well settled by this Court in the case of V.K. Mishra v. State of Uttarakhand[7]. The relevant paras are extracted hereinbelow: "16. Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be

> used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and
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> (iii) the re-examination of the witness if necessary.

17. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross- examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under:

> '145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.'

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court

cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction." (emphasis laid by this Court) Thus, the contradiction of evidence of the complainant-Jai Bhagwan (PW-2) does not prove the factum of demand of bribe by the appellant from the complainant-Jai Bhagwan as the statement recorded under Section 161 of Cr.P.C. put to him in his cross-examination was not proved by B.S. Yadav (PW-10) by speaking to those statements in his evidence and therefore, the evidence of PW-2 is not contradicted and proved his Section 161 statement in the case.

Further, the appellant in his examination under Section 313 of Code of Criminal Procedure, 1973 has, inter alia, stated thus:

> "Q 4: it is in evidence against you that on 28.07.2004 you demanded Rs. 5000/- as bribe from complainant Jai Bhagwan and you accepted Rs. 4000/- as bribe from him and asked the complainant to bring Rs. 1000/- on 30.07.2004 near Dichau Kalan bus stand, Najafgarh. What you have to say?
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> Ans. It is incorrect.
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> XXX XXX XXX Q 14: It is evidence against you that at about 7:00 p.m. you came and you met with complainant and moved towards one water rairi and you demanded and accepted Rs. 1000/- as bribe from the complainant in the presence of panch witness with your right hand and kept the same in left pocket of your shirt. What you have to say?
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> Ans. It is incorrect.
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> Q 15: It is in further evidence against you that in the meantime panch witness gave pre-determined signal and thereafter the members of raiding party came and you were apprehended and panch witness told the raiding officer that you had demanded and accepted the bribe of Rs. 1000/- from the complainant (PW-2) with your right hand and kept the same in your left pocket of your shirt. What you have to say?
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> Ans. It is incorrect." After a careful reading of the evidence of the complainant-Jai Bhagwan (PW-
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> 2), statements made by the appellant in his examination under Section 313 of Cr.P.C. as well as the evidence of Anoop Kumar Verma (PW-6) and inspector-Sunder Dev (PW-12), it is clear that there was no demand of bribe money by the appellant from the complainant-Jai Bhagwan.

It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in the case of B. Jayaraj (supra), A. Subair (supra) and P. Satyanarayana Murthy (supra) upon which reliance is rightly placed by the learned

senior counsel on behalf of the appellant. The relevant paragraph 7 from B. Jayaraj case (supra) reads thus:

> "7. 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 judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. and C.M. Girish Babu v. CBI." (emphasis supplied) In the case of P. Satyanarayana Murthy (supra), it was held by this Court as under:
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> "21. In State of Kerala and another vs. C.P. Rao, this Court, reiterating its earlier dictum, vis-à-vis the same offences, 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.
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> 22. In a recent enunciation by this Court to discern the imperative pre-

requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that 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 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 Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, 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. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder." (emphasis supplied) Further, in the case of Satvir Singh v. State of Delhi[8], this Court has held thus:

"34. This Court, in K.S. Panduranga case has held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent to constitute an offence, the relevant paragraph in this regard from the abovesaid decision is extracted hereunder: (SCC pp. 740-41, para 39) "39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of approval given to the same by the High Court cannot be faulted." (emphasis supplied)

35. The learned Senior Counsel for the appellant has also placed reliance upon the case of Banarsi Dass referred to supra wherein it was held that:

(SCC pp. 456-57, para 24) "24. In M.K. Harshan v. State of Kerala this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8) '8. ... It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.'..." (emphasis supplied) In view of the aforesaid reasons, the approach of both the trial court and the High Court in the case is erroneous as both the courts have relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant-Jai Bhagwan (PW-2) by the appellant though there is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant-Jai Bhagwan (PW-2), which is the sine qua non for convicting him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. Thus, the impugned judgment and order of the High Court is not only erroneous but also suffers from error in law and therefore, liable to

be set aside.

For the reasons stated supra, the impugned judgment and order of the High Court as well as the trial court are set aside. The appeal is allowed. The Jail Superintendent is directed to release the appellant forthwith from the Jail if he is not required in connection with any other case. The Registry is directed to communicate the above portion of the order to the concerned Jail Superintendent to comply with the directions issued to him.

.....CJI.

[T.S. THAKUR] .....J. [V. GOPALA GOWDA]
New Delhi, January 6, 2016

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[1] (2014) 13 SCC 55
[2] (2009) 6 SCC 587
[3] (2011) 6 SCC 450
[4] (2015) 10 SCC 152
[5] AIR 1976 SC 294
[6] (1976) 4 SCC 233
[7] (2015) 9 SCC 588
[8] (2014) 13 SCC 143