



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeal No. 172 of 2015

Reserved on: 06.11.2023

Decided on: 30.11.2023

Neeraj Kumar
...Appellant

Versus

State of Himachal Pradesh
...Respondent

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ Whether approved for reporting?

For the appellant: Mr. Manohar Lal Sharma, Senior Advocate
with Mr. Aman Parth Sharma, Advocate.

For the respondent: Mr. Jitender Kumar Sharma, Additional
Advocate General.

Sushil Kukreja, Judge

The instant appeal filed under Section 27 of the Prevention of the Corruption Act, 1988 (for short, 'the PC Act') read with Section 374(2) of the Code of Criminal Procedure (Cr.P.C.) by appellant Neeraj Kumar, laying challenge to the judgment of conviction and order of sentence dated 16.04.2015,

¹ Whether reporters of Local Papers may be allowed to see the judgment?

passed by the learned Special Judge, Mandi, District Mandi, H.P. in Sessions Trial No.20/2011, titled State of Himachal Pradesh Versus Neeraj Kumar, whereby the appellant (hereinafter referred to as the accused) was convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- under Sections 7 & 13 (1)(d) punishable under Section 13(2) of the PC Act and in default of payment of fine, to undergo simple imprisonment for a period of three months.

2. Briefly stated the facts of the case, which emerge from the records, are that complainant Deepak Guleria, was running the business in the name and style of M/s Deepak Business Communication and had taken CST number in the year 2005 from Excise and Taxation Department, during the year 2010. He was directed by ETO Ms. Nirmal and accused Neeraj Kumar to file returns yearly and a notice was also issued to him. He talked to ETO as well as the accused and informed them that he had not brought any goods from outside, therefore, his returns were nil. However, ETO Nirmal and the accused told him that they would charge Rs.500/- per year irrespective of the fact whether any goods were brought from outside or not. Subsequently, ETO Nirmal, on

being contacted by the complainant, threatened him to impose penalty of Rs.20,000/- for not filing returns and ETO and accused demanded Rs.7,000/- and ultimately the matter was settled for Rs.4,000/-, out of which Rs.3,000/- was to be paid to ETO Nirmal and Rs.1,000/- to the accused. Thereafter, the complainant contacted Vigilance Police and a raiding party was formed by associating one Shakti Sharma as shadow witness. The Investigating Officer explained pre-trap proceedings by preparing solution of sodium carbonate and phenolphthalein powder, then the solutions were destroyed and some powder were kept in match boxes, which were sealed in a cloth parcel. The currency notes which were handed over by the complainant to the police, were treated with phenolphthalein powder and thereafter were handed over to the complainant with a direction to pay the same to ETO Nirmal and the accused on their demand. The police also recorded the number of currency notes on a memo. The complainant and Shakti Sharma (shadow witness) went to the office of the accused and handed over Rs.3,000/- to ETO Nirmal and Rs.1,000/- to the accused and the shadow witness signaled the police and thereafter both ETO Nirmal as well as the accused were caught red-handed.

Their hands were washed, which confirmed phenolphthalein on their hands and the police tallied the currency notes recovered from them which were found to be the same. The police made relevant recoveries and also prepared memos qua the same. Sample seals were drawn and the accused was arrested. In presence of Shyam Singh, Tehsildar, the post trap proceedings were conducted and hand-wash solution was taken in a nip and seized. The police also seized various documents from the office of the accused and procured his posting and appointment orders. The hand-wash solutions were sent to Forensic Science Laboratory (FSL) and the report was obtained.

3. The prosecution sanction against accused Neeraj Kumar was granted, whereas, the competent Authority, despite the availability of sufficient evidence against ETO Ms. Nirmal, declined the prosecution sanction. After conclusion of the investigation, the police presented the charge-sheet against the accused Neeraj Kumar before the learned trial Court.

4. Charges were framed by the learned trial Court against the accused under Sections 7 and 13(2) of the PC Act, vide order dated 24.03.2015. The accused did not plead guilty of the charge

framed against him and claimed trial.

5. In order to prove its case, during trial, the prosecution examined 15 witnesses. After closure of the prosecution evidence, the accused when examined under Section 313 of the Cr.P.C., stated that he was innocent and had been falsely implicated in the case. The accused examined one witness in his defence.

6. On the basis of evidence led on record by the prosecution, the learned trial Court held the accused guilty of having committed offence under Sections 7 & 13 (1) (d) punishable under Section 13(2) of the PC Act and sentenced him as per the description given hereinabove.

7. Being aggrieved and dissatisfied with the judgment of conviction and order of sentence passed by the learned trial Court, the accused approached this Court by way of the instant appeal, praying for his acquittal, after setting aside the aforesaid judgment of conviction and order of sentence.

8. The learned Senior Counsel for the appellant contended that the appellant has been deliberately and discriminately chosen for the trial, whereas, the circumstances demanded equal treatment and on the same material as well as the reason, the prosecution

sanction was not granted to prosecute accused Ms. Nirmal, who was the ETO. He further contended that the trial Court has failed to consider that there was no evidence to show any demand of bribe having been made by the appellant, who had no authority to condone the penalty of tax. He finally submitted that as in this case there is absolutely no evidence regarding the demand of illegal gratification and the evidence put forth by the prosecution is full of discrepancies and as the prosecution has miserably failed to establish either the charge for the offence punishable under Section 7 or the charge for the offence punishable under Section 13(1)(d) of the PC Act, hence, the impugned judgment of conviction and order of sentence dated 16.04.2015 passed by learned Special Judge, Mandi, District Mandi, H.P., is liable to be set aside and the appellant-convict be acquitted of the charges framed against him.

9. On the other hand, learned Additional Advocate General supported the judgment of the learned trial Court and contended that since the charges against the accused have been duly proved by the prosecution beyond reasonable doubt, the

learned trial Court has rightly convicted him on the basis of proper appreciation of evidence.

10. I have heard the learned counsel for the appellant as well as the learned Additional Advocate General and also gone through the record carefully.

11. The accused stood charged for commission of the offence under Sections 7 and 13(1)(d) punishable under Section 13(2) of the PC Act as being a public servant, he allegedly demanded and accepted illegal gratification of Rs.1,000/- from the complainant to dispose of his assessment case. To substantiate the said charge and to bring home the guilt of the accused, the prosecution examined as many as fifteen witnesses. However, the case of the prosecution mainly rests upon the statements of PW-1 Shyam Singh, PW-2 Deepak Guleria, PW-3 Shakti Sharma, PW-4 Inspector Mahender Kumar and PW-14 Bhupender Singh, who is the Investigating Officer of the case. These are the most material witnesses of the prosecution, who have been examined primarily to prove the guilt of the accused.

12. PW-1 Shyam Singh deposed that in the year 2010, he accompanied the Dy.SP Vigilance to the office of ETO, who was

present in her office whose name was Kumari Nirmal and the vigilance officials were also present in the said office. A clerk of the office, namely Neeraj, was also present in the office. Accused Neeraj was caught from his both hands by the vigilance staff and his hands were got washed in a bowl with clean water. The colour of the hand wash remained normal and thereafter the police added sodium carbonate to the hand wash and the colour of the hand wash changed into a light pink. The said pink colour hand wash was put in a glass nip, which was sealed with seal, impression of which he did not remember. The similar process was repeated in case of ETO also. Accused Neeraj Kumar was asked about the money at which he took out currency notes of Rs.500/- each from the pocket of his pants. The serial numbers of the currency notes were tallied with the serial numbers noted on the memo. The said currency notes were sealed in a cloth parcel. The parcel containing currency notes was taken into possession vide memo Ex.PW-1/F and the nip was taken into possession vide seizure memo Ex.PW-1/A. Thereafter, the police recorded his statement and the accused was taken into custody by the police. The pocket of trouser from which the currency notes of Rs.1,000/- were taken out by the

accused Neeraj Kumar was also washed with clean water in a bowl and the colour of the water on wash remained natural, which turned to light pink colour on adding sodium carbonate by the police. The pink coloured-wash obtained from the pocket wash was put into a glass nip which was also sealed with seal impression 'H'. The trouser of the accused was also put into a cloth parcel which was also sealed with seal 'H' and was taken into possession vide seizure memo Ex.PW-1/C. Deepak Guleria and one more witness were also present at the spot when the proceedings were conducted.

13. Complainant Deepak Guleria, while appearing in the witness box as PW-2, deposed that in the year 2005 he had taken CST number from the Excise and Taxation Department, Mandi. He used to deal in various types of goods from outside and used to pay excise duty for the same. He used to file Excise and Taxation returns after every three months and in the year 2010, ETO Nirmla and the dealing hand/clerk Neeraj had asked him to file the returns yearly and a notice from ETO office was given to him. He had talked to ETO and concerned dealing clerk Neeraj Kumar that since he was out of station, he had not brought any goods from

outside, therefore, his income tax returns were nil. ETO Nirmla and dealing clerk Neeraj told him that they would charge Rs.500/- per year whether he had brought any articles from outside or not. Thereafter, he went to the office of ETO and before going there he had also talked to her telephonically. ETO had told him that she could impose penalty of Rs.20,000/- for not filing income tax returns. Accused Neeraj told him that he should talk to ETO. ETO and accused Neeraj had demanded firstly Rs.7,000/- and thereafter demanded Rs.4,000/- for settling the matter, out of this money, accused Neeraj demanded Rs.1,000/- and ETO demanded Rs.3,000/-. Thereafter, he contacted Dy.SP and Inspector Vigilance Hemant Kumar, who recorded his statement Ex.PW-2/A, who formed a raiding party comprising of about 10 officials and came to his office at Moti-bazar. Shakti Sharma was also with him at the time when he visited the police station and in his office also. When the police party came to his office, in his presence the police officials prepared the solution of Sodium Carbonate and Phenolphthalein which remained colourless and when they were mixed together, the colour turned into light pink. Thereafter, the solution was destroyed and sodium carbonate and phenolphthalein

powder was taken in two separate paper packets and were put in a match box and matchbox was sealed in a cloth parcel. The police also treated the currency notes given by him to them with phenolphthalein powder and told him that these notes should be handed over to the accused persons and they prepared demonstration memo Ex.PW-2/B. The police also prepared memo regarding currency notes which were eight in number of the denomination of Rs.500/- each. Police had noted down the numbers of the currency notes which he had handed over to the police. Thereafter, he and Shakti Sharma proceeded to the office of ETO and police had associated Shakti Sharma as shadow witness and had asked him to hand over the currency notes to the accused persons and asked Shakti Sharma to signal the police officials after watching the transaction. Thereafter, he handed over currency notes of Rs.1,000/- of the denomination of Rs.500/- each to Neeraj and remaining Rs.3,000/- to the ETO Nirmla. The shadow witness Shakti Sharma signaled the police party, who came inside the office. Before proceeding to the office of ETO, the members of raiding party had already washed their hands regarding which memo Ex.PW-2/D was prepared. When they reached the office of

ETO and police apprehended the accused Neeraj, then their hands were got washed. Thereafter, the currency notes of Rs.1,000/- of the denomination of Rs.500/- were recovered from the pants of Neeraj, which he handed over to the accused. Thereafter, the currency notes recovered from accused Neeraj were put into an envelope and sealed in a parcel vide memo Ex.PW-1/F.

14. PW-3 Shakti Chand deposited that in the month of March 2010, when he visited the office of Deepak Guleria, the vigilance team had come to the office as Deepak Guleria had made some complaint. Police had prepared two solutions with the help of sodium carbonate and phenolphthalein, the colour was neutral and colourless, but when they were mixed, the colour changed to light pink. They were told that in case currency notes treated with phenolphthalein were touched/ handled by a person and his hand-wash was conducted then its colour would change to pink, when mixed with sodium carbonate. Police had treated the currency notes of the value of Rs.4,000/- of the denomination of Rs.500/- each which were given to them by Deepak Guleria. After treating these notes, the police put the sample powder of phenolphthalein and sodium carbonate into paper packets and the same were put

into the match boxes, which were sealed in cloth parcels. Thereafter, he alongwith Deepak had gone to the office of ETO and he remained outside the room. Deepak went inside the room of accused Neeraj and handed over two currency notes of the denomination of Rs.500/-each to him. He signaled the police and police went inside the room of accused and the accused put the currency notes in the pocket of his pants/trouser. Police got the hands of accused Neeraj washed in a bowl which was colourless and put the sodium carbonate in the said bowl, due to which the colour of the solution turned pink. The said solution was poured into a nip and sealed. Thereafter, the currency notes of Rs.1,000/- of the denomination of Rs.500/- each were recovered from the pocket of the pants of Neeraj. The police had taken into possession the currency notes vide memo Ex. PW-1/F.

15. PW-4 Inspector Mahender Kumar deposed that on 06.03.2010, he alongwith DySP Bhupender Singh Kanwar, Inspector Hemant Kumar, SI Rishi Raj, Constable Brajesh Kumar, Constable Pankaj Kumar, Constable Rajesh Kumar and LC Alka Thakur had gone to the office of Deepak Communication, Moti Bazar, Mandi in a government vehicle, where the complainant

Deepak Guleria got recorded his statement Ex.PW-2/A, which was sent to PS SV and ACB, through Constable Rajesh Kumar. Thereafter, Investigating Officer Bhupender Singh Kanwar had taken out two glasses from his kit and put a pinch of sodium carbonate and phenolphthalein into the glasses and also poured water in the same. The colour of the water remained neutral, when the two solutions were mixed together, the colour turned light pink. The Investigating Officer demonstrated about this solution to complainant and witness Shakti Sharma on the spot and then destroyed the said solution. Thereafter, the samples were taken from the said powder, which were put into paper packets and then in the match boxes and sealed in cloth parcels. Thereafter, complainant Deepak Guleria handed over 8 currency notes of Rs.500/- each to the Investigating Officer which were treated with phenolphthalein power and their numbers were noted vide memo Ex.PW-2/C. Investigating Officer directed the complainant to hand over two notes of Rs.500/- each to accused Neeraj Kumar and remaining six notes to ETO and asked complainant to put these notes into the pocket of his jacket. Shakti Sharma was made shadow witness and Investigating Officer also asked the shadow

witness to watch the whole transaction and to give signal to the police party when the complainant would hand over the currency notes to the accused. Thereafter, hand wash of the members of the raiding party and complainant was done and memo regarding this Ex.PW-2/D was prepared. Complainant Deepak Guleria and shadow witness Shakti Sharma went to the office of ETO on a motorcycle and raiding party went to the office of ETO in their official vehicle. Thereafter, the raiding party and the shadow witness took their position outside the office of ETO. Accused Neeraj Sharma was found sitting in his room. On receipt of signal from shadow witness, they entered the room of the accused who was sitting in the office of ETO and ETO was sitting on her seat. ETO was apprehended from hands by LC Alka Thakur and accused Neeraj Sharma was nabbed by Constable Pankaj Kumar and Brijesh Kumar. Thereafter, Investigating Officer called Naib-Tehsildar Shyam Singh Thakur on the spot and the hands of the accused were got washed in a fiber bowl which remained colourless and thereafter sodium carbonate was added in it and it turned pink. The pink coloured solution was poured in a nip and sealed with seal impression 'H' and taken into possession vide

memo Ex.PW-1/A. Sample seal was taken on a separate piece of cloth. Thereafter, two currency notes of Rs.500/- were recovered from the right side pocket of pants of the accused Neeraj and their serial numbers were tallied with the pretreated numbers already noted in pre-trap memo which were same. The recovered notes were put in khakhi envelope and sealed in a cloth parcel with same seal impression 'H' and were taken into possession vide memo Ex.PW-1/F. The pocket of the pant of the accused was also washed whose colour did not change, but when mixed with sodium carbonate, its colour changed into pink.

16. PW-14 Addl. SP Bhupender Singh (Investigating Officer) deposed that on 06.03.2010, a raiding party was constituted on the information of complainant Deepak Guleria, who had stated that he had received an assessment notice from Assessing Authority, Mandi and in lieu of settlement of his account, E.TO. Nirmal Kumari demanded a sum of Rs.3,000/- and her clerk Neeraj Kumar i.e. accused demanded a sum of Rs.1,000/-. The statement of complainant under Section 154 Cr.P.C. was recorded and sent to the police station for registration of the FIR, where FIR EX.PW5/D was registered. He had constituted two raiding parties,

one under his leadership and second under Inspector Hemant Kumar. Inspector Mohinder, S.I. Rishi Raj, C. Pankaj were with him and SI Harbans, LC Alka and C. Rajesh Kumar were with the Inspector Hemant Kumar in the other party. Thereafter, he demonstrated to the witnesses about the proceedings in the office of the complainant and prepared memo Ex.PW2/B. Thereafter, he took samples of sodium carbonate and phenolphthalein into separate papers those were kept in separate match boxes and were sealed in a cloth parcel with 3 seals of impression 'H' each. Thereafter, he obtained a sum of Rs.4,000/- from the complainant which was demanded by the accused persons as bribe. The numbers of currency notes were noted. These currency notes were treated with Phenolphthalein and prepared memo Ex.PW2/C. He directed the complainant to pay a sum of Rs.3,000/- to Nirmal and Rs.1,000/- to accused Neeraj Kumar on their demand. Shakti Sharma was associated as shadow witness and thereafter the entire police party was directed to wash their hands alongwith witnesses and memo Ex.PW2/D was prepared. Both the parties proceeded to the office of Excise and Taxation Department, Ram Nagar Mandi, H.P. He had directed the complainant to pay bribe

money to the accused persons on their demand and shadow witness was directed to give signal after acceptance of bribe money by the accused persons. After some time shadow witness Shakti Sharma gave signal to the police officials and they entered the office of ETO Nirmal. Thereafter, they introduced themselves to E.T.O. Nirmal and accused Neeraj and the accused persons were caught hold from their wrists. Thereafter, he called PW-1 Naib Tehsildar Shyam Singh. In presence of the witnesses, the hands of accused Neeraj Kumar were washed with water in utensil. The colour of the water did not change. Thereafter sodium carbonate was put into this water and colour changed into light pink. The hand wash was kept in a nip which was sealed with seal 'H' at one place and nip was taken into possession vide memo Ex.PW1/A and signatures of witnesses were obtained on it. Thereafter, the hands of ETO Nirmal were also washed in the same manner. Thereafter, a sum of Rs.3,000/- was recovered from ETO Nirmal. The numbers of currency notes were tallied with the memo and were found to be same. The currency notes were put in an envelope and were sealed with 3 seals of seal 'H'. The memo Ex.PW14/A was prepared and signatures of witnesses were

obtained on it. Thereafter a sum of Rs.1,000/- was recovered from the right pocket of the pants of accused Neeraj Kumar. The numbers of these notes were tallied with memo and were found to be the same. The currency notes were put in an envelope which was kept in a parcel and was sealed with 3 seals of seal H. The sample seal was also drawn and the parcel was taken into possession vide memo Ex.PW1/F. Thereafter, pants worn by accused Neeraj Kumar was taken into possession and right pocket of the pant of the accused was washed with simple water and the colour did not change but after putting sodium carbonate in it, the colour changed into light pink. The pocket wash was kept in a nip which was sealed with one seal impression of H. The pant was kept in a separate parcel which was sealed with 9 seals of seal 'H'. The sample seal was separately drawn and the seal after its use was handed over to Shakti Chand. The parcels were taken into possession vide memo Ex.PW6/C. Thereafter, he prepared spot map Ex.PW14/B and the file of the complainant was taken into possession from the office of ETO, vide memo Ex.PW5/E. Thereafter, the office of ETO Nirmal was searched and memo Ex.PW14/C was prepared. Thereafter, ETO Nirmal was arrested

vide memo Ex.PW14/D and accused Neeraj Kumar was arrested vide memo Ex.PW2/E.

17. Now, the point for determination in this appeal is whether the mandatory requirements to bring the accused under the purview of Section 7 of the PC Act and under Section 13(1)(d) read with Section 13(2) of the PC Act, have been followed to warrant a conviction in this case?

18. It is not in dispute that the sanction for prosecution was granted only in the case of the accused-appellant, but on the same material, it was refused with respect to the co-accused, i.e. ETO Ms. Nirmal for the reasons best known to the prosecution.

19. Before going into the factual aspects, the first question which arises for consideration is as to whether there is a proper and legal prosecution sanction in this case or whether such a sanction stands proved according to law. It is a settled law that sanction of prosecution is not an automatic formality and it cannot be accorded in a mechanical manner without application of mind by the sanctioning authority. Ext.PW12/A is the copy of the prosecution sanction granted by the Excise & Taxation Commissioner against accused Neeraj Kumar. On going through

the sanction order Ext.PW12/A, it can be seen that this sanction was by the order and in the name of Excise & Taxation Commissioner. This sanction order Ext.PW12/A mentioned about the details of allegations against the accused.

20. A reading of the prosecution sanction Ext.PW12/A shows that the allegations therein are that the accused had demanded the bribe from the complainant in lieu of the facilitating for tax assessment penalty and after completion of codal formalities, a trap was laid and the accused was caught red handed while accepting bribe. The prosecution, in order to prove the sanction order Ext. PW12/A, has examined Dinesh Kumar, Senior Assistant, office of Excise and Taxation Commissioner as PW-12, however, he is not the right and the competent person to prove a prosecution sanction granted under Section 19 of the PC Act. PW-12 has failed to depose that the entire relevant material was placed before the sanctioning authority and the authority had applied its mind on the same and thereafter the sanction Ext. PW12/A was granted. In so many decisions, the Hon'ble Apex Court has settled that the prosecution sanction must be proved by the person who

granted the sanction or issued the sanction order, except in cases where the sanction can claim some sanctity or immunity.

21. In ***Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, (1997) 7 SCC 682***, it was held that the grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and the validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Paras-17 to 19 of the judgment read as under:-

"17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts

of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanction authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution".

22. In **State (NCT of Delhi) Vs. Navjot Sandhu, (2005) 11 SCC 600**, the Supreme Court held as under:-

"16.....Ultimately, the test to be applied is whether relevant material that formed the basis of allegations constituting the offence was placed before the sanctioning authority and the same was perused before granting sanction....."

23. In the matter of **State of Karnataka Vs. Ameerjan, (2007) 11 SCC 273**, it was held that the order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. Para-10 of the judgment is reproduced as under:-

"10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper

application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

24. In **CBI Versus Ashok Kumar Aggarwal, AIR 2014**

Supreme Court 827, the Hon'ble Supreme Court in paras 7 & 8

has held as under:-

"7. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter-alia on the ground that the order suffers from the vice of total non-application of mind.

(Vide: Gokulchand Dwarkadas Morarka v. King, AIR 1949 PC 82; Jaswant Singh v. State of Punjab, AIR 1958 SC 124; Mohd. Iqbal Ahmed v. State of A.P., AIR 1979 SC 677; State through Anti- Corruption Bureau, Govt. of Maharashtra v. Krishanchand Khushalchand Jagtiani, AIR 1996 SC 1910; State of Punjab v. Mohd. Iqbal Bhatti, (2009) 17 SCC 92; Satyavir Singh Rath, ACP v. State, AIR 2011 SC 1748; and State of Maharashtra v. Mahesh G. Jain, (2013) 8 SCC 119 : (AIR 2013 SC (Cri) 1466: 2013 AIR SCW 3174).

8. In view of the above, the legal propositions can be summarised as under:-

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the

prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."

25. In this case, the prosecution did not care to examine J.C. Sharma, Excise and Taxation Commissioner, who granted the sanction. In a case where a prosecution cannot be sustained in the absence of a proper sanction, the person who granted the sanction must be examined. This is the trend of all the decisions on the point. But in this case, the person who granted the sanction was not examined to prove the same. Mere fact that a draft sanction order detailing all the facts and circumstances of the case was forwarded to the sanctioning authority is indicative of the fact that the sanctioning authority has accorded sanction mechanically and without applying its mind to the facts and circumstances of the case by signing on the dotted lines. In such a situation, it will have to be

found that there is no proper and valid prosecution sanction in this case. On this ground itself, the accused is entitled for acquittal as regards the charge under the PC Act, in view of the bar under Section 19 of the PC Act.

26. It is a settled principle of law that mere recovery of the bribe money by itself cannot bring home the charge for the offences punishable under Section 7 or 13(2) read with Section 13(1) (d) of the PC Act against the accused, in the absence of any evidence to prove demand of bribe or to show that the accused voluntarily accepted the bribe money, as has been held in a catena of judgments passed by the Apex Court. It is also a settled principle of law that suspicion, however grave cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved".

27. In ***B. Jayaraj Vs. State of Andhra Pradesh, (2014) 13 SCC 55***, the Hon'ble Supreme Court in paras 8 & 9 of the judgment held that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. Paras 8 & 9 of the judgment reproduced as under:-

"8. 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 had disowned what he had stated in the initial complaint (Ext. 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 the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned 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 Sections 13(1)(d)(i) and (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 or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

28. In **P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another, reported in (2015) 10 SCC 152**, it has been held that 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.

Paras 23 and 24 of the judgment read as under:-

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

24. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW 1 S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs 500 from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the Cr.Appeal (SJ). No.302 of 2020 learned counsel for the State to co-relate this statement of PW1 S.Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap 12 operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW 1 S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal

gratification as enjoined by law to hold that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3-10-1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4-10-1996. However, the testimony of PW 1 S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act against the appellant has been proved beyond reasonable doubt."

29. In **Krishan Chander Versus State of Delhi, (2016) 3 SCC 108**, the Hon'ble Supreme Court reiterated the settled principle of law regarding the ingredients of inter-alia Section 7 of the PC Act 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. Paras 35, 36 and 37 of the judgment read as under:-

"35. 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.

36. 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)

37. In the case of *P. Satyanarayana Murthy (supra)*, it was held by this Court as under:

"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."

30. In ***N. Sunkanna Vs. State of A.P., (2016) 1 SCC 713*** , the Hon'ble Supreme Court held that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non to constitute the said offence. Relevant portion of the judgment reads as under:-

"5.It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) 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 or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of

demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of the three-Judge Bench of this Court in B. Jayaraj v. State of A.P. [(2014) 13 SCC 55: (2014) 5 SCC (Cri) 543] and P. Satyanarayana Murthy v. State of A.P. [(2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11 : (2015) 9 Scale 724] "

31. In ***Mukhtiar Singh v. State of Punjab, (2017) 8 SCC***

136, it has been held that in order to prove the charge under the above provisions, the prosecution has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent.

Para-13 of the judgment reads as under:-

"13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair v. State of Kerala, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this 13 enunciation further, it was expounded in State of Kerala v. C.P. Rao that mere recovery by itself of the amount said to have been paid by way of illegal gratification 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."

32. Thus, mere possession and recovery of currency notes from an accused without proof of demand would not enable the court to convict the accused. 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 for an offence under Sections 7 and 13 of the PC Act. Qua Section 20 of the PC Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 of the PC Act, such proof of acceptance of illegal gratification, could follow only if there was proof of demand. Axiomatically, it is true that in absence of proof of demand, such legal presumption under Section 20 of the PC Act could not be made.

33. Now, it is to be seen as to whether the prosecution has been able to successfully establish the demand of Rs.1,000/- by the appellant-accused and recovery of two currency notes of Rs.500/- from his possession. The perusal of the evidence on record reveals that it was the co-accused, i.e. Excise and Taxation Officer (ETO) who demanded the bribe from the complainant. In his cross-examination, PW-2 Deepak Guleria, who is the complainant, admitted that accused Neeraj had not telephonically talked with him

and he had received a notice from the ETO. He also admitted that regarding imposition of the penalty of Rs.20,000/-, he had been intimated by the ETO and it was the only ETO who was competent to impose penalty as well as to recover arrears of tax. Therefore, the accused- appellant being not authorized to impose/condone penalty as well as to recover arrears of tax, by no stretch of speculation, he could be expected to have put forth a demand of Rs.1,000/- as bribe money. It is also pertinent to note that a meagre sum of Rs.1,000/- alone is said to be demanded and accepted as bribe which also makes it improbable. The prosecution has failed to prove by leading sufficient and reliable evidence that accused had demanded the bribe money from the complainant. It is a settled law that in the absence of proof of demand, the presumption under Section 20 of the Prevention of the Corruption Act will not get attracted. In **V. Venkata Subbarao V. State represented by Inspector of Police reported in (2006) 13 SCC 305**, the Hon'ble Supreme Court has held that in the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the PC Act provides for raising of a presumption only if a demand is proved. The relevant

portion of the judgment reads as under:-

"24.....In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. It reads as under:

20. Presumption where public servant accepts gratification other than legal remuneration - (1) Where, in any trial of an offence punishable under Section 7 or Section 11 of clause (a) or clause (b) of sub-section (1) of Section 13, it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other persons, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

34. In ***State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede, reported in (2009) 15 SCC 200***, the Hon'ble Supreme Court has made the following observations:-

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in

question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.”

35. In the instant case, as observed earlier, demand by the accused-appellant from complainant could not be established by the prosecution, as such, in the absence of a proof of demand, the question of raising the presumption would not arise under Section 20 of the Act.

36. The trap proceedings are also surrounded by suspicious circumstances and doubts. There are vital and material contradictions which would show that the entire trap operation could have been a stage managed show. Different versions were given by PW2, PW-3 and PW4 in respect of the execution of the trap. PW-2 Deepak Guleria, in his cross-examination stated that firstly he visited the room of accused Neeraj. He admitted that his file was with ETO and he remained in the room of ETO for about five minutes and thereafter the police came there, whereas, PW-3 Shakti Sharma, who is the shadow witness, stated in his examination-in-chief, that he alongwith PW-2 Deepak had gone to

the office of ETO and he remained outside the room and Deepak went inside the room of accused Neeraj and handed over two currency notes of Rs.500/- each to him. However, PW-4 Mahender Singh, who was one of the police officials in the raiding party, in his cross-examination deposed that they reached in the office of ETO at about 11.30 am. He was standing outside the office of ETO near the gate and accused Neeraj was in the room of ETO when they reached there and they did not go to the room of accused Neeraj. PW-14 Bhupender Singh deposed that after sometime, shadow witness Shakti Sharma gave signal to the police officials and they entered the office of ETO Nirmal. Thereafter, they introduced themselves to ETO Nirmal and accused Neeraj and they were caught hold from their wrists. He admitted in his cross-examination that the room occupied by accused Neeraj was in front of the office of ETO and accused Neeraj was also present in the office of ETO when they were caught accepting bribe money from the complainant.

37. So far as recovery is concerned, the inconsistencies, contradictions and discrepancies pointed out leads to an inference that the prosecution has miserably failed to prove its

case of acceptance of bribe .Therefore, in the light of the emphatic pronouncement of the law in this regard, the necessary conclusion that can be arrived at is that the presumption contemplated under Section 20 of the PC Act does not get attracted to the case on hand. Furthermore, it is not a case where the burden of proof was on the accused in terms of Section 20 of the PC Act. The learned trial court has recorded the finding of guilt on the basis of surmises and conjectures. The learned trial court has misread the evidence and has mislead itself in reaching to the conclusion that the accused is guilty of the offence charged, as a result of which, the entire proceedings against the accused stand vitiated.

38. Learned Senior Counsel for the appellant-accused further contended that no independent witness has been associated by the police, on account of which the entire proceedings against the accused stand vitiated. In ***Ram Parkash Arora Vs. The State of Punjab, AIR 1973 SC 498***, while deprecating the practice of associating interested witnesses, it has been held by the Apex Court that the court may look for independent corroboration before convicting the accused. Relevant portion of the judgment reads as under:-

"8.....It must be remembered that both Joginder Singh (bribe giver) and Dalbir Singh (shadow witness) P.Ws. were interested and partisan witnesses. They were concerned in the success of the trap and their evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person....."

39. The Hon'ble Apex Court in **Som Parkash V. State of Punjab, reported in AIR 1992 SC 665**, has held that witnesses forming part of the raiding party are not independent witnesses. Therefore, their evidence has to be considered like any other witnesses in the light of the other materials and the cumulative circumstances available on record. Para-2 of the judgment reads as under:-

"2. The High Court found that the witnesses who were associated in the conduct of the raid for recovery of tainted money from the appellant could not be termed as independent who could be associated with such raids. The High Court further expressed doubt about veracity of the witness who claimed that money was actually handed over in his presence. The High Court, however, drew an adverse inference against the appellant from the circumstance that the, bill which was delayed for unreasonable period had suddenly been passed by the appellant. On an overall assessment the High Court entertained some suspicion about the credibility of the prosecution witnesses but at the same time did not find the suspicion to be strong enough to raise doubt about the guilt of the appellant. We agree with the learned Counsel for the appellant that in the face of the finding that the witnesses who formed part of the raiding party were not independent and the evidence regarding handing over money to the appellant being unbelievable, the conviction of the appellant cannot be sustained. The guilt of the appellant has not been proved beyond reasonable doubt

and as such the benefit must go to him. Considering the above decisions, in the case of absence of independent and reliable corroborative evidence, other evidence not conclusive and found contradictory, benefit of doubt can be given to the accused. In such circumstances, I am of the view, there is no evidence to show that the respondent/accused has demanded illegal gratification, since P.W.2 has given total go by to the complaint. The trial Court has rightly held that the demand has not been proved by the prosecution beyond reasonable doubt and as such the benefit must go to him."

40. In **Ganga Kumar Srivastava Vs. State of Bihar, (2005) 6 SCC 211**, the Hon'ble Supreme Court in para-20 of the judgment held as under:-

"20. We must not forget that in a trap case the duty of the officer to prove the allegations made against a Government officer for taking bribe is serious, and therefore, the officers functioning in the Vigilance Department must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court and the Court is not left in any doubt whether or not any money was paid to the public servant by way of bribe. It is also the duty of the officers in the Vigilance Department to safeguard for the protection of public servants against whom a trap case may have been laid."

41. In the instant case, PW-2 Deepak Guleria is the complainant, therefore, he is an interested witness and obviously interested in the success of the case against the accused. The shadow witness, i.e. PW-3 Shakti Sharma is also an interested witness as he was working with complainant Deepak Guleria during the relevant period. The prosecution cannot place reliance on the

evidence of PW-4 Mahender Kumar to corroborate the version of the complainant i.e. PW-2, because he cannot be considered to be an independent witness as he was a member of the raiding party as held by the Hon'ble Apex Court in **Som Prakash Vs. State of Punjab, AIR 1992 SC 665** to the effect that the witnesses forming part of the raiding party are not independent witnesses. PW-1 Shyam Singh is the only independent witness, who is the Naib-Tehsildar, but admittedly he was associated during post trap proceeding. He had not deposed as to whether the accused had demanded and accepted the bribe money in his presence. Thus, in view of the law laid down by the Hon'ble Apex Court, non-association of the independent witnesses during pre-trap proceedings assumes significance and the testimonies of the complainant and the shadow witness cannot be believed to be true to record the conviction against the accused and also to draw presumption under Section 20 of the PC Act.

42. From the evidence adduced, nothing has been proved on record that the appellant demanded bribe from the complainant for doing his work. Neither demand nor receipt of the bribe money has been proved. In view of the entire evidence on record, mere

recovery of Rs.1,000/- from the accused is not sufficient to prove the fact of demand and acceptance of illegal gratification by the accused. Therefore, in the absence of demand of any illegal gratification and acceptance thereof, it is clear that the prosecution has failed to prove its case beyond reasonable doubt.

43. Hence, in view of my aforesaid discussion, the prosecution has failed to prove its case against the accused beyond reasonable doubt. There has been a total wrong appreciation of evidence on record by the learned trial Court, which has resulted in miscarriage of justice. For all the reasons stated, the criminal appeal is allowed and the impugned judgment of conviction and order of sentence dated 16.04.2015 passed by learned Special Judge, Mandi, District Mandi, H.P. in Sessions Trial No.20/2011 are set aside and the appellant-accused is acquitted of the charges framed against him. Fine amount collected, if any, shall be refunded to him. The bail bonds executed shall stand cancelled.

44. In view of the provisions of Section 437-A Code of Criminal Procedure, 1973, the appellant is directed to furnish personal bond in the sum of Rs.50,000/- with one surety in the like amount, before the trial Court within a period of four weeks, which

shall be effective for a period of six months, with stipulation that in the event of Special Leave Petition being filed against this judgment or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Supreme Court.

(Sushil Kukreja)
Judge

November 30, 2023
(VH)