

The Indian Law Reports

APPELLATE CRIMINAL

Before S. S. Dewan J.

CHANAN RAM,—Appellant

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 199 of 1974.

January 13, 1978.

Indian Penal Code (XLV of 1860)—Section 161—Charge of accepting bribe—Phenolphthalein powder applied to a currency note allegedly recovered from shirt pocket of the accused—Shirt pocket not dipped in solution to detect the presence of such powder—No expert evidence or book of science produced regarding the mode of its detection—Conviction of the accused—Whether can be maintained.

Held that where no evidence has been produced by the prosecution showing that if phenolphthalein powder is applied to a currency note alleged to have been recovered from the shirt pocket of the accused then some powder will stick to the inner side of the pocket and if this part of the shirt is not dipped in the water to detect the presence of such powder, it is not possible to connect the accused with the commission of the crime more so when no expert opinion or book of science regarding the mode of detection etc. of phenolphthalein powder is produced. Conviction and sentence of the accused cannot, therefore, be sustained in such circumstances.

(Para 10)

Appeal from the order of Shri Amrit Lal Bahri, Special Judge, Patiala, dated the 30th January, 1974, convicting the appellant.

Charge : Under section 161 I.P.C.

Sentence : To undergo R.I. for six months and to pay a fine of Rs. 1,000 (Rs. One thousand). In default to pay the fine to undergo further R.I. for three months.

D. D. Jain & A. C. Jain, Advocates.

D. S. Keer, Advocate, for the State of Punjab.

JUDGMENT

S. S. Dewan, J.—This is an appeal filed by Chanan Ram. It is directed against the judgment of Shri A. L. Bahri, Special Judge (Additional Sessions Judge), Patiala, dated 30th January, 1974, by which the appellant has been convicted under section 161 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 6 months and to pay Rs. 1,000 as fine and in default of payment of fine to further undergo rigorous imprisonment for 3 months.

(2) Briefly stated the facts of the present case are as under:—

Balbir Singh had applied for copies of mutations in the Copying Agency of the Deputy Commissioner's office, Patiala, through Shri Krishan Behari Lal, Advocate. He was given several dates by the office but the copies were not delivered. Exhibit P. C. is the chit issued by the office indicating dates. On 1st October, 1971, Balbir Singh approached the appellant at about 1.00 P.M., and asked for the copies. He told Balbir Singh that only two copies were ready but he could not supply the same unless he gave him Rs 10 as bribe. As Balbir Singh did not want to pay him the bribe, he went to the office of the Inspector Vigilance, Shamsher Singh and made statement (Exhibit PD) before him. He offered a currency note of Rs 10 to the Inspector who applied phenolphthalein powder to that currency note and returned the same to Balbir Singh. The Inspector gave demonstration by applying the same powder to a piece of paper and dipping it in a glass of water. The colour of water turned pink. Memos. (Exhibit PE and PF) in that respect were prepared. The details of the trap to be laid were chalked out. It was settled that Balbir Singh would hand over the currency note to the appellant in his office and Surinderjit Singh would be there as a shadow witness. In the execution of the plan for entrapping the appellant as devised above, Balbir Singh is said to have given the currency note of Rs 10 (Exhibit P. 1) to the appellant. On receipt of the signal by Surinderjit Singh by placing his hand at the back of his head, the Vigilance Inspector Shamsher Singh apprehended the appellant. He disclosed his identity to him and offered his search to Surinderjit Singh and

Saradara Singh, PWs. The Inspector then searched the person of the appellant and recovered a sum of Rs 73, including the currency note of Rs. 10 (Exhibit P. 1) from the pocket of his shirt. The tainted money and the shirt worn by the appellant were taken into possession. His hands were washed in a glass of water and its colour turned pink. Memo. (Exhibit P.H.) was prepared in that respect. The Inspector took into possession copies of the mutations, Exhibits P.J. and P.K. The sanction (Exhibit P.A.) to prosecute the appellant was obtained from the Financial Commissioner. After the completion of the investigation, the appellant was challaned.

(3) In his statement under section 342, Criminal Procedure Code, the appellant admitted having worked as a Record Clerk in the Record Room of the Deputy Commissioner's office, Patiala, on 1st October, 1971, but he gave his own version as under:—

"I have been falsely implicated in the case. Balbir Singh came on me after 2 p.m. Upto lunch time Darshan Singh was working as Record Keeper. Balbir Singh showed me the chit that he wanted the copies for which he had earlier applied. I inspected the register and informed him that two copies were ready, but I could not deliver the copies since Darshan Singh had gone away. Thereupon Balbir Singh felt annoyed and said that he had been harassed. He had visited the office thrice earlier. I asked him that Darshan Singh will deliver the copies to him or he should approach the Incharge. Thereafter Balbir Singh came after about 45 minutes and demanded the copies from me. I asked him that he had just quarrelled with me and he had again come. He threw the currency note of Rs 10 on my table which I picked up and threw it on his face. After sometime the police came and I was taken to the office of Inspector Vigilance and involved in the present case falsely."

(4) In defence, the appellant examined Gurbachan Singh (D.W. 1), On Parkash (D.W. 2) and Rajinder Singh (D.W. 3) and produced documents, Exhibits D. 1 to D. 8.

(5) The aforesaid prosecution story was narrated on oath by Balbir Singh, complainant (P.W. 4). Similar was his statement

(Exhibit P.D.) made to the police, on the basis of which this case was registered and the trap was laid.

(6) In order to prove its case, the prosecution examined Joginder Singh (PW 1), who proved sanction, Exhibit PA for the prosecution of the appellant, Constable Amar Singh and ASI Dalip Singh, being the formal witnesses, filed affidavits Exhibits PW 2 and PW 3, Balbir Singh (PW 4) complainant and Surinderjit Singh (PW 5) the shadow witness. Sardara Singh and Inspector Vigilance Shamsher Singh were not examined by the prosecution.

(7) After considering the evidence of the parties, the learned Special Judge, Patiala, acquitted the appellant of the offence under section 5(2) of the Prevention of Corruption Act, but convicted and sentenced him under section 161, Criminal Procedure Code, as stated above. Feeling dissatisfied, Chanan Ram has filed this appeal.

(8) Shri D. D. Jain, learned counsel, appearing on behalf of the appellant, has contended that the prosecution witnesses produced to prove the recovery of bribe given to the appellant, are partisan and unreliable witnesses, that the test of application of phenolphthalein by the police is of a highly doubtful character because no expert evidence or book of science regarding this test was produced and that the prosecution story was improbable.

(9) There is no other evidence on the file except the statement of Balbir Singh that the appellant met the complainant on 1st October, 1971, and what talk took place between them. Regarding the payment of the amount by Balbir Singh to the appellant and the recovery of the money from the latter, we have got the statement of Balbir Singh (P.W. 4) and Surinderjit Singh (P.W. 5). They unanimously deposed that Balbir Singh, complainant, had asked him to supply the copies of mutations but the appellant demanded bribe of Rs. 10. He handed over the currency note (Exhibit P. 1) to him and he pocketed it in his shirt. Surinderjit Singh gave signal and the Inspector Shamsher Singh came there and disclosed his identity to the appellant. The appellant was asked to stand for his search. The currency notes of Rs. 73, including the processed currency note (Exhibit P. 1) were recovered from the pocket of the shirt worn by the appellant. Currency note (Exhibit P. 1) and shirt (Exhibit P. 2) were taken into possession by the Inspector. It is pertinent to note here that the offices of the Deputy Commissioner and the Inspector

Chanan Ram v. State of Punjab (S. S. Dewan J.)

Vigilance are situated in the premises of the District Courts at Patiala. Surinderjit Singh has stated during his cross-examination that while he was standing in the Court premises, he was called through a constable to the office of the Inspector Vigilance to join the raiding party. He claimed to be present in the Court premises in connection with his evidence to be recorded in the Court of Sub-Judge in case—'Surinderjit Singh v. Davinder Singh'. But he has been belied by Om Parkash (DW 2), clerk to Shri K. B. Lal Mathur, Advocate. He has deposed that no such case was fixed in any Court on 1st October, 1971. Baljinder Singh (DW 3), Reader to Sub-Judge 1st Class "A" Patiala; brought his Peshi register of 1st October, 1971 and stated that there was no case 'Surinderjit Singh v. Davinder Singh' fixed on that date. Surinderjit Singh has denied to have known Balbir Singh earlier to this incident, but the latter stated that he knew him for the last about 4 or 5 months. It is thus manifest that Surinderjit Singh is an interested witness, and, therefore, by no stretch of imagination he can be said to be an independent and reliable witness. Surinderjit Singh stated that there were several persons present in the Court premises when he was called to the office of the Inspector. He has admitted having appeared in one or two cases for the police earlier. The Inspector could have very well joined some independent witness from the persons present in the Court premises but he joined Surinderjit Singh being a convenient witness. It is in the background of unreliability of this witness and false facts deposed to by him that the value of his evidence regarding the delivery of currency note has to be judged. Surinderjit Singh was asked to accompany Balbir Singh to hear the talk between him and the appellant and to see the passing of the money. He says that he saw Balbir Singh passing over the currency note to the appellant but he did not hear their talk. Balbir Singh has admitted that Surinderjit Singh was standing at a distance of 10-15 feet and he was visible to the appellant. In such a situation it is difficult to hold that the appellant would demand money from Balbir Singh in the presence of Surinderjit Singh and would receive money within his sight.

(10) In *Ram Parkash v. The State of Haryana* (1), the facts were that one Hari Singh made a report to the police that the accused Ram Parkash of that case had demanded Rs 20 from him as bribe. He made a report to the police against the accused and a trap was laid.

(1) 1969 unreported judgments (S.C.) 561,

which was successful. Fateh Singh, PW accompanied Hari Singh and he saw the giving of Rupees 80 by the complainant Hari Singh to the accused and he gave a pre-arranged signal to the police party, who effected the recovery of the bribe money from the accused. On the facts it was observed by the Supreme Court :—

“To include Fateh Singh in the raiding party and make him a shadow witness was, to say the least, unsatisfactory. It must have been known to the police officers concerned with the raid that Fateh Singh was a friend of Hari Singh and had stood surety for him in various cases. It is quite clear that nobody saw the act of passing money as bribe except Fateh Singh and we find it impossible to place any reliance on his evidence.”

This fact was held by the Supreme Court to be a suspicious circumstance.”

The statements of Balbir Singh and Surinderjit Singh regarding the alleged recovery of currency note (Exhibit P. 1) from the appellant, are highly discrepant. In the instant case there is no evidence on the file to corroborate the statement of Balbir Singh, complainant, who is a highly interested witness. After the recovery of currency note, the Inspector Vigilance prepared solution of water and washed the hands of the appellant and its colour turned pink. This solution which turned pink has not been produced in the Court for the reasons best known to the prosecution. It is in the evidence of Balbir Singh and Surinderjit Singh, PWs, that when Balbir Singh gave the currency note to the appellant, he put the same in the pocket of his shirt. The processed noted along with the other notes worth Rs. 63 were recovered from the pocket of the shirt of the appellant. Therefore, phenolphthalein powder must have touched the currency notes and the inner side of his pocket and it was incumbent upon the Inspector to have dipped that part of the shirt and also the currency notes in a separate solution of water to see whether the solution turned pink or not; but this was not done for the reasons best known to the Inspector. If he had followed this procedure then it would have connected the appellant with the commission of the crime beyond any reasonable doubt. Consequently, the statements of the two witnesses that the appellant took the currency note in his hand and put the same in the pocket of his shirt and the recovery thereof cannot be accepted to

be correct. In *Ramsingh Badharsingh v. State* (2), it was held as under:—

“Whether in a case of bribery the police resort to the technique of anthreecene powder and *ultra violet* rays for proving that the accused had received the currency notes to which the powder had been applied by the presence of the powder on the hands or shirt of the accused, the prosecution must lead positive evidence by way of expert evidence or books of science to prove the sure method of detection of anthreecene powder, the nature of the test to be applied, the nature of the result to be expected and whether a layman can detect anthreecene powder when such a test is applied. The prosecution must also prove that if the test leads to a positive result, it conclusively proves the presence of anthreecene powder and nothing else.”

These observations are fully applicable in this case. I am in respectful agreement with the observations made in this Division Bench authority of Gujarat High Court. This ruling was followed in *Kapur Singh v. State of Punjab* (3), by S. C. Mital, J. In the instant case, no evidence has been produced by the prosecution that if the phenolphthalein powder is applied to the currency notes then some powder will stick to the currency notes and the inner side of the pocket wherein the same were put and if this part of the shirt is dipped in the water, and the same would turn pink and consequently it will connect the accused with the commission of the crime. Further, no expert opinion or book of science regarding the mode of detection, etc., of phenolphthalein powder was examined. Therefore, the testimony of the prosecution witnesses regarding the use of phenolphthalein powder in the alleged recovery of the currency note from the person of the appellant cannot be accepted to be correct. In this case, the Inspector Vigilance was not examined at all and such an omission is serious. The explanation given by the appellant that Balbir Singh had kept a currency note of Rs 10 on his table to bribe him, but he picked it up and threw it on his face, appears to be plausible. The onus lay heavily on the prosecution to prove by positive and cogent evidence, but it had failed to prove it. Therefore, the conviction and sentence of the appellant cannot be sustained.

(2) A.I.R. 1960 Gujrat 7,

(3) Cr. A. 229 of 72, decided on May 26, 1972.

(11) As a result, the appeal is accepted, the conviction and sentence of the appellant are set aside and he is acquitted. Fine, if paid, will be refunded to him. The appellant is on bail and he is discharged of his bail bonds.

K.T.S.

APPELLATE CIVIL

Before R. N. Mittal, J.

JOG RAJ AND ANOTHER,—Appellants

versus

BANARSI DASS ALIAS BANA GOPAL (DECEASED),—Respondent.

Execution First Appeal No. 64 of 1975

January 13, 1978.

Land Acquisition Act (I of 1894)—Section 31(1) and (2)—Compensation paid to landlord by the Collector ignoring lawful claim of the tenant to apportionment of his share—Such tenant—Whether entitled to recover his share in proceedings under the Act—Remedy of a civil suit—Whether also available.

Held that from a reading of sub-section (2) of Section 31 of the Land Acquisition Act 1894 it is evident that if there is any dispute as to the title to receive payment of the compensation or its apportionment, it is the duty of the Collector to deposit the amount of compensation in the Court to which reference has to be made under Section 18. If in spite of such dispute between the landlord and tenant, the Collector pays the amount to the landlord, then proviso (3) to sub-section (2) says that the person who receives compensation is liable to pay the same to the person lawfully entitled thereto. No machinery has been provided in the Act to enable the person who is lawfully entitled to compensation to recover the same from the person who has received it from the Collector. However, it is an established principle of law that an act of a Tribunal which causes injury to a party should not be allowed to stand and the Tribunal has an inherent right to remedy the same. The tenant can, therefore, recover his share in proceedings under the Act. A civil suit is also maintainable for recovery under the proviso to section 31(2). Thus both the remedies for recovery of such amounts are open and it is for the party concerned to choose either of them.

(Para 6)

The Indian Law Reports

APPELLATE CRIMINAL

Before S. S. Dewan J.

CHANAN RAM,—Appellant

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 199 of 1974.

January 13, 1978.

Indian Penal Code (XLV of 1860)—Section 161—Charge of accepting bribe—Phenolphthalein powder applied to a currency note allegedly recovered from shirt pocket of the accused—Shirt pocket not dipped in solution to detect the presence of such powder—No expert evidence or book of science produced regarding the mode of its detection—Conviction of the accused—Whether can be maintained.

Held that where no evidence has been produced by the prosecution showing that if phenolphthalein powder is applied to a currency note alleged to have been recovered from the shirt pocket of the accused then some powder will stick to the inner side of the pocket and if this part of the shirt is not dipped in the water to detect the presence of such powder, it is not possible to connect the accused with the commission of the crime more so when no expert opinion or book of science regarding the mode of detection etc. of phenolphthalein powder is produced. Conviction and sentence of the accused cannot, therefore, be sustained in such circumstances.

(Para 10)

Appeal from the order of Shri Amrit Lal Bahri, Special Judge, Patiala, dated the 30th January, 1974, convicting the appellant.

Charge : Under section 161 I.P.C.

Sentence : To undergo R.I. for six months and to pay a fine of Rs. 1,000 (Rs. One thousand). In default to pay the fine to undergo further R.I. for three months.

D. D. Jain & A. C. Jain, Advocates.

D. S. Keer, Advocate, for the State of Punjab.

JUDGMENT

S. S. Dewan, J.—This is an appeal filed by Chanan Ram. It is directed against the judgment of Shri A. L. Bahri, Special Judge (Additional Sessions Judge), Patiala, dated 30th January, 1974, by which the appellant has been convicted under section 161 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 6 months and to pay Rs. 1,000 as fine and in default of payment of fine to further undergo rigorous imprisonment for 3 months.

(2) Briefly stated the facts of the present case are as under:—

Balbir Singh had applied for copies of mutations in the Copying Agency of the Deputy Commissioner's office, Patiala, through Shri Krishan Behari Lal, Advocate. He was given several dates by the office but the copies were not delivered. Exhibit P. C. is the chit issued by the office indicating dates. On 1st October, 1971, Balbir Singh approached the appellant at about 1.00 P.M., and asked for the copies. He told Balbir Singh that only two copies were ready but he could not supply the same unless he gave him Rs 10 as bribe. As Balbir Singh did not want to pay him the bribe, he went to the office of the Inspector Vigilance, Shamsher Singh and made statement (Exhibit PD) before him. He offered a currency note of Rs 10 to the Inspector who applied phenolphthalein powder to that currency note and returned the same to Balbir Singh. The Inspector gave demonstration by applying the same powder to a piece of paper and dipping it in a glass of water. The colour of water turned pink. Memos. (Exhibit PE and PF) in that respect were prepared. The details of the trap to be laid were chalked out. It was settled that Balbir Singh would hand over the currency note to the appellant in his office and Surinderjit Singh would be there as a shadow witness. In the execution of the plan for entrapping the appellant as devised above, Balbir Singh is said to have given the currency note of Rs 10 (Exhibit P. 1) to the appellant. On receipt of the signal by Surinderjit Singh by placing his hand at the back of his head, the Vigilance Inspector Shamsher Singh apprehended the appellant. He disclosed his identity to him and offered his search to Surinderjit Singh and

Saradara Singh, PWs. The Inspector then searched the person of the appellant and recovered a sum of Rs 73, including the currency note of Rs. 10 (Exhibit P. 1) from the pocket of his shirt. The tainted money and the shirt worn by the appellant were taken into possession. His hands were washed in a glass of water and its colour turned pink. Memo. (Exhibit P.H.) was prepared in that respect. The Inspector took into possession copies of the mutations, Exhibits P.J. and P.K. The sanction (Exhibit P.A.) to prosecute the appellant was obtained from the Financial Commissioner. After the completion of the investigation, the appellant was challaned.

(3) In his statement under section 342, Criminal Procedure Code, the appellant admitted having worked as a Record Clerk in the Record Room of the Deputy Commissioner's office, Patiala, on 1st October, 1971, but he gave his own version as under:—

"I have been falsely implicated in the case. Balbir Singh came on me after 2 p.m. Upto lunch time Darshan Singh was working as Record Keeper. Balbir Singh showed me the chit that he wanted the copies for which he had earlier applied. I inspected the register and informed him that two copies were ready, but I could not deliver the copies since Darshan Singh had gone away. Thereupon Balbir Singh felt annoyed and said that he had been harassed. He had visited the office thrice earlier. I asked him that Darshan Singh will deliver the copies to him or he should approach the Incharge. Thereafter Balbir Singh came after about 45 minutes and demanded the copies from me. I asked him that he had just quarrelled with me and he had again come. He threw the currency note of Rs 10 on my table which I picked up and threw it on his face. After sometime the police came and I was taken to the office of Inspector Vigilance and involved in the present case falsely."

(4) In defence, the appellant examined Gurbachan Singh (D.W. 1), On Parkash (D.W. 2) and Rajinder Singh (D.W. 3) and produced documents, Exhibits D. 1 to D. 8.

(5) The aforesaid prosecution story was narrated on oath by Balbir Singh, complainant (P.W. 4). Similar was his statement

(Exhibit P.D.) made to the police, on the basis of which this case was registered and the trap was laid.

(6) In order to prove its case, the prosecution examined Joginder Singh (PW 1), who proved sanction, Exhibit PA for the prosecution of the appellant, Constable Amar Singh and ASI Dalip Singh, being the formal witnesses, filed affidavits Exhibits PW 2 and PW 3, Balbir Singh (PW 4) complainant and Surinderjit Singh (PW 5) the shadow witness. Sardara Singh and Inspector Vigilance Shamsher Singh were not examined by the prosecution.

(7) After considering the evidence of the parties, the learned Special Judge, Patiala, acquitted the appellant of the offence under section 5(2) of the Prevention of Corruption Act, but convicted and sentenced him under section 161, Criminal Procedure Code, as stated above. Feeling dissatisfied, Chanan Ram has filed this appeal.

(8) Shri D. D. Jain, learned counsel, appearing on behalf of the appellant, has contended that the prosecution witnesses produced to prove the recovery of bribe given to the appellant, are partisan and unreliable witnesses, that the test of application of phenolphthalein by the police is of a highly doubtful character because no expert evidence or book of science regarding this test was produced and that the prosecution story was improbable.

(9) There is no other evidence on the file except the statement of Balbir Singh that the appellant met the complainant on 1st October, 1971, and what talk took place between them. Regarding the payment of the amount by Balbir Singh to the appellant and the recovery of the money from the latter, we have got the statement of Balbir Singh (P.W. 4) and Surinderjit Singh (P.W. 5). They unanimously deposed that Balbir Singh, complainant, had asked him to supply the copies of mutations but the appellant demanded bribe of Rs. 10. He handed over the currency note (Exhibit P. 1) to him and he pocketed it in his shirt. Surinderjit Singh gave signal and the Inspector Shamsher Singh came there and disclosed his identity to the appellant. The appellant was asked to stand for his search. The currency notes of Rs. 73, including the processed currency note (Exhibit P. 1) were recovered from the pocket of the shirt worn by the appellant. Currency note (Exhibit P. 1) and shirt (Exhibit P. 2) were taken into possession by the Inspector. It is pertinent to note here that the offices of the Deputy Commissioner and the Inspector

Chanan Ram v. State of Punjab (S. S. Dewan J.)

Vigilance are situated in the premises of the District Courts at Patiala. Surinderjit Singh has stated during his cross-examination that while he was standing in the Court premises, he was called through a constable to the office of the Inspector Vigilance to join the raiding party. He claimed to be present in the Court premises in connection with his evidence to be recorded in the Court of Sub-Judge in case—'*Surinderjit Singh v. Davinder Singh*'. But he has been belied by Om Parkash (DW 2), clerk to Shri K. B. Lal Mathur, Advocate. He has deposed that no such case was fixed in any Court on 1st October, 1971. Baljinder Singh (DW 3), Reader to Sub-Judge 1st Class "A" Patiala; brought his Peshi register of 1st October, 1971 and stated that there was no case '*Surinderjit Singh v. Davinder Singh*' fixed on that date. Surinderjit Singh has denied to have known Balbir Singh earlier to this incident, but the latter stated that he knew him for the last about 4 or 5 months. It is thus manifest that Surinderjit Singh is an interested witness, and, therefore, by no stretch of imagination he can be said to be an independent and reliable witness. Surinderjit Singh stated that there were several persons present in the Court premises when he was called to the office of the Inspector. He has admitted having appeared in one or two cases for the police earlier. The Inspector could have very well joined some independent witness from the persons present in the Court premises but he joined Surinderjit Singh being a convenient witness. It is in the background of unreliability of this witness and false facts deposed to by him that the value of his evidence regarding the delivery of currency note has to be judged. Surinderjit Singh was asked to accompany Balbir Singh to hear the talk between him and the appellant and to see the passing of the money. He says that he saw Balbir Singh passing over the currency note to the appellant but he did not hear their talk. Balbir Singh has admitted that Surinderjit Singh was standing at a distance of 10-15 feet and he was visible to the appellant. In such a situation it is difficult to hold that the appellant would demand money from Balbir Singh in the presence of Surinderjit Singh and would receive money within his sight.

(10) In *Ram Parkash v. The State of Haryana* (1), the facts were that one Hari Singh made a report to the police that the accused Ram Parkash of that case had demanded Rs 20 from him as bribe. He made a report to the police against the accused and a trap was laid.

(1) 1969 unreported judgments (S.C.) 561,

which was successful. Fateh Singh, PW accompanied Hari Singh and he saw the giving of Rupees 80 by the complainant Hari Singh to the accused and he gave a pre-arranged signal to the police party, who effected the recovery of the bribe money from the accused. On the facts it was observed by the Supreme Court :—

“To include Fateh Singh in the raiding party and make him a shadow witness was, to say the least, unsatisfactory. It must have been known to the police officers concerned with the raid that Fateh Singh was a friend of Hari Singh and had stood surety for him in various cases. It is quite clear that nobody saw the act of passing money as bribe except Fateh Singh and we find it impossible to place any reliance on his evidence.”

This fact was held by the Supreme Court to be a suspicious circumstance.”

The statements of Balbir Singh and Surinderjit Singh regarding the alleged recovery of currency note (Exhibit P. 1) from the appellant, are highly discrepant. In the instant case there is no evidence on the file to corroborate the statement of Balbir Singh, complainant, who is a highly interested witness. After the recovery of currency note, the Inspector Vigilance prepared solution of water and washed the hands of the appellant and its colour turned pink. This solution which turned pink has not been produced in the Court for the reasons best known to the prosecution. It is in the evidence of Balbir Singh and Surinderjit Singh, PWs, that when Balbir Singh gave the currency note to the appellant, he put the same in the pocket of his shirt. The processed noted along with the other notes worth Rs. 63 were recovered from the pocket of the shirt of the appellant. Therefore, phenolphthalein powder must have touched the currency notes and the inner side of his pocket and it was incumbent upon the Inspector to have dipped that part of the shirt and also the currency notes in a separate solution of water to see whether the solution turned pink or not; but this was not done for the reasons best known to the Inspector. If he had followed this procedure then it would have connected the appellant with the commission of the crime beyond any reasonable doubt. Consequently, the statements of the two witnesses that the appellant took the currency note in his hand and put the same in the pocket of his shirt and the recovery thereof cannot be accepted to

be correct. In *Ramsingh Badharsingh v. State* (2), it was held as under:—

“Whether in a case of bribery the police resort to the technique of anthreecene powder and *ultra violet* rays for proving that the accused had received the currency notes to which the powder had been applied by the presence of the powder on the hands or shirt of the accused, the prosecution must lead positive evidence by way of expert evidence or books of science to prove the sure method of detection of anthreecene powder, the nature of the test to be applied, the nature of the result to be expected and whether a layman can detect anthreecene powder when such a test is applied. The prosecution must also prove that if the test leads to a positive result, it conclusively proves the presence of anthreecene powder and nothing else.”

These observations are fully applicable in this case. I am in respectful agreement with the observations made in this Division Bench authority of Gujarat High Court. This ruling was followed in *Kapur Singh v. State of Punjab* (3), by S. C. Mital, J. In the instant case, no evidence has been produced by the prosecution that if the phenolphthalein powder is applied to the currency notes then some powder will stick to the currency notes and the inner side of the pocket wherein the same were put and if this part of the shirt is dipped in the water, and the same would turn pink and consequently it will connect the accused with the commission of the crime. Further, no expert opinion or book of science regarding the mode of detection, etc., of phenolphthalein powder was examined. Therefore, the testimony of the prosecution witnesses regarding the use of phenolphthalein powder in the alleged recovery of the currency note from the person of the appellant cannot be accepted to be correct. In this case, the Inspector Vigilance was not examined at all and such an omission is serious. The explanation given by the appellant that Balbir Singh had kept a currency note of Rs 10 on his table to bribe him, but he picked it up and threw it on his face, appears to be plausible. The onus lay heavily on the prosecution to prove by positive and cogent evidence, but it had failed to prove it. Therefore, the conviction and sentence of the appellant cannot be sustained.

(2) A.I.R. 1960 Gujrat 7,

(3) Cr. A. 229 of 72, decided on May 26, 1972.

(11) As a result, the appeal is accepted, the conviction and sentence of the appellant are set aside and he is acquitted. Fine, if paid, will be refunded to him. The appellant is on bail and he is discharged of his bail bonds.

K.T.S.

APPELLATE CIVIL

Before R. N. Mittal, J.

JOG RAJ AND ANOTHER,—Appellants

versus

BANARSI DASS ALIAS BANA GOPAL (DECEASED),—Respondent.

Execution First Appeal No. 64 of 1975

January 13, 1978.

Land Acquisition Act (I of 1894)—Section 31(1) and (2)—Compensation paid to landlord by the Collector ignoring lawful claim of the tenant to apportionment of his share—Such tenant—Whether entitled to recover his share in proceedings under the Act—Remedy of a civil suit—Whether also available.

Held that from a reading of sub-section (2) of Section 31 of the Land Acquisition Act 1894 it is evident that if there is any dispute as to the title to receive payment of the compensation or its apportionment, it is the duty of the Collector to deposit the amount of compensation in the Court to which reference has to be made under Section 18. If in spite of such dispute between the landlord and tenant, the Collector pays the amount to the landlord, then proviso (3) to sub-section (2) says that the person who receives compensation is liable to pay the same to the person lawfully entitled thereto. No machinery has been provided in the Act to enable the person who is lawfully entitled to compensation to recover the same from the person who has received it from the Collector. However, it is an established principle of law that an act of a Tribunal which causes injury to a party should not be allowed to stand and the Tribunal has an inherent right to remedy the same. The tenant can, therefore, recover his share in proceedings under the Act. A civil suit is also maintainable for recovery under the proviso to section 31(2). Thus both the remedies for recovery of such amounts are open and it is for the party concerned to choose either of them.

(Para 6)