

Before S. S. Sandhwalia, C.J. & D. S. Tewatia, J.

RAJINDER KUMAR SOOD,—Appellant.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 1480 of 1979.

December 24, 1982.

Prevention of Corruption Act (II of 1947)—Sections 5(1)(d) and 5(2)—Testimony of a complainant with regard to demand of bribe by the accused before the trap is laid—Whether requires corroboration by an independent witness—Evidence of phenolphthalein power test—Whether could be used against the accused.

Held, that when a given complainant first visits a public servant for doing or not doing some task for him he does not go to him as a trap witness. He goes there in a natural way for a given task. To require a witness to take a witness with him at that stage would amount to attributing to the complainant a thought and fore knowledge of the fact that the accused would demand bribe. There is no question of the Court insisting upon any such independent corroboration of the complainant in regard to the circumstance of the kind. Thus, no such independent corroboration of the kind is necessary at all. (Paras 31 and 32).

Held, that phenolphthalein test evidence is admissible in law and can certainly be relied upon against the accused. (Para 35).

Kapur Singh vs. The State of Punjab, Cr. A. 229 of 1972 decided on 26th May, 1972. **OVERRULED.**

Ramsing Badharsing vs. State, A.I.R. 1960 Gujrat 7. **DISSENTED FROM.**

Case referred by a Single Judge Hon'ble Mr. Justice D. S. Tewatia on 18th August, 1982 to the Larger Bench for the decision of an important question of law involved in this case. The Larger Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhwalia and the Hon'ble Mr. Justice D. S. Tewatia finally decided the case on 24th December, 1982.

Appeal from the order of the court of Shri Dev Bhushan Gupta Special Judge, Patiala Division Patiala, dated 17/19th November, 1979 convicting and sentencing the appellant.

J. R. Mittal & Pawan Bansal, Advocates, for the Appellant.

Bachittar Singh, Advocate, for the Respondent.

JUDGEMENT

D. S. Tewatia, J.

(1) The appellant a Medical Officer was convicted and sentenced to one year's rigorous imprisonment and a fine of Rs. 200 and in default of payment of fine to further sentence of two months rigorous imprisonment under section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act and to one year rigorous imprisonment under section 161, Indian Penal Code. However, the substantive sentences of imprisonment were ordered to run concurrently. He has challenged his conviction and sentence in this appeal.

(2) When this appeal came up for hearing before me in the first instance, the legality of the very prosecution was assailed on behalf of the appellant *inter alia* on the ground that the trial Court could not have taken cognisance of the offences in question unless sanction in terms of Section 197, Criminal Procedure Code by the competent authority was forthcoming. I referred the proposition in question for decision to a larger Bench. The Division Bench in its judgment dated 14th April, 1982 after settling the legal proposition against the appellant remitted the appeal to be decided on merits. On resumption of the hearing the learned counsel for the appellant raised two more legal pleas viz:—

- (i) Whether the statement of the complainant regarding the factum of the accused having demanded bribe from him when the complainant first approached him for his fitness certificate required independent corroboration ? and
- (ii) Whether the evidence furnished by the application of phenolphthalien powder test was legally admissible ?

The learned counsel cited a few decisions of the single judges of this Court in support of both the propositions. I entertained doubts as to the soundness of the view taken by the learned single judges. Since the learned counsel for the appellant had been raising legal propositions piece-meal and not knowing that the learned counsel may yet have one or more such legal proposition up his sleeves which may have required a reference of this appeal to the Division Bench for the third time, so instead of referring the aforementioned two legal propositions for an authoritative decision, I

considered it desirable that the entire appeal be decided by a Division Bench and that is how this appeal is before us.

(3) Amrik Singh P.W. 4 (hereinafter referred to as the complainant) a science graduate and an employee of Punjab National Bank, Kurali, happened to visit his relation in village Hulka. There he caught Malarial fever. He visited Government Medical Dispensary, Banur, for taking medicines as also a sickness certificate. There Dr. Mrs. Nisha Sood, wife of the accused Dr. Sood, demanded by way of bribe rupees ten from him which he did not pay then and promised to pay the same at the time of getting fitness certificate. He was given medicines and was advised three days rest under the direction of the accused. Since the complainant felt relief, so that very next day i.e. 22nd July, 1977, he went to Banur in the afternoon around 5 P.M. and requested the accused for issuing a fitness certificate. Accused demanded Rs. 20 by way of bribe. The complainant who had no intention to pay the amount gave an excuse that he did not have the amount with him and promised to pay the same on the next day. Next day, the complainant visited office of the Vigilance Department, Patiala. There he was directed to see Vigilance Inspector Teja Singh, PW 11 (hereinafter referred to as the Vigilance Inspector). Vigilance Inspector directed a Constable to bring some person to witness the recording of the statement of the complainant. The Constable fetched Mam Chand PW 5 from the bus stand. After the arrival of Mam Chand in the Vigilance office, Vigilance Inspector recorded the statement of complainant Ex. PG. The complainant then produced one currency note of Rs. 20 Ex. PH which was duly taken into possession. The Vigilance Inspector thereafter gave a demonstration of phenolphthalein powder test by first smearing a paper with that powder and then showing after dipping it in a chemical solution as to how the colour of that solution turned pink. The solution was put into a bottle and sealed. Thereafter, number of the note Ex. PH was noted. The note was then smeared with phenolphthalein powder and handed over to the complainant. He was informed that if hands of person who had touched that note were dipped in the chemical solution, then the colour of the solution would turn pink. From the Vigilance Office, the complainant, Mam Chand and the Vigilance Inspector with a few police men formed a raiding party and went to Banur in a car. From the Punjab State Electricity Board's Office at Banur, Gurcharan Singh, S.D.O. was joined in the raid after explaining to him the purpose of the raid.

The raiding party which was in a car left the car at a deserted place from where the Vigilance Inspector, Mam Chand PW, complainant and other members of the raiding party proceeded towards dispensary. All the members of the raiding party except complainant and Mam Chand stayed behind while these two persons went to the dispensary. The Vigilance Inspector had already instructed the complainant that after the passing of the currency note, he was to give a signal by placing his hand on his turban. Mam Chand was advised to so locate himself that he could see the passing of the currency note and also be in a position to see the signal being given by the complainant and in turn give pre-arranged signal to the waiting raiding party. The complainant went into the room of the accused where his wife Dr. Mrs. Nisha Sood was also present alongwith a patient. That patient left soon after. The complainant then requested the accused to issue the fitness certificate. On being asked as to whether he had brought the requisite amount, he answered in the affirmative and then took out the currency note and handed over the same to the accused who then pressed a bell. On hearing the bell Sarwan Singh PW 10, a Sweeper came into the room. The accused handed over that currency note to Sarwan Singh to bring two notes of Rs. 10 each. Sarwan Singh took that note and after a few minutes came with two currency notes of Rs. 10 each, which the accused put in his bushirt's pocket. The accused handed over the requisite certificates. At that stage the complainant gave the pre-arranged signal. Mam Chand transmitted the same to the raiding party through a pre-arranged signal. Vigilance Inspector came inside the room of the accused and caught hold of him and also disclosed to him his identity. The accused was told by him that he (the accused) had taken bribe and therefore, he wanted his hands to be dipped in the chemical solution which was prepared on the spot. The accused struggled and did not want to dip his hands in the said solution. The accused then with his knee tumbled down the vessel containing chemical solution. Fresh chemical solution was then prepared and the accused was made to dip his hands in the solution which as a result of dipping of his hands turned pink. Thereafter Sarwan Singh PW was called. He was also made to dip his hands in the freshly made chemical solution. The solution turned pink. Sarwan Singh was then interrogated. The Vigilance Inspector then took Sarwan Singh, Mam Chand and the complainant to PUNSUP shop located at a distance of about 100 yards from the dispensary, where salesman Dilbagh Singh was asked to handover the 20 rupees currency note which Sarwan

Singh a short while ago had given to him. Dilbagh Singh took out from his cash box currency note of Rs. 20 which was duly taken into possession and a receipt therefor was given by the Vigilance Inspector. Thereafter, the accused was arrested. The complainant handed over to the Vigilance Inspector the two certificates in question and the latter duly took them into possession.

(4) The prosecution case primarily rests on the testimony of Amrik Singh, complainant PW 4, Mam Chand PW 8, who acted as a shadow witness, Smt. Rajinder Kaur PW 1, who identified the handwriting on the two certificates issued by the accused and the entry in the register as being in the hand of Dr. Mrs. Nisha Sood, wife of the accused, Sarwan Singh PW 10, who deposed to the factum of currency note having been handed over to him by the accused, that he exchanged the same from the PUNSUP shop with two currency notes of Rs. 10 each and handed over the same to the accused; that thereafter he was made to dip his hands in the chemical solution which turned pink; that thereafter he accompanied the Vigilance Inspector to the PUNSUP shop and there on demand Dilbagh Singh PW took out the note from the cash box and made over the same to the Vigilance Inspector, Dilbagh Singh PW 9/A, who stated that Sarwan Singh had given him currency note of Rs. 20 which he had put in the cash box and that after sometime Vigilance Inspector alongwith Sarwan Singh and others came to his shop and took back the said currency note and issued a receipt therefor to him, and the Vigilance Inspector Teja Singh PW 11, who deposed to the entire prosecution version starting from his meeting with the complainant in his office upto the arresting of the accused.

(5) The accused in his statement under section 313, Criminal Procedure Code denied the prosecution allegations. He stated that the prosecution witnesses were deposing under the influence of the police. In answer to the last question as to why this case against him, he gave the following version :—

“Rajinder Kaur L.H.N. used to flout even my written orders, I made a note of her insubordination in her annual confidential report for the year 1976-77, in the month of 1977. She came to know about this fact from the office of civil surgeon. Amrik Singh, complainant is the friend of Mohan Singh, husband of Rajinder Kaur and they

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used to study together in S.A. Jain College, Ambala and they also resided in the same Hostel, in the year 1969-70. Rajinder Kaur and Mohan Singh colluded with Amrik Singh PW and got me implicated in this false case. On 23rd July, 1977, all the three aforesaid persons came to my office accompanied by Teja Singh, Inspector. I was thrown on the ground, given beatings by the police. The Inspector forcibly rubbed my hands against his hands and got my hands washed forcibly. I did not demand or accept any bribe from Amrik Singh.

Amrik Singh had asked for illness certificate. I told him to deposit Rs. 5 for obtaining certificate. He went out saying that he would get Rs. 5 from outside. In the meantime I prepared the receipt. Thereafter the police came and pounced upon me. On 27th June, 1977, one Shri Ajit Singh, who is a Jan Sangh Leader, sustained injuries in a fight and came to me for medico-legal examination alongwith Mam Chand PW. I issued medico-legal report under section 323 IPC as the injuries on his person were simple. He, however, wanted that I should record the injuries to be grievous but I refused. On this both of them threatened to teach a lesson to me. Mam Chand PW was sour with me on that ground and he has deposed falsely due to enmity."

(6) In support of his version he examined three witnesses namely Dr. P. S. Sethi, who at the time of the trial of the case had taken over the charge of the Civil Dispensary, Banur, as D.W. 1, Ram Lakhan, Water Carrier as D.W. 2 and Mr. M. L. Jain, Principal, S. A. Jain College, Ambala City as DW 3.

(7) Dr. Sethi, DW 1 on the basis of hospital record stated that it was recorded on 7th October, 1976 that the Lady Doctor Mrs. Sood wife of the accused had given an order to Rajinder Kaur PW and the latter did not comply with it; that on 16th October, 1976, an order was passed by the accused which was not complied with by Smt. Rajinder Kaur PW; that again an order was passed on 22nd April, 1977 and that order also was not complied with by Smt. Rajinder Kaur. Similarly on 26th August, 1977, Smt. Rajinder Kaur had refused to accept another order.

(8) Ram Lakhan, Water Carrier as DW. 2 stated that Sarwan Singh all along on the date of occurrence remained with him; that

Mam Chand PW was not there; that the police having gone inside the room of the accused had locked the same from inside and he heard the cries of the accused from inside; and that Amrik Singh was seen visiting Mohan Singh, husband of Smt. Rajinder Kaur.

(9) Shri M. L. Jain, Principal, S. A. Jain College stated that Mohan Singh son of Surjit Singh of village and Post Office Gharuan, Tehsil Sirhind, District Patiala was admitted on 15th July, 1967 to B.A. Part-I under Roll No. 248; that he remained in the college upto 30th April, 1970 from where he qualified B.A. Part-III in the year 1969-70. In the year, 1970, he was an inmate of the College hostel. He further stated that Amrik Singh son of Arjan Singh of village Nangal Faizgarh, Post Office Rasanheri, Tehsil Kharar, was admitted in S.A. Jain College in B.Sc. Part-III under Roll No. 201 and he remained in College upto 30th April, 1970. He also further deposed that Amrik Singh was also a hostel inmate of the College. In cross-examination he admitted that on the basis of the hostel register he could say that they not only resided in separate rooms but also in separate blocks of the hostel.

(10) Hardly anything surfaced in the cross-examination of Amrik Singh, Mam Chand, Sarwan Singh, Dilbagh Singh and Vigilance Inspector Teja Singh which could be suggestive of the fact that these witnesses were not trustworthy and their evidence was not worthy of credence. In the case of Amrik Singh two contradictions in his statement made in Court and the F.I.R. and the one recorded under section 161, Cr. P.C. were pointed out.

(11) In Court in cross-examination he stated that he had not paid to Lady Dr. Mrs. Nisha Sood Rs. 10 demanded by her and that he had told her that the same would be paid at the time of securing fitness certificate while in the F.I.R. there is a mention that Dr. Mrs. Nisha had demanded Rs. 10 while issuing sickness certificate and he paid the said amount to her.

(12) From his statement under section 161, Cr. P.C. he was merely confronted with an omission therein regarding the fact that the accused had pressed a bell and in compliance thereof Sarwan Singh had entered the office when deposed to the said fact at the trial.

(13) Both the contradictions could be considered hardly material to the main prosecution case which was that when the

complainant approached the accused for issuing a fitness certificate the latter demanded a sum of Rs. 20 as bribe. The said amount of bribe was paid to him next day by the complainant. That fact was witnessed by the shadow witness. The accused had handed over the currency note to Sarwan Singh (It is immaterial whether he was summoned by ringing a bell or otherwise) and Sarwan Singh had exchanged the same from PUNSUP shop with two currency notes of Rs. 10 each. As a result of pre-arranged signal at that stage the Vigilance Inspector entered the room of the accused. The accused's hands were dipped into solution which turned pink. Thereafter, followed the similar procedure with regard to Sarwan Singh a result of interrogation and on coming to know the journey of the currency note to PUNSUP shop recovered the same and thereafter affected the arrest of the accused.

(14) Regarding the testimony of Mam Chand it was pointed out that he was an unreliable witness as he had once been involved in proceedings for breach of peace under section 107/151, Criminal Procedure Code and also the fact that he had admitted that he had visited the police station number of times. To us this witness appears to be wholly truthful. He did not hide anything from the Court. Being summoned for breach of peace is not such a thing as to in any manner tarnish either the image or the veracity of a witness. Sometimes on a very flimsy excuse one party takes proceedings against other for breach of peace merely to harass the other party. As regards his visits to police station, it may be observed that that was in connection with Mahabir Dal case. This witness, in fact, is categorical that he never joined earlier in any raid by the police.

(15) Testimony of Sarwan Singh was sought to be discarded on the ground that this witness had been made an accused and his name was put in column No. 2 in police report under section 173, Cr. P.C. and that this witness was not got formally discharged from any Court. It was highlighted that this witness must have deposed in favour of the prosecution under fear of prosecution for the offence in the event of his not toeing the the prosecution line. We find no merit in this contention as well. The police put the name of Sarwan Singh in Col. No. 2 after it had come to the view that Sarwan Singh was innocent in the matter. The very fact that he was not summoned as an accused by the Court showed that he stood formally discharged and therefore, there could be no question of any fear on his part of prosecution if he did not depose to what he

had deposed to in Court. The Vigilance Inspector recorded his statement under section 161 Cr. P.C. only after he had found Sarwan Singh innocent and therefore, thereafter saw no reason as to why he should not be made a witness in the case.

(16) Learned counsel for the appellant pointed out nothing from the testimony of Dilbagh Singh which could detract from the veracity of this witness. Learned counsel merely argued that Dilbagh Singh did not produce the receipt which had been handed over to him by the Vigilance Inspector evidencing the recovery of currency note from his cash box. Dilbagh Singh had stated that the receipt had been misplaced. This fact would not show that, in fact, no such currency note had been given back by Dilbagh Singh to Vigilance Inspector. Dilbagh Singh was not to pay Rs. 20 from his own pocket. He was a salesman on the PUNSUP shop and he must have accounted for the payment of Rs. 20 to the Vigilance Inspector in his books of account because it was not a private shop but a Semi-Government shop. The accused could have summoned the relevant books from the PUNSUP shop to demonstrate that no such deficiency of Rs. 20 in that day's account of the shop existed. Dilbagh Singh is an independent witness and had no axe to grind in the matter. There was not even a suggestion of Dilbagh Singh's association either with the Vigilance Inspector or with any other prosecution witnesses. We, therefore, unhesitatingly place full reliance on his testimony.

(17) The testimony of Teja Singh, Vigilance Inspector, in our view, is wholly reliable. There was not even a suggestion that this witness was in any manner whatsoever inimical towards the accused or interested in the complainant or any other prosecution witness.

(18) Now the stage is set to assess the testimony of Smt. Rajinder Kaur and the defence taken by the accused. Smt. Rajinder Kaur merely identified the handwriting of the accused on the relevant documents and that of his wife on certain entries in the Register. Her testimony is criticised on the ground that she was inimical towards the accused. In support of that criticism reliance on the following portion of her testimony was placed alongwith that of Dr. Sethi:—

“No quarrel ensued between me and Gurdial Kaur on 23rd July, 1977. I cannot say why Gurdial Kaur made a complaint against me for allegedly giving her beatings. It

is correct that in May or June 1977, I had refused to note an order issued by the accused. I do not remember if I refused to note two orders issued by the accused in the Order Book at pages 37 and 44. I know that Man Kaur mid-wife had made application for allowing her house-rent allowance. An enquiry was held against me that I had forged the signatures of Dr. Nisha wife of the accused on that application allowing house-rent to her. I had made written complaint against the accused to the effect that he was spoiling my family planning cases. This happened before the trap in question. It is correct that I received several letters from the accused against my non-performance of duty or poor performance of duty. It is correct that the accused had not noted from me an order that I did not deposit the fees of the slips at the rate of 10 paise per slip. It is correct that the accused had been asking me to regularly prepare the pay bills of part-time men workers and not to delay them for three or four months. He might have got a written order noted from me to that effect on 3rd August, 1977. It is correct that the accused had issued me warnings twice or thrice for insubordination before the occurrence."

(19) The cross-examination portion of the testimony of Rajinder Kaur referred to by the learned counsel for the appellant no doubt does show that Rajinder Kaur PW was perhaps not pulling on well with the accused but in her testimony she has not stated anything which is not a fact. She alone was in a position to identify the handwriting of the accused and his wife and she has only done that. The accused himself was admitted in his statement that he had issued certificate of fitness though his version was that he had done so on receiving Rs. 5 which is said to be officially prescribed fee for issuing such a certificate.

(20) The whole defence version has been built around the animosity of Rajinder Kaur against the accused. For one thing the animosity reflected by the aforementioned extracted portion from her testimony is not such that this witness would go to the extent of procuring of so many witnesses in order to falsely involve a high ranking Medical Officer and for another Smt. Rajinder Kaur is merely a Lady Health Visitor, almost a petty employee. She could certainly not have such resources as to tempt so many witnesses to

tell lies, pervert their conscience and falsely involve an innocent person in a serious crime of this nature.

(21) No connection of complainant and her husband is established. Merely from the fact that they were once in 1970, students of the same College it cannot be inferred that they knew each other. Complainant mentioned that it was only after the occurrence that he came to know Mohan Singh, husband of Rajinder Kaur and that was when he happened to visit Banur in connection with the present case from time to time.

(22) Accordingly, we find no merit whatsoever in the defence version that false case had been concocted against the accused at the instance of Rajinder Kaur in connivance with complainant Amrik Singh.

(23) The learned counsel for the appellant then pointed out that as to why the complainant did not give the pre-arranged signal when he handed over the money to the accused and why did he wait till the accused handed over the said currency note to Sarwan Singh and the latter after exchanging the same for two currency notes of Rs. 10 each gave the said notes to the accused.

(24) No question was put to the complainant by the accused. If they had asked for the explanation he may have a valid explanation for the same. In the absence of that one can only guess that Amrik Singh had not perhaps bargained for what had transpired—that the accused soon after the handing over of the currency note to him would part company of the note—and therefore, the complainant may have been non-plussed and waited for the return of Sarwan Singh with two currency notes and then gave the signal. The Vigilance Inspector was not to concoct a version of this kind. If he was hand in glove with Smt. Rajinder Kaur and was out to fake and foist everything then why Vigilance Inspector would go in for such a rigmarole version. He would have straightway shown recovery of the currency note from the person of the accused. The prosecution version intrinsically shows that, in fact, that is what must have happened.

(25) Non-examination of Gurcharan Singh held out on behalf of the appellant as a proof of the fact that no such recovery of the note had taken place. Gurcharan Singh was given up as won over. At a small place like Banur, Gurcharan Singh, S.D.O. may have been very well known to the accused, who was incharge of the medical dispensary and therefore this witness may not be willing to depose against him. If the defence was that sure of its ground and innocence they could very well have produced him as their own witness.

(26) Now coming to the following two legal propositions :—

“(i) That the testimony of the complainant in regard to the demanding of bribe before the trap was laid is also required to be corroborated by an independent witness ; and

(ii) That the evidence obtained as a result of phenolphthalein powder cannot be relied upon against the accused.”

which, in fact, had necessitated the reference of this case to the Division Bench, it may be observed that so far as the first legal proposition is concerned the two decisions, namely, *Ram Partap v. The State of Punjab* (1) and *Ram Parkash v. State of Punjab* (2), decided by Bains, J. had been wrongly interpreted by the learned counsel as lending support to the first proposition above. *Ram Partap's case* (supra) was a case where even the complainant had turned hostile and had not supported the prosecution case and it was in that context that the learned Judge observed that the complainant having turned hostile and there being no other witness to

(1) 1975 C.L.R. 200.

(2) 1981 C.L.R. 159.

depose to the fact that the accused had demanded bribery from the complainant in that case, so it was not established that the accused had demanded bribery from the complainant when the complainant first visited him.

(27) From this it cannot be inferred that the learned Judge enunciated a proposition that the testimony of a complainant required corroboration in regard to the factum of his first visit to the accused and the latter's demand of bribe. In *Ram Parkash's case* (supra) too, the learned Judge has not enunciated any such proposition. In that case the learned Judge had discarded the testimony of complainant as being unreliable and then had observed that no other independent evidence was available to assure the Court that the accused in that case had demanded bribe from the complainant of that case. But from this it cannot be argued that the learned Judge laid down a proposition that even where the testimony of a complainant is considered reliable, the Court would not consider it admissible in law unless independent corroboration was forthcoming regarding the demanding of bribe by the accused when the complainant first visited him for requiring him to do or not to do a given work.

(28) We are of the opinion that there is no question of the Court insisting upon any such independent corroboration of the complainant in regard to the circumstance of the kind. When a given complainant first visits a public servant for doing or not doing some task for him he does not go to him as a trap witness. He goes there in a natural way for a given task. To require a witness to take a witness with him at that stage would amount to attributing to the complainant a thought and fore knowledge of the fact that the accused would demand bribe.

(29) For the reasons aforementioned we find no merit in the argument and hold that no such independent corroboration of the kind of a fact mooted in proposition No. 1 is necessary at all.

(30) As to the second proposition it may be observed that the same stands settled authoritatively by their Lordships in *Som Parkash v. State of Delhi* (3) and the following observations of Krishna Iyer, J. who delivered the opinion for the Bench are instructive :—

But the outstanding circumstances, most damaging to the accused, flow from the trap. The rival case of the accused is that no money was given to him but PW 1, who had to make good his story, placed the notes on the chair and pretended to the police that he had paid the accused. Of course, the oral evidence of PWs 1 and 4, by itself, if believed, as rightly believed by the High Court, proves the passing of the money to the accused and its production by him when challenged by PW 7. The fact is indisputable that the hands, the handkerchief and the inner lining of the trouser pocket of the accused turned violet when dipped in soda ash solution. From this the State Counsel argues that on no hypothesis except that the notes emerged from the accused's pocket or possession can the triple colour change be accounted for. The evidence furnished by inorganic chemistry often outwits the technology of corrupt officials, provided no alternative reasonable possibility is made out. The appellant offers a plausible theory. PW 1 kept the notes with him and his hands thus carried the powder. He gave a bottle of coke to the accused and the bottle thus transmitted particles of phenolphthalein to the latter's hands. He (the accused) wiped his face with the kerchief and put it into his trouser pocket thus contaminating the lining with the guilty substance. Moreover the inner lining was dipped by P.W. 7 with his

hands which had the powder. Thus, all the three items stand explained, according to him. These recondite possibilities and likely freaks have been rejected by both the courts and we are hardly persuaded into hostility to that finding. It is but meet that science-oriented detection of crime is made a massive programme of police work, for in our technological age nothing more primitive can be conceived of than denying the discoveries of the sciences as aids to crime suppression and nothing ruder can retard forensic efficiency than swearing by traditional oral evidence only thereby discouraging the liberal use of scientific research to prove guilt."

(31) The learned counsel, however, referred us to the following observations of a Division Bench judgment of the Gujrat High Court in *Ramsing Badharsingh v. State* (4) :—

"Where in a case of bribery the police resort to the technique of anthracene 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 anthracene powder, the nature of the test to be applied, the nature of the result to be expected and whether a layman can detect anthracene 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 anthracene powder and nothing else."

which had been followed by a single Judge of this Court in *Kapur Singh v. The State of Punjab* (5), and sought to explain the Supreme Court judgment by mentioning that the question of the desirability of the production of the expert witness before the evidence of chemical test in question could be held admissible was not mooted before their Lordships.

(32) We find no merit in the contention advanced by the learned counsel for the appellant. Their Lordships as would be

(4) AIR 1960 Gujrat 7.

(5) Cr. A 229 of 1972 decided on 26th May, 1972.

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clear from the observations extracted above not only accepted the evidence furnished by chemical test in that case but, in fact, commended the aid of science to the investigation of criminal cases. The learned single Judge having independently accepted the defence version in that case, had merely in the passing referred to the observations of the Gujrat High Court. We, therefore, affirm the second formulation and hold that phenolphthalein test evidence is admissible in Law and can certainly be relied upon against the accused.

(33) In case *Kapur Singh's case* (supra) even if by implication, is taken to be laying down the proposition that chemical test in question carried out by the investigating officer after apprehending the accused is not admissible in evidence, then we hold that it does not lay down the correct law and we overrule the same for the very reasons for which we have recorded our dissent from Gujrat view which the learned single Judge had, it appears, approvingly quoted.

(34) In the present case we unhesitatingly repel the contention on behalf of the defence that phenolphthalein powder might have been transferred to the hands of the accused in the alleged struggle with the Vigilance Inspector. Why would Vigilance Inspector keep his hands smeared with phenolphthalein powder to transfer some of it to the hands of the accused? This would amount to attributing criminality to the Vigilance Inspector and not mere excess of enthusiasm for the success of the prosecution case, which we cannot believe.

(35) For the reasons aforementioned, we find no merit in this appeal and dismiss the same.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

Before S. S. Sandhawalia, C.J. & P. C. Jain, J.

BAJINDER SINGH and another,—Petitioners

versus

THE ASSISTANT COLLECTOR and others,—Respondents.

Civil Writ Petition No. 565 of 1981.

January 13, 1983.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961) as amended by Punjab Village Common Lands (Regulation) Haryana Amendment Act (2 of 1981)—Jurisdiction of the civil Courts taken away retrospectively by sections 13, 13-A and 13-D as introduced by the amending