

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl.Appeal No.447/2001.**

Judgment delivered on 20th July, 2009.

Sh. Dashrath Singh Chauhan Petitioner
Through : Mr. S. Khan and Mr. Shishir Mathur,
Advocates.

Versus

C.B.I. Respondent
Through : Mr. Ajay Pal, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI

- | | |
|---|------------|
| 1. Whether reporters of local papers may be allowed to see the Judgment ? | YES |
| 2. To be referred to the Reporter or not? | YES |
| 3. Whether the Judgment should be reported in the Digest? | YES |

G.S. SISTANI, J.

1. The present appeal is directed against the judgment and order on conviction dated 31.05.2001 passed in C.C. No. 53/95 and R.C.No. 25(A)/ 95-DLI/ CBI/ ACB/ New Delhi, convicting the appellant to Rigorous Imprisonment (hereinafter referred to as, "R.I.") for two years and a fine of Rs.40,000/- under Sections 7, 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. In default of the payment of fine, the appellant was to undergo a further simple imprisonment for a period of six months.
2. The facts of this case briefly stated are that as per the complainant/PW-1, in January, 1995, he was running the business of manufacturing Hosiery items under the name and style of M/s Garg Hosiery Works at premises No.A-309, Shastri Nagar, Delhi.

In January, 1995, he applied for an electricity connection for the aforesaid factory in the DESU Office at Nangia Park. Inspector D.S. Chauhan (appellant herein), from DESU, visited the factory of Arun Kumar, PW-1, for inspection in February, 1995. The appellant asked the complainant/PW-1 to visit his office after ten days to find out the progress of his application. Ten days later, the complainant enquired from the appellant about the electricity connection. The appellant is stated to have demanded a bribe of Rs. 5,000/- which was negotiated by the complainant and it was agreed that Rs. 4,000/- would be paid. The appellant went to the office of the Central Bureau of Investigation (CBI) and registered his complaint regarding the demand of a bribe. Thereafter a trap was laid and as per schedule the complainant went to the office of the appellant. Inside the office premises, the appellant directed the complainant to deposit the money with one Rajinder. As soon as Rajinder accepted the money, a pre-arranged signal was sent and Rajinder was caught on the spot. However, the appellant managed to slip away who was then arrested on 24.04.1995. A case was registered and the accused persons were tried for the offence under section 120B IPC read with Sections 7, 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. Post trial, accused Rajinder was acquitted; however D.S. Chauhan (appellant herein) was found guilty of having demanded and accepted illegal gratification.

3. Learned counsel for the appellant submits that the judgment and order of conviction is based on surmises and conjectures. It is submitted that there are material contradictions in the statements recorded of the complainant as well as other witnesses. Learned counsel submits that there is no evidence on record to show that the appellant was present at the office when the alleged incident took place and even otherwise, as per the case of the prosecution there was neither any demand made by the appellant nor any money was received by the appellant. Learned counsel for the appellant contends that the presence of the appellant is disputed and in fact PW-3 has also supported the appellant on this issue, besides the fact that DW-1 has also categorically stated that the appellant was not present at the spot. Counsel also contends that the learned Special Judge has mis-directed himself and no cogent reason has been brought on record as to why the evidence of DW-1 has not been relied upon.
4. It is contended that the learned Special Judge has passed the order of conviction only relying upon the sole testimony of PW-2 which alone cannot be the basis of conviction so much so, that the learned Special Judge has not placed reliance on the evidence of the complainant as well as on the evidence of the I.O. It is further contended that in fact the Special Judge has categorically stated that no reliance can be placed on the evidence of the I.O. and it has been observed that he is a person of doubtful integrity.

5. Learned counsel for the appellant has further relied upon the Attendance Register, which is Exhibit PW-3/A to show that the appellant was on leave on the fateful day and thus the entire story of the prosecution is false. Learned counsel has drawn my attention to the statement of the co-accused Rajinder Kumar recorded under Section 313 of the Cr.P.C. wherein he has supported the case of the appellant to the extent that the appellant was not present in the office on the date when the raid was conducted. It has been strongly urged before this Court that even if it is assumed that the appellant was present in the office, there is no evidence on record that any of the witnesses saw the appellant leaving the office premises when, the width of the corridor was not more than 3-4 feet and no one could have escaped from the corridor without the knowledge of the raiding party who had admittedly taken position in the vicinity.
6. Learned counsel for the appellant submits that in fact in the judgement itself, the Special Court has observed that the statement of the complainant is false in totality. It is submitted that the present appeal is liable to succeed.
7. *Per contra*, learned counsel for the CBI has strenuously urged before this Court that the prosecution has been able to prove its case beyond any shadow of doubt. Learned Counsel submits that merely because the case of the prosecution would not be proved against the co-accused, no benefit can be derived by the appellant herein who was, in fact, present in the office and at his instructions the money was handed over to the co-accused,

Rajinder Kumar. It is submitted that the appellant had moved away from the scene of the crime on realizing that a raid was being conducted. Learned counsel further submits that the Attendance Register is an unreliable document inasmuch as, the employees were not marking their attendance daily in the said register. Learned counsel also submits that contradictory stands have been taken by the appellant. In the statement recorded under Section 313 of the Cr.P.C., the appellant has stated that he was on leave from 28.03.1995 and onwards, however, his leave of application shows that he had requested for leave from 29.03.1995 onwards. Counsel next submits that there is no reason as to why the evidence of PW-2 cannot alone be the sole ground for conviction against the appellant when PW-2 is an independent witness and has clearly identified the appellant.

8. The prosecution in this case had examined seven witnesses, where as one witness was examined by the defence. Statement of the appellant was also recorded under section 313 of Cr.P.C. It would be worthwhile to analyse the evidence of relevant witnesses.
9. PW-1, Arun Kumar (complainant), deposed that in the year 1995 he was running the business of manufacturing Hosiery items under the name and style of 'M/s Garg Hosiery Works' at premises A-309, Shastri Nagar, Delhi. In January, 1995, he had applied for an electricity connection for the aforesaid factory in the DESU office at Nangia Park. Inspector D.S. Chauhan (appellant) from D.E.S.U., (PW-1 correctly identified the appellant

present in the Court), visited his factory premises for inspection in February, 1995. No one else from D.E.S.U. had visited the factory premises on the said visit. As per PW-1, the appellant went away telling him to visit his office after ten days to find out about the progress of his application. This witness further deposed that ten days later, he had visited the office of D.S. Chauhan, appellant, at Shehzada Bagh, Daya Basti and enquired from the appellant about his electricity connection. On this the appellant, D.S. Chauhan said "BEF KOOF PANE KI BAATEN NAHIN KAREEN? JO SAHI BAAT HAI ISE KAR". Thereafter, the appellant said "AB BHI NAHIN SAMJHA MAIRA ISHARA". On this the complainant said "BATA DO MUJH KO KIYA BAAT HAI. The appellant, D.S. Chauhan, said that he will take Rs.5,000/- for installing power connection at the factory. PW-1 stated that he had a small hosiery business and was not in a position to pay this amount and said that he could pay a lesser amount as per his capacity. But appellant, D.S. Chauhan, insisted for Rs.5,000/- and said that his remark on his application cannot be reversed by even the General Manager, DESU. PW-1 came back to his residence and again visited the office of the appellant, D.S. Chauhan five or ten days after. At this stage, PW-1 again said that before his said visit to the office of D.S. Chauhan, one Rajinder had visited his residence along with D.S. Chauhan three/four days after the date on which D.S. Chauhan had demanded a bribe of Rs.5,000/-. PW-1 further deposed that the accused persons were also accompanied by some technicians.

Appellant, D.S. Chauhan, asked him "KIYA HOOWA". PW-1 said that he could not arrange for the money. On this, appellant, D.S. Chauhan pointed towards the Electricity meter already installed at his house and said "YE JO TERI DHARAM SHALA LAGI HUI HAI? YEHI SAB METER WAGERA UTAAR DOON GAAN AGAR PAISE NAHIM DIYE". After that the accused persons left and while going appellant, D.S. Chauhan, told him to visit his office after 4/5 days. As per PW-1, on 28.3.1995 he visited the office of appellant, D.S. Chauhan and there it was agreed that he should pay Rs.4,000/- as bribe to the appellant for installing power connection at his factory. D.S. Chauhan himself reduced the demand amount to Rs.4,000/-, when PW-1 said that he was not in a position to pay Rs.5,000/-. PW-1 left the office of the appellant telling him that he would pay the amount to him in his office on 29.3.1995 at 10.00 a.m. Thereafter, PW-1 went and met his friend, Mahabir, and narrated the matter to him. Mahabir suggested to take PW-1 to the CBI Office. Thereafter PW-1 visited the CBI Office on 28.3.1995 at 1.00 p.m. There, PW-1 met one S.P., Shri Prabhakar and narrated the entire facts to him. Thereafter, S.P., Shri Prabhakar, made PW-1 write down his complaint. After recording of his complaint, Mr. Prabhakar sent PW-1 to Sh. Kaul, Inspector, CBI. PW-1 deposed that his complaint is Ex.PW-1/A and is in his handwriting and bears his signatures Ex.PW-1/A.

10. PW-1 further deposed that on 29.3.1995 at about 10.15 a.m. Shri Kaul, Inspector came to his residence along with two public

witnesses and 3/4 CBI officers. They did not disclose the name of independent witnesses to PW-1 at that time. The two public witnesses enquired from him about the contents of his complaint and he verified about the correctness of allegations. Thereafter, he produced Rs.4,000/- at the instance of Inspector Kaul. Inspector who noted down the numbers of the said currency notes on paper. Thereafter, one chemical powder was applied on the said currency notes. He then said that money produced by him consisted of two hundred rupee notes and seventy six fifty rupee notes. Remaining chemical powder which was applied to the currency notes was thrown away in the latrine of his house. Thereafter, Inspector Kaul, told him to keep the tainted notes in his pocket and also directed him to pay that money to the appellant, Chauhan, only in the event of demand by him. He kept the said money in the front pocket of his pant. One of those public witnesses was also directed to accompany him and watch the proceedings. He was also directed to give the signal by facing his hand on the head in the event of acceptance of bribe by the appellant.

11. PW-1 also deposed that thereafter, they all left his residence for the office of appellant, D.S. Chauhan, Daya Basti, Shahazada Bagh, in a car. He and one public witness, who was directed to accompany him, went inside the office of the appellant, D.S. Chauhan. 3/4 public persons were there in the office of the appellant, Chauhan, and when they left, he told the appellant, D.S. Chauhan, that he has brought Rs.4,000/- as per demand.

Appellant, D.S. Chauhan, told him to wait for a minute. Thereafter, he took out aforesaid Rs.4,000/- and extended the same towards the appellant, D.S. Chauhan, but he did not accept the money in his hand and told him to give the same to appellant, Rajinder Kumar. At this stage, learned P.P. requested to cross-examine PW-1.

12. During cross-examination by learned Public Prosecutor, PW-1 deposed that his statement was recorded under Section 161 of the Cr.P.C. and he had read the same. Aforesaid statement was correctly recorded as per his narration and he was satisfied after reading it. PW-1 deposed that it was correct to say that as soon as the aforesaid 3/4 persons present in the office of appellant, D.S. Chauhan, left, he said to him "HAAN KAHO". It was correct to say that when he said "HAAN SAHIB MAIN APNE WALE KAAM KE BAARE MAIN AIYA THA", on this appellant, D.S. Chauhan said "PAISE LAE HO". It was also correct that "he replied in affirmative by saying "JI". PW-1, however, denied the suggestion that he did not tell the appellant, D.S. Chauhan, in so many words that he had brought Rs.4,000/- as per his demand and that he had stated in his statement under Section 161 of the Cr.P.C. that he told appellant, D.S. Chauhan, in his office that he had brought Rs.4,000/- as per his demand, he was confronted with his statement under Section 161 of the Cr.P.C. marked 'X' where it was not so recorded.
13. PW-1, in his further examination by learned Prosecutor, deposed that while leaving his residence, CBI officials had a bag

containing sealing material, a glass tumbler, empty bottles, sodium carbonate, etc. He accepted the suggestion that on reaching the office of appellant, D.S. Chauhan, he told him "HAN SAHIB MAIN APNE KAAM KE BAARE MAIN AIYA THA". He also accepted the suggestion that on this appellant, D.S. Chauhan asked "PAISE LAYE HO" and to which he replied in the affirmative. The appellant, D.S. Chauhan, told him to give the money to Rajinder, who was also present in the said room. PW-1 also accepted the suggestion that he had wished Rajinder, by saying, "ABHI CHAUHAN SAHIB SE BAAT HUI HE" and to which Rajinder said that "HAAN HAAN LAO KITNE HAIN". On this he took out the tainted notes from his pocket and handed over those Rs.4,000/- to Rajinder. Rajinder took the money in his right hand and transferred it to his left hand and thereafter kept the tainted money in left pocket of his pant. As soon as the money was accepted by Rajinder, the public witness went outside and gave signal to the trap party. PW-1 stated that it was correct to suggest that after this members of the raiding party came inside the room and Mr. Kaul showed his identity card. It is also correct that he enquired from Rajinder whether he has accepted the bribe of Rs.4,000/- from PW-1. He also accepted the suggestion that on this Rajinder told Shri Kaul that he has taken the money of bribe at the instance of the appellant, Chauhan, who is his officer. He also deposed that meanwhile, appellant, Chauhan, escaped from the room and further that Rajinder was apprehended by CBI officers from both his wrists. PW-1 accepted

the suggestion that other officials of DESU were requested to join the proceedings of the raid, but no one agreed and left the office. The public witness who had accompanied him recovered the tainted notes from the pocket of Rajinder's pant, in the presence of other members of the raiding party. Currency notes were counted by both the public witnesses and they also compared their numbers with the numbers already noted down in the annexure to the handing over memo. PW-1 accepted the suggestion that sodium carbonate solution was in a glass of water and thereafter Rajinder was made to dip his right hand fingers in the said solution and the aforesaid solution turned from colourless to pink. He also accepted the suggestion that solution of right hand was transferred into an empty bottle and its mouth was covered with a cloth wrapper and thereafter the bottle was sealed with the seal of CBI. A rough site plan was prepared by the IO at the spot. He further deposed that bottle of the right hand wash is Ex.P-1, bottle containing left hand wash is Ex.P-2 and the bottle containing pocket wash is Ex.P-3. Hundred rupee currency notes are Ex.P4 and Ex.P-5. Fifty rupee currency notes are Ex.P-6 to Ex.P-81. He also identified the currency notes as the same currency notes which were given by him as bribe and accepted by Rajinder. He accepted that lining of the pocket of the pant of Rajinder was signed by the independent witnesses and Ex.P-82 is the same pant which Rajinder was wearing at the relevant time. He further deposed that the CBI officials searched for appellant, D.S. Chauhan, in the office, but in vain. Thereafter,

they went to the residence of the appellant, D.S. Chauhan, at Rohini. Appellant, D.S. Chauhan was not present at his residence but his neighbour told that he had left shortly in his Maruti Car. He accepted that the appellant, D.S. Chauhan, had warned him not to depose against him and because of that fear he had incorrectly stated in his examination-in-chief that in the office of Mr. Chauhan he told him that he had brought Rs.4,000/- as per demand and thereafter he took out aforesaid four thousand and extended the same towards appellant, D.S. Chauhan, who told him to hand over the same to Rajinder Kumar. He accepted the suggestion that because of fear, he did not mention about the demand made by D.S. Chauhan.

14. During cross-examination by counsel for the appellant, D.S. Chauhan, PW-1 deposed that he met appellant D.S. Chauhan for the first time in January, 1995 but he did not remember the date. He had never met him before January, 1995. D.S. Chauhan visited his factory 3/4 times. His statement under Section 161 of the Cr.P.C. was recorded on his narration. It was in February, 1995, or the last week of January when appellant, D.S. Chauhan, pointed towards the electricity meter installed at his house and said "YEH JO TERI DHARAMSHALA LAGI HUI HAI, YEH SAB METER WAGERA UTAAR DOON GAAN AGAR PAISE NAHIN DIYE". When on the day of raid he entered the office of appellant, D.S. Chauhan, he wished him by saying, "CHOHAN SAHIB NAMESTE". Shadow witness was along with him. Other members of raiding party were present in the galary leading to the said office. PW-1 stated

that it was incorrect to suggest that on 29.3.95 he had no conversation with appellant, Chauhan, because he was not present in the office on the said day.

15. PW-1, Shri Arun Kumar, was further cross-examined by counsel for Rajinder and he deposed that when he entered the office room of accused persons, 3/4 persons were already present there. PW-1 stated that he did not remember whether on the first occasion right hand or left hand wash of Rajinder was taken. They remained at the spot of the raid for about 2 or 2 ½ hours. PW-1 denied that Rajinder did not accept the money from him.
16. PW-2 Mohinder Lal, UDC, CPWD (Vigilance Unit), deposed that on 29.3.1995 during morning time, CBI officials came to his office and at their request Sh. Sukhdev Singh, Executive Engineer directed him and Shri K. Ganesh to go to the CBI office for the purposes of the raid. From their office, they accompanied the CBI team to the residence of the complainant at Shastri Nagar, Delhi. They satisfied themselves about the contents of the complaint. Thereafter the complainant produced Rs.4,000/- comprising of some hundred rupee currency notes and some fifty rupee currency notes. Numbers of those currency notes produced by the complainant, were recorded on a memo. One chemical powder was applied on them. They were told that if any-one after handling those notes would dip his fingers in another chemical solution, aforesaid solution would turn pink. The tainted notes were handed over to the complainant which he kept in the pocket of his pant. Complainant was directed that he

should not touch the tainted notes again and give the same to the accused only in the event of specific demand and not otherwise. He was directed to accompany the complainant for watching the proceedings and hearing the conversation. He was also directed that in the event of acceptance of bribe, he should give signal by placing his hand over his hair. All the members of the raiding party were made to wash their hands. One IO bag was prepared which contained a few glass tumblers, few empty bottles, handing over memo, sealing material and the chemical powder of which solution was made. The remaining portion of chemical powder which was applied to the tainted notes was destroyed. Handing over memo was prepared which is Ex.PW1/B, which was signed by the complainant on both the sheets at respective points 'B', Ex.PW1/B1 in his presence. He along with members of raiding party left the residence of the complainant at about 11.15 a.m. and at about 11.30 a.m. reached the DESU office at Shehzada Baagh. He along with the complainant went to the office of the accused, Chauhan, and other members of raiding party took positions. He identified accused, Chauhan, who was present in the Court. When he reached inside the office, Chauhan, was standing outside his office room in the corridor. Complainant greeted accused Chauhan by saying "NAMASTE". Chauhan, returned the greeting and told the complainant to wait. At that time, Chauhan was talking to two or three other persons. 2/3 minutes later when those 2/3 persons left, Chauhan, said, "PAISE LAAYE HO".

Complainant replied "HAAN LAYA HOON". Thereafter, complainant (sic Chauhan) said "AAP KAA KAAM JO JAYE GAA". "PAISE ANDER US AADMI KO DE DO". It was also recorded that Chauhan also took the name of the said person while pointing towards him. Aforesaid person was present in Court and this witness correctly identified the accused Rajinder Kumar. Thereafter, the complainant went inside the room, took out the tainted money, and told Rajinder that Mr. Chauhan has directed him to give the money to him. On this Rajinder, accused, accepted the money from the complainant. As soon as, the accused, Rajinder, accepted the tainted Rs.4,000/-, he went outside the room and gave the pre-arranged signal by placing his hand on his head. On this, other members of the raiding party came inside the office and apprehended the accused, Rajinder. Recovery memo, EX.PW-1/D was prepared at the spot. A rough site plan was prepared at the spot which is Ex.PW-2/A. CBI officials searched for the appellant, Chauhan, in the office, but in vain. Thereafter, they all went to the residence of Chauhan. He did not remember his address but the appellant was not present at his residence. PW-2, Mohinder Lal, UDC further at first deposed that the chemical powder which was supposed to be used during post-raid proceedings was kept in the IO bag, but then said that no chemical powder was taken along in the IO bag.

17. In the cross-examination by learned counsel for the appellant, PW-2, stated that he did not remember whether the members of

raiding party took positions outside the main gate of the DESU office or within the four walls of DESU office, as he had gone inside the office along with the complainant. He also did not know at which specific place which member of raiding party took position. He did not remember if anyone asked the complainant, "AAJ TUM KAISE AAYE HO". He denied that the corridor shown in the site plan Ex.PW-2/A is so narrow that more than two persons cannot stand side by side in the same. He also denied that he did not see accused D.S. Chauhan in the office of DESU. He also denied that no conversation, as narrated by him in examination-in-chief took place between the complainant and the accused. He further denied that Chauhan, did not tell the complainant to pay the bribe amount to Rajinder. He denied that he had deposed falsely against, accused, D.S. Chauhan, under the pressure of CBI.

18. During cross-examination by counsel for accused, Rajinder, PW-2 deposed that no other person was present in the room of accused, Rajinder Kumar, at the relevant time.
19. PW-2 was re-examined by the learned APP and PW-2 stated that when he said in the examination-in-chief that no powder was kept in the IO bag, he was referring to the chemical powder which was applied to the currency note.
20. PW-3 Shri Raj Kumar Time Keeper, DESU, deposed that in the year 1995 he was posted as Assistant Time Keper, DESU, Zone 4222, Shehzada Bagh, Delhi. As per procedure officials of DESU

pertaining to the Zone except Assistant Engineer and above were supposed to mark their daily attendance in the Register maintained in the office of the Asstt. Engr. It was his duty to collect the attendance registers at the end of the month on the basis of the attendance marked in those registers, he used to prepare the attendance statement of technical staff and forwarded it to the pay office. He was on leave during the period w.e.f. 28.3.95 till 31.3.95 . On 29.5.1995 one Mistry of DESU came at his residence and told him that he was required by the Executive Engineer at the office. On this, he reached his office at about 1.30 p.m. He did not hand over attendance register pertaining to March, 1995 to Assistant Engineer on 29.3.1995. He had seen attendance register Ex.PW3/A. He further deposed that he had seen the register pertaining to March, 1995 and the attendance of employees was not marked in the register after 27th of March, 1995. He further deposed that this register used to remain in the custody of Assistant Engineer and not in his custody. Since he was on leave w.e.f. 28.3.1995, therefore, he was not aware whether or not accused, Dashrath Singh, submitted any leave application for 29.3.1995.

21. PW-4, R.K. Narain s/o late Sh. J.N. Sharma, deposed that on 8.9.1995, he was posted as General Manager (E), DESU. On 8.9.1995, he granted sanction for prosecution of Dashrath Singh Chauhan, Inspector, DESU, and Rajidner Kumar, Line-mate, DESU.

22. PW-5, Shri K.S. Chhabra, Sr. Scientific Officer, Grade-I, CFSL, deposed that on 19.3.1995, three sealed bottles were received in the laboratory. The samples gave positive tests for phenolphthalin and sodium carbonate. He identified his signatures on Ex.PW4/A at portion- A.
23. DW-1, Shri Babu Lal, deposed that in March, 1995, he was posted as Electric Fitter, DESU. He knew appellant, Dashrath Singh Chauhan and Rajinder Kumar, who were present in the Court. Both of them were posted in Shahada Bagh Office of DESU in March, 1995. Around the last week of March, 1995, probably on 29th March, 1995, he was present at the DESU Office, Shahjada Bagh when at about 11.00 a.m. some persons came and apprehended Rajinder and asked him to take them to the house of the appellant.
24. During cross-examination by the learned Public Prosecutor for the CBI, DW-1 denied that he had any friendly relations with him. He further denied that on 29.3.1995 at around 11:30 to 11:55 a.m., appellant D.S. Chauhan, was present in his office. He voluntarily stated that he did not see him in the office. He also denied the suggestion that he had deposed falsely in order to favour his colleague, D.S. Chauhan.
25. I have heard learned counsel for the parties and carefully gone through the record of this case.
26. Learned counsel for the appellant has made the following submissions before me:

- a) the prime witness (PW1) who is also the complainant has been declared a hostile witness.
- b) Statement of IO (PW-6) has not been relied upon by the trial Court.
- c) the appellant was not present in the office on the day of the raid and there is evidence (attendance register; deposition of DW 1 and co-accused Rajinder Kumar) to corroborate the same.
- d) assuming that the appellant was present, then also the prosecution has themselves stated that neither any money was demanded nor accepted by the appellant.

27. On the contrary, learned APP has made the following submissions before me:

- a) appellant is guilty of demanding and accepting bribe from PW 1.
- b) attendance Register is an unreliable document.
- c) PW-2 is an independent witness and has correctly identified the appellant.
- d) merely because the case of the prosecution could not be proved against the co-accused, no benefit can be derived by the appellant.

28. Allegations of demanding and having accepted illegal gratification in terms of money were found to be true by the trial

court, against a D.S.Chauhan, a government official working in DESU. D.S.Chauhan (appellant herein) was convicted under section 7, 13(1)d read with section 13(2) of the Prevention of Corruption Act, 1988. Section 7 of the Prevention of Corruption Act reads as under:

"7. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.—

(a) ****

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) *****

Section 13 of the Prevention of Corruption Act reads as under:

"13. Criminal misconduct by a public servant.—

(1) A public servant is said to commit the offence of criminal misconduct,—

- (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or
- (b) ****; or
- (c) ****; or
- (d) if he,—
 - (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”

29. Learned counsel for the appellant has urged before me that not only there are contradictions in the testimony of the main witness-complainant, PW-1, but also that the said witness had turned hostile and his entire evidence was ignored by the trial Court. I deem it appropriate to first analyse the evidence of PW-1 in detail. The complainant/PW-1 has deposed that in January, 1995, he was running the business of manufacturing Hosiery items under the name and style of M/s Garg Hosiery Works at

premises No.A-309, Shastri Nagar, Delhi. In January, 1995, he applied for an electricity connection for the aforesaid factory in the DESU Office at Nangia Park. Inspector D.S. Chauhan (appellant herein), from DESU, visited the factory of Arun Kumar, PW-1, for inspection in February, 1995. The appellant asked the complainant/PW-1 to visit his office after ten days to find out the progress of his application. Ten days later, the complainant enquired from the appellant about the electricity connection and the appellant is stated to have said "*METER AISE NAHI LAGE GA, METER KE LIYE AAP KO KUCHH DENA PARE GA*", and to which the complainant said that he had already deposited requisite dues in the office of DESU for getting the electricity connection. On this the appellant said "*BEF KOOFPANE KI BAATEN NAHI KARTEN, JO SAHI BAAT HAI, USE KAR*". Thereafter the appellant said "*AB BHI NAHI SAMJHA MERA ISHARA*". The complainant said "*BATA DO MUJH KO KIYA BAAT HAI*". The appellant then stated that he would take Rs.5,000/- for installing the power connection at the factory of the complainant. The complainant told him that since he was running a small hosiery business, he was not in a position to pay the amount. The complainant thereafter bargained for a lesser amount, but the appellant insisted for Rs.5,000/- and further stated that his remark on the application cannot even be reversed by the General Manager, DESU. PW-1 again said that before his said visit to the office of D.S. Chauhan, one Rajinder had visited his residence along with D.S. Chauhan three/four days after the date on which D.S. Chauhan had demanded a

bribe of Rs.5,000/-. PW-1 further deposed that the accused persons were also accompanied by some technicians. Appellant, D.S. Chauhan, asked him "KIYA HOOWA". PW-1 said that he could not arrange for the money. On this, appellant, D.S. Chauhan pointed towards the Electricity meter already installed at his house and said "YE JO TERI DHARAM SHALA LAGI HUI HAI? YEHI SAB METER WAGERA UTAAR DOON GAAN AGAR PAISE NAHIM DIYE". After that the accused persons left and while going appellant, D.S. Chauhan, told him to visit his office after 4/5 days. As per PW-1, on 28.3.1995 he visited the office of appellant, D.S. Chauhan and there it was agreed that he should pay Rs.4,000/- as bribe to the appellant for installing power connection at his factory. Thereafter, PW-1 went and met his friend, Mahabir, and narrated the matter to him. Mahabir suggested to take PW-1 to the CBI Office. PW-1 visited the CBI Office on 28.3.1995 at 1.00 p.m. There, PW-1 met one S.P., Shri Prabhakar and narrated the entire facts to him. S.P., Shri Prabhakar made PW-1 to write down his complaint in writing. PW-1 deposed that his complaint is Ex.PW-1/A and is in his handwriting and bears also his signatures. As per this examination-in-chief of PW-1, it emerges that a clear cut illegal demand of Rs. 5,000/- bargained to Rs. 4,000/- was made by the appellant.

30. PW-1 has further deposed that on his complaint, a trap was laid by the CBI and as per schedule complainant went to the office of the appellant. Inside the office premises, the complainant told

the appellant that he had brought the money as per his demand. Thereafter he took out the aforesaid Rs. 4,000/- and extended the same towards the appellant who did not accept the money in his hand and directed the complainant to deposit the money with Rajinder. At this stage, learned PP for the State sought liberty to cross-examine PW-1, complainant. It is the case of the appellant that since PW-1 turned hostile, his entire evidence cannot be relied upon. In my considered opinion, although in the examination-in-chief, PW-1 has deposed that on the day of the raid, when PW-1 along with the shadow witness (PW-2) went to the office of the appellant, he himself told the appellant that he had brought the money as per the demand of the appellant. However, in the cross-examination by the learned PP on 17.09.1996, PW-1 clarified that he was dared and warned by D.S. Chauhan (appellant herein) not to depose against him and it was out of fear that he had not stated that the money was demanded by the appellant on the day of the raid. PW-1 stated, *"It is correct that accused, D.S. Chauhan had warned me not to depose against him and because of that fear I had incorrectly stated in the examination-in-chief that in the office of Mr. Chauhan I told him that I have brought Rs.4,000/- as per demand and thereafter I took out aforesaid four thousand and extended the same towards accused, D.S. Chauhan, who told me to give the same to accused, Rajinder Kumar. It is correct that because of fear, I did not mention about the demand made by D.S. Chauhan."* Further in the cross-examination of PW-1 by counsel for the accused

Rajinder, PW-1 stated that he had reported about the threat extended by D.S.Chauhan to the police as well as to the CBI Officials.

31. Furthermore, in the cross-examination by the learned PP, PW-1 stated that on reaching the office of appellant, he had told him "HAN SAHIB MAIN APNE KAAM KE BAARE MAIN AIYA THA". On this, appellant asked "PAISE LAYE HO" and he replied in the affirmative. Then the appellant told him to give the money to Rajinder, who was also present in the same room. PW-1 also accepted the suggestion that he wished Rajinder by saying that "ABHI CHAUHAN SAHIB SE BAAT HUI HE" and that Rajinder said "HAAN HAAN LAO KITNE HAIN". On this PW-1 took out the tainted notes from his pocket and handed over those Rs.4,000/- to Rajinder. PW-1 further stated that Rajinder took the money in his right hand and transferred it to his left hand and thereafter kept the tainted money in his left hand and thereafter kept the tainted money in left pocket of his pant. As soon as the money was accepted by Rajinder, the public witness went outside and gave the requisite signal to the trap party who then came inside the room.
32. In the cross-examination by counsel for the appellant, PW-1 deposed that he met appellant, D.S.Chauhan for the first time in January, 1995 but he did not remember the date. He had never met him before January, 1995. D.S.Chauhan visited his factory 3/4 times. His statement under Section 161 of the Cr.P.C. was recorded on his narration. It was in February, 1995, or the last

week of January when the appellant, pointed towards the electricity meter installed at his house and said "YEH JO TERI DHARAMSHAL LAGI HUI HAI, YEH SAB METER WAGERA UTAAR DOON GAAN AGAR PAISE NAHIN DIYE". When on the day of raid he entered the office of the appellant, and wished him by saying, "CHOHAN SAHIB NAMESTE". Shadow witness was along with him. PW-1 also deposed that he entered the office of the appellant and the bribe money was given in the office of the appellant. PW-1 also denied the suggestion that he was deposing falsely so as to falsely implicate the appellant, D.S. Chauhan. PW-1 also denied the suggestion put to him that appellant, D.S. Chauhan did not demand the bribe from him or that Rs. 4,000/- were not paid at the instance of the appellant.

33. Thus it is seen that PW-1 has convincingly nailed the appellant that illegal gratification (bribe) was demanded by the appellant and that at the instance of the appellant, money was accepted by Rajinder. PW-1 has clarified that he was threatened by the appellant not to depose against him and it was only out of fear that he had resiled from his statement made in the complaint. PW-1 has also withstood the cross-examination and the minor contradictions do not go to the root of the matter. Even otherwise also, merely because a witness has been cross-examined by the party that had brought it to the witness-box, it does not imply that the entire evidence of such witness be held as otiose. If after careful scrutiny of such evidence, the Court finds a portion thereof to be reliable, then the Court may place

reliance on it. In the case of **Gurpreet Singh Vs. State of Haryana** reported at **(2002) 8 SCC 18**, the Apex Court observed as under:

“19. Incidentally, it is now well settled that in the event of a portion of evidence not being consistent with the statements given under Section 161 and the witness stands declared hostile, that does not, however, mean and imply total rejection of the evidence. The portion which stands in favour of the prosecution or the accused may be accepted but the same shall be subjected to close scrutiny.”

34. Further in the case of **T. Shankar Prasad Vs. State of A.P.** reported at **(2004) 3 SCC 753**, it was held as under:

“23. On a close reading of PW1’s evidence it appears that he has not really given a clean chit to the accused persons. Though a feeble attempt was made to show that he has not implicated A-2, in fact that is really not of significance when his evidence is read along with the evidence of other witnesses. The evidence clearly shows that A-1 directed the money to be paid to A-2. The stand of the accused about nature of receipt of the money is also not consistent. The stand was taken as if the money was received by A-2 for the payment of the advance tax. The documents brought on record go to show that there was no necessity for paying any advance tax. In fact, the official records indicate that the tax due was fully paid. Therefore, the plea that the amount was paid as advance tax is clearly without substance.

24. The fact that PW 1 did not stick to his statement made during investigation does not totally obliterate his evidence. Even in criminal prosecution when a witness is cross-examined and contradicted with the leave of court by the party calling him, his evidence cannot as a matter of law be treated as washed off record altogether. It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the judge finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the said witness, accept

in the light of the other evidence on record that part of his testimony which he found to be creditworthy and act upon it. As noted above, PW 1 did not totally resile from his earlier statement. There was only a half-hearted attempt to partially shield A-2. PW 1 has categorically stated that he had paid the money to A-2 as directed by A-1.”

35. In my considered opinion, the facts of the case in hand are similar to the facts of **T. Shankar Prasad** (*supra*) inasmuch as, in the case of **T. Shankar Prasad** (*supra*), allegations of bribe were leveled against two persons A1 and A2. While A1 was the main accused, A2 was stated to have accepted the illegal gratification at the instance of A1. Further, the main complainant (PW1) was found trying to shield A2. In the present case also, a close reading of the evidence of PW-1 would show that although there were minor contradictions in the evidence of PW-1, they were with respect to one Rajinder, who was stated to have accepted the bribe at the instance of the appellant (D.S. Chauhan). However, PW-1 has categorically deposed against the appellant and not once did he give a clean chit to the appellant. He gave sufficient explanation as for the threat extended to him by the appellant. Further, contrary to the argument of learned counsel for the appellant, I find that the trial Court has nowhere observed in the judgment that the version of PW-1 is false *in toto*. Rather, the trial Court has observed in para 5 of its judgment that it is a well established principle of law that when a witness is called in to a witness box, is cross-examined by that very party only, the statement of such a witness does not stand washed out and on careful scrutiny, chaff may be separated from

the grain. The trial Court has further gone on record to say that the complainant (PW-1) fully establishes that repeated demands for illegal gratification were made by D.S. Chauhan at his residence and office.

36. The case of the prosecution has also been whole-heartedly supported by PW-2, shadow witness. PW-2 is an independent witness and he has stated that on 29.03.1995, during morning time he accompanied the CBI team to the residence of the complainant and where, he and another public witness questioned the complainant and satisfied themselves about the contents of the complaint. As per PW-2, the complainant produced Rs.4,000/- comprising of some Hundred Rupee currency notes and some Fifty Rupee currency notes. The number of the said currency notes was duly recorded on a memo. One chemical powder was applied to the aforesaid Rs.4,000/- and it was told that anyone who after handling those notes, would dip his fingers in a particular chemical solution, the said chemical solution would turn pink. The complainant was directed not to touch the tainted currency notes and PW-2 was asked by the CBI to accompany the complainant at the time of the raid. In the event of acceptance of bribe, PW-2 was directed to give a signal by placing his hands over his hair. PW-2 has stated that he alongwith members of the raiding party left the residence of the complainant at about 11:15 a.m. and at about 11:30 a.m., they all reached the DESU office. He along with the complainant went to the office of the appellant while other

members of the raiding party took positions outside the office. PW-2 has further stated that the complainant greeted the appellant by saying "namaste", who returned the greeting and asked the complainant to wait. At that point of time, appellant was talking to 2/3 persons who thereafter left. The appellant then asked the complainant, "KAISE AIYO HO" and to which the complainant replied "MAIRA KAAM KAR DIJIYE". Thereafter appellant enquired "PAISE LAAYE HO" and the complainant replied "HAAN LAYA HOON". Thereafter, appellant said "AAP KAA KAAM JO JAYE GAA, PAISE ANDER US AADMI KO DE DO". Thereafter, the complainant went inside the room, took out the tainted money, and told Rajinder that the appellant had directed him to give the money to him. On this Rajinder, accepted the money from the complainant. As soon as Rajinder, accepted the tainted Rs.4,000/-, PW-2 went outside the room and gave the pre-arranged signal by placing his hand on his head and other members of the raiding party came inside the office and apprehended Rajinder from both his wrists.

37. This witness (PW-2) has withstood incisive cross-examination and stated that it would be wrong to suggest that he did not see appellant, D.S. Chauhan in the office of DESU on the day of the raid and further wrong to suggest that appellant, Chauhan did not tell the complainant to pay the bribe amount to Rajinder. He was unshaken in his stand that the present appellant had demanded bribe of Rs. 4,000/- and asked the same to be deposited with Rajinder. PW-2 correctly identified the appellant

who was present in the Court. PW-2 is an independent witness and the appellant has been unable to show as to, why this Court should not take the deposition of PW-2 into account, or that PW-2 has been deposing falsely. There is nothing to suggest as to why testimony of PW-2 is to be disbelieved. Before this incident, the appellant and PW-2 had not even known each other so as to say that there was a grudge or any kind of enmity between the two. Thus PW-2, an independent witness to the entire raid proceedings, has corroborated the version of the prosecution in material particulars.

38. PW-2 further in clear terms deposed that Rajinder accepted the money in his right hand and then transferred it to his left hand and kept it inside the left hand pant pocket. PW-2 has gone on record to say that PW Ganesh searched Rajinder and recovered the tainted money of Rs.4,000/- from the left pocket of his pant. Thereafter, PW-2, and Ganesh compared the number of recovered currency notes with the numbers already noted down in Exhibit PW-1/B1 and the currency notes were found to bear the same number. In a glass of water some Sodium Carbonate was dissolved, Rajinder was made to dip his right hand fingers in the said solution. As soon as Rajinder put his fingers in the said solution, the entire solution turned from colourless to pink. The said solution was then transferred into an empty bottle, its mouth was closed, covered with a cloth wrapper and sealed with the seal of the CBI. The said cloth wrapper was signed by PW-2 and Ganesh. Thereafter fresh Sodium Carbonate solution was

prepared in a clean glass and Rajinder was made to dip his left hand fingers in the solution which also immediately turned Pink. The mouth of the said glass was also covered with a cloth wrapper and duly sealed with the seal of the CBI. Similarly, the inner lining of the left hand side pocket of the pant of Rajinder was dipped in the solution and the same turned pink. This glass bottle was also sealed with the seal of CBI. PW-2 has identified that the bottle of right hand wash is Exhibit P/1; left hand wash is Exhibit P/2; and the inner lining of the left hand side pocket is Exhibit P/3. PW-2 has further identified the money recovered as bribe containing Hundred Rupee currency notes as Exhibits P/4 and P/5, and Fifty Rupees currency notes as Exhibits P/6 to P/81. Recovery memo, Exhibit PW-1/D and a rough site plan Exhibit PW-2/A was also prepared at the spot. Reading of evidence of PW-2 would show that his evidence is trustworthy and reliable. Evidence of PW-1 and PW-2 has been corroborated by the evidence of PW-6 Inspector Kaul of CBI, and who has supported the case of the prosecution. PW-6 has unerringly deposed that on 28.03.1995, he was posted as Inspector, Anti-Corruption Branch, CBI, Delhi. PW-6 has deposed that on receiving the pre-arranged signal from PW-2 (an independent witness), he immediately rushed towards the spot along with other members of the raiding party. On his instructions, Rajinder was apprehended and who (Rajinder) stated that he was told by the appellant, D.S. Chauhan, to take the money and had no role to play. PW-6 has further deposed that on his instructions one Ganesh searched

Rajinder Kumar and recovered Rs.4,000/- from the left hand side pocket of his pant. Thereafter both the independent witnesses compared the currency notes and it was found that the money recovered from Rajinder bore the same numbers as were recorded in Exhibit PW-1/B1. Thus, both PW-2 and PW-6 have stated that the money recovered from Rajinder was the same which were marked to be given to the appellant, D.S. Chauhan, in case any illegal gratification is sought for by him. PW-6 has also identified the case property as Exhibit P-1 (Bottle of right hand wash); Exhibit P-2 (bottle of left hand wash); and Exhibit P-3/ (Bottle of pant pocket wash). PW-6 also identified the Hundred rupee currency notes as Exhibits P-4 and P-5 and the Fifty Rupee currency notes as Exhibits P-6 to P-81. PW-6 has also deposed that while the interrogation of Rajinder was taking place, appellant D.S. Chauhan, slipped away. He asked Rajinder about the whereabouts of D.S. Chauhan and Rajinder informed him that appellant, D.S. Chauhan was in the room a few moments back and he has just gone out of the room. As per PW-6 this fact was also confirmed by the independent witness, Mahinder, PW-2. PW-6 further stated that he along with Mahinder came out in the corridor in search of appellant, D.S. Chauhan, but he was nowhere to be seen. The staff of DESU informed PW-6 that appellant, D.S. Chauhan, has gone away from the office. Thereafter, PW-6 tried to contact the Executive Engineer, In-charge, at the said office as well as the Assistant Engineer, but they were unavailable. After sometime the said

persons arrived at the spot and from them the address of appellant, D.S. Chauhan, was taken. PW-6 further stated that he sent some members of the CBI team to the residence of appellant, D.S. Chauhan, with a direction to arrest him. Thereafter, he made a requisition to senior officers and seized some records of DESU including the attendance register vide Exhibit PW-3/A. Appellant, D.S. Chauhan, was later on arrested on 24.04.1995 and was correctly identified by PW-6 in the Court. The trial court discredited the entire evidence of PW-6, Inspector Kaul, on the ground that certain allegations were pending against PW-6. Even otherwise, merely because the trial Court has come to the conclusion that the evidence of PW-6 is not reliable, the entire case of the prosecution cannot be defeated. PW-2 has also stated that while the search of Rajinder was going on, appellant, D.S. Chauhan, slipped away. The officials of the CBI searched for appellant, D.S. Chauhan, in the office, but in vain. Thereafter, PW-2 along with other officials went to the residence of Chauhan, but he was not found there.

39. It has also been argued before me that the appellant was not present in the office on the day of the raid and in support thereof the employee attendance register of the concerned DESU office has been relied upon. Statement of the appellant D.S. Chauhan was recorded under Section 313 of the Cr.P.C. wherein the appellant has stated that on 28.03.1995 he was on leave and that he did not meet the complainant. The appellant further stated that the complainant had filed a false complaint against

him because of the fact that a few days prior to the alleged incident, hot words were exchanged between the appellant and the father of the complainant. Further the witnesses have deposed against him under the pressure of CBI. Learned counsel for the appellant has submitted before me that the appellant had applied for leave for a period of ten days w.e.f. 28.03.1995. It would be pertinent to point out that the appellant in his statement under section 313 Cr.P.C. admitted that on 17.01.1995 one Shri Arun Kumar (complainant) proprietor of M/s Garg Hosiery Works, applied for an electricity connection for his factory premises at A-309, Shastri Nagar, vide his application no.PW-1/C. The appellant has further admitted that in February, 1995, he visited the aforesaid factory premises for inspection and asked the complainant to visit his office after ten days so as to find out the progress of his application. The appellant has further admitted as correct that ten days after the inspection visit, the complainant visited his office at Shahzada Bagh, Daya Basti, Delhi, and enquired about his electricity connection. However, the appellant, denied having ever demanded any kind of illegal gratification. I have carefully gone through Exhibit PW-3/A, the attendance register of the concerned DESU office. Perusal of the attendance register shows that the attendance of no employee including D.S. Chauhan has been marked for the date of 28.03.1995 and 29.03.1995. In the column for the name of the employees, eight persons have been mentioned for the month of March, 1995. It is seen that with respect to one Sh. P.D.

Singh, the columns from 17.03.1995 till the seizure of the attendance register on 29.3.1995, no attendance has been marked. Similarly, no attendance has been marked for Sh. V.P. Sharma from the date of 07.03.1995 to 29.03.1995. The entries with respect to one Sh C.D. Sharma are also blank for the entire month of March. Even the attendance column of Smt. Sushila Devi is blank at several places. It is seen that of the eight employees mentioned in the said register, there are incomplete entries with respect to as many as five employees. I am in respectful agreement with the opinion of the learned trial Court that the attendance register is an unreliable document inasmuch as PW-3 (the official time keeper at DESU) has also deposed that the attendance of employees was not marked in the attendance register, EX. PW-3/A after 27.03.1995. In view of the fact that the said attendance register, Exhibit PW-3/A contains incomplete entries with respect to several employees at the said DESU office, the same is held to be unreliable as holding any evidentiary value before this court.

40. Although it is settled position of law that Defence Witnesses are entitled to the same level of reliability and protection and are to be treated at par with prosecution witnesses, however, in the facts of this case, I find the evidence of DW-1 to be unreliable. Ex. PW3/B is the leave application dated 03.04.1995, Agra, addressed by the appellant, D.C. Chauhan to the Assistant Engineer, Zone 422, (D) SKN, DESU, Shahzada Bagh, Delhi. Relevant portion of the said letter is reproduced as under:

"Respected Sir,

In continuation of my previous leave application sent through my father but not received in your office for the reason best known to them.

I am sad to say that on 29.03.95, I had to leave my office in haste on receipt of message (sic message) about the serious illness of my younger brother at Agra. My brother has still not recovered from illness and my physical presence at Agra is essential to look after him.

I may kindly be granted leave for ten days w.e.f. 29.3.95 with permission to leave the station.

Yours faithfully

- sd -

D.S. Chauhan

Inspector – 2 – 422 (D) SKN"

41. A bare perusal of Exhibit PW-3/B shows that the appellant had sought leave for a period of ten days w.e.f. 29.3.1995. This letter is dated 03.04.1995 and has been sent from Agra. In the said leave application, the appellant has himself stated that on 29.3.1995 he had to leave his office in haste on receipt of message of his younger brother at Agra. Thus it is the appellant's own version that he was present in the office on

29.3.1995, contrary to what he has stated in his statement under Section 313 of Cr.P.C. Ex. PW3/B clearly falsifies the stand taken by the appellant that he was on leave on 29.03.1995 (the day of the raid by CBI). I find no force in the contention of learned counsel for the appellant that DW-1 is a reliable witness or that the version of Rajinder (co-accused before the Trial Court) is correct. On the contrary, in view of Ex. PW-3/A (attendance register) relied upon by the appellant himself; Ex. PW-3/B (leave application of the appellant), it can be safely said that the appellant was present in his office on 29.3.1995. I have no doubt in my mind that the said appellant was present in his office at Shahzada Bagh, Delhi, on 29.3.1995 at the time of the raid and that he sneaked away from his office as soon as he got to know that a raid was underway.

42. In view of the totality of the facts and circumstances of this case, I find that the appellant is guilty of having demanded and accepting illegal gratification in terms of money from the complainant (PW-1). PW-1 has clearly deposed against the appellant and established that repeatedly illegal demands were made by the appellant. PW-2, an independent witness, has also stated that the appellant is responsible for his illegal design of having demanded and accepting bribe from the complainant. The appellant has been unable to show before this court as to why should the testimony of PW-2 be not taken into account. The presence of the appellant in his office on 29.3.1995 at the time of raid stands affirmed by the testimony of PW-1; PW-2; PW-

6; attendance register (EX. PW3/A) and the leave application (Ex. PW3/B) dated 03.04.1995 written by the appellant himself from Agra, placed on record. Accordingly, I find no infirmity in the judgment and order on conviction dated 31.05.2001 passed in C.C. No. 53/95 and R.C.No. 25(A)/ 95-DLI/ CBI/ ACB/ New Delhi.

43. The appeal stands dismissed. In case the appellant is on bail, he be taken into custody, so as to serve the remaining portion of his sentence.

G.S. SISTANI, J.

July 20, 2009
'msr//'