

IN THE HIGH COURT OF DELHI, AT NEW DELHI
Crl.A No.73/2001

% **Judgment delivered on July 31st, 2009**

Darshan Lal Appellant
Through : Mr. Anurag Jain, Adv. for the appellant.

Versus

\$ State (CBI) Respondent
^ Through : Mr. Ashiesh Kumar, Adv. For the CBI.

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**

1. The present appeal is directed against the judgment 30.01.2001 and order on sentence dated 31.01.2001 passed by the learned Special Judge, Tis Hazari in Criminal Case No.127/99, RC No.83-A/95. The appellant was convicted to Rigorous Imprisonment (hereinafter referred to as, "R.I.") for a period of two years and a fine of Rs. 10,000/- under Section 7 of the Prevention of Corruption Act, 1988. In default of the payment of fine, the appellant was to undergo RI for a period of six months. The appellant was also convicted under section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 for a period of three years and a fine of Rs. 10,000/-. In default of the payment of fine, the appellant was to undergo RI for a period of six months. Both the sentences were to run concurrently, and

the period of detention if any undergone by the appellant, was to be deducted.

2. The facts of the case as noticed by the learned Special Judge are that a case was registered on the basis of a written complaint of one Sh. Bankey Lal Chauhan regarding demand of Rs.1000/- as bribe by Sh.Darshan Lal ASI, Police Station Vinay Nagar, Delhi, for releasing his cousin, Pawan Kumar and his friend Vikram, otherwise they would be falsely implicated in a case. Sh.Darshan Lal, directed the complainant to come to Police Station Vinay Nagar after 5:00 p.m. On 21.9.1995 while demanding bribe, Darshan Lal had threatened to plant a knife and to send them to jail, if demand was not fulfilled. Since Bankey Lal Chauhan was not willing to pay the bribe, he on 21.9.1995 lodged a complaint to the SP, CBI/ACB, Delhi, on the basis of which a case was registered and one A.G.L. Kaul Inspector was deputed for laying trap. On 21.9.1995, Inspector Kaul arranged for the presence of two independent witnesses and completed the pre-trap formalities. The pre-trap formalities were completed in the presence of two witnesses namely, Mrs.Kiran Saxena, Assistant Director and Mrs.Urmila Malhotra, Dy. Director, Central Translation Bureau. The complainant produced a sum of Rs.1000/- as trap money, which was treated with phenolphthalein powder and practical demonstration regarding the reaction of phenolphthalein powder with Sodium carbonate solution was also given and explained to all members of the raiding party. The tainted amount of Rs.1000/- was kept in the pocket of the shirt of the complainant and he was instructed to

handover the same to Mr.Darshan Lal, ASI only on his specific demand and not otherwise. Mrs.Saxena was asked to act as a shadow witness, in order to overhear the conversation between the appellant and the complainant and to see the transaction of the tainted money. She was also directed to give a pre-arranged signal on completion of the transaction, to the members of the trap party.

3. The trap party left CBI office at 6:00 p.m. and reached near Police Station Sarojini Nagar at about 6:25 p.m. The complainant and shadow witnesses were directed to proceed to the premises of the police station. At about 6:35 p.m. both of them came out and the shadow witness informed that Sh.Darshan Lal had told them to come after half an hour. At 7:15 p.m. both of them again went inside the Police Station and after some time came out and informed that Sh. Darshan Lal was not present at his seat. Again at 7:50 p.m. the complainant and shadow witness went inside the Police Station. At about 8:05 p.m., the pre-arranged signal was received from the shadow witness. The members of the trap party on getting the signal, rushed into the room no.1 of Police Station Sarojini Nagar. Sh.Darshan Lal was challenged and caught. The complainant and shadow witness confirmed regarding the demand and acceptance of bribe by the appellant and keeping the same in the backside pocket of his pants. S.I. Vipin Kumar on the direction of Inspector Kaul recovered the bribed money of Rs.1000/- from the back pocket of trousers of the appellant. The number of G.C. notes so recovered tallied with the numbers mentioned in the handing over memo. The right

hand fingers and back pants pocket of Darshan Lal were washed in two separate freshly prepared solutions of Sodium Carbonate which turned pink in colour and the same were kept in two separate bottles and sealed and signed by the witnesses. During the course of investigation, the sealed bottles containing hand wash and pants pocket wash were sent to the CFSL for chemical examination and as per the report of the Chemical Examiner, the washes gave positive result confirming the presence of phenolphthalein powder and Sodium Carbonate in the solutions. Accordingly appellant was charge-sheeted for the offence punishable under section 7 and 13 (2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988.

4. The appellant has assailed the impugned judgment dated 30.01.2001 and order on sentence dated 31.01.2001 firstly on the ground that the sanctioning authority has failed to apply its mind. Learned counsel for the appellant submits that the sanction in this case was granted without any application of mind and was solely based on the draft sanction, DW1/DA. He submits that as per section 19 of the Prevention of Corruption Act, granting sanction is not a mere formality, and in this case, sanction was granted in a mechanical manner and the reasoning of the Court below is without any basis. While relying upon DW1/DA, learned counsel submits that the CBI had addressed a letter to the Deputy Commissioner of Police, South West District, calling upon them, that in case due to some reason if the department wanted to depart from the draft sanction, the matter may be discussed with the undersigned so that the sanction

given is not found wanting. It is submitted by counsel for the appellant that reading of paragraph 4 of this letter would show that the sanctioning authority was not allowed to apply its mind independently. It is further contended that the sanction order is vague and lacks material particulars as nowhere it has been stated as to what is the material which has been perused and considered by the sanctioning authority, which has accorded the sanction. Mr. Jain, learned counsel for the appellant, strongly submits that even otherwise, the evidence of PW-3, Sh. U.N.B. Rao (sanctioning authority) is not reliable. Learned counsel for the appellant has drawn the attention of the Court to the evidence of PW-3 wherein PW-3 has stated that before according sanction, he had perused all the statements of the witnesses recorded, memos, CFSL report and other relevant documents and was satisfied that there existed a *prima facie* case and thereafter he accorded the sanction. Mr. Jain, learned counsel for the appellant submits that the file of the sanctioning authority was summoned and it was found that besides the draft order of sanction and a report, none of the documents sought to be relied upon by PW-3 were part of the original record. Mr. Jain also contends that the order of sanction does not mention that the sanctioning authority prior to grant of sanction, had perused documents such as the statements, memos, statements of witnesses, CFSL report and other relevant documents. Learned counsel submits that application of mind prior to the grant of sanction is a mandatory requirement and in support of this plea, counsel relies upon the decision of the Apex Court in the case of

State of Karnataka Vs. Ameer Jan, reported at AIR 2008 SC 108 and more particularly relies on para 7.

5. Learned counsel for the appellant submits that cross-examination of PW-1 would show that PW-1 had made material improvements, besides there are contradictions in his statement and he is not a trustworthy and reliable witness. It is contended that Bankey Lal was rather himself a shadow witness of the CBI and was used in the trap. The conduct of the Bankey Lal is unusual inasmuch as the complainant, Bankey Lal had stated in the complaint that Pawan Kumar and Vikram were related to him, however, during cross-examination he was unable to establish any relationship between himself, Pawan Kumar and Vikram and thus this shows that there was no motive or reason for Bankey Lal to make a complaint to the CBI against the appellant herein. It is next contended that admittedly both, Vikram and Pawan Kumar, were already arrested, therefore, the appellant could have been of no help to the complainant. It is thus contended that the story in this case is a false and concocted. He also submits that there was absolutely no motive nor any reason to show as to why the appellant would ask for any bribe in view of the fact that admittedly both Pawan Kumar and Vikram had already been arrested, and there was no ground for him to falsely implicate them or show any favour to Pawan and Vikram. It is also submitted that the trial court has infact convicted the appellant on a mere possibility. The learned trial Court Judge has observed in para 39 of the Judgment that Pawan and Vikram were arrested and both of them were in the locker of

the police and thus possibility of demand of bribe by the appellant from them cannot be ruled out.

6. He also submits that there are deviations and there was no occasion for PW-2 to witness the exchange of money as there was no possibility of this witness to be present at the time when the alleged money was exchanged and even otherwise it was dark. He thus contends that no reliance can be placed on the testimony of PW-2. He also submits that in these circumstances the appellant could not have been convicted as the order of conviction can only be passed when prosecution has been able to establish its case beyond any shadow of doubt. Learned counsel for the appellant contends that there is a contradiction with regard to the nature of conversation which took place between the complainant and the appellant as described by PW-1 as well as by PW-2. This by itself would show that the testimony of these witnesses are unreliable, and note of which has also been taken by the trial court.
7. He also submits that there are material contradictions as to where the money was kept after the same was received. It is not clear whether the money was kept in the back pocket of the pant or whether the money was kept in the right side pocket of the pant. This lapse according to the counsel for the appellant is material and goes to the root of the matter. Receipt of money is alleged to have been witnessed by PW-1 and PW-2, however, there are material contradictions with regard to the place where the money was demanded and accepted.

8. Mr. Anurag Jain also submits that PW-6, Munni Devi was a material witness of the prosecution, who had turned hostile. PW-6, Munni Devi did not support the case of the prosecution and there is no reason to disbelieve her testimony as she was not related to either Bankey Lal or the appellant herein. Her evidence is independent and should have been relied upon and considered by the trial court.
9. It is also contended that the complaint was admittedly written by one Vijay Kumar, however, prosecution has failed to examine Vijay Kumar as a witness and this prime evidence and a necessary link, which is missing in the case. This submission is also relevant in view of the fact that the time gap between the demand of bribe and the complaint sought to have been made was very short.
10. It is further submitted that Malkhana Moharar was not examined as the washes of the bottle were to remain with the Malkhana Moharar and further, the constable who took the sample bottle for examination has also not been examined. Thus a very important link which would establish the commission of the offence, is missing.
11. It is also submitted that the evidence of PW-5 would show that at the time when the raid was conducted, S.I. Ranbir Singh was present in the room, However, S.I. Ranbir Singh had refused to witness the post raid proceedings and this witness, i.e. PW-5 was directed to witness the same. Counsel submits that non-production of S.I. Ranbir Singh by the prosecution is fatal to their case, in view of the fact that he was a natural witness present at

the spot and had witnessed the raid and yet he was not examined by the prosecution. It is also submitted that it was necessary for the prosecution to produce S.I. Ranbir Singh, as the investigation by the prosecution must be fair and just, and this witness was the person, who would have given true and correct picture of the innocence of the appellant.

12. *Per contra* learned counsel for the respondent, CBI submits that the prosecution has been able to establish their case beyond any shadow of doubt. The pre-trap formalities were conducted by the raiding party comprising of two independent witnesses, PWs- Munni Devi and Kamlesh, before they proceeded to the Police Station. He further submits that the appellant was caught red handed taking bribe. The currency notes that were marked for giving, were sprinkled with phenolphthalein powder and when the appellant handled them and dipped his fingers in the Sodium Carbonate solution, the same turned from colourless to pink. He further submits that the sanction was granted after due application of mind. He relies upon the evidence of PW-3, who has clearly stated in his testimony that he had carefully perused the documents and thereafter accorded the sanction. Counsel for CBI has placed reliance upon **C.S. Krishnamurthy v. State of Karnataka** reported at (2005) 4 SCC 81 and more particularly paragraphs 7 and 9 of the same. He also submits that merely because the sanction was granted as per the draft order, that by itself cannot be a ground to raise the plea of non-application of mind and relies on **R. Sundararajan Vs. State**, (2006) 12 SCC 749 and more particularly on paragraphs 12 – 14.

13. Counsel for CBI contends that the evidence of the trap laying officer is trustworthy and reliable and in fact that itself can be the sole ground for conviction of appellant and relies on **State of U.P. Vs. Zakaullah** (1988) 1 SCC 557 and more particularly paragraph 12 of the same. He also submits that non-examination of Malkhana Moharar cannot be proved fatal to the case of the prosecution, as putting of phenolphthalein powder on the notes is not as per any statutory provision but for the satisfaction of the officials and for this purpose he placed reliance on paragraph 13 of the above said judgment.
14. I have heard learned counsel for the parties and minutely scrutinized the evidence on record.
15. The submissions of learned counsel for the appellant can be summarized as under:
- i. sanctioning authority has failed to apply its mind inasmuch as the sanction order is vague and lacks material particulars.
 - ii. the evidence of complainant, Bankey Lal (PW-1) is unreliable.
 - iii. there was absolutely no motive nor any reason to show as to why the appellant would ask for any bribe in view of the fact that admittedly both Pawan Kumar and Vikram had already been arrested.
 - iv. the evidence of shadow witness, PW-2 is unreliable.
 - v. there are material contradictions in the evidence of witnesses of the prosecution with regard to where the money was kept after the same was received

(back pocket or right side pocket) and contradictions as to the place of demand and extraction of bribe.

vi. PW-6, Munni Devi, a material witness, did not support the case of the prosecution.

vii. Vijay Kumar (the person who wrote the complaint); Malkhana Moharar; constable who took the sample bottle for examination; and S.I. Ranbir, have not been examined by the prosecution, and the same is fatal to the case of the prosecution.

16. The submissions of learned counsel for the respondent can be summarized as under:

i. prosecution has been able to establish its case beyond any shadow of doubt.

ii. appellant was caught red handed.

iii. sanction was granted after due application of mind.

iv. merely because the sanction was granted as per the draft order, that by itself cannot be a ground to raise the plea of non-application of mind.

v. evidence of the trap laying officer (PW-8) is trustworthy and reliable and in fact that itself can be the sole ground for conviction.

vi. non-examination of Malkhana Moharar cannot prove to be fatal to the case of the prosecution.

17. In the facts of this case, it is seen that the appellant herein was convicted by the learned trial Court Judge 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.”

18. The prosecution in support of its case examined ten (10) witnesses. The statement of the accused (appellant herein) was recorded under section 313 Cr.P.C., and one witness was examined by the defence.
19. Learned counsel for the appellant has strongly contended before me that the sanctioning authority did not apply its mind at the time of granting sanction. While submitting that PW-3 copied in *verbatim* the draft sanction order sent to it by the CBI, learned counsel has submitted that the sanctioning order is invalid in law. In the case of **R. Sundarajan Vs. State**, reported at (2006) 12 SCC 749, it was held:

“**12.** There is no dispute that the sanction order was passed by the competent authority.

13. Dr. A. Chelliah, learned counsel for the appellant, however, submitted that the sanction order was vitiated as there was no material on which it could have been passed. We do not agree.

14. In this connection, it may be mentioned that we cannot look into the adequacy or inadequacy of the material before the sanctioning authority and we cannot sit as a court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same in great detail. Only because some of the said materials could not be proved, the same by itself, in our opinion, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority, and hence we do not agree that the sanction order was in any way vitiated."

20. Similarly in the case of **C.S. Krishnamurthy Vs. State of Karnataka**, reported at (2005) 4 SCC 81, the Apex Court held as under:

"7. This sanction order was proved by Mr V. Parthasarthy, Deputy General Manager of Bangalore Telecom as PW 40, he was competent authority to accord sanction and he accorded the sanction for prosecution of the accused for the alleged offence on 28-2-1990 as per Ext. P-83. He deposed that SP, CBI sent a report against the accused and he perused the report and accorded the sanction as per Ext. P-83. He deposed that he was satisfied that there was a case for prosecuting the accused for the alleged offence. He admitted that he received a draft sanction order and a draft sanction order was also examined by the Vigilance Cell and then it was put up before him. He also deposed that before according sanction he discussed the matter with the Vigilance Cell. He also admitted that he was not a law man, therefore, he discussed the legal implication with a legally qualified officer in the Vigilance Cell. He has denied the suggestion that he did not apply his mind in according sanction. It is no doubt true that sanction is necessary for every prosecution of public servant, this safeguard is against the frivolous prosecution against public servant (sic) from harassment. But, the sanction should not be taken as a shield to protect corrupt and dishonest public servant. In the present case, a perusal of the sanction order itself shows that Shri C.S. Krishnamurthy's income from all known sources between the period from 25-5-1964 to 27-6-1986 was Rs 7,91,534.93. That income was from salary, GPF advances, rental income, interest amount from bank accounts and loan amount received from LIC towards house constructions, the dividend income, interest amount and gain in respect of chits received from Navyodaya Sahakara Bank, Vyyalikaval House Building Cooperative Society, Vishalam Chit

Funds and Reliance Industries, loan received from friends and family members, gain towards sale of scooter/car, sale proceeds of jewellery and income received by family members and the total expenditure incurred by the accused during this period is Rs 2,41,382.85 and the total assets acquired by the accused both movable and immovable from 25-5-1964 to 27-6-1986 is Rs 9,51,606.66p. Therefore, the accused has to account for difference between the two. The sanction itself shows that there is something to be accounted for by the accused. When the sanction itself is very expressive, then in that case, the argument that particular material was not properly placed before the sanctioning authority for according sanction and the sanctioning authority has not applied its mind becomes unsustainable. When sanction order itself is eloquent enough, then in that case only formal evidence has to be produced by the sanctioning authority or by any other evidence that the sanction was accorded by a competent person with due application of mind. In the present case the learned Additional Sessions Judge took a very narrow view that all the papers were not placed before the court to show that there was proper application of mind by the sanctioning authority. The view taken by learned Special Judge was not correct and the learned Single Judge correctly set aside the order. In this connection we may refer to a three-Judge Bench decision of this Court in *Indu Bhusan Chatterjee v. State of W.B.* in which a similar argument was raised that the sanctioning authority did not apply his mind to the facts of the case but merely perused the draft prepared by the police and did not investigate the truth of the offence. The learned Judges after perusing the sanction order read with the evidence of Mr Bokil held that there was a valid sanction accorded by a competent person. In this case, the accused was charged under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act. The accused was paid a sum of Rs.100 in marked currency as illegal gratification at Coffee House for clearing some claims entrusted to him and same was found in his possession. Sanction for prosecution of the appellant was sought from PW 5. Mr Bokil as a competent authority to grant sanction, came in the witness box and he deposed that he accorded sanction for prosecution after proper application of mind. On these facts the learned Judges observed that Ext. 6 on the face of it disclosed a valid sanction for prosecution. In the sanction order it was disclosed that the accused had accepted a bribe of Rs.100 for clearing claim cases and he was trapped. Though the sanctioning authority who came in the witness box could not answer some questions in cross-examination, yet this

Court held that sanction itself is eloquent read with evidence of the sanctioning authority and the same is valid. In the present case, the facts contained in the sanction order read with evidence of the sanctioning authority makes it clear that sanction was properly accorded and is valid.

8. ****

9. Therefore, the ratio is sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. In the present case, the sanction order speaks for itself that the incumbent has to account for the assets disproportionate to his known source of income. That is contained in the sanction order itself. More so, as pointed out, the sanctioning authority has come in the witness box as Witness 40 and has deposed about his application of mind and after going through the report of the Superintendent of Police, CBI and after discussing the matter with his Legal Department, he accorded sanction. It is not a case that the sanction is lacking in the present case. The view taken by the Additional Sessions Judge is not correct and the view taken by learned Single Judge of the High Court is justified.

10. In the case of *Balaram Swain v. State of Orissa*⁴ the High Court reversed the finding of the trial court that the sanctioning authority has not applied his mind on the materials placed before him. It was observed in para 9 that the sanctioning authority, namely, PW 4 has stated on oath that he perused the consolidated report of the vigilance and fully applied his mind and thereafter issued the sanction. The admission of PW 7 in that case that the entire record was not looked into, was held to be not fatal to the sanction. The finding of the High Court was affirmed by the Apex Court. Likewise, PW 40 i.e. the sanctioning authority in the present case, has gone through the report of the Superintendent of Police and after discussing the matter with the Legal Department has accorded sanction. That is enough to show that there is due application of mind in the present case."

21. The court is not to go into the technicalities of the sanctioning order. Justice cannot be at the beck and call of technical infirmities. The Court is only bound to see that the sanctioning authority after the careful consideration of the material that is brought forth it, has passed an order that shows application of mind. Applying the principles laid down by the Apex court to the

facts of this case, I have carefully gone through the sanctioning order, Ex. PW-3/A as well the statement given by PW-3 before the Court. PW-3, Shri U.N.B. Rao, Addl. Commissioner of Police (Administration) has stated in Ex.PW-3/A (sanction order), that all the material placed before him had been carefully perused by him and it was after due consideration that he had accorded the sanction. Relevant portion of the sanction order is produced here under:

“And whereas, I, U.N.B. Rao, Deputy Commissioner of Police, South West District, n. Delhi being the Authority Competent to remove Shri Darshan Lal, ASI from office, after fully and carefully examining the materials placed before me in regard to the said allegations and circumstances of the case, consider that the said Shri Darshan Lal should be prosecuted in the court of law for the said offence.”

22. PW-3 further stated on oath that in September, 1995, he was posted as DCP/South-West and he accorded sanction Ex.PW-3/A and which bears his signatures. PW-3 has very categorically stated that after perusing of all the statements of the witnesses that were recorded, memos, report of the CFSL and other relevant documents, he found and was satisfied that a *prima facie* case was made out against the appellant under Section 7 read with Section 13 of the Prevention of Corruption Act and thus the sanction was accorded. PW-3 withstood the cross-examination by counsel for the appellant and did not budge from his stand that he had taken into account all the material on record, before according sanction for prosecution of the appellant. PW-3 further denied the suggestion that he did not peruse the aforesaid documents as stated in the examination-in-chief. In view of above, I find no merit in the contention of the counsel for the appellant that the sanctioning authority did not

apply its mind before according sanction. The learned trial court judge while dismissing this contention of the counsel for the appellant has rightly relied upon several judgments *inter alia* **Gurubachan Singh Vs. State** reported at 1970 Cri.LJ. 674, wherein it was held that the intention of the Legislature in providing for a sanction U/s 6 of the Act for the offence under the [Old] Act is to afford a reasonable safeguard for the public servant in the discharge of his official duties. The sanction does not intend that a public servant who is guilty of the particular offence mentioned in that section should escape the consequences of his criminal act by raising the technical plea of invalidity of the sanction. The section safeguards the innocent but does not shield the guilty person.

23. Another case relied upon by the learned trial Court Judge was **Central Bureau of Investigation Vs. V.K. Sehgal & Another**, reported at 1999, Cri.LJ 4593, wherein it was held that the absence of sanction or invalid sanction to prosecute public servant cannot be ground to set aside conviction and sentence for offence under P.C. Act, 1947. It was further held that while dealing with the appeal filed against the conviction and sentence of any offence mentioned in 1947 Act, the legal position is that no such conviction and sentences shall be altered or reversed merely on the ground of absence of sanction much less on the ground for want of competency of the authority, who granted the sanction.
24. In another case law reported as **State of Madhya Pradesh & Ors. Vs. Jagdish Prasad Gupta**, reported at JT 2000 (1) SC 518, while dealing with the provision of Prevention of Corruption Act, 1988, it was laid down that:

“Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act.”

25. In my considered opinion, it would be incorrect to conclude that simply because the sanctioning order Ex. PW-3/A is a virtual reproduction of the draft sanction letter Ex. DW1/DA, the same would be deemed to have been passed without any application of mind. There is no necessary concomitant corollary between the two. Even otherwise, while dismissing this contention, it was specifically observed by the trial Court Judge that although the sanction order, Ex.PW-3/A is almost the verbatim reproduction of the draft sanction order, Ex.DW-1/DD, but this draft sanction, Ex.DW-1/DD was not put to PW-3 at the time of his cross-examination. I am in firm stead with the opinion of the learned trial court judge that there is no force in the contention of the learned counsel for the appellant that the sanctioning order contains any infirmity or any irregularity.
26. The next point urged before me by learned counsel for the appellant is that the conduct of PW-1 (Bankey Lal Chauhan) was unusual, PW-1 has made material improvements, there are contradictions in his statement and he is not a trustworthy and reliable witness. It would thus be relevant to first analyse the evidence of PW-1. PW-1 has deposed in his examination-in-chief that Pawan Kumar is the son of his uncle and Vikram is his friend. Both of them are his neighbours. On 21.9.1995 ASI Darshan Lal came to their *Jhuggi* and took Pawan Kumar and Vikram in Police Station Vinay Nagar and put them in lock up on 21.9.1995 in the evening at about 4:00 or 5:00 p.m. He went to the Police Station

Vinay Nagar, to find out about his cousin Pawan Kumar, where he met ASI Darshan Lal, whom he identified correctly in Court. On his enquiring about detention of Pawan Kumar, ASI demanded Rs.1000/- for releasing Pawan Kumar and asked for money the same evening. PW-1 went to CBI office and met S.P./ CBI (Mr.Dutta) to whom he narrated the facts and submitted his written complaint (PW-1/1). He deposed that the complaint has been written in the hand writing of his brother, Vijay Kumar, but was signed by him at the encircled portion. This complaint was handed over by S.P./CBI to one Inspector Kaul and two witnesses both ladies were called. They were introduced to him and his complaint was shown to the witnesses, who asked him questions regarding contents of the complaint. Although, he did not remember the name of the said ladies. This witness produced Rs.1000/-. Number of notes were noted down on a piece of paper which was signed by him as well as by the witnesses (PW-1/B). Tainted notes were kept in his pocket by Mr.Kaul. He was directed to give the tainted notes to the appellant only in the event of specific demand. One of the said ladies was directed to accompany as shadow witness and to watch the proceedings as well as the conversation. She was also directed to give signal by placing hand over her head in the acceptance of bribe by the accused. She was also told to introduce herself as the employer (*Malkin*) of Bankey Lal Chauhan. Before leaving for the raid, the member of the raiding party were searched and they were not permitted to carry any cash. The pocket of the I.O. contained empty bottle seal of CBI, sealing material etc. He further

deposed that the raiding party left the CBI Office around 6:00 p.m. and reached Vinay Nagar Police Station. The vehicle was stopped at post office near Police Station. PW-1 as well as the shadow witness went inside the Police Station. They went to the room of the appellant. On seeing the lady appellant was annoyed and aksed "*Madam ko kui lai? Inko bhej do.*" PW-1 replied that she was his employer. Thereafter the appellant told PW-1 to come half an hour later and they both came out of the police station. PW-1 further stated that after half an hour, they both went to the room of the appellant, but he was not available, and they came out. After half an hour again, they again went to the room of the appellant and he was present there. Appellant asked, "*Paisa laya hai ?*" PW-2 replied "*Sahib paisey laya hoon, ab to meri madad karo.*" On this the appellant replied "*Han karta hun*". Thereafter, they all came out of his room in the corridor and PW-1 handed over the tainted money (Rs.1000/-) to the appellant, who accepted the money in his right hand and kept it in the right hand side back pocket of his pant. Meanwhile, shadow witness gave the pre-arranged signal and the CBI team rushed to the spot. Two CBI officials apprehended the appellant and Inspr. Kaul challenged the appellant that he had received bribe. Thereafter, Additional SHO, Smt. Kamlesh was summoned to the spot. Shadow witness told CBI official about the acceptance of bribe by the appellant. Inspr. Kaul searched the appellant and recovered the tainted money of Rs.1000/- from the right hand side back pocket of the pant of the appellant. CBI officials then compared the numbers of the recovered GC notes

with those already noted down in Ex.PW-1/B. The numbers tallied. In a glass of water, a chemical powder was dissolved, and the appellant was made to dip his right hand fingers in the said solution. The solution turned from colourless to Pink. The said right hand wash was transferred into a clean empty bottle, its mouth was covered, rapped with a piece of cloth and sealed with the seal of the CBI. Identification labels were prepared, pasted on the said bottle and signed by the witnesses. Similarly, the inner lining of the right hand side back pocket pant of the appellant was dipped in a colourless solution prepared and which turned pink. The solution was transferred into an empty bottle and sealed with the seal of the CBI. Recovery memo was prepared at the spot, which is Ex.PW-1/D. PW-1 further identified the case property i.e. Rs.1000/- and stated that Rs.100/- G.C. notes are Ex.P-1 to P-4 and Rs.50/- GC notes are Ex.P-5 to P-16. As per PW-1, one, Munni Devi, was also present at the spot at the time of post-raid proceedings and that it was correct to say that name of the shadow witness is Kiran Saxena and she accompanied him to the police station.

27. At this stage, learned PP sought to question PW-1. In the cross-examination by learned PP for the CBI, PW-1 deposed that he did not remember whether or not he had handed over the tainted money to the appellant in his room while he was sitting on his chair.
28. Learned counsel for the appellant also cross-examined PW-1 and wherein PW-1 stated that no criminal case has ever been registered against him at police station Sarojini Nagar or

Chanakya Puri. Learned counsel for the appellant has submitted before me that PW-1 is unreliable in view of his admission that Pawan Kumar is not his real brother and that he is not related to him through family or by blood, contrary to what he has stated in his examination-in-chief. I have carefully gone through the examination-in-chief as well as the cross-examination of PW-1. Although I find that PW-1 has stated in his cross-examination that Pawan Kumar is not the son of his real maternal uncle but he has clarified that when he came to Delhi after leaving his family, since then, he has been living with the father of Pawan Kumar and therefore, he considers Pawan Kumar to be his brother. PW-1 further denied the suggestion that the explanation given by him was incorrect. Therefore, I find no force in the contention of learned counsel for the appellant that this minor variation goes to the root of the matter.

29. PW-1 has further stated in his cross-examination that it was correct to say that on 21.09.1995, when he went to meet ASI Darshan Lal in the Police Station, at that time Pawan Kumar as well as Vikram were in the lock up. PW-1 withstood the incisive cross-examination and went on record to deny that the appellant did not demand any money or that a false complaint had been lodged against him. I find no merit in the contention of the learned counsel for the appellant that there are any material contradictions in the version of PW-1 which go to the root of the matter so as to compel me to negate the entire version of PW-1. PW-1 has in clear terms deposed that the appellant had asked and received the illegal gratification in terms of the money. PW-

1 in his cross-examination by counsel for the appellant, further deposed that on 29.01.1995, at the time of the initial demand, appellant asked him to meet him inside the police station in the evening after 6.00 P.M. PW-1 further stated in his cross-examination that it was incorrect to suggest that his complaint Ex.PW-1/A was false. He further stated that he did not remember whether or not he mentioned in his statement before the CBI that ASI Darshan Lal had told him to send the shadow witness away or that he replied that she was his employer. The witness was confronted with the statement Ex.D/A wherein it was not so recorded. As per PW-1, on the first visit, ASI DARshan Lal asked him to come after some time and also enquired whether or not PW-1 had brought the money. This conversation took place in the presence of the shadow witness. After coming out from the room of appellant, Darshan Lal, stated that he did not tell the CBI team that he had been asked to come after half an hour or that he had enquired about the money. After half an hour when PW-1 along with the shadow witness went to the room of appellant, he was not present at his seat. Munni Devi was also not present there, though she was present in the said room at the time of his previous visit. After waiting for 20-25 minutes when they again went to the room of appellant, Darshan Lal, was present there, as also Munni Devi. PW-1 stated that it was correct to say that one Sub-Inspector was also present in the room of the appellant at that time. However, he refused to admit or deny whether the name of the said Sub-Inspector was Ranbir Singh. PW-1 has further deposed that he had taken out the tainted money from

the pocket of his shirt and passed on the same to the appellant. After the pre-appointed signal, the appellant was apprehended by the raiding party in his room. PW-1 stated that he does not know if hot words were exchanged between SI Ranbir and the CBI officials. Further, as per PW-1, one CBI official had searched the appellant and recovered the tainted money, but PW-1 stated that he was sure that the said person was not Mr. Kaul. In light of the deposition of PW-1, I am of the considered opinion that there are no material contradictions in his evidence, which go to the root of the matter. Minor contradictions are bound to creep in when a long time has passed between the date of the incident and the recording of the evidence before the Court. I also find that there is no force in the argument of counsel for the appellant that there was absolutely no motive nor any reason to show as to why the appellant would ask for any bribe in view of the fact that admittedly both Pawan Kumar and Vikram had already been arrested. The appellant in his statement under section 313 Cr.P.C. has admitted that on 21.09.1995, after coming back from the Court, at about 7 p.m., he had arrested Pawan Kumar and Vikram under FIR No. 483/95 dated 20.09.1995 and put them in lock-up of the police station. PW-1 has stated that the appellant had asked for bribe. Since the factum of Pawan Kumar and Vikram being in lock up is admitted, I have no reason to disbelieve the testimony of PW-1.

30. PW-2, Smt. Kiran Saxena, shadow witness, has wholeheartedly supported the case of the prosecution. PW-2 has deposed that on 21.09.1995 she went to the CBI office to be a witness in this

case. At the CBI office, PW-2 met the complainant, Bankey Lal and Inspr. Kaul. She had a brief conversation with the complainant and satisfied herself about the genuinity of the allegations contained in the complaint. Thereafter, Rs.1,000/- in the denomination of 4 GC notes of Rs.100 and 12 GC notes of Rs.50 were marked to be given to the appellant in case of any demand made by him. The number of those GC notes was noted down as Ex.PW-1/B, which bears her signatures at portion-B. Those GC notes were treated with a chemical powder and thereafter handed over to the complainant, Bankey Lal. As per PW-2, she was directed to accompany the complainant to the spot, with a view to watch the proceedings and in case of acceptance of bribe, she was to give a signal by scratching her head. PW-2 has further deposed that she along with PW-1 left the CBI office at around 5.45 p.m. and reached Sarojini Nagar police station. Thereafter, she along with PW-1 went to the room of appellant, Darshan Lal, who was busy in his work at that time. PW-2 correctly identified the appellant, who was present in the court. The appellant asked PW-1 to come after sometime and enquired as to her identity. And to this PW-1 replied *"MADAM HAI MAIN INKE SAATH KAAM KARTA HU"*. On this appellant said *"MADAM KO KYON TAKLEEF DI"*. PW-2 has further corroborated the verion of PW-1 that it was on the third occasion that the appellant asked the complainant *"PAISE LAYE HO"*. The complainant replied in the affirmative and said *"LAIYA HUN"*. Thereafter some conversation regarding the money took place and the appellant said *"PANDRAH SO DO"*. PW-2 requested the

appellant *"ISSE KAM LE LIJYE"*. On this, the appellant, took them outside the room and said *"ACHA LAIYE LAIYE JALDI KIJYE"*. The complainant said *"MERA KAAM KAR DIJYEGA"*. And the appellant replied *"CHINTA MAT KARIYE"*. PW-2 further corroborated that PW-1 gave the tainted money to the appellant who kept the same in the back pocket of his pant. Thereafter, PW-2 and PW-1 proceeded to go out of the building and the appellant went to his room. PW-2 gave the pre-arranged signal and the appellant was caught red handed at the spot. PW-2 has further affirmed that the tainted money was recovered from the appellant, the numbers of the currency notes tallied with those already recorded and further that the Sodium Carbonate solution was prepared and the appellant was made to dip his fingers in the said solution, which turned from colourless to Pink. Thereafter, the bottle was sealed with the seal of CBI. PW-2 further stated that the aforesaid recovered GC notes, bottles of washes, pant of the appellant, etc. were seized by the CBI vide recovery memo Ex.PW-1/D and which bears her signature at encircled portion 'B'. The appellant was arrested and his personal search was conducted vide Ex.PW-2/A. PW-2 further correctly identified the case property at the time of her deposition in the court.

31. In the cross-examination by learned counsel for the appellant, PW-2 deposed that apart from this case, she had never been arrayed as a witness by the CBI. PW-2 further stated that the appellant had accepted the bribe money outside his room in the aforesaid dark area. The appellant was apprehended by the CBI officials in his room. PW-2 denied the suggestion that tainted

money was not recovered from the appellant. She further denied that that day before appearing as a witness she was made to refresh her memory by the CBI officials by going through the copy of her statement recorded under Section 161 of the Cr.P.C and also denied that she was a tutored witness and had been deposing falsely.

32. PW-7, Km. Urmil Malhotra (Recovery Witness), has also stood by the case of the prosecution and named the appellant as the person from whom the tainted money was recovered. PW-7 has stated that on receipt of signal, all the members of the raiding party went inside the police station and apprehended the appellant, Darshan Lal. Search of the appellant was conducted and the tainted money was recovered from the back pocket of his pant. PW-7 has further gone on record to say that the numbers of the currency notes recovered from the appellant, tallied with the currency notes that were marked to be given to the appellant in case of any demand by him. As per PW-7, she signed the personal search memo Ex.PW-2/A; recovery memo, Ex.PW-1/D; site plan, Ex.PW-7/A; and facsimile of the seal, Ex.PW-2/B. She further identified the currency notes as Ex.P-1 to P-16 and Ex.P-21 as the pant of the appellant. This witness was cross-examined and wherein she denied that she was deposing falsely or that she was a tutored witness.

33. Both PW-2, shadow witness, and PW-7, recovery witness, are independent witnesses and there is nothing on record to suggest that they had any previous enmity or grudge against the appellant. The two witnesses have convincingly nailed the

appellant and have withstood the contortionist cross-examination. I find the version of PW-2 and PW-7 to be trustworthy and reliable.

34. Further the case of the prosecution has been corroborated in material particulars by PW-5, Smt. Kamlesh, who was posted as an Additional SHO, Sarojini Nagar on 21.09.1995. PW-5 has particularly stated that she joined the post-raid proceedings and has corroborated the entire version of the prosecution. PW-5 denied the suggestion that no post-raid proceedings took place in her presence or that she had falsely nailed the appellant.
35. PW-8, Sh. A.G.L. Kaul, Inspr. CBI, has also deposed that in September, 1995, he was posted in the Anti-Corruption Branch of CB, Delhi. PW-8 has also lend credence to the case of the prosecution. PW-8 has stated that at 6.25 p.m. the trap team including the complainant and independent witnesses reached Police Station Sarojini Nagar. The members of the trap party took their position while the complainant and the shadow witness were asked to go inside the police station and meet Darshan Lal. PW-8 has further stated that after a few minutes they both returned and reported that Darshan Lal was not inside his room and that they had been told that Darshan Lal was not likely to return any time soon. Thereafter the complainant and the shadow witness went inside the police station twice or thrice to verify whether Darshan Lal was available or not. Last such attempt was made at around 7.30 p.m. At around 8.00 p.m., the independent witness gave the pre-arranged signal and whereafter, PW-8 along with members of the trap party, rushed

inside the police station. On the pointing out of the shadow witness, Darshan Lal was apprehended from both the wrists. PW-8 disclosed his identity and challenged Darshan Lal to have demanded and accepted bribe from the complainant. The GC notes were got recovered and found to tally with the numbers already noted down in the annexure of the handing over memo. This witness has also affirmed that the sodium carbonate solution was prepared which turned from colorless to pink after the appellant dipped his right hand fingers in the solution and also when the lining of the back right side back pocket pant was dipped in the solution.

36. Although, PW-6, Munni Devi resiled from her statement given before the police and was declared a hostile witness, however, the case of the prosecution cannot be defeated on this ground alone in view of the fact that PW-1, complainant; PW-2, shadow witness have affirmed that the appellant demanded illegal gratification in terms of money and accepted the same. PW-5, Additional SHO; PW-7, recovery witness; and PW-8, trap laying officer, have all affirmed that the tainted money was recovered from the appellant.

37. Learned counsel for the appellant has next urged before me that there are material contradictions as to where the money was kept after the same was received. It is urged that it is not clear whether the money was kept in the back pocket of the pant or whether the money was kept in the right side pocket of the pant. In the facts of this case, on a closer reading of the evidence, it is seen that PW-1 has stated in his examination-in-chief that the

appellant kept the tainted money in his right hand side back pocket of his pant. The money was recovered from the right hand side back pocket of his pant and further that the inner lining of the right hand side back pocket of the pant of the appellant was dipped in the chemical solution. In the cross-examination by the learned PP, PW-1 has stated that he cannot admit or deny if the money was recovered from the right side pant pocket of the appellant by SI Vipin Kumar. In the cross-examination by the learned counsel for the appellant, PW-1 stated that he did not remember if he had stated in his statement before the CBI that the appellant kept the tainted money in his right side pocket of the pant. PW-2, shadow witness has stated that the appellant kept the tainted money in the back pocket of his pant. And that the inner lining of the right back pocket of the pant was dipped in the chemical solution. In the cross-examination by the learned counsel for the appellant, PW-2 denied the suggestion that the appellant did not accept the bribe amount or that he did not keep the same in the right back pocket of his pant. PW-5 has also stated that the back pocket of the pant of the appellant was dipped in the chemical solution which turned from colourless to pink. PW-7, recovery witness has also stated that the money was recovered from the back pocket of the pant of the appellant and that inner lining of the hip pocket of the pant was dipped in the chemical solution. PW-8, trap laying officer has deposed that the tainted money was recovered from the right side back pocket of the trousers of the appellant and further that the inner lining of the back pocket of

the pant of the appellant was dipped in the chemical solution. Thus all the witnesses have stated that the money was recovered from the back pocket of the pant of the appellant. Further as observed by the trial Court Judge, the appellant in his statement under Section 313 of the Cr.P.C. simply states that no money was recovered from him. He has not specifically denied the prosecution story that no money was recovered from his pant pocket. There is no force in the contention of the counsel for the appellant that there is any anomaly with regard to whether the money was kept in the back pocket of the pant or whether the money was kept in the right side pocket of the pant. Even otherwise, it is immaterial whether the money was kept in the right hand side pant pocket or in the back pocket of the pant. The relevant portion is that the money was recovered from the appellant, the same having been affirmed by the prosecution convincingly.

38. Further it has been contended by the appellant that there are material contradictions with regard to the place where the money was demanded and accepted. Learned trial court Judge has observed in his judgment that though it is correct that the initial case of the prosecution was that the appellant had demanded and accepted the money in his office room whereas in his evidence before the Court, PW-1 has stated that the appellant came out of his room in the corridor and at that place PW-1 handed over the tainted money to him. Similarly, PW-2 has stated that the appellant took them outside the room on a side which was dark and at that place the appellant accepted the

money. The pertinent question for a conviction under section 7/13 of the Prevention of Corruption Act is the *factum* of proof of demand and acceptance of bribe by a public servant. I am in firm agreement with the learned trial court judge that any minor deviation with regard to the place of acceptance of bribe cannot sound a death knell to the case of the prosecution. To say that the appellant be let off on this sole ground, does not find merit with me. In the present case, PW-1, the complainant, and PW-2, shadow witness, have stated in their evidence that the money was accepted by the appellant outside the room. Learned trial court judge has further observed that as per the site plan, Ex.PW-7/A, just outside the room of the appellant there was a corridor and the money was accepted outside the room. So under these circumstances, demand and acceptance of the bribe money stands fully proved. The appellant was caught red handed and the tainted money was recovered from him.

39. In so far as the question of not arraying Vijay is concerned, I also find there to be no merit in the contention of the counsel for the appellant. PW-1 has deposed in his cross-examination that when ASI Darshan Lal demanded bribe from him at that time no one else was accompanying him and that though Vijay had accompanied him to the police station Vinay Nagar, but because of fear of the police, he did not enter the police station and he alone met ASI Darshan Lal. PW-1 has further stated that after ASI Darshan Lal demanded an illegal gratification in terms of Rs.1000/- from him then the appellant directly went to the CBI office to lodge a complaint against ASI Darshan Lal. Vijay Kumar

had also accompanied him to the CBI office. Vijay Kumar accompanied him till the entrance door of Shri Datta, S.P., Anti Corruption. PW-1 stated that while he went inside the room, Vijay waited outside in the gallery. As per PW-1, after leaving the police station, they sat in a park on their way to CBI office and where complaint, Ex.PW-1/A, was written by Vijay Kumar. PW-1 has further deposed in his cross-examination that on 21.9.1995 at the time of the initial demand, appellant had told him that he would meet him in the police station in the evening after 6.00 p.m. After coming out of the room of ASI Darshan Lal, he did not tell Vijay Kumar anything about the demand made and only told him at the time when he had asked Vijay Kumar to write a complaint for him. In view of the above deposition, it can be safely said that there was no need for the prosecution to array Vijay Kumar as a witness, as he had merely written the complaint, Ex.PW-1/A, on behalf of PW-1 who is the complainant before me.

40. Another contention raised by the learned counsel for the appellant is that SI Ranbir Singh has not been arrayed as a prosecution witness though he was present inside the room on the date of the incident. In my considered opinion there is no force in the contention of the learned counsel inasmuch as, if SI Ranbir Singh had not been examined by the prosecution, he could have been examined by the defence, if according to them SI Ranbir Singh had anything to corroborate from the side of the defence.

41. Learned counsel for the appellant has also contended before me

that the prosecution failed to examine Malkhana Mohrar and this fact goes to the root of the matter. It is settled position of law that in a trap case, failure to send the solution used for conducting the phenolphthalein test to the chemical examiner is only to corroborate the case of the prosecution. There is no legal requirement which necessitates sending of the chemical solution. I find merit in the contention of the CBI that non-examination of Malkhana Mohrar cannot be proved fatal to the case of the prosecution, as putting of phenolphthalein powder on the notes is not as per any statutory provision but for the satisfaction of the officials and for this purpose he has placed reliance on paragraph 13 of **State of U.P. Vs. Zakaullah** reported at (1988) 1 SCC 557. The same is reproduced hereunder:

“13. The reasoning of the High Court that reliability of the trap was impaired as the solution collected in the phial was not sent to the Chemical Examiner is too puerile for acceptance. We have not come across any case where a trap was conducted by the police in which the phenolphthalein solution was sent to the Chemical Examiner. We know that the said solution is always used not because there is any such direction by the statutory provision, but for the satisfaction of the officials that the suspected public servant would have really handled the bribe money. There is no material discrepancy in the evidence regarding preparation of recovery memo and the minor contradiction mentioned by the learned Single Judge is not worth considering.”

42. In view of the aforesaid, I am of the considered opinion that a clear cut case is made out against the appellant of having demanded the illegal gratification in terms of money (Rs.1,000/-) and having accepted the same. PW-1, the complainant and PW-2, the shadow witness, have unerringly deposed against the

appellant, as the person who demanded and accepted the bribe. PW-7, the recovery witness, has also affirmed the recovery of tainted money from the possession of the appellant. Both PW-2 and PW-7 are independent witnesses and there is nothing to suggest that they have been deposing falsely or that their version is to be dis-believed. PW-5, Additional SHO; and PW-8, the trap laying officer, have also affirmed that the money that had been marked to be given to the appellant in case of any demand made, was indeed recovered from the appellant. I also find there to be no infirmity in Ex.PW-3/A, the sanction order, passed by PW-3, who has stated in the sanction order that he had carefully perused and gone through the material on record before granting sanction for prosecution of the appellant. PW-3 has also stated on oath that he had taken into account the evidence of the witnesses, CFSL report, memos brought on record and other relevant material. PW-3 was also cross-examined but he was firm in his statement that he had passed the sanction order after the careful scrutiny of all the relevant documents. As aforesaid, merely because the sanction order was reproduced in verbatim by PW-3, there is no necessary corollary which can be drawn against PW-3 that he did not apply his mind or that he mechanically passed the sanctioned order. Thus, I find no infirmity in the judgment dated 30.01.2001, passed by the learned Special Judge, Tis Hazari in Criminal Case No.127/99, RC No.83-A/95, convicting the appellant under section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. However, keeping in mind the facts

that the appellant has been through the rigours of trial for more than fourteen years, he has four daughters to look after, the order on sentence dated 31.1.2001 is modified to the extent that the sentence awarded under section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 for a period of three years RI, is reduced to two years RI.

43. The appeal stands dismissed.

**G.S.SISTANI
(JUDGE)**

July 31, 2009