

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 78/2001

SHAM SUNDER Appellant
Through : Mr. Durgesh Kumar Pandey, Adv.
versus

\$ C.B.I. Respondent
^ Through : Mr. Ashiesh Kumar, Adv.

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

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

% **ORDER**
20.10.2009

G.S.SISTANI, J. (ORAL)

1. The present appeal has been filed under Section 374/382 of the Code of Criminal Procedure, 1973 against the judgment dated 19.01.2001 and order on sentence dated 27.01.2001 passed by the learned Special Judge, CBI, Delhi. By virtue of the said judgment, appellant was convicted under Section 7 of the Prevention of Corruption Act and sentenced to two years of rigorous imprisonment together with a fine of Rs.10,000/-. In default of the payment of fine, appellant was directed to undergo imprisonment for a further period of six months. The

appellant was also convicted under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act and sentenced to two years of rigorous imprisonment together with a fine of Rs.10,000/-. In default of the payment of fine, appellant was directed to undergo imprisonment for a further period of six months. Both the sentences were to run concurrently.

2. Brief facts of the case as noticed by the learned Special Judge are that telephone No.5741398 was installed in the joint names of Sh. Raghuvir Singh and Sh. Anoop Singh at 10/18, East Patel Nagar, New Delhi. After the death of Sh. Raghuvir Singh, his widow, Smt. Prakash Kaur, submitted an application for transfer of the said telephone in her name and shifting of telephone connection to 34/22, East Patel Nagar, New Delhi. This application was filed in the office of MTNL, Rajouri Garden Exchange in May, 1994. Smt. Prakash Kaur had deputed and authorized Sh. Anil Prakash Nijhawan to pursue the said application with Rajouri Garden Exchange authorities. Appellant, who was working in the Department as a Lower Division Clerk was dealing with the aforesaid application of Smt. Prakash Kaur. The complainant, Anil Prakash Nijhawan, was tracking the progress of the application. On 22.08.1994, during lunch hours, the appellant (outside his office) told the complainant that the matter had been processed and formalities had been completed, but the complainant would have to pay him an amount of Rs.2500/- for getting the order for shifting of the

telephone number and the change of name. It was also alleged that the appellant had told the complainant that out of the said sum of Rs.2500/-, the complainant should pay Rs.500/-, in advance, on 23.08.1994 and the remaining amount he would have to pay at the time of handing over of the OB for shifting of telephone.

3. The complainant thereafter went to the office of the CBI and submitted a written complaint, Exhibit, PW-1/A, against the appellant herein. On the basis of the said complaint, a formal FIR, Exhibit PW-6/B was registered and investigation was entrusted to Inspector Rai Singh Khatri, who after interrogating the complainant, decided to lay a trap. Inspector Rai Singh Khatri also arranged for punch witnesses by sending a requisition through S.P., CBI. On 23.08.1994, the complainant (Anil Prakash Nijhawan), as well as the two independent witnesses Sh. B.R. Tata and Sh. Davinder Kumar, assembled in the office of Inspector Rai Singh Khatri, who also introduced the complainant to said punch witnesses and the complaint was also shown to them. The complainant produced Rs.500/- comprising of five Government currency notes of Rs.100 denominations, each. The numbers of those Government currency notes were noted down. Inspector Kishore Kumar applied phenolphthalein powder to those Government Currency Notes and a live demonstration was given in the CBI Office. After demonstration, the powder treated Government Currency Notes were kept in the

right side pocket of the shirt of the complainant and he was instructed to pass on the same to the appellant only in the event of his specific demand. Sh. Davinder Kumar was directed to act as a shadow witness and remain close to the complainant with a view to hear the conversation that might take place between the complainant and the appellant and also to see the transaction of passing of bribe money. The shadow witness was further directed to give a signal to the trap party by scratching his head in the event of acceptance of the bribe by the appellant. The trap team left the CBI office in their official vehicle and reached near Telephone Exchange Rajouri Garden. At around 12:50 p.m., the complainant and the shadow witnesses, went to the office of the appellant and the other members of the trap party followed them and took suitable positions in the corridor on the fourth floor. It was alleged by the prosecution that the appellant was present in his office and he had a conversation with the complainant and during the said conversation he demanded bribe from the complainant and also told him that as soon as he would pay the remaining bribe amount, OB would be issued. Thereafter the complainant passed on tainted Rs.500 to the appellant, who accepted the money in his hand and kept the same in the pocket of his shirt. In the meanwhile, shadow witness, Davinder Kumar, gave the pre-arranged signal to the trap party. Thereafter the members of the trap party ran into the office of the appellant and apprehended him red-handed.

4. In support of its case, the prosecution examined eight witnesses. Statement of the appellant was recorded under Section 313 of Cr.P.C, however no witness was examined in defence. In his statement recorded under Section 313, Cr.P.C. the appellant admitted that an application had been made by the widow of late Sh. Raghuvir Singh for transfer of telephone connection, however, he stated to have refused to entertain the complainant in the absence of a letter of authority from the widow of late Sh. Raghuvir Singh. As per the appellant, it is because of this that the complainant was nursing a grudge against him. He stated that the sanction for his prosecution was granted by Sh. H.P. Wadhwa, the then Deputy General Manager (Administration), N.T.R., New Delhi. However, the same was invalid as it was accorded without any application of mind. The appellant also deposed that he had been falsely implicated with the help of CBI in order to create an atmosphere of terror in the minds of MTNL officers so that in future he may be accommodated by them in relation to his liaison work. He denied having taken or accepting any illegal gratification. He further deposed that on the day of trap, 4/5 persons had entered in his room, physically apprehended him and thereafter forcibly put the tainted Government Currency Notes into his pocket.

5. Learned Amicus Curiae for the appellant while impugning the judgment and order on conviction passed against the appellant, submits that as per the

complaint, the complainant (Anil Kumar Nijhawan) had approached the appellant for transfer of telephone in favour of Smt. Prakash Kaur on the demise of her husband. Learned Amicus Curiae submits that despite Smt. Prakash Kaur having been shown in the list of witnesses, she did not appear as a witness before the Court. Moreover, PW-3, an independent witness, who was sitting in the office of MTNL at the time when the raid was conducted, has not supported the case of the prosecution.

6. It is contended by learned Amicus Curiae that the complainant is a tout and he has falsely implicated the appellant with a view to create terror in the minds of other officers and to enable the complainant to carry out his illegal activities in the Department. It is further contended that the money was forced upon the appellant. Learned Amicus Curiae submits that even otherwise, sanction granted by H.P. Wadhwa, the then Deputy Manager (Administration), is invalid as the same was accorded without any application of mind.
7. *Per contra*, learned counsel for the CBI submits that the case of the prosecution has been proved beyond any shadow of doubt. Counsel submits that the sanction was accorded after due deliberations and cannot be said to have been accorded without any application of mind. Learned counsel further submits that 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 the appellant. Furthermore, two

independent witnesses have clearly supported the case of the prosecution.

8. I have heard learned counsel for the parties and minutely scrutinized the evidence on record.
9. The submissions of learned counsel for the appellant can be summarized as under:

- i. sanctioning order is invalid as it has been passed without any application of mind.
- ii. Complainant is a tout and has falsely implicated the appellant.
- iii. PW-3, an independent witness has turned hostile.
- iv. Smt. Prakash Kaur was not examined by the prosecution.

10. 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. sanction was granted after due application of mind.
- iii. appellant was caught red handed.
- iv. evidence of trap laying officer is trustworthy and supported by independent witnesses.

11. The first question which comes up for consideration before this Court is whether the sanction accorded was an empty formality or the same was accorded after

due application of mind. In the case of ***R. Sundarajan Vs. State***, reported at (2006) 12 SCC 749, the learned two Judges Bench held as under:

“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.”

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. 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. 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.

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.”

12. In the case of *Gurucharan Singh Vs. State* reported at 1970 Cr.L.J. 674, it has also been held that *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.*

13. Keeping in mind the settled position of law, I have carefully gone through the sanctioning order, Ex. PW-5/A as well the statement given by PW-5 before the

Court. PW-5, Shri H.B. Wadhwa has stated on oath that on 24.11.1994, he was working as Deputy General Manager (Administration) and he accorded sanction Ex.PW-5/A, which bears his signatures. PW-5 has very categorically deposed that he accorded the sanction for prosecution of the appellant after perusing the documents which contained the history of the case as well as the statement of the witnesses recorded by the CBI. Further I find that in Ex.PW-5/A (sanction order), PW-5, has stated that all the material placed before him had been carefully examined by him and it was after due consideration that he had accorded the sanction. The order of sanction is a detailed order. Perusal of the order shows that all material facts constituting the offence committed by the appellant were examined by him. A careful scrutiny of the sanction order, Ex. PW-5/A, leaves no room for doubt that Sh. H.P. Wadhwa had perused the records of the case and the relevant statements, and after due application of mind accorded sanction to prosecute the appellant herein. Thus 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.

14. Further I find that the evidence of PW-1 is corroborated by the complaint, PW-1/A, and further duly confirmed by the raid, which was carried out. PW-1, Anil Kumar Nijhawan has categorically deposed in his examination-in-chief that late Sh.Raghubir Singh was his uncle and that they had a telephone connection

number 5741398 at premises No.10/18, East Patel Nagar, New Delhi. The widow of late Sh. Raghubir Singh had applied for transfer of the aforesaid telephone connection in her name and application in this regard was submitted to telephone exchange, Rajouri Garden, New Delhi. On the request of his aunt, PW-1, was tracking the progress of the application. PW-1 met the dealing clerk Sham Sunder, (whom PW-1 identified in Court), on several occasions but Sham Sunder used to avoid giving any answer to PW-1 and tendered lame excuses. PW-1 deposed that on 18.8.1994 he met appellant in his office at Rajouri Garden and there the appellant told him that his work would be done only if PW-1 paid him Rs.2,500/- as bribe. The appellant also told him that PW-1 would have to pay Rs.500/- as advance and the remaining money would be taken later on. Appellant told PW-1 to come again on 22.8.1994 for the settlement of the above payments. As per PW-1, he again visited appellant in his office on 22.8.1994 some time before lunch. Appellant told PW-1 to pay part payment of Rs.500/- on the next day and he would get the order of transfer of telephone connection a day later. The appellant also told PW-1 that in the event of non-payment of bribe, his work would not be done.

15. PW-1 went on record to say that from the office of the appellant, he came back to his residence and thereafter went to the office of the CBI, where he met Sh. Degwakar, S.P., narrated the entire incident to him and submitted a written

complaint, Ex.PW-1/A. PW-1 identified his signatures on the complaint. The S.P. asked him to meet Inspector Rai Singh Khatri. As per PW-1, he reached the office of the CBI, the next morning by 10:00 A.M. where two independent witnesses were already sitting in the room of Inspector Rai Singh Khatri. The complaint was shown to the said independent witnesses. Five currency notes of Rs.100/- each were produced by the complainant and numbers of these notes were noted down in a memo. Thereafter, chemical powder from the malkhana was called for and applied on the currency notes. A demonstration was carried out in front of the witnesses and the complainant, whereby it was shown that if anybody touched the tainted notes and then dipped his fingers in another chemical solution, then the solution would turn from colourless to pink. PW-1 was directed to give the tainted notes to the appellant only in the event of specific demand and Sh. Davinder Kumar (PW-2) was directed to accompany as a shadow witness and watch the proceedings. Before leaving for the raid, empty bottles were put by the IO in a bag, members of the raiding party were searched and made to wash their hands.

16. Having been duly informed about the process to be followed, the complainant and the trap party, left for the office of the appellant and at about 12:45 pm the CBI officials were spotted by the side of the main road at a distance of 50 paces from the telephone exchange. PW-1 goes on to depose that he along with Sh.

Davinder Kumar came to the reception of telephone exchange, obtained a pass and thereafter went upstairs in the office of the appellant in the commercial section. The CBI officials and other members of the raiding party also followed them at some distance. On reaching the room of the appellant, the appellant took out the file of transfer of telephone and told PW-1 that the work had been done. The appellant further said, “*JAISE PAISE DO GE, IMMEDIATELY, KAAM POORA HO JAYE GA*”. PW-1 said, “*THIK HE JO KAL BAAT HOE THI WHO LAEN HAIN*”. Then the appellant said, “*CHOTE MOTE KHARCHE TO CLERK JAIB SE KAR LAITA HE, BARE KHARCHE KE LIYE WAIT KARNA PARTA HAI*”. Then he asked the appellant, “*YAHIN DEN YAA AAP BAHAR CHALEN GEN*”. Appellant said, “*YAHEN DE DO*”. PW-1 stated that the appellant had told him that as soon as he would pay the total bribe amount, OB would be issued. Thereafter, PW-1 took out the tainted notes (Rs.500/-) from his shirt pocket and handed over the same to the appellant. The appellant took the currency notes in his right hand and thereafter shifted the notes in his left hand and kept the same in the left pocket of his shirt. Thereafter, PW-1 said, “*ACHHA CHALTE HAIN*”. Meanwhile, witness, Davinder turned back and gave the signal to the trap party. CBI officials raided the room and appellant was apprehended from his wrists. Inspector Rai Singh Khatri informed the appellant that he was from CBI and challenged him that he had accepted bribe. Appellant

kept mum. Thereafter, witness Davinder Kumar told that the appellant had demanded bribe and accepted the tainted money. One Avinashi Lal, Commercial Officer of the office of appellant was also called and entire incident was narrated to him. Thereafter, in the presence of Sh. Avinashi Lal, Shri Tata recovered the tainted currency notes from the pocket of shirt of the appellant. Numbers of the said currency notes were tallied by Sh. Tata, Sh. Avinashi Lal and Sh. Khatri with the numbers already noted down in the handing over memo. Thereafter some water was fetched in a tumbler and chemical powder was dissolved in it. Appellant was made to dip his right hand in the said solution, which turned pink. The said solution was transferred into an empty bottle and its mouth was covered with a cloth wrapper and sealed with the seal of CBI. A slip containing particulars of hand wash was pasted upon the bottle which was signed by the witnesses in the presence of PW-1. Thereafter, fresh sodium carbonate solution was again prepared and appellant was made to dip his left hand in the same, which turned slightly pink. Left hand wash was transferred into another empty bottle and similar procedure for sealing it and pasting of a slip was followed. The said slip was also signed by the witnesses. Appellant was also made to take off his shirt and the inner lining of the pocket of his shirt was also dipped in a fresh solution which was prepared in a clean tumbler and the said shirt wash also turned pink. Shirt was also transferred into an empty bottle and was duly sealed

following the similar procedure. A slip containing particulars of shirt wash was pasted on the aforesaid bottle and it was signed by the witnesses. PW-1 further deposed that recovery memo was prepared at the spot which bears his signatures as a witness on all the three pages at respective points A. Said recovery memo is Ex.PW-1/C and runs into three pages. Appellant was arrested and his personal search was conducted vide memo Ex.PW-1/D. File of the said telephone connection was also seized from the spot and its photo copy was left with the department through the Commercial Officer, Avnashi Lal. PW-1 also identified the case property and stated that the tainted currency notes were Ex.P-1 to P-5; bottle containing right hand wash was Ex.PW-6; bottle containing left hand wash was Ex.P-7; bottle containing the shirt wash was Ex.P-8; and Ex.P-9 was the shirt of the appellant. PW-1 also stated that the numbers of the tainted currency notes tallied with the numbers noted down with the handing over memo. One sample seal was also prepared at the spot as well as a rough site plan was prepared by the I.O.

17. PW-1 has withstood the incisive cross-examination and was consistent in his version that the appellant had asked and accepted bribe from him. PW-1 has stated that he along with the team/raiding party left the CBI office at about 11:00 a.m and denied the suggestion that he did not visit the office of the CBI on 23.8.1994 or that he had concocted a false story implicating the appellant.

18. PW-2 Davinder Kumar, shadow witness, has also corroborated the evidence of PW-1 in material particulars. PW-2 has deposed that on 23.8.1994 on the instructions of the DGM, he along with Sh.B.A. Tata went to the office of the CBI at Lodhi Road. As per PW-2, he left the CBI office for raid at about 12:00 noon and reached Telephone Exchange, Rajouri Garden at about 12:30 or 12:45 p.m. The vehicles were parked at some distance from telephone exchange across the road. PW-2 further stated that he along with PW-1 went inside the telephone exchange with other members of the raiding party following them. They received the entry pass at the reception and went to the fourth floor where the office of Commercial Section was located. PW-2 and PW-1 reached the office of the appellant where PW-1 wished the appellant, who said *"AAP KAA KAAM LAG BHAG HO CHUKKA HAI AAP JAB CHAHO GE HO JAYE GAA. AAP KE DONO KAAM HUM NEN KARWA LIYE HAIN LAIKEN UN PAR ABHI SIGNATURE HONE HAIN. AAP JAB CHAHEN GEN KARWA LEN GEY"*. The appellant further said *"CHHOTE MOTE KHARCHE TO HUM APNE PAAS SE KAR LETE HAIN PAR ZIADA KHARCHA HUM NAHIN KAR SAKTE"*. Thereafter PW-1 said *"JAISE AAP NEN KAHA THA MAIN ABHI TO PAANCH SO RUPEE LAYA HOON BAAKI AIK DO DIN MAIN BAQAYA PAISE DE KE KAAM KARA LON GAA."* On this the appellant replied, *"JIS DIN PAISE DE JAYO GE AGLE ROZ ORDER LE JAANA"*. Thereafter PW-1 said *"PAISE*

YAHIN DE DOON YAA BAHAR CHALKE DOON". Appellant replied "*AAP YAHIN DE DI JIYE. YAHAN SAB LOG APNE HAIN AUR KHULLA DARBAR HAI*". On this PW-1 took out the tainted money from the pocket of his shirt and handed over to the appellant. The appellant kept the money in the front pocket of his shirt. Thereafter PW-2 went outside the room and gave the signal by scratching his head. The CBI officials immediately rushed into the room and PW-2 told them the entire incident. PW-1 also confirmed the passing of the bribe to the appellant and thus one CBI officer held the appellant from both his wrists. One section officer of MTNL was also summoned by the CBI officials. PW-2 further stated that Mr.Tata recovered the tainted Rs.500/- from the pocket of the shirt of the appellant and the numbers of the recovered currency notes tallied with the numbers already noted down in the handing over memo. CBI officials asked the appellant as to whether he had taken bribe, however, the appellant kept mum. PW-2 gave a blow by blow narration of the entire incident and further stated that when the appellant was made to dip his right hand finger in the colour less solution prepared by dissolving the chemical powder, the said solution turned pink. Similar procedure was repeated for the left hand fingers and the solution turned pink. The appellant was also made to remove his shirt and the inner lining of the pocket of his shirt was dipped in the aforesaid solution which also turned pink. All the above washes were respectively transferred into

clean empty bottles, sealed with the seal of CBI and identification slips were also pasted. PW-2 further deposed that he appended his signatures on all the bottles. Recovery memo Ex. PW-1/C was also prepared at the spot including a rough site plan, Ex.PW-2/A. Personal search of the appellant was conducted vide memo, Ex.PW-2/B and the draws of the table of the appellant were also searched vide memo, Ex.PW-2/C.

19. PW-2 was cross-examined at length by the learned counsel for the appellant, however, PW-2 was unshaken in his testimony that the appellant is the person who accepted illegal gratification from PW-1. I find that PW-2 is an independent witness and there is nothing on record to suggest that there was any previous enmity between him and the appellant, so as to falsely implicate the appellant. I have no hesitation in saying that PW-2 corroborates the testimony of PW-1 in material particulars.
20. Learned counsel for the appellant has contended before me that PW-3 has become a hostile witness and which creates a doubt as to the veracity of the case of the prosecution. No doubt PW-3 has stated that she was not present at her seat nor did she see the alleged bribe transaction, however, I find that she was an employee at the said MTNL office and there is very likelihood that she was coerced to take a contrary stand. Even otherwise, she has not stated that there was no such bribe transaction but has only stated that she was not present at her

seat. In my considered opinion, no advantage flows in favour of the appellant from the deposition of PW-3.

21. Further as already stated above, PW-5, H.S. Wadhwa, has also deposed that he was the appointing authority of the appellant and he could also terminate his services. He has identified his signatures in Ex. PW-5/A, which is the order granting sanction. He has categorically deposed that he accorded sanction for the prosecution of the appellant on the request of CBI after perusing the documents which contained history of the case and the statements of the witnesses recorded by the CBI.
22. Furthermore, PW-6, Inspector Rai Singh Khatri, DSP, CBI has also corroborated the evidence given by PW-1 and PW-2. PW-6 has in clear terms stated that he along with his raiding party left the office of the CBI at 12:00 p.m. and reached telephone exchange, Rajouri Garden. The shadow witness came out from the room of the appellant and gave a pre-appointed signal by scratching his head. PW-6 has stated that on receipt of signal, all the members of the raiding party went inside the police station and apprehended the appellant. Search of the appellant was conducted and the tainted money was recovered from the pocket of his shirt. PW-6 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. This witness has also affirmed that the

sodium carbonate solution was prepared which turned from colourless to pink after the appellant dipped his right and left hand fingers in the solution and also when the inner lining of the front pocket of his shirt was dipped in the solution.

23. In the case of *State of U.P. Vs. Zakaullah* reported at (1988) 1 SCC 557, it was held that in a trap case, sending of the washes to the chemical examiner is only to corroborate the case of the prosecution. There is no legal requirement which necessitates sending of the washes. However, I find that in this case, the solutions were sent to CFSL. Evidence of PW-8, Sh. N.K. Prasad has been recorded and who has clearly deposed that he received three sealed bottles duly sealed with the seal of CBI. He has deposed that the seals were intact when the bottles were received, which contained light pink coloured liquid. The said bottles were stated to have been found positive for sodium-carbonate solution and phenolphthalein.

24. I also do not find non-examination of Smt. Prakash kaur as a witness by the prosecution, to go to the root of the matter inasmuch as, the defence could have also filed an application seeking her statement before the Court. Both Davinder Kumar (PW-2) as well as Inspector Rai Singh Khatri (PW-6), have corroborated the version of the complainant (PW-1) relating to demand and acceptance of bribe and also regarding recovery of tainted money from the possession of the appellant. PW-2 is an independent witness and there is nothing to suggest that he

is a false witness. It is clearly established that the respective hand washes as well as the shirt pocket wash of the appellant was taken and the solution of sodium carbonate of all the three washes had turned pink in colour. This also indicates that the appellant received the tainted Government Currency Notes otherwise there would have been no occasion for this solution to turn pink. I also find that sanctioning order does not suffer from any infirmity as the same was passed by PW-5 after a careful examination of all the material placed before him and only thereafter accorded the sanction. PW-8, Sh. N.K. Prasad has also deposed that the bottles received were found to be positive for sodium-carbonate solution and phenolphthalein. In view of the aforesaid, I am of the considered opinion that a clear cut is made out against the appellant of demanding and accepting bribe from PW-1.

25. Learned counsel for the appellant has strongly pleaded that the sentence of the appellant should be modified to the period already undergone and he should be released on probation. I am unable to agree with the submission made, on account of the fact that corruption has become rampant in the society and any leniency shown would send a wrong signal to the society at large. Corruption is one of the major factors, which is causing hindrance to the development of our country. Besides the image of the country is being tarnished. Any modification in the order of sentence would be a result of misplaced sympathy. In the case of

State of M.P. Vs. Ram Singh reported at (2000) 5 SCC 88, it was held that:

“8. Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malignise (*sic*) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

9. The menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, not as

understood in common parlance but specifically defined in the Act.

10. The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object.

26. Accordingly, I find no infirmity in the judgment dated 19.01.2001 and order on sentence dated 27.01.2001 passed by the learned Special Judge, Delhi in Criminal case No. 71/94, RC No. 55(A)/94-DLI/CBI/ACB/New Delhi, under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.
27. Appeal stands dismissed. For the hard work and assistance rendered, fee of Amicus Curiae is fixed at Rs.7,500/-.

G.S.SISTANI,J

OCTOBER 20, 2009
'msr'