

REPORTABLE

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

+ **CRIMINAL APPEAL NOS. 82 & 75 OF 2002**

% **Reserved on :** 31st August, 2010.
Date of Decision: 2nd November, 2010.

RAM CHANDER SINGH ... Appellant in 82/2002.
PREM DUTT SHARMA ...Appellant in 75/2002.
Through Mr. Ajay Burman, Mr. Rajesh
Samanotra and Mr. Prabhat K.
Singh, Advocates.

Versus

CBI Respondent
Through Ms. Sonia Mathur and Mr.
Sushil Kr. Dubey, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J.:

1. These two connected appeals assail the judgment dated 22nd January, 2002 convicting the appellants Ram Chander and Prem Dutt Sharma under Section 120-B of the Indian Penal Code (hereinafter referred to as IPC, for short) read with Sections 7, 13 (2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the PC Act, for short) and also for substantive offences under Section 7 and 13(2) read with Section 13(1)(d) of the PC Act. By order on sentence dated 30th January, 2002, the appellants Ram Chander and Prem Dutt Sharma have been sentenced to simple imprisonment for a period of one year for the offences punishable under Sections 120-B IPC read with Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act

and pay fine of Rs. 2,000/- each and in default of payment of fine, simple imprisonment for a period of 15 days. For the offences punishable under Section 7 of the PC Act the appellants have been sentenced to undergo simple imprisonment for a period of two years and fine of Rs.3,000/- and in default of payment of fine suffer simple imprisonment of one month. For the offences punishable under Section 13(2) read with Section 13(1)(d) of the PC Act the appellants have been sentenced to undergo simple imprisonment of three years with fine of Rs. 5,000/- and in default of payment of fine, undergo simple imprisonment of two months.

2. The allegations against the appellants are that they had demanded bribe from the complainant Sallan and the appellant Ram Chander was caught after he had accepted bribe of Rs.5,000/- pursuant to a trap, which was laid by the Central Bureau of Investigation (hereinafter referred to as CBI, for short). Facts of the case have been set out in detail in paragraph 2 to 6 of the impugned judgment, which for the sake of convenience are reproduced below:-

“2. The case of the prosecution, precisely stated is that Sh. Sallan S/o. Sh. Jamaluddin (hereinafter referred to as the complainant), R/o Jhuggi No.30, Nagla Manchi Devi Nagar, Ring Road, New Delhi, lodged a complaint with the CBI alleging that on the intervening night between 28-29.3.94, he was lifted by S/Sh. Ram Babu, ASI, Prem Dutt Sharma, HC, Ram Chander Constable and other staff of P.S. Gokulpuri, in Police Vehicle from his jhuggi No.30 Nangla Manchi, Devi Nagar, Ring Road, New Delhi and taken to P.S. Gokal Puri where he was detained in the rook (sic room) of HC Prem Dutt Sharma. On 29.3.94 at about 5.45 PM, he was taken to the shop of Sh. Ramesh Verma, Kabbadi, located at Jangpura, Bhogal Road by the said police party. On being objected to by Sh. Ramesh Verma, the police party had taken him to the police post Jangpura and thereafter, he and Ramesh Verma, were taken to the shop of Sh. Allahbux Kabadi, Nangla Manchi Devi Nagar, Ring Road and the said Allahbux was also lifted by

the said police party. Then all were taken to P.S. Gokulpuri. Sh. Ramesh Verma and Allahbux were, however, released on 29.3.94 at about 9.30 PM.

3. It is further stated that the complainant was released in the early hours of 30.3.94 by the said accused persons, who directed him to pay Rs.5,000/- by 4 PM on 30.3.94 i.e., the same day. The complainant met accused Prem Dutt Sharma and Ram Chander in P.S. Gokulpuri and expressed inability for arranging bribe amount whereupon both the accused told the complainant that they would come tomorrow, i.e., on 31.3.94 between 4 to 5 PM at the residence of his employer Sallaudin where the complainant was staying, to collect the bribe and also to meet with the said employer Sallaudin. Since the complainant did not want to pay the bribe, he lodged the complaint against the accused persons and the case was registered by the orders of SP who entrusted investigation to Sh. K.S. Joshi, Dy. SP for laying trap against the accused persons.

4. Accordingly, a trap party comprising of two independent witnesses namely, S/Sh. Uday Bhan Singh and Inder Singh, both working as Regular Mazdoors with MTNL (Vig.), K.L. Bhawan, New Delhi and other officers of CBI/ACB, had been constituted. The members of the trap party assembled in the CBI office and after satisfying themselves about the genuineness of the complaint dtd. 31.3.94, the complainant produced Rs.5000/- in the denomination of Rs.50/- GC notes of Rs.100/- each which were treated with Phenolphthalein powder and the demonstration of reaction between Phenolphthalein powder and Sodium Carbonate was performed. Sh. Inder Singh was directed to act as shadow witness and to give signal by scratching his head with his hands, to the trap party after the transaction was completed. The complainant was directed to pass on the treated GC notes of Rs.5000/- to either of the accused persons on the specific demand of the bribe only. A handing over memo incorporating the numbers of

treated GC notes and all proceedings was prepared at the CBI office which was signed by all the members of the trap party.

5. At about 3:45 PM, the trap party left CBI office and reached near the house of Sh. Sallaudin at Kachi Colony, Rajeev Nagar, Khajuri Khas, Delhi at 4:20 PM on 31.3.94.

6. Further, the complainant along with shadow witness went inside the house of Sh. Sallaudin, employer of the complainant and at about 5:20 PM, Sh. Ram Chander reached and parked scooter no. DL-5SC 6321, outside the house of Sh. Sallaudin and went inside the house. He allegedly demanded the bribe amount from the complainant. At about 5:40 PM, Ram Chander, came out of the house, along with complainant, witness and Sh. Sallaudin, rode his scooter, which was parked in front side and directed the complainant to put the bribe amount in his left upper shirt pocket. The complainant took out the bribe amount from his pocket and kept the same in the shirt left upper pocket of accused Ram Chander. At about 5:45 PM, the shadow witness gave pre-appointed signal. While accused Ram Chander was trying to start the scooter, he was caught by left and right wrists by Inspectors Sh. R.S. Tokas and Kishore Kumar, both members of the trap team. The tainted money was recovered from the left upper shirt pocket of accused Ram Chander, inside the house of Sh. Sallaudin, where the accused was taken for personal search, immediately. The numbers of the GC notes were found tallying with the numbers mentioned in the handing over memo. Washes of left & right hands and left upper-shirt-pocket of accused Ram Chander, were taken respectively and these washes were transferred in the separate glass bottles, sealed with CBI seal and signed by both public witnesses. A site plan of place of occurrence was prepared. Seal after use was handed over to independent witness Sh. Uday Bhan Singh, for safe custody. A recovery memo incorporating all the proceedings was

prepared and signed by witnesses at the spot. Personal search of the accused was also taken and the scooter No.DL-55C-6321(sic), was seized during investigation.”

3. Learned counsel for the appellants has submitted that the learned trial court had erred in relying upon statement of Sallan (PW-2), the complainant, which is contradictory and, therefore, the said witness is not reliable. It was submitted that Sallan (PW-2) was an accomplice and his statement should not be relied upon. It was submitted that the independent witnesses namely, Inder Singh (PW-5) and Uday Bhan (PW-10) have not supported the prosecution case and even Sallauddin (PW-6), who was the employer of Sallan (PW-2) has not supported the prosecution version.

4. Even though there may be variance, exaggeration, embellishments or inconsistencies in the statement of the witnesses, rejection in entirety is not justified unless it affects the core of the prosecution case. It has to be examined whether established material and evidence assists the court to act in a reasonable manner to establish the existence of the facts alleged by the prosecution. Whether the said evidence would induce a reasonable man to reach a particular conclusion? The probative value of the proved circumstances must be considered with due regard to ordinary human conduct and on a pragmatic and realistic approach. The entire evidence in totality has to be taken into consideration. Evidence is not to be considered in isolation but total cumulative effect of all proved circumstances has to be considered. If the evidence on the whole is found credible after careful analysis and all the proved circumstances each of which reinforces the conclusion of guilt, the said evidence may be relied upon to form the basis of conviction. The Supreme Court in ***Munshi Prasad vs. State of Bihar***, (2002) 1 SCC 351 has observed:-

“10. Incidentally, be it noted that while appreciating the evidence of a

witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of, and we do not see any justification to pass a contra-note, as well, on perusal of the evidence on record. In this context reference may be made to two decisions of this Court. The first being *State of U.P. v. M.K. Anthony* as also a later one in the case of *Leela Ram v. State of Haryana*. Needless to record that difference in some minor detail, which does not otherwise affect the core of the prosecution case, may be there but that by itself would not prompt the court to reject the evidence on minor variations and discrepancies. In *Leela Ram* this Court observed in para 10 of the Report:

“10. * * *

‘24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.’

This Court further observed:

‘25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for

confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

“155. *Impeaching credit of witness.*—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

(1)-(2) * * *

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;”

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be “contradicted” would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to “contradict” the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to “contradict” the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to

contradict that witness (vide *Tahsildar Singh v. State of U.P.*).’ ”

The issue, therefore, is whether the evidence available on record is otherwise trustworthy and an acceptable piece of evidence: in the contextual facts the answer is in the affirmative and both the trial court and the High Court have also considered the same to be so.....”

5. Reference may also be made to the Supreme Court in ***M. Narsinga Rao Vs. State of A.P.*** (2001) 1 SCC 691 wherein it was observed:-

“15. The word “proof” need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word “proved” in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in *Hawkins v. Powells Tillery Steam Coal Co. Ltd.* observed like this:

“Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.”

6. Similarly in ***State of W.B. v. Orilal Jaiswal***, (1994) 1 SCC 73, it was observed :

“15. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of

proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in *Bater v. Bater* has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter.

16. In *Gurbachan Singh v. Satpal Singh* Mr Justice Sabyasachi Mukharji (as he then was) has very rightly indicated that the conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. *Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law."*

7. The statement of Sallan (PW-2) is very detailed and he has narrated and supported the prosecution case. As noticed below Sallan's statement has a few discrepancies but it will be wrong to reject and discard his entire testimony. We have to see and examine the extent to which his statement can be relied upon and how and to what extent is his statement corroborated by other witnesses and material. It is not as if

the statement of Sallan (PW-2) is entirely unreliable. It is true the Inder Singh (PW-5) and Uday Bhan Singh (PW-10) were declared hostile, but they have partially proved and corroborated a part of the prosecution case and supported the statement made by Sallan (PW-2). Similar is the position with regard to the statement of Sallaudin (PW-6). We also have the evidence of the CBI officers. The entire incident has to be dealt with and examined in three episodes/periods viz the period between the picking up of the complainant Sallan and the making of the complaint, the period between the registration of the complaint and laying of trap and lastly the trap, i.e. the episode where the appellant was arrested by the TLO pursuant to the trap, in order to see to whether the statement of Sallan (PW-2) is reliable and is corroborated on material aspects.

8. The fact that Sallan (PW-2) was detained and taken to the police station Gokul Puri on the night intervening 28-29th March, 1994 as stated by Sallan (PW-2) stands fortified by DD entry No.23A dated 28-29th March, 1994 marked Ex.PW-8/A. The said DD entry was made at about 1.50 am at night. The said DD entry records that information was received through wireless that police had picked upon two persons from Nangal Manchi Devi Nagar, Ring Road and PW-8, ASI Kartar Chand came to know upon enquiry that 5-6 persons had gone in a police vehicle and picked up one Sallan (PW-2) and had taken him away with them. Nobody had noted the number of the police vehicle and no progress could be made.

9. Abrar (PW-3) has stated that he and Sallan (PW-2) were sleeping in the shop of Sallaudin Kabari at Nangla Market, Devi Nagar, New Delhi and that they were taken to the police station at about 1-1.30 am in the night. He has stated that he was allowed to go at 4 pm but Sallan (PW-2) was detained in the police station and came back in the evening the next day.

10. Sallan (PW-2) has stated that on 28th March, 1994 during the night he was picked up by police and taken to the

police station Gokul Puri. Sallan (PW-2) has stated that in the morning he was taken to the kabadi shop of one Shabir Khan but he was not there and he was brought back to the police station. Thereafter he was taken to the shop of one Ramesh at Bhogal, Jangpura. Ramesh insisted that he should be taken to the police chowki, at Jangpura. After some discussion with the police at police chowki he along with Ramesh was taken to the shop of Allahbux situated at Nangla Manchi Devi Nagar, Ring Road. Allahbux and Ramesh were let off from the police station at about 10 pm on 29th March, 1994. The aforesaid statement of PW-2, Sallan (PW-2) is affirmed by the statement of PW-9, Allahbux. He has stated that on one evening in March 1994, 4-5 police officials came to his shop and arrested him. He was interrogated about stolen property but after one or two hours he was released. The said witness was declared hostile and was cross-examined by the Public Prosecutor, CBI. However, the fact that he was detained and taken to the police station was not denied by him. Ramesh Chander (PW-7) is more forthright as he has stated that on 29th March, 1994, a police team comprising of 6-7 persons came to his shop with Sallan (PW-2) in their custody. He was informed that Sallan (PW-2) had told police that he was selling stolen goods to Ramesh Chander (PW-7). He refused to accompany them and contacted police chowki of the area on telephone. Chowki Incharge Mr. Rajesh Sharma asked him to accompany police officers. He has stated that he was taken to the shops of Sallauddin and Allahbux. Allahbux was also picked up and taken to the police station. Both of them were made to sit there and were released after he had paid Rs.4,000/- to the policemen. However, he did not make any complaint against these police officials. He could not identify the police officials in the court and had stated that the two appellants might be among the police officials.

11. Sallan (PW-2) has further stated that on the night intervening 29-30th March, 1994, he was released/let go at

about 2.30 am. At the time of his release the two appellants and ASI Ram Babu had directed him to bring Rs.5,000/- on 30th March, 1994 at 4 pm to police station Gokul Puri. Thereafter he met Sallauddin and informed him about the bribe demanded. Sallauddin was not prepared to give bribe and stated that he had already lodged a complaint at the police station. Sallan (PW-2) had stated that he met the two appellants and ASI Ram Babu and told them he could not arrange the money and the same would be arranged the next day. Appellant Ram Chander stated that he would accept the money at the residence of Sallauddin. It was decided that Sallan (PW-2) would reach the house of Sallauddin at 5 pm and they agreed to take the money at the residence of Sallauddin. Sallan (PW-2) wrote the complaint marked Ex.PW-2/A on the next day i.e. 31st March, 1994 and went to the office of the CBI. He had also taken Rs.5,000/- with him.

12. Learned counsel for the appellants submitted that there is discrepancy as to who had written the complaint (Ex.PW-2/A). With regard to preparation of complaint (Ex.PW-2/A), Sallan (PW-2) has admitted his signatures on the said complaint. In his examination-in-chief on 28th November, 1995, Sallan (PW-2) had stated that he wrote the complaint in CBI office and it took about an hour to write the complaint and that he had narrated the facts to the SP, CBI. However, in his cross-examination on 16th July, 1996, he had stated that the complaint was not written by him and he got the complaint written by a person who used to reside in nearby jhuggi. He had further stated that he had gone to the CBI office with a complaint but there were too many cuttings and he was asked to come back with a fresh neatly written complaint. He had stated that he had little knowledge of Hindi and he could not write Hindi properly. Sallauddin (PW-6) has also stated that he along with Sallan (PW-2) had gone to the office of the CBI and put his thumb impression on the complaint though he does not know what was mentioned in

the complaint. The complaint made by Sallauddin (PW-6) to the Police Commissioner on 29th March, 1994 has been marked Ex.PW-6/A. Explanation and reasons given by Sallan (PW-2) in the cross examination with regard to the written complaint (Exhb.PW-2/A) appear to be more acceptable but in view the of commutative effect of the entire evidence this discrepancy loses significance. In any case this does not affect the core case of the prosecution.

13. Learned counsel have highlighted discrepancy regarding who had arranged for the bribe money of Rs. 5000. My attention in this regard is drawn to the examination of chief of Sallan (PW-2), wherein he had stated that money was arranged by Sallauddin (PW-6) but in the cross examination he had stated that trap money was arranged by him by selling certain articles. It is submitted that in the cross-examination Sallan (PW-2) had stated that Rs.10,000/- was demanded from him but he had only paid Rs.5,000/-. On the question of Rs.5,000/- and who had arranged the money, Sallan (PW-2) had stated that "this money was arranged by me Shri Sallauddin". In his cross-examination dated 17th April, 1997, he had stated that he had arranged the money by selling certain articles. However, whether the money was arranged by him alone or along with Sallauddin (PW-6), is really of no relevance and does not affect the prosecution case. It is either Sallan or Sallan along with Sallauddin who had arranged for the bribe money, which was demanded. Sallan (PW-2) in examination in chief and as well as in cross-examination had stated Rs.5,000/- was demanded. In his cross-examination he had stated that Rs.10,000/- was demanded from Sallauddin (PW-6). This so called discrepancy in statement about the amount demanded does not materially affect the prosecution case. What is clear from the testimony of Sallan (PW-2) and Sallauddin (PW-6) is that Rs.5,000/- was taken to the office of the CBI to be paid as bribe money.

14. Sallan (PW-2) had stated that on 31st March, 1994, he was introduced to the two witnesses, namely, Inder Singh (PW-5) and Uday Bhan (PW-10). He had stated that numbers of the currency notes were written on a piece of paper and the said notes were smeared with white powder. Currency notes were kept in the right pocket of his pant and he was instructed to give currency notes only on specific demand. Independent witness Inder Singh (PW-5) was instructed to remain with him and give signal on acceptance of the bribe amount. The members of raiding party washed their hands with soap and water and mutual searches were taken and nobody was allowed to keep anything except for identity cards. A small bag containing necessary and required papers was taken along. Sallan (PW-2) identified his signatures on Ex.PW-2/C, which is a chart giving details of currency notes. The said chart also bears signatures of Inder Singh (PW-5), Uday Bhan (PW-10) and K.S. Joshi (PW-11). Sallan (PW-2) in his examination in chief has stated as under:-

“At about 4.20 p.m. we reached Khauri(sic) Khas. The vehicles were parked at the pushta I and Inder Singh proceeded on foot to the residence of Sallauddin by employer. I and Inder Singh occupied the birth on a charpai and at about 5.30 p.m accused Ram chander reached the spot on his two wheeler. He parked two wheeler. He reached the spot and occupied a chair and thereafter he asked about Sallauddin. Sh. Sallauddin was also present said that he was Sallauddin and thereafter constable Ram Chander spoke said “TUM CHORI KA MAAL KHARIDTE HO OR BHAG JAATE HO”. Sallauddin said “AAP PITAI KARO GE EES LIYA BHAG JAATE HE”. Upon this Ram Chander said if he had revolver with him he would have short (sic) him. Thereafter accused Ram Chander look (sic) at me and said “KI MERA INTJAAM KIYA TO WHICH I REPLY MEIN 5000/- RUPEES LAYA HOON”. Thereafter Ram Chander also demanded money from Sallauddin the demnded (sic) amunt(sic) of was Rs.5,000/-. Sallauddin he would pay the money next day. Thereafter Ram Chander

stood up and went towards the scooter & occupied the seat on the scooter and told me to put the bribe mney(sic) by his left side shirt pocket and by opening the mouth of his pocket shirt. Accordingly, I kept those tainted currency notes in his shirt pocket. Shir Ram Chander by his other hand arrange the money into his pocket. He used his right hand for this purpose and he used left hand for opening the mouth of the shirt pocket and in the mean tim(sic) the witness Inder Singh gave the signal.

The trap party on receiving the signal came to the spot and caught constable Ram Chand by his wrist by two officers of CBI whose name I do not remember. The identity was also disclosed by those CBI officials and upon this Ram Chander got perplexed. Sh. Joshi directed Sh. Uday Bhan take out the currency notes from the shirt pocket of the accused Ram Chander.

I had not told sh. Joshi that the currency notes were in the pocket of Ram Chander. Sh. Joshi may be standing near by in the scattered position alongwith the members of the trap party & thereafter Ram Chander was taken in the same position to the house of Sallauddin and there the currency notes were tallied with the memo already prepared in CBI office. At the numer (sic) of the currency notes were got tallied. The numbers were tallied by the independent witnesses who were present there. Thereafter water in a glass was brought the powder which was mixed in that bottle & his left hand was washed in that solution and that solution turned into pink in colour and the same was poured in a glass of bottle Similarly another solution powder was prepared and the right hand was dipped in that solution and the solution turned into light pink colour and the same was poured in another bottle and the bottle was sealed thereafter. Thereafter another solution with that powder was prepared and in which inner side of the shirt pocket (Left pocket) and that solution turned into pink colour and that solution was another bottle and bottle was sealed thereafter. The said bottles are Mark 'L', R and SP

Q.The shirt is a same shirt which was worn by Sh. Ram chander.

Ans. Yes.

The shirt is Ex.P1

The recovery memo was prepared on the spot it was signed by the witnesses and myself. I identify my signature at point 'A' on all the four pages of this memo(sic) which is Ex.PW2/D. The currency notes are Ex.P2 to P51. The site plan was also prepared the searches were also taken. Ram Chander was arrested and he was taken to the police station to Gokal Puri and went to CBI office. I also went to CBI office."

In spite of extensive cross-examination on behalf of the appellants there is nothing which dents the said testimony and statement made by Sallan (PW-2).

15. Uday Bhan (PW-10) has not supported the prosecution case. However, it is interesting to note that he was first examined on 4th September, 2000 and his examination in chief was deferred after recording that learned public prosecutor had stated that the witness did not appear to be in his senses. Whereas the witness had stated that he had taken medicines for treatment of TB. Uday Bhan (PW-10) had accepted that he had gone to the office of the CBI and had stated that the complainant may be Sallan (PW-2) but he had been called Kallan. He has further stated that the complainant had given Rs.5,000/- in the CBI office but he did not remember the denomination of the currency notes. He had stated that neither the numbers of notes were recorded nor were they treated with Phenolphthalein powder. He had stated that Inder Singh (PW-5) was directed to remain close with the complainant Sallan (PW-2) to overhear conversation and see the transaction. He had admitted that he had gone to the house of Sallauddin at Khajuri Khas and at about 5.30 pm he had seen a person in civil dress, riding on a Bajaj scooter, whose identity was disclosed later on as appellant Ram Chander. Inder Singh gave pre appointed signal to the raiding party and some Inspectors from the raiding party over-powered the appellant

Ram Chander. He had also admitted that the appellant Ram Chander was asked that he had demanded and accepted bribe of Rs.5,000/- from Sallan on which the appellant kept mum. He, however, could not identify the appellant Ram Chander and denied that the bribe money of Rs.5,000/- was recovered by him or that the numbers of the currency notes were tallied. He had admitted his signatures on Ex.PW-2/B i.e. the handing over memo, which was prepared before the currency notes were handed over to Sallan (PW-2) and Ex.PW-2/C, which gives serial number of the currency notes. He has also admitted his signatures on the recovery memo Ex.PW-2/D, rough sketch site plan (Ex.PW-5/A) and personal search and seizure memo (Ex.PW-11/B) of the appellant Ram Chander.

16. Inder Singh (PW-5) has stated that Sallan had made a complaint that the appellant Ram Chander had demanded money from him but he could not tell how much money was demanded. He had also admitted that numbers of the currency notes were noted down on a paper. After being declared hostile and on being cross-examined by Public Prosecutor, he had stated that Sallan had told him that the appellant Prem Dutt Sharma had demanded bribe from Sallan but he did not remember the amount. He has stated that the chemically treated currency notes were given to Sallan with direction to give the said notes to the accused only on specific demand. He has confirmed that they went to the house of Sallauddin on 31st March, 1994 and at about 5.30 pm, the appellant Ram Chander came on a scooter and sat on a chair inside the house and inquired from Sallan about Sallauddin. Inder Singh (PW-5) has denied the conversation which took place between Sallauddin and the appellant Ram Chander. He had stated that when the appellant Ram Chander reached the house of Sallauddin, CBI officials thrust money into the pocket of the appellant Ram Chander. He had denied that he had given any signal. However, he has admitted the T.L.O. had disclosed his

identity and told Ram Chander that he had demanded and accepted bribe from Sallan. Appellant Ram Chander kept mum and could not speak. Appellant Ram Chander was brought to the house of Sallauddin and the tainted notes were recovered by Uday Bhan from the pocket of the appellant Ram Chander. These notes were tallied with the numbers noted on annexure Ex.PW-2/C and found to be correct. Thereafter hands of the appellant Ram Chander were dipped in the solution of water and sodium carbonate and the colour of solution turned pink. Solution was transferred in a bottle and was sealed with the seal of CBI. He has identified his signatures on the rough site plan Ex.PW-5/A, the facsimile impression of the CBI seal taken on Ex.PW-5/B and recovery memo Ex.PW-2/D. He has also identified currency notes Ex.P-2 to P-51, which were recovered from the shirt pocket of the appellant Ram Chander.

17. Sallauddin (PW-6) has stated that Sallan was his employee and had informed him that some police officers were demanding money from him. He has admitted his thumb impression on the complaint, which was made on 29th March, 1994. He has accepted that Sallan had gone to CBI office and a complaint was made on which he had put his thumb impression. He has accepted that on 31st March, 1994, Sallan had visited his house along with Inder Singh (PW-5). He, however, has denied that the appellant Ram Chander had come to his house and was present in court. He has accepted that Sallan had given Rs.5,000/- to someone in his presence but does not know whether he was a CBI officer or a police officer as he was talking to one Zakir outside his house. He has accepted that CBI may have arrested one or two persons and money was recovered from their pocket. He has also accepted that hand washes were taken. He has accepted that his thumb impressions were obtained on certain papers.

18. K.S. Joshi (PW-11), who is TLO and the Investigating Officer, has corroborated the relevant facts. He has confirmed that the Sallan had made a complaint and pursuant thereto they had gone to the house of Sallauddin (PW-6) along with other witnesses. Sallan (PW-2) along with Inder Singh (PW-5) walked on foot towards the house of Sallauddin whereas other members of the party and Uday Bhan took their position near the house of Sallauddin (PW-6). At about 4.45 pm a person whose identity was later on disclosed as constable Ram Chander, came riding a scooter and entered into the said house. After some time the said person along with Sallan, the shadow witness Inder Singh and Sallauddin came out of the house. Appellant Ramesh Chander went near the scooter and at that time signal was given by the shadow witness. Accordingly members of the trap party along with Uday Bhan Singh rushed towards the appellant Ram Chander. They disclosed their identity and the appellant Ram Chander was told that he had accepted bribe from Sallan. On hearing this the appellant Ram Chander became perplexed and kept mum. He had confirmed the fact that numbers of currency notes were tallied, site plan was prepared and search memo Ex.PW-11/B was made by him. He had obtained the complaint dated 29th March, 1994 made by Sallauddin to the Commissioner of Police, which was given mark Ex.PW-6/A. In his cross-examination he had denied that the money was thrust into the pocket of the appellant Ram Chander by one CBI officer. He has accepted in the cross-examination that in the recovery memo or in the statement of witnesses only one hand of the appellant Ram Chander was mentioned. This fact does not destroy the statement of witnesses or affect the credibility of the statement made by K.S. Joshi (PW-11).

19. It is submitted on behalf of the appellant that K.S. Joshi (PW-11) has not stated what steps were taken by him to verify the complaint. K.S. Joshi (PW-11) in his testimony had stated that on the basis of the complaint he had enquired

the reasons for making the complaint. It was also stated that employer Sallauddin had come to the office of the CBI. It is stated that he had made necessary verifications from his own sources including officers of Delhi Police on telephone. Keeping in view the fact that the bribe money was to be paid by the evening detailed investigation about the complaint was not necessary once the CBI officers were aware and satisfied about the complaint.

20. Mr. V.S. Bisaria (PW-4), Senior Scientific Officer, CFSL, has proved the result of analysis of three bottles which were tested positive for Phenolphthalein and Sodium Carbonate. The fact that in the two bottles colour of the solution turned pale pink and in the third bottle colour of solution turned pink is hardly relevant. The report of the CFSL (Ex.PW-4/A) is clear that on chemical analysis solution was found to be containing Phenolphthalein and Sodium Carbonate.

21. In view of the aforesaid the contention of the appellants that the requisition slip for calling the independent witness has been not placed on record, is irrelevant as presence of the independent witnesses has not been disputed nor denied.

22. Appellant Ram Chander in his statement recorded under Section 313 Cr.P.C. has denied that he had even gone to the shop at Nangal Manchi Devi Nagar, Ring Road on 28/29th March, 1994. He, however, admitted that Allahbux was brought to the Police Station by ASI Ram Babu in case FIR No.117/94 Police Station Gokal Puri. With regard to some other questions, he had stated as under:-

“Q.36. It is further in evidence against you that you used your left hand for opening the lid of pocket and used right hand for adjusting the money in your pocket. What have you to say?

A. It is incorrect. Money was thrust into my pocket by CBI officers.

Q.37. It is further in evidence against you that as soon as the transaction of bribe was completed witness Inder Singh gave the pre-appointed signal and on receipt of

signal the trap team rushed towards the spot. What have you to say?

A. It is incorrect. I was just enquiring from some person about the whereabouts of one accused Hafizullah, who was a P.O., when I was apprehended and money was forcibly put in my pocket.

Q. 38. It is further in evidence against you that you were caught by your wrist by CBI officials and Sh. K.S. Joshi PW-11 disclosed his identity and challenged you for accepting bribe money from Sallan PW-2 and on this you became perplexed. What have you to say?

A. It is incorrect.

Q. 39. It is further in evidence against you that Sh.K.S. Joshi PW-11 directed Udey Bhan to recover currency notes from your pocket and he recovered the tainted money from you left side shirt pocket. What have you to say?

A. It is also incorrect. In fact, I resisted with my left hand, when the money was being thrust into my pocket.

Q. 40.

A.

Q. 41. It is further in evidence against you that your left and right hand fingers were washed in solutions of sodium carbonate separately and these solutions were transferred into two clean empty bottles which were corked and wrapped with cloth wrappers and labels were pasted on them and witnesses signed on the cloth wrappers and labels. What have you to say?

A. It is correct to the extent only that my hand wash was taken.

Q.42. It is further in evidence against you that you were made to remove your shirt and inner lining of left pocket was washed in another solution of sodium carbonate which was sealed in another bottle in the above said manner. What have you to say?

A. It is correct to the extent only that inner lining of left pocket of my shirt was washed."

23. Learned counsel for the appellants has relied upon ***Sita Ram Vs. State of Rajasthan*** AIR 1975 SC 1432, ***Ram Prakash Arora Vs. The State of Punjab*** AIR 1973 SC 498 and ***Suraj Mal Vs. State (Delhi Administration)*** AIR 1979

SC 1408. Reference is also made to the ***Darshan Lal Vs. Delhi Administration*** AIR 1974 SC 218, ***Om Prakash Vs. State*** AIR 1976 SC 195, ***G.V. Nanjundiah Vs. State (Delhi Administration)*** AIR 1987 SC 2402, ***Rajendra Prasad Vs. State*** 1993 CLJ 750 and ***Panalal Damodar Rathi Vs. State of Maharashtra*** AIR 1979 SC 1191. The decision in ***Sita Ram*** (supra) is limited to its own facts as held by the Supreme Court in ***M. Narsinga Rao*** (supra). The decisions in the case of ***Ram Prakash Arora, Suraj Mal, Darshan Lal and Panalal Damodar Rathi*** (supra) are of no help to the appellant Ram Chander. In ***Ram Prakash Arora*** (supra) the complainant had turned hostile. The court noticed that the raiding party was headed by DSP against whom, serious strictures had been passed with regard to his conduct in investigation in another case. The said DSP was associated with two inspectors whose antecedents were equally doubtful and they were not produced as witnesses. With regard to evidence of other witnesses, the Supreme Court had made observations that the said witnesses were interested parties in the facts of the said case. In ***Darshan Lal*** (supra), the currency note was not recovered from the appellant. The prosecution case was that the appellant had thrown the currency note on the ground after noticing arrival of police. The Supreme Court had observed that the court below had over-looked the evidence of Deputy Superintendent of Police, who had not seen the note being thrown on the ground but had stated that witness had picked up a 100 rupees note, which was alleged to have been thrown on the ground by the appellant therein. There was discrepancy in the statement of witnesses with regard to recovery of incriminating currency note. It was observed that the complainant in the said case had vested interest and had grudge against the appellant. It was not one factor alone but several factors on which the Supreme Court had doubted the story of prosecution. In ***G.V. Najundiah*** (supra) the Court had observed that the factum of acceptance of bribe was not

established. There were doubts in the statement of the complainant as to how the bribe was accepted. In ***Panalal Damodar Rathi*** (supra), the Supreme Court had observed that there was no mention of demand or demand of money or direction by the appellant to pay money to the second accused-appellant. The currency notes were not recovered from the appellant. In ***Rajendra Prasad*** (supra), a single Judge of Madhya Pradesh High Court has rejected the prosecution case as the single independent witness was not supporting the prosecution case and the evidence of the complainant was not reliable. There was no documentary evidence to show that the main accused was present at the time when bribe was given. In this connection it may be appropriate to refer to the observations made in ***State of Uttar Pradesh Vs. Zakaullah*** (1998) 1 SCC 557 wherein it has been observed as under:-

“6. The complainant’s evidence was jettisoned on the mere ground that since he had a grouse against the delinquent public servant he might falsely have implicated the latter. Such a premise is fraught with the consequence that no bribe-giver can get away from such a stigma in any graft case. No doubt PW 5 would have been aggrieved by the conduct of the respondent. The very fact that he lodged a complaint with the Anti-Corruption Bureau is reflective of his grievance. Such a handicap in his evidence may require the Court to scrutinise it with greater care, but it does not call for outright rejection of his evidence at the threshold. A pedantic approach rejecting the evidence of a complainant simply on the premise that he was aggrieved against the bribe-taker, would only help corrupt officials getting insulated from legal consequences.”

24. In the said case the Supreme Court had also relied upon police officer, who had arranged for the trap. It was observed that he had no interest against the accused as he had no animosity against the said delinquent officer.

Reference was also made to the decision of the Supreme Court in ***Prakash Chand Vs. State (Delhi Administration)*** 1979 3 SCC 90 and ***Hazari Lal Vs. State of Delhi*** (1980) 2 SCC 390.

25. Section 20 of the PC Act, 1988, raises a presumption and reads as under:-

“20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its

opinion, so trivial that no inference of corruption may fairly be drawn.”

26. In ***B. Noha Vs. State of Kerala & Another*** (2006)

12 SCC 277, it was observed:-

“**10.** The evidence shows that when PW 1 told the accused that he had brought the money as directed by the accused, the accused asked PW 1 to take a cut and give the same to him. When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. It was held by this Court in *Madhukar Bhaskarrao Joshi v. State of Maharashtra* as follows:

“12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted ‘as motive or reward’ for doing or forbearing to do any official act. So the word ‘gratification’ need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like ‘gratification or any valuable thing’. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word ‘gratification’ must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.”

11. This decision was followed by this Court in *M. Narsinga Rao v. State of A.P.* There is no case of the accused that the said amount was received by him as the amount which he was legally entitled to receive or collect from PW 1. It was held in the decision in *State of A.P. v. Kommaraju Gopala Krishna Murthy* that when

an amount is found to have been passed to the public servant the burden is on public servant to establish that it was not by way of illegal gratification. That burden was not discharged by the accused.”

27. From the aforesaid discussion, I am satisfied that the appellant Ram Chander was caught red handed at the spot with bribe money after he had demanded bribe from Sallan (PW-2). The prosecution’s case has been proved beyond doubts against the appellant Ram Chander. Conviction and sentence of Ram Chander under section 7 and section 13(2) read with section 13(1)(d) is maintained.

28. It is the contention of the learned counsel for the appellants that Sallan (PW-2) had implicated ASI Ram Babu, and the appellants Prem Dutt Sharma and Ram Chander as he was detained by them on the night intervening 28-29th March, 1994, and therefore had personal enmity and ill will towards them. Sallan (PW-2) was a suspect and was being interrogated for offences. Statement of Sallan (PW-2) should be rejected and discarded. It is not possible to accept the broad contention that statement of Sallan (PW-2) should be discarded as he was a suspect in a case. Bribes can be demanded from suspects. Bribes demanded and paid by suspects are an offence. However, care and caution has to be taken while examining the evidence to rule out possibility of implication. Charges must be proved beyond reasonable doubt about the complicity of the accused. A fact is said to be proved when the court considers its existence so probable on available evidence that a prudent man ought to act upon the supposition that the fact exists.

29. The case of the prosecution is that bribe collected by the appellant Ram Chander was also on behalf of the appellant Prem Dutt Sharma. It is alleged that this is a case of conspiracy. In **State of M.P. Vs. Sheetla Sahai, (2009) 8 SCC 617**, it is observed :

“37. Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused.

38. A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy. Its ingredients are:

(i) an agreement between two or more persons;

(ii) an agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means.

39. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. While saying so, we are not oblivious of the fact that often conspiracy is hatched in secrecy and for proving the said offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can also be proved by circumstantial evidence.

40. In *Kehar Singh v. State (Delhi Admn.)* this Court has quoted (at SCC p. 731, para 271) the following passage from *Russell on Crimes* (12th Edn., Vol. 1):

“The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough.”

41. In *State (NCT of Delhi) v. Navjot Sandhu* this Court stated the law, thus: (SCC p.691, para 101)

“101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.”

30. Sallan (PW-2) in his examination in chief has specifically named the three officers ASI Ram Babu, Head Constable Prem Dutt Sharma and Constable Ram Chander. He has stated that there were some other police officers too but he did not know their names. He had recognized the appellant Prem Dutt Sharma in the Court as one of the officers, who had picked him up in the night intervening 28-29th March, 1994. He had stated that at the time of release, ASI Ram Babu and the appellants Ram Chander and Prem Dutt Sharma had directed him to bring Rs.5,000/- on 30th March, 1994 at 4. P.M. in the police station.

31. With regard to what had happened on 30th March, 1994, he has stated as under:-

“I went to police station and met Ram Dutt Sharma, Ram Babu and Prem Dutt. I told them that I could not arrange the money that day and would arrange for the same next day. Constable Ram Chander told me that he accept the money at the residence of Saluddin and also talk to Shri Saluddin. So thereafter it was decided that I will reach the house of Saluddin on 31.3.94 at about 5.00 p.m. & they had agreed that they will take money at the residence of Saluddin.”

(emphasis supplied)

32. Thus, Sallan (PW-2) had submitted that he met ASI Ram Babu and the appellants Ram Chander and Prem Dutt Sharma on 30th March, 1994 in the police station and told them that he could not arrange for money at that time but he would arrange money on the next day. He has stated that the appellant Ram Chander told him that he would accept the money at the residence of Sallauddin and also talk to Sallauddin. At the same time Sallan (PW-2) has used the word "they" with reference to all of them, who would be taking money at the residence of Sallauddin. Thus there is discrepancy/doubt whether the appellant Prem Dutt Sharma on 30th March, 1994, at 4 pm, had demanded bribe to be paid the next day. The appellant Prem Dutt Sharma did not come to the house of Sallauddin. Appellant Prem Dutt Sharma was not at the spot at the time of the trap on 31st March, 1994. It is interesting to note that ASI Ram Babu has not been prosecuted and sanction was not given for prosecution of ASI Ram Babu, though evidence against ASI Ram Babu and the appellant Prem Dutt Sharma is identical and same and there is no difference in their cases. My attention is drawn to the fact that the charge, which was framed against the appellant Prem Dutt Sharma was that the scooter used by Ram Chander belonged to the appellant Prem Dutt Sharma. There is no evidence to show that the scooter used by the appellant Ram Chander belonged to Prem Dutt Sharma. In these circumstances, I am inclined to give benefit of doubt in case of Prem Dutt Sharma. He is accordingly acquitted. As held above, the conviction and sentence of Ram Chander under section 7 and section 13(2) read with section 13(1)(d) of the PC Act is upheld and maintained.

Appeals are disposed of.

(SANJIV KHANNA)
JUDGE

NOVEMBER 02, 2010.
NA/P