

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

% Judgment reserved on: 04.03.2011  
Judgment delivered on: 08.04.2011

+ **Crl.A.107/2002**

SHRI R. P. S. YADAV

..... APPELLANT

Vs

CBI

..... RESPONDENT

**Advocates who appeared in this case:**

For the Appellant : Mr Sunil Mund, Advocate

For the Respondent : Ms Sonia Mathur, Advocate

**CORAM :-**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

**RAJIV SHAKDHER, J**

1. The captioned appeal has been preferred against the judgment dated 17.01.2002 passed by Shri M.L. Sahni, Special Judge, Tis Hazari Court, Delhi in CC No.10/1999.

2. By virtue of the impugned judgment, the appellant (i.e., Sh R.P.S. Yadav) has been convicted for offences under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the P C Act, 1988'). As a result thereof, the appellant has been sentenced to undergo simple imprisonment for a period of two years in respect of conviction under Section 7 of the P C Act, 1988 with a fine of Rs 3000/-. In default of payment of fine, he is required to undergo simple imprisonment for a further period of one and a half month. In so far as the appellant's conviction under Section 13(2) read with Section 13(1)(d) of the P C Act is concerned, he has been sentenced to undergo simple imprisonment for a period of two and a half years with a fine of Rs 7000/-. In default of payment of fine, the appellant is required to

undergo a further period of incarceration (i.e., simple imprisonment) for a period of two months. The two sentences are to run concurrently.

3. The conviction of the appellant has occurred in the background of the following circumstances which are adverted to in the complaint (Ex PW3/F) and the FIR (Ex PW8/A). The circumstances being as follows: The complainant in this case is one Sh Hamid Khan (PW-3) who was at the relevant point in time running a tailoring shop at F-237, New Seema Puri, Delhi. In connection with the said business, in the year 1994, Hamid Khan (PW-3) had applied for a licence to the Municipal Corporation of Delhi (in short 'MCD'), Health Department, located in Shahadra Zone Delhi. Hamid Khan (PW-3) in response to his application received a letter in April, 1995 from MCD, inter alia, calling upon him to furnish certain documents related with the tailoring shop he ran at the premises, referred to hereinabove. Even though Hamid Khan (PW-3) evidently, had filed the papers sought for, he did not receive any response from MCD for a considerable period of time. It is in this connection that the Hamid Khan (PW-3) visited the appellant, an employee of MCD; upon being informed that the appellant was the concerned person who, he would have to meet in order to process his papers.

4. In this background, the first meeting, between Hamid Khan (PW-3) and the appellant took place on 05.05.1995 at about 3.00 pm in the afternoon in the office of the appellant. At the meeting, Hamid Khan (PW-3) was told by the appellant that, if his papers had to be processed i.e., his work had to be done, 'some fee' would have to be paid and for this purpose he should meet him in his office on 08.05.1995 at about 2.30 pm.

5. On 08.05.1995, Hamid Khan (PW-3) alongwith his friend one Sh Krishan Kumar Godwal met the appellant at the appointed time. The appellant at the meeting demanded a bribe of Rs 1500/- in addition to the official fee for processing his papers. Since this modality was not acceptable to Hamid Khan (PW-3), he lodged a complaint (Ex PW3/F) dated 09.05.1995 with the Superintendent of Police, Central Bureau of Investigation (in short 'CBI') at his office located at Lodhi Road, New Delhi. Based on the report, a First

Information Report (in short 'FIR') (Ex PW8/A) was registered on the same day i.e., 09.05.1995.

6. On registration of the FIR, the case was entrusted to Sh S. R. Singh (PW-8), Inspector, CBI, ACB, New Delhi. It appears that Sh S. R. Singh (PW-8) after satisfying himself as regards the ingredients of the complaint took a decision to lay a trap for the appellant. Accordingly, a team was constituted which included CBI personnel and two independent witnesses, namely one, Sh S. S. Rawat (PW-6) who was employed as a typist in the Vigilance Department of F.C.I and Sh A. K. Sanan (PW-7), also an employee of F.C.I. Sh S. R. Singh (PW-8) headed the team; in fact was the Trap Laying Officer (in short 'TLO').

7. As is customary, in such like operations conducted by the CBI, pre-trap proceedings were carried out. A handing over memo (Ex PW3/H) was prepared, which was signed by Sh S. S. Rawat (PW-6) and Sh A. K. Sanan (PW-7) as also by Sh S. R. Singh (PW-8). During the course of the pre-trap proceedings, Sh S. S. Rawat (PW-6) and Sh A. K. Sanan (PW-7) were given an opportunity to speak to Hamid Khan (PW-3) i.e., the complainant to ascertain the ingredients of his complaint. Furthermore, it was explained to Hamid Khan (PW-3) that he was to hand over the GC notes i.e., the bribe money to the appellant or any other person as per the direction of the appellant only on a specific demand being made and not otherwise. Sh S. S. Rawat (PW-6) was directed to act as a shadow witness to accompany Hamid Khan (PW-3) so that a first person account could be had of the transaction in respect of which Hamid Khan (PW-3) had made a complaint.

8. As is usual, every member of the trap laying party was asked to wash their hands thoroughly with soap and water whereafter, personal search was taken of each of the members of the trap laying party which included Sh S. S. Rawat (PW-6) and Sh A. K. Sanan (PW-7). The officials of the CBI were directed not to carry anything else with them except their identity cards. The trap laying party left the CBI premises alongwith a trap bag consisting inter alia clean glass tumblers, clean glass bottles, spoon, Sodium

Carbonate, CBI seals and other sealing material. The members of the trap team and the independent witnesses were informed of their respective roles. The contents of the bag were shown to the members of the trap team including Hamid Khan (PW-3). The GC notes, which were 15 in number of a denomination of Rs 100 each, were treated with Phenolphthalein powder. A demonstration was given by a CBI officer to the members of the trap team to show to them that when treated notes were handed over to the bribe-taker how the powder would stick to the handler's hands, and upon the handler's hands and fingers being dipped in a colourless solution of Sodium Carbonate it would turn pink in colour. This demonstration was given with the help of A. K. Sanan (PW-7) and in the presence of the other independent witness i.e., Sh S. S. Rawat (PW-6). After this demonstration was over, the pink colour solution was discarded and as indicated above, a trap laying bag was prepared carrying clean glass tumblers and other attendant material including Sodium Carbonate solution, in case an eventuality arose to use the same on the conclusion of the operation.

9. To continue with the narrative, at about 3.40 pm the trap laying party reached the office of the MCD at the address noticed hereinabove. Hamid Khan (PW-3) alongwith Sh S. S. Rawat (PW-6) the shadow witness, proceeded to the room where the appellant usually was available. All this while the other members of the trap team took suitable positions outside the office of the MCD. The other members of the trap team were required to converge only upon the shadow witness i.e., Sh S. S. Rawat (PW-6) giving a pre arranged signal to the said members of the trap laying party. Sh S S Rawat (PW-6) was thus required to signal to the other members of the trap laying party to convene by scratching his head.

10. On reaching office of the appellant, Hamid Khan (PW-3) asked the appellant whether his work had been done; to which the appellant responded by asking whether the money demanded had been brought by him. On receiving affirmation from Hamid Khan (PW-3) in respect of the same, the appellant walked out of his room alongwith Hamid Khan (PW-3) and the shadow witness Sh S. S. Rawat (PW-6). He then called out for his

peon, one Sh Chandan Singh. On receiving no response, he walked out of his room where he met Sh Janak Raj, a Class IV employee of the MCD.

10.1 It is pertinent to note at this stage that Janak Raj was also a co-accused in the case who has been acquitted by the trial court.

10.2 The appellant it appears whispered something to Sh Janak Raj, whereafter he directed Janak Raj to accompany Hamid Khan (PW-3) with a direction that the money should be handed over to Janak Raj. Consequently, Hamid Khan (PW-3) alongwith Sh S. S. Rawat (PW-6) came out of the office and crossed the road and entered the adjoining public park. On reaching the park, Janak Raj asked Hamid Khan (PW-3) to hand over the money, which was done; at which point in time Sh S S Rawat gave the pre arranged signal. By this time Janak Raj had received the treated GC notes with his right hand and, evidently after counting the money with both his hands, kept the money in the right side pocket of his trouser.

11. On receiving the signal, other members of the trap team also descended at the spot where transaction was consummated alongwith other independent witness Sh A. K. Sanan (PW-7). The trap team confronted Janak Raj, who was the recipient of the money. Janak Raj on being confronted accepted that he had received the money on the direction of the appellant. Thereafter, Janak Raj was taken to the room of the appellant, where on the direction of Sh S. R. Singh (PW-8) i.e., the TLO, Sh A. K. Sanan (PW-7) recovered Rs 1500/- from the right side pocket of Janak Raj's trouser. Immediately thereafter, the washes of the right hand and the left hand fingers as well as the inner lining of the right side pocket of Janak Raj's trouser was taken. The washes had evidently turned pink in colour.

12. The colourless solution of Sodium Carbonate which had turned pink was accordingly transferred into clean containers/bottles which had been brought by the trap team alongwith them. The bottles were wrapped with a cloth and sealed. In so far as the left hand wash was concerned, it was marked as LWH, and similarly the right hand wash of Janak Raj was marked as RWH. In so far as the wash of the right hand side pocket of

Janak Raj's trouser was concerned, a paper with the mark RPW was attached. A site plan (Ex PW6/P) was also prepared wherein, the positions of various persons before and after the trap were indicated. Personal search of Janak Raj was also conducted, and a personal search memo being: Ex PW6/C was prepared. A personal search memo of the appellant was also prepared, being Ex PW6/B. Both search memos bear the signatures of the two independent witnesses S. S. Rawat (PW-6), A. K. Sanan (PW-7) and TLO, S. R. Singh (PW-8) as also the persons whose search had been conducted which is the appellant and Janak Raj. The bottles containing the coloured solution, the GC currency notes which had been handled by Janak Raj as well as the trouser which was worn by Janak Raj was taken into custody. The events as they transpired during the course of the trap operation were recorded in a recovery memo (ExPW3/K). The said recovery memo (ExPW3/K) bears the signatures amongst others of the complainant Hamid Khan (PW-3), TLO S. R. Singh (PW-8) and S. S. Rawat (PW-6). The chemical analysis of all the samples also showed a positive result.

13. By an order dated 27.07.1995 the Additional Commissioner, MCD granted sanction (Ex PW2/A) under Section 19(1)(c) of the P C Act for prosecution of both the appellant and Janak Raj for offences punishable under Section 120B of the Indian Penal Code (in short 'IPC'), Section 7, Section 13(1)(d) read with Section 13(2) of the PC Act.

14. The appellant and Janak Raj were charged under the provisions of Section 120B of the IPC, Section 7 and 13(2) read with Section 13(1)(d) of the PC Act.

15. At the trial, the prosecution examined nine (9) witnesses while, the defence examined the accused and one more witness i.e., one Sh Rampal (DW-1).

16. The trial court on perusal of the evidence on record came to the conclusion in so far as Janak Raj was concerned that no incriminating evidence had been placed on record by the prosecution to prove the constituents of criminal conspiracy. The trial court thus held that charge as against Janak Raj was not proved. Similarly, in so far as the charge against the appellant under Section 120B was concerned, it was dropped, in view of the fact that the prosecution had failed to establish subsistence of any agreement between the

co-accused Janak Raj and the appellant to commit an illegal act including the act of demanding illegal gratification from the complainant Hamid Khan (PW-3). The rationale being, if the charge is of criminal conspiracy between two persons and one of them is acquitted, and it is not the case of the prosecution of involvement of a third person, the charge against the other will also fail.

17. In so far as the remaining charges against the appellant, in respect of the other substantive provisions were concerned, the trial court sustained the same. In coming to this conclusion, the learned trial judge observed that based on the evidence on record the prosecution had been able to establish that the appellant was a public servant; and that he had demanded and thereupon accepted a sum of Rs 1500/- through the via media of the co-accused Janak Raj, on 09.05.1995, in pursuance of demand made from the complainant Hamid Khan (PW-3). The learned trial judge concluded that the bribe was accepted as a reward for according a licence to the complainant Hamid Khan (PW-3) in respect of his tailoring shop.

18. Being aggrieved, as noticed above, the instant appeal has been filed.

19. In support of the appeal, on behalf of the appellant arguments have been addressed by Mr Sunil Mund. In rebuttal on behalf of the State arguments have been advanced by Ms Sonia Mathur. It must be stated at the outset that even though in the appeal several grounds have been raised, Mr Sunil Mund confined his submissions to the following.

19.1 It was submitted that in order to sustain the conviction as had been done by the trial court, the evidence on record must lead the Court to a conclusion, beyond reasonable doubt, that an illegal demand had been made by the appellant and in pursuance thereto the bribe was accepted by him. The prosecution, according to Mr Mund, had also to prove, in order to establish the guilt of the appellant, the recovery of the tainted money from the appellant. It was submitted that none of the ingredients were established or, at least, the evidence placed on record did not reach the standard of proof prescribed for conviction in criminal matters.

19.2 To buttress his submission, the learned counsel submitted that the appellant was not conferred with the authority to issue licence and that it was in fact the Zonal Assistant Commissioner who was conferred with the said authority. The job assigned to the appellant was only to scrutinize the documents filed in that behalf by the applicants, which included the complainant Hamid Khan (PW-3).

19.3 Mr Mund went on to say that, as is evident from the evidence, the appellant had only informed the complainant Hamid Khan (PW-3) that for processing his documents he would have to pay a fee of Rs 1500/- as per the prevalent rules, for the period 1991-1996. This, according to Mr Mund, had annoyed the complainant Hamid Khan (PW-3) as he was desirous of having his application processed under the old rules, which would have resulted in his having to pay approximately Rs 750. The complainant Hamid Khan (PW-3) not being too happy with the fact that he was told by the appellant that he would have to pay the requisite fee of Rs 1500/- had filed the said complaint with the CBI against him. In support of this submission, the learned counsel drew my attention to the statement of the appellant made under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to in short as 'Cr.P.C').

19.4 In order to establish that there was no demand made, learned counsel drew my attention to the testimony of the complainant Hamid Khan (PW-3). In particular my attention was drawn to the following portion of the testimony:-

“.....We both entered into the room of accused R.P.S. Yadav. I wished accused R.P.S.Yadav and I asked:-

Sir, Mera kaam ho jaye ga Kya. To which accused Yadav replied : Jo maine kaha tha laya ha. I replied : Haan laya hun. Thereafter, accused Yadav asked me to come out of the room. Thereafter coming out of the room accused R.P.S.Yadav called out the name of his peon Chandan Singh but that peon was not available. At some distance, accused Janak Raj was sitting (witness has correctly identified accused Janak Raj who is present in court). Accused R.P.S.Yadav called accused Janak Raj by waving his hand and accused Janak Raj reached there. Thereafter accused R.P.S.Yadav directed Janak Raj to accompany me and told him “key yeh kuchh degain, lay aao”. Accused Janak Raj came alongwith me outside the office in a park..”

19.5 The learned counsel submitted that as a matter of fact, there was some contradiction between what the complainant Hamid Khan (PW-3) said transpired at the meeting, between him and the appellant on 09.05.1995 and what emerged from the

testimony of S.S Rawat (PW-6). In this context he relied upon the following part of S. S.

Rawat's (PW-6's):-

“...We left for MCD office, Shahdara zone at about 1.30-2 PM and reached near MCD office Shahdara office at about 2.30/2.45 PM. On reaching there I and complainant went in the chamber of accused Yadav and complainant enquired from accused Yadav as to what had happened to his work. Accused Yadav asked the complainant to come day after tomorrow OR KAM HO JAYE GA. Thereafter complainant stayed there for about 2-4 minutes and said “KI MAINE KAM KIYA HUA HAI”. In the meanwhile accused Yadav stood up from his seat and called his peon whose name was like that of Chandan. Exact name I do not remember. However that person was not available at that time. Thereafter accused Yadav went to the room of accused Janak Raj after searching for him in 4/5 rooms. Again said accused Yadav went to different rooms KI KOI BHI ADMI MIL JAYE. Accused Janak Raj was sitting in his section on his duty. Accused Yadav called him and pointed towards us by saying to accused Janak Raj that he should go alongwith us. However, accused Yadav did not tell about the purpose of the work. Janak Raj was not willing to go for that work but however he left that work to obey the order of his superiors.....”

19.6 Based on the said testimony, Mr Mund submitted that not only was there a vast difference in recollection of the events as they transpired on 09.05.1995 when the complainant Hamid Khan (PW-3), and shadow witness S. S. Rawat (PW-6) met the appellant, but it also showed that there was in fact no demand of illegal gratification by the appellant. The reliance in this regard was also placed on the testimony of Rampal Singh (DW-1), wherein the said witness said that on 08.05.1995 at about 1.30 pm when, he was sitting with the appellant for lunch two persons walked into the office one of whom revealed his name as Hamid Khan (PW-3), and enquired as to the fee that would be payable for the period 1992-1996. At which point, the appellant informed the said gentleman that the fee for the five year period would be Rs 1000 in addition to a registration fee of Rs 500. At this juncture, according to DW-1, the complainant Hamid Khan (PW-3) sought concession of Rs 500 to which the appellant responded by saying that the same had to be paid towards government fee and hence, it could not be waived. DW-1 went on to say that, at this point the gentlemen left the room and threatened the appellant while leaving the room. Based on this, Mr Mund submitted that there was no evidence on record that the appellant had demanded money towards illegal gratification.

19.7 As regards acceptance of illegal gratification, Mr Mund sought to demonstrate

from the evidence on record that the bribe money was handed over to Janak Raj, even as per the prosecution and not to the appellant. He further submitted that as a matter of fact A. K. Sanan (PW-7) had denied that he had taken search of the right side trouser pocket of Janak Raj and that on doing so, he had recovered the treated G. C. notes amounting to Rs 1500/-. A specific emphasis was laid on the following part of the testimony of A. K. Sanan (PW-7):-

“....It is incorrect to suggest that I was directed to take the search of right side pant pocket worn by Janak Raj and on doing so I recovered Rs.1500/- consisting of 15 GC notes of Rs 100 denomination each.....”

19.8 Mr Mund also attempted to demonstrate contradictions in the prosecution's case by relying upon the testimony of the complainant Hamid Khan (PW-3). My attention was drawn to that part of the testimony of the complainant Hamid Khan (PW-3) wherein, he submitted that Janak Raj had handed over the tainted GC notes to the appellant and the said GC notes were recovered from the pocket of the appellant and not from the pocket of Janak Raj. The relevant part of the testimony is extracted hereinbelow:-

“....The money was not recovered from the pocket of accused Janak Raj and the same was recovered from the pocket of accused R.P.S.Yadav...

It is wrong to suggest that no handwash of accused R.P.S.Yadav was taken. Volunteered: Pant wash to accused R.P.S.Yadav was taken.”

19.9 Mr Mund also drew my attention to another part of the complainant Hamid Khan's (PW-3) testimony in which he stated that he was told that the assessment fee was Rs 1500/- and that he had not deposited the assessment fee for the years 1992 to 1996. The purpose of drawing my attention to the said part of Hamid Khan (PW-3's) testimony was that the payment of Rs 1500/- was being discussed between the appellant and the complainant Hamid Khan (PW-3) in the context of what was legally payable as fee for grant of licence.

20. Based on the aforesaid, Mr Mund argued that the case against the appellant could not stand; since suspicion could not substitute proof. In support of his submissions he placed reliance on the following judgment of the Supreme Court:-

***Varkey Joseph vs State of Kerala: AIR 1993 SC 1892***

21. On behalf of the State Ms Sonia Mathur largely relied upon the judgment of the trial court. Ms Mathur, drew my attention to the testimony of S. S. Rawat (PW-6), A. K. Sanan (PW-7), S. R. Singh (PW-8) and Hamid Khan (PW-3) to establish that not only was there demand but that there was also acceptance of the illegal gratification; though the gratification had been received by Janak Raj on behalf of the appellant. The learned counsel, however, fairly conceded that the case of the prosecution was that treated GC notes had been recovered from the Janak Raj notwithstanding the fact that the complainant had deposed that the tainted money had been recovered from the appellant. The learned counsel submitted that notwithstanding the fact that the S. S. Rawat (PW-6) and A. K. Sanan (PW-7) had turned hostile it was not as if the entire testimony on that account alone would be discarded by the Court. It was submitted that both A. K. Sanan (PW-7) and S. R. Singh (PW-8) had not only proved their signatures on the pre-trap proceedings i.e., the handing over memo (Ex PW3/H) but had also proved their signatures on the recovery memo (ExPW3/K). It was submitted that the contradictions, if any, in the testimony of PW-6 and PW-7 were minor and did not in any way dilute the case of the prosecution. It was also contended that a reading of the testimony of the TLO S. R. Singh (PW-8) alongwith other circumstantial evidence would (as held by the trial court) prove beyond reasonable doubt the guilt of the appellant. In support of the aforesaid submissions, the learned counsel appearing for the State relied upon the following judgments:-

***State of Maharashtra vs Narsingrao Gangaram Pimple: AIR 1984 SC 63; State of U.P vs Zakaullah: (1998) 1 SCC 557; Gura Singh vs State of Rajasthan: 2001 Crl.L.J 487(SC); B. Noha vs State of Kerela & Anr. (2006) 12 SCC 277; Jodhraj Singh vs State of Rajasthan: 2007 Crl.L.J. 2942(SC); and Madan Lal vs State (G.N.C.T of Delhi): Crl.A 67/2005 decided on 22.03.2010***

22. I have heard the learned counsel for the appellant as well as the State and also perused the evidence on record. It is no doubt true that in order to establish the guilt of

the appellant the evidence on record must establish beyond reasonable doubt the necessary ingredients in respect of the offence with which they are charged. These being: the demand of illegal gratification, the acceptance of such illegal gratification and the recovery of the same from the appellant; de hors statutory presumption. To examine this let me touch upon the testimony of the key witnesses of the prosecution and what they had to say in regard to the allegation qua the appellant.

23. The complainant Hamid Khan (PW-3) testified that he had made an application to the MCD in 1994 for grant of licence to run a tailoring shop; in 1995 he received a communication from the office of the MCD to furnish documents mentioned in the said communication; after receipt of the said communication even though he submitted the said documents, he was not issued a licence; this resulted in his approaching the appellant who was posted as an Inspector in the office of the MCD; he met the appellant in April-May, 1995 when he was told to bring some documents which produced in original alongwith their Photostat copies. The complainant Hamid Khan (PW-3) went on to say that the appellant told him that, if he wanted a licence to be issued in his favour he would have to pay him Rs 1500/-. On the complainant Hamid Khan (PW-3) enquiring whether the said amount was a fee, the appellant told him that the licence fee would be different from the amount of Rs 1500/- demanded by the appellant. To be noted, Hamid Khan (PW-3) in Court identified the appellant as the one who had demanded a sum of Rs 1500/- from him. The complainant Hamid Khan (PW-3) also proved his complaint to the CBI (Ex PW3/F) which he testified was in his own handwriting and bore his signatures at point A. Hamid Khan (PW-3), went on to state that on the complaint being made S. R. Singh (PW-8) constituted a trap team comprising of two independent witnesses one of whom was S S Rawat (PW-6). He did not seem to remember the name of the other witness. Hamid Khan (PW-3), however went on to say that, the independent witnesses did not ask him any questions, and that he was the one who had produced Rs 1500 in the denomination of Rs 100 each, which he handed over to S R Singh i.e., TLO PW-8. He further deposed that the serial

numbers of the GC notes were recorded and also the fact that they were treated with Phenolphthalein powder. PW-3 proved his signatures at point A on the Annexure (Ex PW3/G) appended to the handing over memo Ex PW3/H, which set out the numbers of the GC notes. He also proved the procedure which was adopted, as noticed by me above, with respect to the pre-trap proceedings.

23.1 In so far as what transpired on the day the trap was executed, Hamid Khan (PW-3) testified that he alongwith the trap team and the independent witnesses left the CBI office for the MCD office, where the appellant was posted. On reaching the MCD office, he entered the MCD office alongwith S S Rawat (PW-6). On entering the appellant's room he enquired from the appellant as to whether his work had been done the appellant replied "Jo maise (maine) kaha tha laya ha(hai) " to which PW-3 evidently responded by saying that "Haan laya hun" whereupon the appellant it appears came out of the room and called out the name of his peon one Chandan Singh. Since Chandan Singh was not available, and having noticed Janak Raj sitting at some distance, he waived to him and asked him to accompany the complainant Hamid Khan (PW-3). Janak Raj, according to Hamid Khan (PW-3), was told that "Ke eh kuchh denge lay aao". Thereupon Hamid Khan (PW-3) accompanied Janak Raj to a park adjoining the office with the shadow witness S. S. Rawat (PW-6). After reaching the park Janak Raj exhorted PW-3 to give him whatever he had to hand over by stating "Lao ji" at which point in time the treated GC notes which were wrapped in a paper were handed over to Janak Raj. Janak Raj took the notes wrapped in the paper in his right hand. The paper containing the notes was kept by Janak Raj in his trouser pocket at which point in time the shadow witness S. S. Rawat (PW-6) signaled to the other members of the trap team. The CBI officials reached there swiftly and apprehended the accused Janak Raj. Janak Raj when apprehended said "Kayon pakra hai kaya bat hai". On being caught, CBI officers told Janak Raj that he had accepted Rs 1500 as bribe money, whereupon Janak Raj denied the allegation and started weeping. The CBI officials thereafter directed Janak Raj to remove the package from his pocket, and on

opening the package, it was found that it contained Rs 1500. Janak Raj was thereafter asked to count those notes. Janak Raj, as directed, counted the treated GC notes with his hands, at which point, Janak Raj told the CBI officials his Sahib (i.e., the appellant) asked him “Ki yeh jo denge inke saath jakar lay aao”. The CBI officials thus directed Janak Raj to hand over those tainted notes to his Sahib i.e., the appellant for whom he had collected the said GC notes. Janak Raj was also told not to indulge in actions which would forewarn the appellant, and also that the notes must be handed over to the person who had asked him to accept the same. After this, the complainant Hamid Khan (PW-3) alongwith other persons including Janak Raj entered the office of the appellant and Janak Raj handed over the GC notes to the appellant.

23.2 To be noted, since the witness turned hostile he was cross-examined by the prosecutor. In the cross-examination by the prosecutor, the complainant Hamid Khan (PW-3) stated as follows:-

“...It is correct that witness A K Sanan was directed to recover tainted currency notes from right side pant pocket of accused Janak Raj. Again said: the money was not recovered from the pocket of accused Janak Raj and the same was recovered from the pocket of accused R.P.S.Yadav....”

23.3 The complainant Hamid Khan (PW-3) however testified that after the hand washes of the left and right hand of Janak Raj were taken, the colourless Sodium Carbonate solution turned pink and furthermore the said solution was transferred to separate bottles and sealed. The left hand wash bottle being sealed with the mark LHW. He also testified to the effect that wash of the trouser pocket of Janak Raj was also carried out which turned the colourless Sodium Carbonate solution into pink. He went on to say that the wash was kept in a separate bottle and duly sealed and wrapped with a label put on it. Hamid Khan (PW-3) however went on to testify that hand wash of the appellant was taken. He further volunteered that trouser wash of the appellant was also taken at which point in time he was confronted with his statement under Section 161 of the Cr.P.C. The complainant Hamid Khan (PW-3) however proved his signatures on the recovery memo Ex PW3/K at point A. He also testified that the GC notes (P-1 to

P-15) were the same which he had produced in the CBI office during the pre-trap proceedings, and it was those GC notes which were recovered, albeit from the appellant.

23.4 In the cross-examination carried out by the counsel for the accused (i.e., the appellant) as well as Janak Raj Hamid Khan (PW-3) seemed to suggest that he had signed the papers which were handed over to him by CBI officials without going through the contents of the documents as they were drawn in english. He further submitted that none of these documents had been read over and explained to him. In particular, the complainant Hamid Khan (PW-3) affirmed in his testimony that he was a leader who at times worked on behalf of the others to get their work done at the MCD office, and since he was annoyed with the appellant he had falsely implicated him. He however denied the suggestion that he did not want the appellant to charge assessment fee in the previous years.

24 Mr S. S. Rawat (PW-6) who was the shadow witness in this case and as noticed above, an employee of F.C.I, in his testimony has alluded to following crucial aspects of the case. It may also be noticed that Mr S. S. Rawat (PW-6) is a typist in the Vigilance Department of the F.C.I, posted in the Headquarters at New Delhi. In his testimony, he stated as follows :-

24.1 On 09.05.1995, based on the requisition of CBI, he alongwith Mr A. K. Sanan (PW-7), his colleague reported to the office of CBI. They reached the office around 12.30 p.m. Where they met the complainant, Hamid Khan (PW-3). He deposed that he was told that Hamid Khan (PW-3) had lodged a complaint that a bribe was being demanded of him. He stated that he made an enquiry to that effect from the complainant, who evidently informed him that since his work was not getting done, bribe was demanded of him. He was informed that his job was to see and observe what transpired on their visiting the MCD office at Shahdara Zone.

24.2 On reaching the office, Mr Hamid Khan, complainant (PW-3) alongwith Mr S S Rawat (PW-6) entered the room where the appellant was present, whereupon

PW-3 asked the appellant as to what had happened to his work. The appellant responded by saying that Hamid Khan (PW-3) should come back, day after tomorrow, when his work shall get done. After a brief pause, the complainant Hamid Khan (PW-3) is said to have stated “ki maine kaam kiya hua hai”. At this juncture, it appears that the appellant stood up from his seat and called out for his peon Chandan. Since Chandan was not available, the appellant walked out where Janak Raj was present. On seeing Janak Raj, the appellant called out to Janak Raj and asked him to accompany Hamid Khan (PW-3) and S. S Rawat (PW-6). The appellant, however, did not tell Janak Raj, the purpose of their visit. Janak Raj was unwilling to accompany us but he agreed as he did not want to disobey the order of his superior. On the way, Janak Raj enquired about the purpose of the work; since they had been instructed not to disclose the purpose of their work, they did not get into a conversation on this aspect.

24.3 To be noted, at the stage, when S S Rawat (PW-6) was declared hostile by the public prosecutor, permission was sought to cross-examine Mr S S Rawat (PW-6); which the court granted.

24.4 In the cross-examination by the public prosecutor, Mr S S Rawat (PW-6) admitted that the name of the complainant Hamid Khan (PW-3) was Hamid Khan; that the complainant Hamid Khan (PW-3) had informed him that the appellant, one Mr R. P. S. Yadav, Health Inspector in the MCD had demanded Rs.1500/- from him for obtaining a licence in connection with the tailoring shop which was run by the complainant Hamid Khan (PW-3); he admitted that the complainant had produced Rs.1500/- comprising of 15 GC notes of a denomination of Rs.100/- each, the numbers of which were recorded in Ex. PW-3/G; he admitted that Ex.PW3/G at point ‘B’ bore his signatures. He also accepted the fact that GC notes were treated with phenolphthalein powder. It was accepted by Mr S S Rawat (PW-6) that a pre-trap demonstration was given in the office of CBI and that during the course of that demonstration, said A.K Sanan (PW-7) was asked to touch the said treated notes and then dip his fingers in a solution of sodium carbonate and on doing so, the solution

turned pink in colour. He accepted the fact that the said solution after the demonstration was thrown away. He accepted the fact that the complainant Hamid Khan (PW-3) was handed over the treated notes. He also accepted the fact that the complainant Hamid Khan (PW-3) was instructed to hand over the powder treated notes to the appellant only on a specific demand by him or whomsoever he was directed to. He accepted the fact that he was instructed to accompany the complainant Hamid Khan (PW-3) as a shadow witness for purposes of over-hearing the conversation between the appellant and the complainant and to observe the events as they transpired. He also accepted the fact that, once the bribe money was handed over to the appellant, he was to signal to the other members of the trap team by scratching his head with his both hands. He, however, denied the fact that the members of the trap team washed their hands with sodium carbonate water and had mutually searched each other that they were carrying nothing except their identity cards. He, though, admitted the fact that the handing over memo Ex. PW3/H bore his signatures, though he denied having read the contents of the said document. He denied the suggestion that the appellant had said the following to him :-

“Jo kam ke liye kaha tha veh kiya hai ke nahin and complainant said ‘kiya hai’.

Yadav asked “Abhi laye ho”. Then complainant said :-

“Main laya hun”.

(witness is confronted with portion C to C of statement Ex. PW-6/A where it is so recorded).”

24.5 S.S.Rawat (PW-6), however, stated that the complainant Hamid Khan (PW-3) himself had said “sab kaam ho gaya hai”. Mr S S Rawat (PW-6) further stated in his cross-examination stated that since Chandan was not available (who evidently was his peon), he approached Janak Raj and whispered something in his ear which he was unable to hear and that thereafter, the appellant told Janak Raj to accompany the complainant Hamid Khan (PW-3). He reiterated that Janak Raj did not know the purpose for which he was accompanying the complainant Hamid Khan (PW-3). Mr S. S. Rawat (PW-6) denied the suggestion that the appellant had said to the complainant

CrI. A 107-02

Hamid Khan (PW-3) “aur isko dena”. He accepted the fact that Janak Raj had taken them to a park adjoining MCD office. He denied the suggestion that Janak Raj had either enquired from the complainant Hamid Khan (PW-3) as to the nature of his profession or kind of work he did or even the problem he had encountered in the MCD office. Mr S S Rawat (PW-6) further stated that at the relevant point in time, he was sitting at a place which was about 10 feet away from where the complainant Hamid Khan (PW-3) and Janak Raj were positioned. He further deposed that it was the complainant Hamid Khan (PW-3) who handed over the envelope to Janak Raj which he accepted, and at that point of time, he signaled to the other members of the trap team. He denied the suggestion that Janak Raj had accepted the money with his right hand and had counted the same, with both hands. He also denied the suggestion that he had deliberately referred to an envelope being handed over by the complainant Hamid Khan (PW-3) to the appellant to derail the case set up by the prosecution.

24.6 He accepted the fact that on his signal, the other members of the CBI team converged to the spot where Janak Raj was located and caught hold of him by his right hand wrist. Mr S. S. Rawat (PW-6), however, failed to recollect as to whether one of the members of the CBI team had confronted Janak Raj with an accusation that he had demanded, and thereafter accepted a bribe of Rs.1500/- from the complainant Hamid Khan (PW-3).

24.7 Mr S. S. Rawat (PW-6), however, accepted the fact that Janak Raj had admitted to his having accepted an envelope on the directions of his superior i.e., the appellant S.S.Rawat (PW-6), however, denied the suggestion that the appellant had demanded the money and directed the complainant Hamid Khan (PW-3) to hand over the money to Janak Raj. He denied having confirmed to the CBI team that Janak Raj had kept the money in his right hand side trouser pocket.

24.8 Mr S. S. Rawat (PW-6) accepted the fact that Janak Raj was taken to the room of the appellant after he was caught. He did not seem to recollect that A. K. Sanan (PW-7) had been directed to search the right side trouser pocket of Janak Raj and on

doing so, the recovery of the bribe money was made. He also failed to recollect that he and Mr A K Sanan (PW-7) had tallied the numbers of the recovered GC notes with those given in Ex. PW-3/G. He went on to state that no hand wash of Janak Raj was taken in his presence since he had left the place as there was a “melee”.

24.9 Even though S. S. Rawat (PW-6) denied that the hand wash of the right side trouser pocket was taken in his presence, he accepted the fact that Ex. P-16 to P-18 bore his signatures at point ‘A’. He, importantly, went out to say that neither he refused to sign the exhibits nor he was pressurized to sign the exhibits, and that all exhibits had been signed by him at the spot. He also accepted the fact that the Recovery Memo Ex. PW-3/A bore his signatures at point ‘B’. He also stated that he had signed the memo without having read its contents. He claimed to have been educated till class 12. He accepted the fact that he never signed any paper without reading its contents during the ordinary course of discharge of his official duties. He proved his signatures on the personal search memo of the appellant i.e., Ex. PW-6/B and those of Janak Raj i.e., PW-6/C. Mr S. S. Rawat (PW-6) also accepted his signatures at point ‘A’ on the seizure memo Ex. PW-6/D. He also admitted his signatures on Ex. PW-3/A, PW3/B, Mark B to G, ex. PW-3/C, Mark H to K, and Ex. PW-3/E. He also accepted his signatures on the site plan Ex. PW6/F.

24.10 In the cross-examination carried out by the counsel for the appellant, S.S. Rawat (PW6) was not asked as to whether Janak Raj was asked for or handed over bribe by the complainant Hamid Khan (PW-3). Mr S S Rawat (PW-6), however, accepted the fact that Janak Raj was seen by the trap laying party outside the trap room, whereafter they went inside the MCD office to confront the appellant.

25. PW-6 failed to recollect as to whether his statement was recorded. He, however, accepted the fact that he had signed about ten (10) to twelve (12) sheets of paper in the office of the CBI on returning from the MCD office, though none of the sheets of paper, on which he had signed were typed. He seemed to have shifted his stand on this aspect as well as he, in response to a very next question, went on to state

that he did not know what was typed or written in the papers which he had signed as he had not read them.

25.1 To a suggestion made as to whether he was a member of the trap team, he stated as follows :-

*“It is incorrect that I was not a party to the Investigating team and nothing was recovered in my presence and everything is false and fabricated.”*

26. In the context of the above, let me examine the testimony of Mr A K Sanan (PW-7).

26.1 PW-7 was at the relevant point of time posted as stenographer in FCI at its Headquarters in New Delhi. Like PW-6, he was also requisitioned by CBI to join the trap laying team in connection with the aforementioned operation. In his testimony, he touched upon the following relevant aspects :-

26.2 Mr A K Sanan (PW-7) deposed that in the execution of the operation, he remained alongwith the CBI officers. On reaching the MCD office, S S Rawat (PW-6) alongwith the complainant Hamid Khan (PW-3) entered the MCD office. After the trap was executed, he along with other officials, entered the MCD office. Since there was a “melee” in the office, he did not recollect as to what happened in the office.

26.3 It is, at this juncture, that the public prosecutor in his case, sought permission of the court to cross-examine A K Sanan (PW-7). In the cross-examination, he like S S Rawat (PW-6) accepted the fact that the complainant was one Mr Hamid Khan and Mr Hamid Khan had informed him that he was being asked for a bribe of Rs.1500/- from one Mr R P S Yadav i.e., the appellant, who was an Inspector in the MCD at Shahdara Zone; the money was being demanded by the appellant in order to enable the complainant Hamid Khan (PW-3) to secure the licence for his tailoring shop.

26.4 He also accepted the fact that the complainant had produced 15 GC notes of a denomination of Rs.100/- each. Mr A K Sanan (PW-7) went on to state that the numbers of the said GC notes were recorded in a Handing Over Memo, on which he had appended his signatures. He also accepted the fact that the GC notes were treated

with phenolphthalein powder and that he had been asked to touch the said treated notes and, thereafter dip his fingers in the said solution. The solution turned pink. It was accepted by Mr A.K. Sanan (PW-7) that thereafter the pink solution was discarded. PW-7 also accepted the fact that the complainant Hamid Khan (PW-3) was searched and that he was not allowed to carry with him anything except the treated notes which he had kept in the left side shirt pocket.

26.5 Mr A. K. Sanan (PW-7) testified that the complainant Hamid Khan (PW-3) was instructed to handover the treated notes to the appellant only on a specific demand being made by him or to any other person on the say so of the appellant. He further stated that Mr S S Rawat (PW-6) was directed to act as a shadow witness so that he could accompany the complainant and interact with the appellant. He stated that PW-6 was told that once the transaction was complete, he was to signal to the other members of the trap laying team by scratching the hair on the head.

26.6 Mr A K Sanan (PW-7) also accepted the fact that the trap team members were searched and they were allowed to carry only their identity cards. He went on to state that the trap bag containing the articles such as glass tumblers, empty bottles, sodium carbonate powder, sealing material, etc. was prepared. He proved his signatures on the pre-trap proceedings recorded in memo Ex. PW-3/H and the annexure accompanying the said memo i.e., PW-3/G.

26.7 He deposed that on reaching the MCD office, the complainant Hamid Khan (PW-3) and the shadow witness were directed to proceed to the office of the appellant. He went on to state that he saw Mr S S Rawat (PW-6) and the complainant Hamid Khan (PW3) coming out from the MCD office with another person who, he later came to know was Janak Ram @ Janak Raj; a beldar in the MCD office.

26.8 Crucially, he accepted the fact that on a signal being received, the members of the trap team converged where the complainant Hamid Khan (PW3), the shadow witness (PW-6), Janak Raj was located. He accepted the fact that the CBI official after disclosing their identity confronted Janak Raj with the accusation that he had demanded

and accepted Rs.1500/- from the complainant (PW-3). Crucially, Mr A. K. Sanan (PW-7) deposed that Janak Raj had admitted to having accepted the bribe amount on the directions of the appellant. The relevant part of his testimony to that effect reads as follows :-

“It is correct that CBI official disclosed his identity and challenged Janak Raj that he had demanded and accepted Rs.1500/- from Hamid Khan. It is correct that Janak Raj on challenged admitted that he has accepted the bribe amount on the directions of R.P.S. Yadav”

26.9 Mr A. K. Sanan (PW-7), however, denied the suggestion that he had searched the right side pocket of Janak Raj and that he had recovered the said 15 GC notes or that he had tallied the numbers of the GC notes alongwith Mr S S Rawat (PW-6). Mr A. K. Sanan (PW-7) went on to state that he did not recollect if the left hand wash of Janak Raj had been taken. He, however, did say that the pink solution was transferred to a bottle in his presence, whereupon it was sealed and labeled.

26.10 He also accepted having appended his signatures on the labels. In so far as the right hand wash was concerned, he did not state with clarity as to whether solution had been transferred to a bottle as he had not seen the bottle. A similar stand was taken vis-à-vis the wash of the trouser pocket.

30. As regards, other aspects of the trap proceedings, which related to his having appended his signatures on following documents, he accepted having done so. These documents being: Personal Search Memos Ex. PW-6/B & PW-6/C, Recovery Memo Ex. PW-3/K, Seizure Memo Ex. PW6/D; site plan Ex. PW6/P. He also accepted that a specimen of the seal bearing No.9/94 Ex. PW7/B was taken in his presence and bore his signatures at point ‘A’. PW-7 also accepted that he had seen the file PW-6/E, which bore his signatures alongwith those of Mr S. S. Rawat (PW-6) and the fact that his signatures had been appended during the trap proceedings.

30.1 He also went on to say that he had seen the bottle containing the washes i.e., P-16 to P-18. He also accepted the fact that they bear the signatures at point ‘B’. He also

accepted that fact that he had seen currency notes P1 to P-15, and that he compared their numbers with annexures Ex. PW-3/G, which were found to be correct.

30.2 In the cross-examination carried out by the counsel for the appellant, to a question as to how many papers he had signed at the spot and whether he had read the same before signing, Mr A. K. Sanan (PW-7) stated as follows :-

“I also do not know how many papers I signed at the spot and how many papers were written. I have seen my signatures today, so I identified my signatures. I must have read the statement at that time before signing. I cannot say what is written in those papers as I have not read it. The whole writing in long hand took more than 1 hour. The writing took place in the office of R P S Yadav. Many officers / officials were surrounding. Only Officer signed. No other was called to witness the proceedings.”

30.3 He seemed to have taken (at a later point in his deposition) a different line with regard to having signed the documents as he has stated to have said as follows :-

“We came to the CBI office directly and there writing took place. Signatures were done there. I could not read what was written there. I from the CBI office went to my house at about 7.30 to 8 PM.”

30.4 Crucially, in the cross-examination carried out by the counsel for Janak Raj, Mr A K Sanan (PW-7) stated as follows :-

“It is incorrect to suggest that accused Janak Raj did not admit in my presence that he accepted the money on behalf of accused R.P.S. Yadav. It is correct that the accused Janak Raj has no knowledge about money transaction between the R.P.S. Yadav and the complainant.”

31. The prosecution case (as noticed above by me in the earlier portion of my narrative) is based largely on the testimony of Mr S R Singh (PW-8). However, in the cross-examination carried out by the counsel for the appellant, the witness, with regard to the operation stated as follows :-

“Complainant and shadow witness were directed to go to the office of R.P.S. Yadav. I cannot tell the distance where I was standing to the office of Yadav, however, I was in the premises and I cannot tell the distance. There were some public persons in the premises. In between me and the office of Yadav. I did not see R.P.S. Yadav coming out of his office,

however, I saw another person whose name I came to know later as Janak Raj. The other park where Janak Raj went alongwith shadow witness, Hamid (complainant) was across the road. I also moved in the park simultaneously. After the trap, Janak Raj told me about R.P.S. Yadav.

....We made the recovery in the office of R.P.S. Yadav and not in the park.”

31.1 Similarly, in the cross-examination by the counsel for Janak Raj, with regards to the certain crucial aspects of the operation, he stated as follows :-

“It is incorrect to suggest that no pre raid proceedings was conducted.”

“...I had not prepared personal search of the witnesses and the other trap members. All the signatories of memos went ahead to the MCD office. I had not heard the conversation between the complainant and the accused Janak Raj. Janak Raj was caught hold after 15 minutes of leaving the office of accused R.P.S. Yadav. Inspector Rajesh Kumar and A.K. Kapoor caught hold Janak Raj with his wrists. Both the Inspectors offered their search to the accused Janak Raj but no memo was prepared in this regard. The money was recovered in the office of accused R.P.S. Yadav so far as I remember none was present except accused Yadav in his office when we reached there. It is wrong to suggest that no money was recovered. It is further wrong to suggest that the official who recovered the money did not offer his search. Hand wash were taken by the subordinate staff and the water was also brought by the subordinate staff. One of our staff member took out the inner lining of the pant whose name I do not remember. I also do not remember the said person was the same person who took the hand washes of the accused. It is wrong to suggest that no hand washes were taken at the spot. It is further wrong to suggest that no recovery was made from the accused.”

32. Mr Rajeev Kumar Chadha (PW-9), who was the officer to whom the case had been transferred from Mr S R Singh (PW-8) deposed as follows :-

32.1 He stated that he had been entrusted with the case with effect from 29.05.1995. The investigation into the case was thereafter carried out by him. He stated that he collected the report from the Central Forensic Science Laboratory (in short, ‘CFSL’) in respect of the washes. He also deposed that he was responsible for obtaining the sanction

for prosecution of the appellant from the competent authority, and that he had recorded the statements of various witnesses; presented charge-sheet in court against the appellant as well as against the Janak Raj. In the cross-examination carried out by the counsel for the appellant, the witness stated that the case had been transferred to him in the interest of fairness since PW-8 had been involved in laying the trap. He denied the suggestion that Mr S. R. Singh (PW-8) was authorized to conduct the investigation.

32.2 On being questioned as to whether he was responsible for sending the bottle containing the washes to the CFSL for the expert opinion, the witness stated as follows :-

“I sent the bottles and the specimen of CBI seal to the CFSL for expert opinion. Except covering letter and sealed bottles and specimen of seal nothing else was sent. I withdrew the bottles from malkhana CBI. I did not recollect at this point of time whom I had deputed to collect the bottles from malkhana and who signed in the malkhana register, however, I did not sign. I sent the bottles on 31<sup>st</sup> May, 1995. I did not record any observation in writing that the bottles were duly intact. However, as far as I remember the bottles were sealed. I do not know which witness was having the seal of the CBI but I did not have the same as the seals after the use are normally being handed over to the witnesses. The seal of the CBI once given to the public independent witness is never taken back. I received the opinion on 12<sup>th</sup> July, 1995. CFSL is situated in the same complex. The acknowledge was given to me back in the evening on the same day i.e., 31<sup>st</sup> May, 1995. On my requisition, the bottles were taken from malkhana and then taken to CFSL. I do not know in person about the recovery or demand and acceptance etc. It is incorrect to suggest that I am deposing falsely.

32.3 To a question put by the counsel for Janak Raj as to whether the general reputation of Janak Raj had been verified before the trap, the witness stated as follows :-

“The general reputation of the accused was verified by Sh. S.R. Singh before laying the trap. I did not counter verified the same and I also did not enquire from S.R. Singh from whom he had enquired the general reputation.”

33. A reading of the evidence on record would clearly show that the ingredients of the offence with which the appellant was charged, that is, sections 7, 13(2) read with Section 13(1)(d) of the PC Act, 1988 are made out. A perusal of the evidence would show that

there is nothing placed on record which would demonstrate that the complainant, Hamid Khan (PW-3) had any animus against the appellant. The fact that the appellant in his statement under section 313 Cr.P.C mentioned that the complaint had been lodged against him by the complainant Hamid Khan (PW-3) as he was annoyed that his application was not being processed under the old rules seems rather thin. The fact of the matter remains that it is proved, based on the evidence on record that, on 08.05.1995 the complainant had visited the appellant along with one of his acquaintance. This fact is established by the appellant's own witness DW-1. Thereafter, the complainant, visited the appellant on 09.05.1995. Both the independent witnesses in their own ways have indicated that the complainant, Hamid Khan (PW-3) suggested to the appellant that he had done whatever he had been asked to do, at which point in time, the appellant looked for a person who could help him collect whatever the complainant, Hamid Khan (PW-3) had brought with him. The defence taken that the appellant would not accept what the complainant had brought with him (assuming that they were only documents or the legal fee) seems rather incredulous. If these were official documents, then the appellant, in the ordinary course of work ought to have accepted them in the office itself. The fact that the appellant had to step out of his office and ask a class-IV employee (i.e., Janak Raj) to accept what the complainant Hamid Khan (PW-3) had to offer, in the circumstances shows that it could not have been either documents or legal fee as Janak Raj could not have been the recipient of either in the normal course of his duties.

33.1 As noticed by me above, PW-6 & PW-7 have stated in so many words that Janak Raj did accept (when confronted by the trap team) that he had received the bribe money from the complainant Hamid Khan (PW-3) at the behest of the appellant. The fact that the PW-6 & PW-7 turned hostile or that the PW-7 said recovery not made by him from the pocket of Janak Raj, in my opinion, is not material if the events as they transpired on 09.05.1995 are seen as a complete chain events with various links attached to it. PW-7 in the cross-examination by the counsel for Janak Raj has clearly stated that Janak Raj in his presence had stated that he had accepted the bribe money on behalf of the appellant.

Similarly, PW-3's statement that recovery was made from the appellant and not from Janak Raj is a minor variation when seen in the light of the fact that prosecution witnesses concurred that Janak Raj was got involved by the appellant as the recipient. The fact that PW-3 indicated that recovery was made from the appellant can be put down in haziness of past events. This is especially so, since there is evidence on record that after treated GC notes were accepted by Janak Raj outside the MCD building, the trap team alongwith Janak Raj proceeded to the place where the appellant was located in the MCD office. What ensued thereafter was caricatured as a 'melee' by the witnesses. Therefore, given the fact that the trap was laid in 1994 whereas the testimony of PW-3 was recorded in September, 1999 – given human frailties in recalling events I would not put it down as a major contradiction which would dilute an otherwise credible testimony. Once it is established that Janak Raj stepped out of the MCD office at the behest of the appellant to accept whatever the complainant Hamid Khan(PW-3) had to offer, the factum of both the demand and the acceptance of bribe is established. It is quite evident in this case that PW-6 and PW-7 have clearly tried to impact the case of the prosecution by speaking in different voices. Despite such insidious attempts, the events as they transpired are quite clearly established from the testimony of the trap laying officer (PW-8). PW-8 has clearly not only established the factum of recovery of the bribe money, but also the fact that washes of the hand and trouser pocket of the appellant were taken (see portion of his testimony extracted in paragraph 31.1 above). PW-9 alongwith PW-1 have established both the sanctity of the CFSL report and the proof of its contents. There is no reason for the court to disbelieve the testimony of PW-8. As a matter of law, there is no impediment in the court convicting an accused even on the sole testimony of a trap laying officer if he is otherwise a credible witness (see *Hazari Lal vs State (Delhi Administration)* (1980) 2 SCC 390 paragraph 9 at page 395 and *State of U.P. vs Zakaullah* (1998) 1 SCC 557 paragraph 12 at page 562]. PW8 in my view is a credible witness whose testimony can be safely relied upon. In this case, there is more than enough evidence to establish the guilt of the accused beyond reasonable doubt. In these

circumstances, I am of the opinion that the judgment of the trial court convicting the appellant has to be sustained. It is ordered accordingly.

34. The appeal is thus dismissed. The bail bond and the security furnished is cancelled. The appellant shall be taken into custody forthwith and suffer the remaining part of the sentence, as directed by the trial court. The appellant shall, however, get the benefit of the period of detention, if any, already undergone against the sentence of imprisonment awarded by the trial court.

**APRIL 08 , 2011**  
**mb/yg**

**RAJIV SHAKDHER, J.**