

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 16.03.2011

Judgment delivered on: 21.04.2011

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Crl.A.113/2003

SH MOHAN LAL WALIA

..... APPELLANT

Vs

STATE (C. B.I) DELHI

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant : Mr. K B Andley, Sr Advocate with Mr M Shamikh, Advocate

For the Respondent : Ms Sonia Mathur, Advocates

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment ? | No |
| 2. | To be referred to Reporters or not ? | No |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

RAJIV SHAKDHER, J

1. The captioned appeal has been preferred under the provisions of Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') against the judgment and order of sentence dated 11.02.2003 and 13.02.2003 respectively passed in CC No. 26/97 RC No. 72(A)/96/C.B.I./ACB/New Delhi by the Special Judge, Tis Hazari Delhi.

2. By virtue of the impugned judgment, the appellant has been found guilty under the provisions of Section 7, Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'P C Act').

3. Briefly, the case of the prosecution is as follows:

4. On 21.09.1996 at about 1200 hrs one Sh Purshottam Singh (PW6) made a complaint (Ex PW6/A) dated 21.09.1996 to the Superintendent of Police, Anti Corruption Branch (in short 'ACB'), CBI, New Delhi about, a bribe, in the sum of Rs 2000/- having been demanded by the appellant. The complainant (PW6) alleged

that the cause for seeking a bribe from him was his involvement in a criminal case filed against him under Section 308/323/34 of the Indian Penal Code, 1860 (in short 'IPC') which was being investigated by the appellant. The said criminal case against the complainant (PW6) was instituted in turn based on a complaint filed by his neighbours. It was alleged in the complaint (Ex PW6/A) by PW6 that the appellant had warned him that in case the said bribe was not paid by 5.00 pm on that very day, he and the other co-accused, would end up in jail on the basis of the statement of the third witness, who was still to be examined.

4.1 In the complaint (Ex PW6/A) a reference was made to the complainant's (PW6's) fracas with his neighbours which took place on 13.09.1996, and the initial demand for bribe (to which reference is made above), which was made of him a day prior (i.e., 20.09.1996) when, he was being accompanied to Court by the appellant.

5. On the basis of the afore-mentioned complaint (Ex PW6/A), a FIR (Ex PW8/B) was registered.

6. Consequent thereto, the Superintendent of Police, ACB, CBI entrusted the case to Sh B K Pradhan (PW8), Inspector, CBI. Upon perusal of the complaint (Ex PW6/A) he set about, to lay a trap, to establish the veracity of the allegations made in the complaint (Ex PW6/A). Resultantly, a trap team was formed, and services of two independent witnesses was sought; one from the Oriental Insurance Company, Daryaganj and other from Punjab National Bank (in short 'PNB'), Daryaganj, Delhi. Sh Govind Ram Rawal (PW3) was summoned from PNB, while Mr Mahesh Mathur (PW4) was summoned from Oriental Insurance Company. Mr Mahesh Mathur (PW4), at the relevant point in time, was employed as the Development Officer.

6.1 Govind Ram Rawal (PW3) and Mahesh Mathur (PW4) were introduced to the complainant (PW6) and also shown the complaint (Ex PW6/A) filed by him. Both, Govind Ram Rawal (PW3) and Mahesh Mathur (PW4) were given an opportunity to interact with the complainant (PW6) so that they could satisfy

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themselves as regards the ingredients of the allegations made by the complainant (PW6) against the appellant.

6.2 Thereafter, B K Pradhan (PW8) who had been assigned the role of the Trap Laying Officer (in short 'TLO') familiarized the trap team, which included the two independent witnesses Govind Ram Rawal (PW3) and Mahesh Mathur (PW4) as to how Phenolphthalein powder reacted when brought in contact with a solution of Sodium Carbonate powder and used in executing the trap.

6.3 In this regard the money arranged by the complainant (PW6), i.e., a sum of Rs 2000/- in the form of 20 currency notes of a denomination of Rs 100 each Exs PW-1 to PW-20 (hereinafter referred to as 'GC notes') were treated with Phenolphthalein powder and handed over to the complainant (PW6), who kept them in the right side pocket of his Pajama. In order to ensure that the complainant (PW6) was not carrying anything else except the treated notes, a personal search of the complainant (PW6) was carried out. The complainant (PW6) was duly informed that he was to hand over the treated GC notes to the appellant, only on a specific demand being made by the appellant. Govind Ram Rawal (PW3) was instructed to act as a shadow witness so that he would be in a position to observe the events and overhear the conversation between the complainant (PW6) and the appellant during the execution of the trap. Govind Ram Rawal (PW3) was also instructed to signal the completion of the transaction (i.e., the making of the demand and its acceptance by the appellant) by scratching his head with his right hand.

7. A trap bag was also prepared which contained inter alia clean glass tumblers, seal, sealing material and Sodium Carbonate powder. A copy of the FIR and Rs 200/- was also kept in the said bag to meet incidental expenses. Before embarking upon the operation, the members of the trap team carried out a personal search, amongst themselves, with a view to ensure that no member of the trap team was carrying anything except their identity cards.

7.1 The afore-mentioned events commencing with the lodgment of the complaint (Ex PW6/A), the preparatory steps taken before laying a trap and the instructions given to the members of the trap team including two independent witnesses were incorporated in the pre trap proceeding memo i.e., the handing over memo (Ex PW3/B).

7.2. Having thus prepared for the trap, the trap team proceeded to the Shri Ram Colony Police Post where the appellant was supposed to be located. The trap team parked their vehicles at a short distance from the police post so as to avoid undue attention. On disembarking from their vehicles, the complainant (PW6) and the shadow witness Govind Ram Rawal (PW3) were instructed to proceed to the police post where the appellant was located.

8. It is the case of the prosecution that the complainant (PW6) and the shadow witness Govind Ram Rawal (PW3) met the appellant, who demanded a bribe of Rs 2000/- whereupon, the complainant (PW6) handed over the treated GC notes to the appellant who accepted the same with his right hand, and after counting the same with both hands, put the treated GC notes in the right side pocket of his trouser .

8.1 At this juncture, the shadow witness Govind Ram Rawal (PW3) signalled to the other members of the trap team. On receiving signal from Govind Ram Rawal (PW3) the other members of the trap team converged at the spot where, the appellant alongwith Govind Ram Rawal (PW3) were present.

8.2 The appellant was apprehended. Care was taken that the appellant was held by his wrist. The appellant was confronted with the fact that he had demanded and accepted a bribe of Rs 2000/- from the complainant (PW6). The appellant evidently looked perplexed.

8.3 At the behest of B K Pradhan, TLO, (PW8), Mahesh Mathur (PW4) searched the appellant and recovered the treated GC notes from the right side pocket of the appellant. Immediately thereupon, serial numbers of the recovered GC notes were compared by Govind Ram Rawal (PW3) and Mahesh Mathur (PW4) with the numbers recorded in the Annexure A appended to the handing over
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memo (Ex PW3/B). A comparison of the serial numbers confirmed that the recovered GC notes were those which had been handed over to the complainant (PW6) for being given to the appellant on a specific demand made by him.

9. Consequently, the trap team prepared a colourless solution of Sodium Carbonate. The appellant was asked to dip his right hand fingers in the said solution. On the appellant's right hand fingers coming in contact with the colourless solution of Sodium Carbonate, it turned pink. The case was no different when the left hand fingers of the appellant were dipped in colourless solution of Sodium Carbonate. On coming in contact with the Sodium Carbonate solution, the colourless solution turned pink. A similar exercise was carried out with respect to the inner lining of the right side trouser pocket of the appellant. The inner lining of the right side trouser pocket was dipped in the colourless solution of Sodium Carbonate. Once Again, on the inner lining of the trouser pocket coming in contact with the Sodium Carbonate solution, it also turned pink.

9.1. Both the right hand wash as well as the trouser pocket wash of the appellant was transferred into two separate clean empty bottles each of which were sealed and covered with a cloth; with a label RWH and RPPW affixed to it respectively. As in the case of right hand wash, left hand wash was also transferred into a clean bottle, whereupon it was sealed and covered with a cloth and labeled as 'LHWH'.

10. The appellant was thereupon arrested. A personal search was conducted. The recoveries made consequent upon search, was recorded in the personal search memo being Ex PW3/F. The signatures of the appellant as well as the others were taken on the said memo. A rough site plan was also prepared by Inspector S K Bhati on instructions of the TLO B K Pradhan (PW8) being Ex PW8/C. The original police file pertaining to the case involving the complainant (PW6), which was being handled by the appellant was also seized. The proceedings as they transpired during the execution of the trap were reduced to writing and recorded in the recovery memo being Ex PW3/D. The washes of both the right and left hand as

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well as that of his right side trouser pocket were sent for chemical analysis to the Central Forensic Science Laboratory (in short 'CFSL') for chemical examination.

11. Upon completion of the investigation by Inspector P K Sharma (PW7), the Investigating Officer in the case (in short 'IO') took steps to obtain sanction for prosecution of the appellant. A request in that regard was made to the sanctioning authority i.e., the Deputy Commissioner of Police vide letter dated 14.12.1996 (Ex DW1/A) by the Superintendent of Police, ACB, CBI. Based on the evidence collected and other material on record including the statement of witnesses, sanction was sought for prosecution of the appellant. The sanctioning authority after due consideration of the material on record vide order dated 17.12.1996 (Ex PW2/A) granted sanction for prosecution of the appellant.

12. A chargesheet was prepared and filed in the trial court. The trial court on taking cognizance, summoned the appellant. After hearing the appellant, charges were framed vide order dated 06.01.1998 under the provisions of Section 7 and Section 13(2) read with Section 13(1)(d) of the P C Act. Since the appellant pleaded "not guilty", the matter was put to trial.

13. During the course of the trial, the prosecution examined eight (8) witnesses, while the appellant apart from recording his statement under Section 313 of the Code examined one (1) witness being ASI Rajiv Wason (DW1).

14. The trial court after weighing the evidence on record and the arguments advanced by both parties came to a conclusion that the guilt of the appellant was established beyond reasonable doubt, and thus convicted the accused of the offences with which he was charged.

15. Before me on behalf of the appellant arguments were addressed by Mr K B Andley, Sr Advocate instructed by Mr M Shamikh, while on behalf of the State/CBI, submissions were advanced by Ms Sonia Mathur.

16. At the outset, I may notice that even though in the appeal several grounds have been raised, Mr Andley during the course of arguments has confined his submissions to the following:

16.1 The complaint was motivated in as much as the complainant (PW6) himself was carrying on illegally, the business of generating electricity, which had resulted in causing pollution in the neighbourhood. On account of this illegal activity there was tension in the neighbourhood.

16.2 Furthermore, according to Mr Andley, the complainant (PW6) bore a grudge against the appellant in as much as he was aggrieved by the fact that in the criminal proceedings involving him and his neighbours, the appellant had arrested only the complainant (PW6) and his family members, though they were injured, and not his neighbours.

16.3 Mr Andley sought to buttress his submissions by submitting that on the day (i.e., 20.09.1996) when allegedly, the appellant is said to have demanded a bribe from the complainant (PW6), the appellant could have done very little, if at all, to jeopardize the interest of the complainant (PW6) since, the complainant (PW6) had already been released on bail on 18.09.1996, in the other criminal case involving his neighbours, which was handled by the appellant. Therefore, according to Mr Andley, the entire case, which had its genesis in a false complaint made by PW6, was triggered only to settle a score because of the grudge that the complainant (PW6) bore against the appellant.

16.4. Mr Andley went on to contend that in this case decidedly, the two independent witnesses i.e., Govind Ram Rawal (PW3) and Mahesh Mathur (PW4) had been declared hostile by the prosecution and hence, no reliance be placed on the testimony of the said witnesses. In support of his submissions reliance was placed on the judgment of the Supreme Court in *Jagir Singh vs The State (Delhi): 1975 SCC (Cri) 129*. It was thus contended that in these circumstances no reliance whatsoever can be placed on the testimony of Govind Ram Rawal (PW3) and Mahesh Mathur (PW4).

16.5. Mr Andley further submitted that in so far as recovery of the treated GC notes was concerned, there was complete lack of clarity in the case set up by the prosecution. While according to the TLO B K Pradhan (PW8) the treated GC notes

were recovered by Mahesh Mathur (PW4) from the right side pocket of the appellant the testimony of Mahesh Mathur (PW4) seem to suggest to the contrary. Mr Andley in this regard drew my attention to the examination-in-chief of Mahesh Mathur (PW4) wherein he stated as follows:-

“....On the directions of Inspector B K Pradhan accused Mohan Lal Walia (correctly identified) took out tainted Rs.2000/- from the right side pocket of his pant and kept the money on the table. I was directed to compare the numbers of those GC notes with the numbers noted down in the list PW3/A. On comparison numbers tallied.....”

16.6. Mr Andley submitted that it is quite evident that Mahesh Mathur (PW4), did not recover the money from the appellant as was alleged by the prosecution. The testimony of the witness by its very nature is akin to that of an interested party and hence cannot be relied upon. He has also laid stress on the fact that even though according to the complainant (PW6), the bribe had been allegedly demanded on 20.09.1996; the complainant for reasons best known to him, chose not to inform the Magistrate, when he was produced before him in the other criminal case, about the illegal demand of money being made by the appellant at the time of his production before the Magistrate on 21.09.1996.

16.7. Mr Andley thus contended that on account of the aforementioned factors, the benefit of doubt ought to be given to the appellant and the impugned judgment thus be set aside.

17. As against this, Ms Sonia Mathur in rebuttal made the following submissions:

17.1 The learned counsel at the very outset submitted that the basic premise of Mr Andley's submission that a witness once declared hostile his testimony has to be completely discarded, is flawed. To buttress her submissions she placed reliance on the following judgment:-

Jodhraj Singh vs State of Rajasthan: (2007) 15 SCC 294;
Gura Singh vs The State of Rajasthan: 2001 Crl.Law Journal
487.

17.2 Ms Mathur further contended that in this particular case an initial demand was made by the appellant on 15.09.1996, when the complainant (PW6) was produced for remand in the court below. The demand of bribe was reiterated by the appellant on 20.09.1996. In respect of both these contentions my attention was drawn to the relevant paragraphs of the testimony of the complainant (PW6).

17.3 In so far as the acceptance of the bribe by the appellant was concerned, Ms Mathur relied upon the testimony of the shadow witness Govind Ram (PW3) apart from that of the other witnesses Purshottam Singh (PW6) and B K Pradhan (PW8). The relevant portion of the testimony of Purshottam Singh (PW6) on which reliance was placed for the sake of convenience is extracted hereinbelow:-

“.....When we entered the room of accused in police post, he was sitting on a chair. On entering the office of room, I wished him “RAM RAM SAHAB”. Accused also replied “RAM RAM”. Then I said “SAHAB KAL JO BAAT HUI THI PAISE LE AYA HUN”. On this accused got up from his chair and signaled me to come out of his office. Then I followed him outside his office room. After coming out of the room, accused Mohan Lal Walia made a gesture of demand with his hand. On this I took out tainted Rs. 2000/- from the pocket of my pajama and extended towards accused. He accepted the money in his right hand and kept it in the right side pocket of his pant. I said “SAHAB GIN LO”. And on this accused replied “KOI GINNE KI CHIJE HOTI HAIN”. Thereafter, on my request, accused took out tainted money from the right pocket of his pant and counted it with his hands and again kept it in the said pocket.....”

17.4 As regards the contention of the Learned counsel for the appellant that there was a contradiction with regard to the aspect of recovery of the treated GC notes from the appellant, Ms Mathur drew my attention to the cross-examination of Mahesh Mathur (PW4) by the prosecutor wherein he is stated to have said “....***It is possible that your suggestion that I recovered tainted money from the pocket of the pant of the accused may be correct....***”. Ms Mathur argued that given the period of time which had elapsed between the execution of the trap and the date on which testimony of the witness was recorded, a slight variation between what was stated in the examination-in-chief by Mahesh Mathur (PW4) and that which was stated by the other witness B K Pradhan (PW8) would not be material when,

looked at in the light of PW4's testimony in the cross-examination by the prosecution which was done to really jog PW4's memory.

17.5 Ms Mathur submitted that in any case even apart from the testimony of Mahesh Mathur (PW4), the recovery of the treated notes from the person of the appellant was clearly established if regard is had to the testimonies of Purshottam Singh (PW6) and B K Pradhan (PW8).

17.6 Ms Mathur submitted that the court could rely upon even the uncorroborated testimony of the TLO if it was otherwise credible to convict an accused in a particular case. Ms Mathur submitted that in this case, however, the testimony of the TLO was corroborated and hence, the appellant's conviction was in any event in order.

17.7 As regards the submission of the learned counsel for the appellant that the conduct of the complainant (PW6) was wholly unnatural in as much as he did not raise the issue of illegal demand being made of him by the appellant when he was produced in Court in the criminal proceedings pending against him under Section 308 and other relevant sections of the IPC on 15.09.1996; Ms Mathur sought to place reliance on the observations of the trial court in paragraph 20 of the impugned judgment. Ms Mathur further contended that in this case since recovery stood proved the Court could draw a statutory presumption under Section 20 of the P C Act that the appellant was guilty of the offence charged.

17.8 In this connection Ms Mathur also relied upon the response of the appellant to the question put to the appellant during the course of his statement being recorded under Section 313 of the Code, whereby he had been asked as to what was his say with regard to the evidence against him that: B K Pradhan (PW8) had asked Mahesh Mathur (PW4) to search him, and the search had resulted in recovery of the tainted money i.e., Rs 2000/- from the right side pocket of his trouser.

17.9 Since the appellant had given a laconic reply to the effect : "it is incorrect"; Ms Mathur contended that the failure to furnish an explanation would be an

additional circumstance which the Court would take into account in ascertaining the guilt of the appellant. In support of her submissions Ms Mathur relied upon the following Judgments:-

Balasubramanian vs State through Inspector of Police: (2010) 9 SCC 20; Madhukarrao Bhaskarrao Joshi vs State of Maharashtra: (2000) 8SCC 571 paras 9, 11, 12 Page....; M Narsinga Rao vs State of Andhra Pradesh: (2001) 1 SCC 691 paras 13 to 15, 21, 22 at pages....; B Noha s State of Kerala & Anr. (2006) 12 SCC 277 paras 10 and 11 at Pages....

17.10 In rejoinder, the learned counsel for the appellant apart from reiterating what was said in the opening for the first time argued that the sanction was not in accordance with law. The short submission made in this regard was that, the sanctioning authority while according sanction did not have the opportunity to pursue the statement of the witnesses recorded under Section 161 of the Code and other vital documents. For this purpose, reliance was placed on the testimony of ASI Rajiv Wason (DW1). Thus, according to the learned counsel for the appellant, the sanction was vitiated as the authority concerned did not have the relevant material before it.

17.11 Ms Mathur, in rebuttal, relied upon the testimony of Kishan Kumar (PW2) and the observations made by the trial court in paragraphs 50 to 54 of the impugned judgment to meet the aforesaid submission made on behalf of the appellant.

18. I have heard the learned counsel for the parties as well as perused the evidence on record. Before I proceed further, it would be relevant to refer to the material parts of the testimony of the witnesses on record so as to ascertain as to whether the prosecution had been able to prove its case beyond reasonable doubt.

18.1. In this regard, first in line, is the testimony of the complainant (PW6). PW6 in his examination-in-chief briefly states as follows: On 13.09.1996 he got involved in a quarrel with his neighbours: Sant Lal, Jia Lal, Kunwar Pal and Ram Babu and others, and an altercation followed, in which, the Complainant (PW6) and his son Dharmender Singh received injuries. Resultantly, a criminal case was

registered against him and his family members, even while the complainant (PW6) himself also filed, a complaint against his neighbours.

18.2 PW6 was produced in the night intervening 13.09.1996 and 14.09.1996 in the police post situate at Khajoori Khas. It is here for the first time the complainant (PW6) met the appellant. The appellant was incharge of the said police post. The appellant and his son Dharmender Singh were sent for medical examination.

18.3 On 14.09.1996 the appellant alongwith his son and another person by the name of Ranbir Singh were arrested by the appellant. The complainant (PW-6) was produced before the Magistrate on 15.09.1996 at around 2.00 pm. It was while the complainant (PW-6) was being taken to the court that a suggestion was made by the appellant for illegal gratification.

18.4 In his testimony PW6 specifically adverts to the fact that the appellant had conveyed to him in no uncertain terms that if his demand for bribe amounting to Rs 2000/- was not met, he would be in serious trouble. The basis for holding out this threat was evidently that, one of the witnesses at that point in time, was hospitalized. PW6 in his examination-in-chief went on to say that, he was called to the police post at about 8-8.30 am by the appellant to enquire as to why the money demanded i.e., sum of Rs 2,000/- had not been paid to him. From his deposition it is evident that the demand was made on 20.09.1996.

18.5 PW6 evidently fobbed the appellant by adverting to the fact that he had not been able to arrange the money and that it would be paid to the appellant by the afternoon of the ensuing day.

18.6 PW6 goes on to state that on 21.09.1996 he went to the office of the CBI alongwith his neighbour Pramod Tiwari where he met the Superintendent of Police, CBI. PW6 testified that after narrating his interaction with the appellant, he made out a complaint, which was written in his neighbour's (Pramod Tiwari's) hand. The complainant (PW6) proved his signatures, appended at point A on the complaint (Ex PW6/A). PW6 proved in his testimony the prosecution's case with

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regard to the formation of a trap team; the pre trap demonstrations carried out by the trap laying officer; the record of the events, as they transpired, during the pre trap proceedings, in the handing over memo (Ex PW3/B); and his signatures appended on the said memo at point C as also those of other witnesses. The witness (PW-6) also accepted that he had been handed over powder treated GC notes which, he carried in his Pajama. He also testified that he was instructed to hand over the treated GC notes to the appellant only on a specific demand being made by him. PW6 accepted the fact that he was introduced to the shadow witness Govind Ram (PW3), and that Govind Ram had been directed to signal to the other members of the trap team by scratching his head once the appellant had accepted the bribe.

18.7. As regards what happened when the complainant entered office of the appellant on arrival with other members of the trap team, PW6 stated as follows: on entering the room he wished the appellant “RAM RAM SAHAB” who responded in turn by saying “RAM RAM”. Thereupon, the appellant informed the complainant that, as indicated the day before he had arranged the money, at which point of time, the appellant rose from his chair and trooped out of his office with the complainant at his heel. On reaching the outer precincts of his office room, the appellant made a demand by gesturing with his hand; at which point, the complainant took out the treated GC notes from his Pajama pocket and handed it over to the appellant. The appellant accepted the same in his right hand, and kept it in the right side pocket of his trouser.

18.8 PW6 goes on to state that he exhorted the appellant to count the money; the appellant after initial hesitation took the money out of his right side pocket and counted the treated GC notes and, thereafter proceeded to put the money back in his right side trouser pocket. The appellant thereafter re-entered his office.

18.9 In the interregnum, both the complainant (PW6) and the shadow witness signalled to the other members of the trap team that the transaction had been completed. Within no time the other members of the trap team converged at the

spot. The appellant was apprehended and held by his wrist. The appellant was confronted and told that he had demanded and accepted bribe from the complainant (PW6). At first the appellant protested. On Mahesh Mathur (PW4) being instructed, he searched the appellant. The search by the appellant resulted in the recovery of the treated GC notes from the right side pocket of the trouser of the appellant. The serial numbers on the GC notes were compared by Govind Ram Rawal (PW3) and Mahesh Mathur (PW4) with the numbers recorded in the handing over memo (Ex PW3/B) prepared in the office of the CBI. The comparison of the serial numbers revealed that the GC notes recovered were the same which had been handed over to the complainant (PW6).

19. The complainant (PW6) also confirmed the post-trap proceedings. The complainant (PW6) specifically adverted to the fact that the appellant was asked to dip his right and left hand in a colourless solution of Sodium Carbonate, which on coming in contact with the same, turned pink. The left hand and right hand washes which had been taken in separate bottles were transferred to the two separate clean bottles. The washes were sealed and wrapped in cloth. Similarly, the inner lining of the right side trouser pocket of the appellant was subjected to the same test. On the inner lining of the right side pocket of the trouser being dipped in the colourless solution of Sodium Carbonate, it turned pink. The trouser pocket wash was also transferred to a clean empty bottle. The wash was sealed and covered.

19.1 The complainant (PW6) proved his signatures appended at point C on the recovery memo (Ex PW3/F). PW6 also went on to prove his signatures on the personal search memo (Ex PW6/B). Similarly, PW6 also identified the GC notes Exs P-1 to P-20.

19.2 In the cross-examination carried out by the counsel for the accused, PW6 accepted the fact that he was engaged in the business of supplying electricity to the people in his locality through a generator installed by him. He deposed that in this regard he had obtained the requisite licence and permission from the concerned authority. He went on to accept though, that in October, 1999 at the instance of the

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local police proceedings under Section 133 of the Code had been instituted against him on the charge of pollution. He however displayed his ignorance as to whether the SDM of the area had called for local police report in the proceedings initiated against him under Section 133 of the Code. He also refuted the suggestion that he had made an application against a sub-Inspector by the name of C B Singh posted at the Police Station Khajoori Khas, or even the suggestion that, he had made an oral complaint against the said Inspector. He went on to refute the suggestion that prior to his visit to the CBI office on 21.09.1996, he had met the brother-in-law of Pramod Tiwari, one Sh Vishwa Vishal Dwivedi, posted as Deputy Director in the Ministry of Home Affairs.

19.3. On the aspect as to when, the bribe was first demanded of him, the complainant (PW6) stated that on 15.09.1996 a bribe was demanded of him when, he alongwith his son Ranbir Singh was being escorted to Court by the appellant for obtaining his remand. PW6 asserted that on that date he was neither represented by an advocate nor were his relatives present in Court. The only person with whom he interacted on 15.09.1996, was his nephew who, reached after his remand had been ordered; though he accepted that he did not inform his nephew about the bribe demanded of him by the appellant.

19.4 PW6 went on to testify that the demand for bribe was reiterated by the appellant on 20.09.1996.

19.5 It is pertinent to note here that the demand was made at night. This particular aspect was adverted to by PW6, since he had stated in his examination-in-chief that the demand was made on 20.09.1996 in the morning hours i.e., between 8 – 8.30 am. This, PW6 stated in his cross-examination was incorrect, to the extent of the time recorded therein.

19.6 On a suggestion being made that there was no demand of illegal gratification by the appellant, the witness (PW6) refuted the same. PW6 also refuted the suggestion that he bore a grudge against the appellant since he was instrumental in his arrest and that of his family members, even though injuries had

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been suffered by them and not by the neighbours. He also refuted the suggestion made that because he bore a grudge against the appellant, he had filed the instant complaint against him.

19.7 In the cross-examination PW6 adhered to the stand taken by him in the examination-in-chief. The witness PW6 specifically refuted the suggestion that the treated GC notes were not recovered from the trouser pocket of the appellant.

19.8. Sh. Purshottam Singh (PW-6) also refuted the suggestion that the post-raid proceedings were not conducted at the spot or he had signed the Recovery Memo subsequently in the office of the CBI.

20. The shadow witness, Sh. Govind Ram Rawal (PW-3) in his testimony stated that on 21.09.1996, he visited the office of the CBI on the directions of his Chief Manager, one Mr. Gandhi. He deposed that he was introduced to another witness, who was employed with Oriental Insurance Company. He went on to state that he was introduced to the complainant Purshottam Singh (PW-6). He stated that the complainant produced the GC notes, the details with respect to which were noted down in Annexure-A (Ex.PW3/A) appended to the Handing Mover Memo (Ex.PW3/B). Govind Ram Rawal, shadow witness (PW-3) proved his signatures at point 'A' on the said exhibit Ex. PW3/A.

20.1 The shadow witness Govind Ram Rawal (PW-3) also proved the prosecution's case with regard to the pre-trap proceedings. He specifically adverted to the fact that the complainant Purshottam Singh (PW-6) was instructed to hand over the powder treated GC notes to the appellant in the event a demand was made. He further went on to state that he was instructed to act as a shadow witness so that he was in a position to observe the transaction as it happened.

20.2 He accepted the fact that he was instructed to signal the conclusion of the transaction between the complainant Purshottam Singh (PW-6) and the appellant by moving his right hand to his head. As regards what happened, once the trap team reached the office of the appellant; the shadow witness Govind Ram Rawal (PW-3) stated that on reaching the office, the complainant Purshottam Singh (PW-6) wished

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the appellant, to which the appellant responded and offered a seat whereupon, the complainant Purshottam Singh (PW-6) told the appellant that his work had been carried out; to which the appellant responded by saying “ACHA HO GAYA THEEK HAI”.

20.3 Thereafter, the appellant after some time sauntered out of his office into the compound. Purshottam Singh (PW-6) and the shadow witness Govind Ram Rawal (PW-3) followed him, at which point the appellant enquired about the identity of Govind Ram Rawal (PW-3). The complainant Purshottam Singh (PW-6) told him that Govind Ram Rawal (PW-3) was a son of his maternal uncle. The appellant persisted with his enquiry in as much as Govind Ram Rawal (PW-3) was asked about his vocation, to which the shadow witness Govind Ram Rawal (PW-3) replied by saying that he was employed with PNB, at its Darya Ganj branch.

20.4 It is at this point of time, according to the shadow witness Govind Ram Rawal (PW-3), that the complainant Purshottam Singh (PW-6) took out the treated GC notes and handed them over to the appellant. The appellant, evidently, accepted the money with his left hand, and kept it in his left side trouser pocket. It is at this point, the prosecutor declared the witness hostile and cross-examined him. In the cross-examination by the Prosecutor, the shadow witness Govind Ram Rawal (PW-3) stated as follows :-

“It is wrong to suggest that in the office room of the accused, Purshottam said “SAHAB JAISA AAPNE KAHA THA MAIN PAISE LE AYA HUN.” (Witness is confronted with portion B to B of statement Ex.PW3/X, where it is so recorded. Witness denies having made such statement to CBI. It is wrong to suggest that while coming out of the room, accused extended his right hand and said “LAO”. Actually, while saying “LAO”, accused extended his left hand. (Confronted with portion C to C of his statement Ex.PW3/X, where it is mentioned that accused has said that “LAO” while extending his left hand. It is wrong to suggest that accused accepted the tainted money with his right hand and after counting the same with both his hands, kept the money in the right side pocket of his pant. (Witness is confronted with portion D to D of his statement Ex.PW3/X and he states that actually after taking the money in his left

hand accused kept it in the left pocket of his pant. Then he took out said money from his pocket and counted it with both his hands and then kept it in the right side pocket of his pant.”

20.5 As regards what happened after he had signaled to the other members of the trap team, the shadow witness Govind Ram Rawal (PW-3) stated as follows :-

“On the receipt of my signal, other members of the trap team entered the office of the accused. Accused was apprehended by two Inspectors of CBI from respective wrists. Inspector B.K. Pardhan disclosed his identity and challenged the accused of having demanded and accepted bribe from the accused. Accused protested that he had not taken the bribe, and the complainant had forced the money into his pocket. I cannot admit or deny, if Mahesh Mathur was directed to search the accused, but I do remember that some members of the trap party searched the right side pocket of the pant of the accused Mohan Lal. Tainted Rs.2000/- were recovered from the right side pocket of the pant of the accused. I do not remember, therefore, I cannot say if myself and Mahesh Mathur compared the numbers of GC notes with the numbers noted down in Ex.PW3/A and the numbers tallied. (Confronted with portion F to F of alleged statement (Ex.PW3/X) where it is so recorded.”

20.6 Govind Ram Rawal (PW-3) accepted the fact that after the treated GC notes had been recovered from the appellant, his hands were dipped in a colourless solution of sodium carbonate, which turned pink. He also proved the prosecution’s case with regard to the wash being taken of the inner lining of the right hand pocket of the trouser of the accused.

20.7 Govind Ram Rawal (PW-3) also went on to prove the fact that the washes were transferred to clean empty bottles, whereupon they were sealed and covered with a cloth. Govind Ram Rawal (PW-3) also proved his signatures on the Recovery Memo (Ex.PW3/D) as also on the photocopy of the seized file, pertaining to the criminal case, which was being handled by the appellant. Govind Ram Rawal (PW-3) also proved his signatures on the Personal Search Memo (Ex.PW3/F). The witness (PW-3) also identified the treated GC notes (Ex.P-1 to P-20). In the cross-examination by the counsel for the appellant, the witness (PW-3) stated as follows :-

“When the accused said “LAO” and extended his left hand complainant did not ask him what he was asking for. During his conversation with the accused, complainant did not refer to money. It is incorrect to suggest that accused neither said “LAO” nor he extended his left hand to the complainant. I told the CBI during investigation at the time of recording of my statement that accused after accepting the money in his left hand kept it in the left pocket of his pant and thereafter he took out said money from his left pocket, counted it with both his hands and then kept it in the right side pocket of his pant.”

20.8 In regard to this aspect of the matter, the shadow witness Govind Ram Rawal (PW-3) was confronted with his statement made under section 161 of the Code (Ex. PW3/X), wherein it had been recorded that he had stated that the appellant had accepted the money with his right hand and after counting the money, he had kept it in the right side pocket of his trouser.

20.9 Govind Ram Rawal (PW-3), however, refuted the suggestion that the hand wash and the trouser pocket wash of the appellant was not taken at the spot or that no post-raid proceedings were conducted at the spot. Govind Ram Rawal (PW-3) went on to refute the suggestion that signatures on the Recovery Memo (Ex.PW3/D) were not his.

21. In so far as Mahesh Mathur (PW-4) was concerned, he was the other independent witness. He also broadly affirmed the prosecution’s case with regard to the pre-trap proceedings. In his examination-in-chief, as noticed above by me, Mahesh Mathur (PW-4) stated that on being confronted and on the directions of B.K. Pardhan, TLO (PW-8), the appellant himself took out the treated notes from his right side pocket and kept it on the table.

21.1 Since Mahesh Mathur (PW-4) was declared hostile, he was cross-examined by the Prosecutor. Mathur Mathur (PW-4) when asked about this aspect of the matter, stated that it was possible that he had recovered the tainted money from the trouser pocket of the appellant. The post-trap proceedings were proved by Mahesh Mathur (PW-4). In particular, he affirmed the fact that after the recovery, both hands of the appellant were dipped in two separate bottles containing a solution of sodium

carbonate, which on coming in contact with the solution, turned pink. He also affirmed that the inner lining of the trouser pocket from which the GC notes had been recovered was dipped similarly in a colourless solution of sodium carbonate, which also turned pink.

21.2 Mahesh Mathur (PW-4) went on to state that both the hand wash as well as the trouser pocket wash were transferred to clean separate bottles whereupon they were duly sealed and covered with cloth. Mahesh Mathur (PW-4) affirmed his signatures on the inner lining of the trouser pocket of the appellant. Mahesh Mathur (PW-4) admitted that he had appended his signatures on the Personal Search Memo (Ex.PW3/F) as also on the Recovery Memo (Ex.PW3/D). Mahesh Mathur (PW-4) also accepted his signatures on the seized file.

21.3 The witness went on to identify the GC notes (Ex.P-1 to P-20) as those which were used for laying the trap and consequent thereto, recovered from the appellant. Mahesh Mathur (PW-4) also affirmed his signatures on the bottles which contained the hand washes of the appellant (Ex.P-21 to P-23).

21.4 On the aspect of recovery, the witness (PW4) while explaining his testimony made during examination-in-chief in cross-examination stated as follows:

“I am aware that deposing falsely in court is an offence. My statement in examination to the effect that on the directions of trap officer, accused himself took out tainted money from right side pocket of his pant, is incorrect. Similarly, my version in examination in chief by Id. Prosecutor that wash of other hand was not taken is incorrect. It is wrong to suggest that yesterday I was called to the CBI and directed to admit all the suggestions of the prosecutor. I did not offer my search to the accused before recovering the tainted money from his pocket. It is wrong to suggest that no recovery was effected from the pocket of the pant of the accused.”

21.5 The suggestion made to PW-4 that the hand washes of the accused were not taken or that the Recovery Memo (Ex.PW3/D) was not written by Inspector B.K. Pardhan (PW-8) at the spot; was refuted by Mahesh Mathur (PW-4).

22. Inspector Bharat Singh (PW-5) proved that the appellant was entrusted with the investigation of the case involving the complainant being FIR No.645/1996 filed under sections 308, 323 and 34 of the IPC. He further stated that the said FIR was registered on 14.09.1996 in Police Station Gokul Puri, Delhi.

23. Inspector P.K. Sharma (PW-7), who took over the investigation of the case from Inspector B.K. Pardhan, TLO (PW-8), deposed that he was responsible for: recording the statements of the witnesses; arranging the transportation of sealed bottles containing the washes of the appellant to the CFSL for analysis; and for collection of the Chemical Examiner's report (Ex.PW1/A) as also for obtaining sanction for the prosecution of the appellant from the concerned authority.

24. Inspector B.K. Pardhan, TLO (PW-8), proved both the pre-trap and the post-trap proceedings – in particular, on the aspects, as to what transpired after the shadow witness had given the signal that the transaction between the appellant and the complainant had been completed; he deposed as follows :-

“At the instance of shadow witness, Inspector Bhati and Inspector Lohmor physically apprehended the accused Mohan Lal Walia present in the court (correctly identified) from his respective wrists. I challenged the accused of having demanded and accepted bribe of Rs.2000/- from the complainant. Accused became perplexed and kept mum for some time and thereafter pleaded guilty (objected to). On my enquiry shadow witness narrated the sequence of events which happened in the room of the complainant. PW Mahesh Mathur was directed to search the accused and recovered tainted Rs.2000/- from the right side pocket of the pant of the accused. The money comprised of 20 GC notes of Rs.100/- denomination each. Numbers of recovered GC notes were then compared by both the panch witnesses with numbers recorded in handing over memo (Annexure-A), After comparison, they confirmed that GC notes were the same.”

24.1 Inspector B.K. Pardhan, TLO (PW-8) also deposed to the effect that the washes of both right hand and left hand of the appellant were taken after the tainted GC notes were recovered from him. He also affirmed the fact that the inner lining of the right side pocket of the appellant was subjected to a wash. The witness (PW-8)

deposed that the right hand and left hand washes were labeled as RHW and LHW, that the right side pocket wash of the appellant was labeled as RPPW. Inspector B.K. Pardhan, the TLO (PW-8) proved: the Personal Search Memo (Ex.PW3/F); the Site Plan (Ex.PW8/C) as also the Recovery Memo (Ex.PW3/D).

24.2 The witness (PW-8) also identified the bottle washes (Ex.P-21 to P-23); the treated GC notes (Ex.P1 to P20); the trouser (Ex.P-24) and the cloth wrappers (Ex.P-25 to P-27).

24.3 In the cross-examination, Inspector B.K. Pardhan (PW-8) deposed consistently with what he had said in his examination-in-chief.

25. As noticed above, the appellant examined only witness i.e., ASI Rajiv Wason (DW-1), apart from making a statement under section 313 of the Code. The statement made under section 313 of the Code by the appellant was laconic to the extent that apart from the usual denial, nothing much has been said in the form of an explanation except with regard to the question as to why witnesses had deposed against him; the appellant said that the complainant Purshottam Singh (PW-6) bore a grudge against him and that the panch witnesses were not independent. According to the appellant the prosecution witnesses had deposed against him out of fear of departmental enquiry.

26. In so far as ASI Rajiv Wason (DW-1) was concerned, he was examined in respect of his role regarding grant of sanction for initiating prosecution against the appellant. In this regard, he stated that the sanction file contained a letter of request addressed by the Superintendent of Police (in short, 'SP'), CBI alongwith the enclosures such as: the SP Report, calendar of evidence (oral and documentary), and a draft sanction order. He went on to testify that the sanction file did not contain statement of witnesses under section 161 of the Code or any other document pertaining to the case.

26.1 In the cross-examination when it was put to him as to whether he was aware why other documents were not shown to the sanctioning authority, the witness stated that he had no personal knowledge about the case.

27. In my view, on perusing the testimony on record, what emerges, is as follows :-

- (i). the complainant Purshottam Singh (PW-6) was being prosecuted in a criminal case instituted against him and other members of his family under sections 308, 323 and 34 of the IPC, which was under the charge of the appellant;
- (ii). it is in that connection that the appellant had been produced before the Magistrate on 15.09.1996, for seeking his remand. On the said date, the complainant Purshottam Singh (PW-6) did not have access to an advocate. As a matter of fact members of his family were not present, when he was produced before the Magistrate, though his nephew, according to his own testimony, interacted with him after his remand proceedings were over;
- (iii). the complainant Purshottam Singh (PW-6) was evidently approached for a bribe on 15.09.1996. On 18.09.1996, the complainant Purshottam Singh (PW-6) was released on bail;
- (iv). in the criminal case pending against the complainant Purshottam Singh (PW-6), one of the witnesses who had been hospitalized, had not been examined;
- (v). the demand for illegal gratification evidently was reiterated by the appellant on 20.09.1996;
- (v)(a). it is pertinent to note that though in the examination-in-chief, there is a reference by the complainant Purshottam Singh (PW-6) that the demand was made in the morning, he seems to have corrected course by saying that it was made at night when he was summoned in the police post at Khajoori Khas;
- (vi). the complainant Purshottam Singh (PW-6) being harassed, on 21.09.1996 filed a complaint (Ex.PW6/A) with the CBI;
- (vii). a trap was laid out by Inspector B.K. Pardhan, the TLO (PW-8), in which, Govind Ram Rawal (PW-3) and Mahesh Mathur (PW-4) were included as independent witnesses;
- (viii). the trap was executed on 21.09.1996 when on a demand being made, the treated GC notes were handed over to the appellant;

- (ix). the said treated GC notes were recovered from the appellant;
- (x). the appellant was asked to dip his hands in a colourless solution of sodium carbonate, which on coming in contact with the said solution, turned pink. A similar exercise was carried out vis-à-vis the inner lining of the right side trouser pocket of the appellant, which also turned pink, on coming in contact with the sodium carbonate solution; and
- (xi). lastly, the chemical analyses of the washes i.e., the hand wash and the trouser pocket wash of the appellant, tested positive for the presence of phenolphthalein and sodium carbonate.

28. The argument of the learned counsel for the appellant that the testimony of the complainant Purshottam Singh (PW-6) ought to be discarded for the reason he bore a grudge against the appellant, seems unsubstantiated. While it cannot be disputed that the complainant could not have been very happy about the situation that he was put in, which was, his prosecution in the case involving a fracas with his neighbour. But to impugn his credibility with regard to the allegations of a demand of bribe from the appellant solely on this basis would be improper. The fact that the complainant's (PW-6's) prosecution in the said criminal case, was decidedly under the charge of the appellant, furnishes the necessary motive for the appellant to demand a bribe from the complainant Purshottam Singh (PW-6).

28.1 The submission of Mr. Andley that the appellant was in no position to help the accused is, contrary to the evidence on record, in as much as, not only was the appellant the Investigating Officer entrusted with the said case, but at that point in time i.e., 20-21.09.1996, one witness in the said criminal case, who was hospitalized; remained to be examined. Therefore, there was, in my view, motive present which could have propelled the appellant to demand the bribe from the complainant Purshottam Singh (PW-6).

28.2 As regards the demand of bribe by the appellant on 21.09.1996, in my view is sufficiently established by the testimony of the shadow witness Govind Ram Rawal (PW-3) in his testimony affirms the demand though there is some minor variations

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with regard to the conversation which took place between the appellant and the complainant Purshottam Singh (PW-6). In my opinion, given the time gap [which was approximately three (3) years] between the time the trap was laid out and the testimony of the shadow witness Govind Ram Rawal (PW-3) was recorded, the variations are bound to occur. What has to be borne in mind is whether they are material. Having examined the evidence in totality, I am of the opinion that the variations brought to my notice could not have had a bearing on the main issue as to whether the appellant had demanded money from the complainant Purshottam Singh (PW-6). The other variation with regard to which emphasis was laid so as to establish that there was no acceptance of bribe by the appellant, was with respect to the hand which the appellant evidently extended to accept the treated GC notes as also the pocket of the trouser in which the money was kept, are again minor variations. This is specially so, when one keeps in mind not only the time frame involved but also the fact that invariably witnesses get confused when asked to refer to the hand which was used to accept the graft. This happens since witnesses often sub-consciously, without realising, refer to their own hands, when actually they are required to advert the hand used by the person accepting the graft. In view of this confusion the witness invariably refers to the wrong hand or the wrong pocket of the apparel in which the graft is kept by the accused after acceptance. The situation appears to be no different in the instant case. Both the complainant Purshottam Singh (PW-6) and Govind Ram Rawal (PW-3) confirmed that a demand was made by the appellant; pursuant to which the treated GC notes were accepted by him.

29. This brings me to the issue of recovery of the treated GC notes from the appellant. While the complainant Purshottam Singh (PW-6) has testified that the recovery was made from the appellant, he was unable to remember as to who was assigned the task of recovering the treated GC notes from the trouser pocket of the appellant. On the other hand, Mahesh Mathur (PW-4) in his examination-in-chief testified that the appellant had taken out the treated GC notes from his trouser pocket and laid it out on the table. This version was corrected by him, in the cross-
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examination by the Prosecutor ,when he adverted to the fact that it was possible that the treated GC notes were actually recovered from the pocket of the appellant. In the complainant's (PW-6's) cross-examination by the counsel for the accused, he stuck to this version and refuted the suggestion that a change in deposition had taken place at the say so of the prosecution. In so far as recovery of the treated GC notes is concerned; this aspect has also been proved by Inspector B.K. Pardhan, TLO (PW-8). In his testimony, he specifically adverts to the fact that the treated GC notes were recovered by Mahesh Mathur (PW-4) from the right side trouser pocket of the appellant. Sh. Govind Ram Rawal (PW-3) on the other hand, as indicated above, stated that while he did not remember as to who searched the appellant but the search of the right side trouser pocket of the appellant did result in the recovery of the treated GC notes. When the testimonies of Inspector B.K. Pardhan (PW-8), Sh. Govind Ram Rawal, shadow witness (PW-3) and Mahesh Mathur (PW-4) are read alongwith the report (Ex.PW1/A) of the Chemical Examiner, I am left with no doubt in my mind that the treated GC notes were recovered from the appellant. This report was proved by Sh. K.S. Chhabra (PW-1).

29.1 This apart, the shadow witness Sh. Govind Ram Rawal (PW-3), Mahesh Mathur (PW-4) and Inspector B.K. Pardhan, TLO (PW-8) have all proved their signatures on the Recovery Memo (Ex.PW3/D). Therefore, in my view, the variation in the testimony of Mahesh Mathur (PW-4) vis-à-vis what he said in his examination-in-chief when compared that which he stated in his cross-examination, is neither significant nor material. The variation in the testimony of Mahesh Mathur (PW-4) when compared with that of Inspector B.K. Pardhan, TLO (PW-8) is not significant given the time gap. Even if I were to exclude the testimony of Mahesh Mathur (PW-4) on the aspect of recovery, the testimony of the other witnesses i.e., Sh. K.S. Chhabra (PW-1), Inspector B.K. Pardhan, TLO (PW-8) and the shadow witness Sh. Govind Ram Rawal (PW-3) fully establish the case of the prosecution that the treated GC notes were recovered from the right side trouser pocket of the appellant.

30. This brings me to the question as to whether the sanctioning authority had accorded the sanction for the prosecution of the appellant after due consideration of the material on record. In support of this submission, that the competent authority had granted sanction without reference to the requisite material as, none was available on record; reliance had been placed on the testimony of ASI Rajiv Wason (DW-1). A close scrutiny of the testimony of ASI Rajiv Wason (DW-1) would show that the said witness had no personal knowledge of the events which transpired at the point in time when the sanction was obtained. The said witness (DW-1) was a formal witness, who had brought the sanction file in court which, according to him, did not contain the statements of witness under section 161 of the Code and other documents pertaining to the case. What the witness could not say with certainty, since he had no personal knowledge, as to whether other documents were otherwise made available or not. A perusal of the sanction order shows that the competent authority which, in this case was, the Dy. Commissioner of Police, North-east District, Delhi had applied its mind to the material on record. The sanction order adverts, in a synoptic manner, the entire gamut of the case including the existence of a criminal case against the complainant Purshottam Singh (PW-6), the laying out of the trap against the appellant, the execution of the trap, the recovery of the treated GC notes from the appellant, the chemical analysis of the hand wash and the pocket wash of the appellant as also the seizure of the file pertaining to FIR No.645/1996 (i.e., the case pending against the complainant at the relevant time under sections 308, 323 and 34 of the IPC).

31. In these circumstances, I am not persuaded by the submission made on behalf of the appellant that the competent authority had accorded sanction for the prosecution of the appellant without reference to the requisite material as reflected in the sanction order.

32. Before I part with the judgment, I would only wish to deal with the judgment of the Supreme Court in the case of ***Jagir Singh's*** (*supra*) which was relied upon by Mr. Andley to contend that the testimony of Govind Ram Rawal (PW-3) and Mahesh

Mathur (PW-4) could not be relied upon at all, since they had been declared hostile. The Supreme Court in that case made the observations in paragraph no.7 to the effect that once a witness for the prosecution is permitted to be cross-examined, the purpose is to discredit the witness altogether and not merely to get rid of a part of his testimony.

32.1 The observation made by the Supreme Court has to be understood in the context of the facts obtaining in *Jagir Singh's* (*supra*) case. In that case, the appellant, who was the accused, had been convicted of an offence under section 302 of the IPC. It appears that the appellant in that case belonged to a gang which, evidently bore animosity with another gang, of which the victim, one Harnek Singh was a member. The murder of Harnek Singh, according to the prosecution, took place on 03.04.1968 at about 3.00 a.m. The prosecution in order to establish the guilt of the appellant / accused, amongst others, examined three (3) eye-witnesses. Of the three (3) eye-witnesses, one witness turned hostile. The court in coming to the conclusion that the testimony of the prosecution witnesses, in particular, the eye-witnesses could not be relied upon, had taken into account a gamut of circumstances. These being that the appellant was named as accused, for the first time, as a eye-witness only on the following day i.e., 04.04.1968 at 11.00 a.m. Two (2) out of the three (3) witnesses had left the victim in the hospital and travelled to Meerut to confer with the brother of the victim. The eye-witnesses were unable to give the number of the truck, in which evidently, the appellant /accused arrived at the spot, where the murder took place. The witnesses in order to get out of this tricky situation, trotted the theory that the number plates of the truck used by the appellant/accused were covered with mud. The murder having taken place in the early hours of the morning, ordinarily it would have been difficult for the eye-witnesses to have seen the appellant/accused with clarity; hence the story set up by the witnesses that the head lights of the truck were switched on.

32.2 It is on a consideration of the entire circumstances, including what is mentioned above, that the court came to the conclusion that the testimony of the eye-

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witnesses could not be relied upon, which included the testimony of one of the eye-witnesses, who had been declared hostile as he had completely resiled from the case of the prosecution.

32.3 Therefore, in my view, the observations of the Supreme court in paragraph 7 has to be read in the context in which it is made. To put the matter beyond debate, one may only refer to the observations of the Supreme Court made in paragraph nos. 11 to 14 in Jodhraj Singh's case (a latter judgment) at pages 296-297 :-

“11. The High Court took up all the appeals together for hearing. The only distinctive fact in the case involving the appellant was that PWs 8 and 9 turned hostile, but the same, in our opinion, would not materially alter the prosecution case, as a conviction can even be based on the testimony of a single witness. The courts furthermore are entitled to rely upon a part of the testimony of a witness who has been permitted to be cross-examined by the prosecution.

12. In State of U.P. v. Ramesh Prasad Misra , this Court opined (SCC p.363 para 7):

“7. The question is whether the first respondent was present at the time of death or was away in the village of DW 1, his brother-in-law. It is rather most unfortunate that these witnesses, one of whom was an advocate, having given the statements about the facts within their special knowledge, under Section 161 recorded during investigation, have resiled from correctness of the versions in the statements. They have not given any reason as to why the investigating officer could record statements contrary to what they had disclosed. It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted....

[See also Gurpreet Singh v. State of Haryana and Gagan Kanojia v. State of Punjab]

13. Moreover, while recording a judgment of conviction, the court may consider a part of the deposition of a witness who had been permitted to be cross-examined by prosecution having regard to the fact situation obtaining in the said case. How the evidence adduced before it shall be appreciated by the court would depend on the facts and circumstances of each case.

14. It is trite that only because a witness, for one reason or the other, has, to some extent, resiled from his earlier statement by itself may not be sufficient to discard the prosecution case in its entirety. The courts even in such a situation are not powerless. Keeping in view the materials available on record, it is permissible for a court of law to rely upon a part of the testimony of the witness who has been declared hostile.”

(emphasis is mine)

33. In the aforesaid circumstances, I am of the view that the case of the prosecution against the appellant has been proved beyond reasonable doubt. Resultantly, the impugned judgment and sentence imposed by the trial court is sustained.

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 imposed by the trial court.

35. The appeal is disposed of accordingly.

APRIL 21, 2011
mb/yg

RAJIV SHAKDHER, J.