

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

% Judgment Reserved on: April 01, 2011
Judgment Delivered on: May 06, 2011

+ **CRL.APPEAL NO.995/2002**

SHRI BRIJ PAL SINGH Appellant

Through: Mr.Pradeep Kumar Arya with
Mr.Narindra Choudhry and
Mr.V.K.Chopra, Mr.Anuj Chopra,
Mr.Anuj Tomar, Ms.Esha Singh,
Mr.Shobhit Mittal and Mr.Kunal
Rana, Advocates

Versus

CBI Respondent

Through: Dr.A.K.Gautam, Standing Counsel
for CBI with Mr.Neeraj Kapoor,
Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J.

1. The accused was charged, while functioning as a public servant, in the capacity of Sub-Inspector, Delhi Police, posted at Police Station: Jahangir Puri, on 12.07.1995 at about 7:00 pm at PS, Jahangir Puri, Delhi, for demanding and accepting an

illegal gratification of ₹5,000/- from the complainant Ashok Kumar as a motive or reward for showing him official favour in the matter of a complaint of bank fraud submitted by one Samey Singh and thereby committed an offence punishable under Section 7 of Prevention of Corruption Act (hereinafter referred to as "P.C. Act" for short). Second charge against the accused is that as a public servant while working in the aforesaid capacity at the aforesaid time and place by corrupt or illegal means and by abusing his official position obtained for himself a pecuniary advantage of ₹5,000/- without any public interest, thereby, committed an offence punishable under Section 13(2) read with Section 13 (1) (d) of P.C. Act.

2. The accused pleaded not guilty and tried by the Special Judge, Delhi. Vide judgment dated 11th December 2002, the accused was convicted and vide order dated 16.12.2002 for offence punishable under Section 7 of the P.C. Act, 1988, the accused was sentenced to undergo Simple Imprisonment (SI) for a period of 2 years and a fine of ₹2,000/- and in default of payment of fine to undergo SI for a further period of two

months. For the offence punishable under Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988, the accused was sentenced to undergo SI for a period of 3 years with a fine of ₹3,000/- and in default of payment of fine, he shall have to undergo SI for 3 months. Both the substantive sentences were directed to run concurrently and period of detention already undergone during the investigation/trial of the case was set of.

3. The facts of the case in brief are that the accused had demanded a bribe of ₹10,000/- from Shri Ashok Kumar, complainant PW-1. On the complaint of aforesaid PW-1, a trap party was constituted by Shri S.K. Peshin PW-9, DSP of CBI consisting of Shri A.G.L. Kaul and Ved Prakash, Inspectors (Both witnesses not examined). Two eye witnesses, namely, Swaminath PW-3 from the Ministry of Health, Man Mohan Kumar PW-8 from the DGS & D and other staff of CBI(Anti Corruption Branch). After completing the requisite pre-trap formalities, the trap party left the CBI office at about 3:10 pm and reached the police station Jahangir Puri at about 4:50 pm.

Accordingly, the members of the trap party took up suitable position.

4. The Complainant PW-1, shadow witnesses PW-3 and public witness PW-8 went inside the police station. Since the accused was not present, they came out. Again, as directed by the TLO (Trap Laying Officer) went inside at about 6:00 pm. The appellant was found busy and told the complainant PW-1 to meet him at 7:00 pm. Accordingly, they met him again and handed over ₹5000/- to appellant. On receipt of pre-appointed signal from the shadow witness at 7.55 pm, the trap rushed in and accused was apprehended by his left wrist by Sh. Ved Prakash, Inspector. The appellant while trying to free himself, came out of the room and reached the passage outside. He took out some currency notes from the right hand side pocket of his pant and threw the same on the asbestos sheets adjoining the passage. The Government currency notes were photographed while they were lying on the Asbestos Sheets. The currency notes were found tallied with the numbers of the

notes recorded in the annexure of the handing over memo prepared in the CBI office.

5. Inspector Ram Sewak PW-7, SHO of P.S. Jahangir Puri and A.C.P. were called. In their presence hand wash of the right hand of the accused was taken in a colourless solution of sodium carbonate which turned pink in colour and similarly, the wash of the inner-linings of the right pocket of the pant worn by appellant was taken which also gave positive result in the colourless solution of sodium carbonate. Both the pink solutions obtained were transferred to separate glass bottles which were duly sealed with CBI seal wrapped and got signed by the independent witnesses.

6. Thereafter the table drawer of accused was searched. Original complaint of Sh. Samey Singh PW-5, which was under verification was recovered. Pass-book and driving license of the complainant PW-1 and other documents were also recovered which were seized by the trap team of CBI.

7. During investigation, it was found that the appellant was verifying the complaint given by Sh. Samey Singh PW-5 and in

connection with that complaint, the appellant had been calling the complainant Ashok Kumar, PW-1 to the police station repeatedly.

8. The prosecution examined 10 witnesses in all. Ashok Kumar PW-1 had deposed on 02.03.1998 that on 28.06.1995, accused Brij Pal Singh, SI called him to police station Jahangir Puri. He told him that by practicing fraud upon the bank a sum of ₹36,000/- had been withdrawn from the account of one Samey Singh PW-5. He was also told that in the aforesaid transaction of withdrawal of money, his (PW-1) bank account number as witness was written. The complainant told the accused that he had not given any witness for the bank account and the aforesaid withdrawal. The accused also threatened him that he would implicate him in the case if he failed to pay him ₹10,000/- as bribe.

9. Thereafter, the accused called him to the police station in that connection several times. On 12.07.1995 the accused further told him to pay first installment of ₹5,000/- on the same day at the police station. He (PW-1) came back to his

residence. He wrote a complaint and went to CBI office and met S.P., Anti Corruption.

10. At about 1:30 pm, two public witnesses, namely Somi Nath (Swami Nath) PW-3 and Man Mohan Kumar PW-8 arrived in the room of PW-9 S.K.Peshin, DSP. The complainant produced ₹5,000/- comprising 50 GC notes of ₹100/- denomination each and gave to Shri S.K.Peshin PW-9. He noted down several numbers of those currency notes on paper Ex.PW-1/B. One chemical powder was applied to those GC notes. Thereafter, demonstration of chemical reaction of aforesaid powder was given by making one witness to touch the treated notes and dip his fingers in the plain water, but the colour of water did not change. Thereafter, one other chemical powder was dissolved in a clean glass of water to prepare a colourless solution. Same witness was directed to touch the treated notes with other hand and dipped his fingers in the said colourless solution. On this solution fingers turned pink. Aforesaid demonstration solution was thrown away. His search was conducted and he was not permitted to carry

money. Thereafter, the aforesaid treated currency notes of ₹5,000/- were kept in the left pocket of his shirt, and was directed to give tainted money to the accused only on the event of specific demand. PW-3 Somi (Swami Nath) was directed to act as a shadow witness and watch the proceedings as well as hear the conversation between him and the accused. He was further directed to scratch his head in the event of acceptance of money by the accused. All the other members of the raiding party were searched by each other and no body was permitted to keep money on his person. One yellow bag was taken which contained empty bottle and chemical powder for making solution, sealing material, glass tumbler and CBI seal etc. All members of raiding party washed their hands before leaving for the raid. Pre-raid proceedings were prepared vide memo Ex. PW-1/C.

11. PW-1 further deposed that on seeing the accused in his room along with 3-4 persons sitting in the said room, the accused told PW-1 that he will talk with him after some time. Thereafter, they came downstairs and waited till 7:00 pm.

Again, he along with Somi (Swami) PW-3 went to the room of accused at first floor at 7 pm. The conversation with the accused was as under:

Brij Pal Singh	-	Kaya Haal Hai
Complainant	-	Thik Hain
Brij Pal Singh	-	Hoon; yeh kaun hain
Complainant	-	Mere Mamaji ka ladka hai
Brij Pal Singh	-	Kitne Paise Laye Ho
Complainant	-	Paanch Hazar Rupaye

12. Thereafter, he took out ₹5000/- tainted money and gave to the accused Brij Pal Singh. He accepted the money in his right hand and kept the same in the right side pocket of his pant. Thereafter, complainant asked “MERE SAATH KOI AISI BAAT TO NAHI HOGI”, and accused told him that he would close the file and nobody would harass him. Then, accused asked him “DOOSRI KISHT KAB DEGA”, and complainant replied, “KAL DE DENGE”. Thereafter, accused Brij Pal Singh came out of the room. Meanwhile, PW-3 Somi (Swami) Nath gave signal by scratching his head and members of raiding party reached at the spot. Two CBI officials Mr.Kaul and

Mr.Javed caught hold of the accused from his respective wrists. Accused started shouting. CBI officials, thereafter, gave the introduction to the accused. He managed to get free from his right hand. He took out tainted money from the right pocket of the pant and threw it on the asbestos sheet of the roof of the room of the reader of SHO. ACP and SHO of the police station were summoned at the spot and were asked to join further proceedings. Somi Nath PW-3 detailed the transaction as well as the conversation took place between him and the accused. Photographer was summoned, who took photographs of the Govt.Currency notes lying on the roof. Manmohan PW-8 picked up GC notes from the roof of the room of the reader and his photographs were taken while he was picking the GC notes. Numbers of those GC notes were also compared by PW-8, with the numbers already noted down on the list Ex.PW-1/B and he confirmed that GC notes were same.

13. Thereafter, a glass of water was brought and accused Brij Pal Singh was made to dip his right hand fingers in aforesaid plain water, on this water turned pink. Aforesaid right hand

wash was transferred into a clean empty bottle, its mouth was covered with a piece of cloth. It was sealed with the seal of CBI and identification lable was prepared and pasted on the bottle. Bottle was marked as 'RHW'. The accused was made to remove his pant. Fresh water in a clean glass of water was fetched and inner lining of the pocket of the pant of the accused was dipped, on this water turned pink. Thereafter, pocket wash was transferred into a clean and empty bottle, its mouth was closed and covered with a piece of cloth. The bottle was sealed with the seal of CBI and identification lable was prepared and pasted on the bottle. Recovered currency notes, bottles of washes and the pant of the accused etc., were seized vide recovery memo Ex.PW-1/D.

14. Thereafter, room of the accused was searched from where his (PW-1) 'Bank Pass Book' and 'Driving Licence' were recovered.

15. The cross-examination of the complainant was deferred at the request of the accused, as his counsel was not available on that day. However, this could take place only on

24.07.1998 when PW-1 made a summersault and proved a complete turn-coat to the prosecution. He deposed in cross-examination as under:-

"I do not know anyone with the name of Harish Aggarwal. I visited CBI office for lodging the complaint with one Mahender Kumar. It is correct that I took Mahender Kumar alongwith me because he knew some CBI officers. He reached at CBI office at around 11 a.m. In the CBI office, first of all, we went to the office of SP Sh. Dutta. It is correct that Mahender Kumar knew Mr. Dutta, SP, Anti Corruption, CBI. Thereafter, Mr. Dutta, called DSp Sh. S.K. Peshin. He sent me along with Shri S.K. Peshin to his room. It is correct that Mr. Dutta directed Sh. S.K. Peshin to get my complaint recorded from me. It is correct that Mr. Peshin interrogated me regarding the facts and on his dictation I wrote down my complaint. **It is correct that accused beat me at the instance of SHO. It is also correct that SHO Jahangirpuri had demanded a bribe of ₹30,000/- from me.** I had told Sh. Peshin about this fact. **It is correct that my complaint was drafted several times and after tearing few drafts of complaint, finally complaint Ex.PW-1/A was written.** Witnesses Manmohan and Swaminath were already sitting in the room of Sh. Peshin, when I arrived along with him.

I produced ₹5,000/- for trap money. **Aforesaid amount comprised of few ₹100/- GC notes and few ₹50/- GC notes.** We left CBI office for raid at about 2 p.m. **It is correct that I did not wash my hands with soap and water before leaving for the raid.** I cannot admit or deny if the other members of the raiding party washed their hands.

I had visited CBI office on 10.7.95 also. On the said day, I orally narrated the factum of

bribe demanded by the accused to Shri S.K. Peshin. I also told him about the bribe demanded by the SHO. **It is correct that on 10.7.95 also, a trap was organized by Shri S.K. Peshin and trap party went to P.S. Jahangirpuri to trap the accused. It is correct that on 10.7.95, accused did not meet me at the police station.** Trap Party did not go to the police station on 11.7.95. I had handed over my complaint Ex. PW-1/A to Sh.S.K. Peshin. **Witness Swaminath and Manmohan accompanied the trap party to P.S. Jahangirpuri on 10.7.95 also.** On 12.7.95, we reached at P.S. Jahangirpuri at around 3.20 pm. At the time of trap, **Manmohan accompanied me as shadow witness.** My statement was not recorded by CBI at any stage during the investigation. On 12.7.95, at about 3.30 pm, when we reached at police station **accused Brij Pal Singh was available in the police station. I met him in his room. I along with Manmohan had gone to the room of accused upstairs** but remaining members of the raiding party remained downstairs. At that time, Sh.S.K.Peshin was sitting with SHO in his room. It is correct that remaining members of the raiding party took position in the room of duty officer. **When I reached in the room of the accused, ¾ public persons including one Narender Singh were already sitting there.** Manmohan did not accompany into the room of the accused and he stayed outside. He stayed at a distance of 5-7 feet from the room of the accused in the gallery. **After we reached the room of the accused, he left the room for sometime. It is correct that in the absence of accused, aforesaid Narinder demanded money from me and I handed over aforesaid tainted ₹5000/- to Narender in absence of accused.** It is correct that this happened in the presence of public persons who were already present there. **It is correct that at the time of trap I had no conversation with the accused, But I had**

onversation with said Narender. It is correct that after I passed on the money to Narinder, trap party entered said room and at the same moment, accused also entered his office. It is also correct that I told Shri Peshin that I had given trap money to Nainder on his demand. It is also correct that on this S.K. Peshin got annoyed and told me that I should have given tainted money to the accused. **When I entered the room, I shook hand with the accused. On seeing the trap party, Narinder Singh got up and pushed the money towards the accused and on this accused Brij Pal Singh came out of the room. He refused to accept that money from Narinder saying "what is this?"** It is correct that accused was apprehended by CBI team and **Narinder managed to run away.** It is correct that thereafter, S.K. Peshin along with the raiding party, accused as well as SHO straightway came to CBI office. It is also correct that entire proceedings of the raid were recorded in the CBI office. I have seen handing over memo Ex. PW-1/C. It was prepared in the CBI office after the raid. It is correct that I do not know English. It is also correct that before obtaining my signatures on handing over memo, it was not read over to me. Numbers of the GC notes were not recorded during pre-raid proceedings.

It is correct that Ex.PW-1/B was prepared in the CBI office after the raid. I have seen Ex. PW-1/D. It bears my signatures on all the four pages. I appended these signatures in the CBI office. When I signed aforesaid recovery memo, it was already written. It is correct that recovery memo PW-1/D was not read over to me nor its contents were explained to me before obtaining my signatures. Contents of these documents were not explained to me even thereafter. I signed the recovery memo presuming that CBI officers must have narrated the correct facts in the memo.

We reached CBI office at 6 pm. It would be incorrect to say that we reached back to CBI office at about 11 pm in the night. It would be incorrect to say that accused demanded bribe from me at around 7.30 pm or that he was arrested at that time. ACP Sanjiv Kumar did not arrive at the spot during raid proceedings. I remained at CBI office for about 15 minutes after our arrival back from the raid.

“It is correct that at the time of raid, Sh.Peshin, DSP directed the public persons sitting in the room of the accused to leave the room. **He did not search the room of the accused in my presence. Nothing was recovered from the said room** in my presence. When I left CBI office, after the proceedings, above said independent witnesses also left CBI office along with me. Inspector D.M. Sharma, was also a member of the trap party.

I was examined by the Ld. PP in this court on 02.3.98. **My said version is incorrect and version given today is correct. I gave statement dtd. 2.3.98 under the pressure of 2 or 3 CBI officers.** It is correct that they threatened me that if I failed to support the prosecution case, I can suffer dire consequence. The version given by me today was told by me to Inspector D.N. Sharma.

Q. You have stated that when the trap party entered the room of the accused Narinder Kumar pushed tainted money towards the accused and accused came out of the room saying “what is this?”. Please tell at that time where Narinder Kumar and Brij Pal Singh were present.

A. At that time, Narinder Singh was sitting on a chair and accused was standing by the side of his table.

It is correct that Narinder Kumar pushed the money towards the accused on the directions

of S.K.Peshin. It is also correct that because accused was not ready to accept the money and Sh. S.K.Peshin wanted the money to be forced upon him, in the process money fell down on the ground. Rough side plan was not prepared in my presence on the day of trap.

It is correct that my complaint was got written on 10.7.95. It is also correct that on 12.7.95, Sh. Peshin made me to copy said complaint dated 10.7.95 and thereafter the complaint dated 10.7.95 was torn off because trap did not succeed on 10.7.95. No document was prepared in the CBI office on 10.7.95. On 12.7.95, when I left CBI office for my residence, SHO Jahangirpuri was still in the CBI office. I do not know whether he was arrested. It is correct that accused Brij Pal Singh never demanded bribe from me nor he accepted this amount. It is correct that because accused used to beat me at the instance of SHO, therefore, I was annoyed to (with) him. **It would be incorrect to say that Swaminath accompanied me as a shadow witness. It was only Manmohan who accompanied me as a shadow witness.** It is correct that I did not have conversation described at portion "A" to "A" of my examination in chief dated 2.3.98 with the accused. **It is correct that this conversation took place with Narinder but I substituted his name with the accused under the pressure of CBI.** Narinder was also a policeman. I had seen him on several occasions with SHO."

16. Considering the conduct of complainant in making two entirely contradictory statements, the public prosecutor CBI then cross-examined him, but failed to bring him around to his case. While in his re-cross-examination by defence counsel, he reiterated what he had stated on 24.07.1998, **adding further that a trap was laid on 10.07.1995 and he changed the**

date to 12.07.1995 at the behest of Sh.S.K.Peshin PW-9,
who was T.L.O. of this case.

17. Interestingly, not only the complainant PW-1 has turned hostile, both the two public witnesses joined in the raiding party, namely, Swami Nath. PW-3 and Manmohan PW-8, who acted according to the prosecution as a shadow witness and recovery witnesses respectively. Both public witnesses PW-3 and PW-8 completely had turned hostile and did not support prosecution case. Public prosecutor cross-examined them at length and confronted with them the statements purported to had been recorded under Section 161 Cr.P.C., however, he could not elicit anything favourable to the prosecution from them. Their testimonies did not land any corroboration to the complainant PW-1, who as discussed above, earlier deposed in favour of the prosecution but later on retracted from his deposition in chief examination recorded on oath on 02.03.1998.

18. The trial Judge has relied upon the testimony of S.K.Peshin DSP, PW-9 TLO of the case and circumstantial evidence of K.S.Chhabra, Sr. Scientific Officer PW-4, Sh.Samey

Singh PW-5, P.D.Vasandhani PW-6, and Inspector Ram Sewek PW-7.

19. To this effect it is relevant to discuss all the aforesaid witnesses in brief how they had put light in the case while deposing in the Court.

20. PW-4 Sh.K.S.Chhabra, Sr.Scientific Officer Grade-I cum Assistant Chemical Examiner, Govt. of India CFSL Delhi deposed that on 18.07.1995, two sealed bottles were received in the laboratory; their seals were intact and tallied with official specimen enclosed; both bottles contained pink colour liquid with sediments and were marked as "RHW" and "RPPW", which gave positive tests for phenolphthalein and sodium carbonate. He proved his report as Ex.PW-4/A. This witness had not been cross-examined.

21. PW-5, Samey Singh, was having a bank account with State Bank of India, at Jahangirpuri Branch, in the year 1995. Regarding embezzlement of ₹36,000/- from his account, he lodged a complaint Ex.PW-5/A on 29.06.1995 at police station Jahangirpuri. This witness was also not cross-examined.

22. PW-6 P.D.Vasandhani, was the Deputy Manager in State Bank of India, Jahangirpuri Branch, during the year 1995. He had deposed that account No.8477 in the name of one Sh.Samey Singh, was maintained in the branch during his tenure. Duplicate pass book was issued on 27.06.1995. Further, he deposed that on 24.06.1995, there was a deposit of ₹20,000/- as per the ledger Ex.PW-6/A and on 27.06.1995 a sum of ₹36,300/- was shown as withdrawn from that account. This witness was cross-examined, however, nothing material came out to discredit his evidence.

23. PW-7 Inspector Ram Sewek, he was posted as SHO at police station Jahangir Puri in June/July, 1995 and the accused was working under him as Sub-Inspector. He had confirmed that complaint Ex.PW-5/A was made by Sh.Samey Singh PW-5, which was marked by his reader to the accused on his behalf.

24. On perusal of the above discussed evidence of PW-5, PW-6 and PW-7, it is clearly established that on the day of trap, i.e. 12.07.1995, appellant was investigating a complaint of PW-5 of embezzlement in his account. Thus, the appellant had motive

to ask for bribe for favouring the complainant PW-1. Further, testimony of PW-7, lands more credence to the case of prosecution regarding recovery of the tainted money as under:-

“On 12.7.95, at about 8.00 pm, I was present in P.S. Jahangirpuri in my office room. At that time Sh. R.A. Sanjeev, ACP had also come to our police station. While I was having discussion with the ACP, I heard noise that some raid has (had) taken place. Thereafter, I along with Shri S.K. Peshin, Dy. S.P. of CBI went upstairs, i.e., on first floor. There I saw that accused had been apprehended by the CBI officials. I saw that some currency notes were lying on the tin-shed (Asbestos-sheet) out of that room CBI officials got photographs of those currency notes. Thereafter, CBI officials prepared a recovery memo and number of GC notes were compared and the said tallied. Thereafter hand wash of both the hands of the accused were taken. I have seen the recovery memo Ex. PW-1/D which bears my signatures at page No. 2,3, and 4 at point “D”. I had signed on this recovery memo after reading the same. In my presence, right-side pant pocket wash was also taken and some papers were recovered from the table drawer from the accused as well as from the box.”

25. PW-9 S.K.Peshin, DSP, CBI had laid trap on 12.07.1995, thereafter who investigated the case of R.C.No.56/1995 Ex.PW-9/A. He deposed that this case was registered against the accused on the complaint of Ashok Kumar PW-1 alleging demand of bribe by Sh.Brij Pal Singh, Sub-Inspector posted at

P.S. Jahangir Puri. Complainant PW-1 was called by him to his room, interrogated him regarding the allegation made by him. He was satisfied about the genuineness of the allegations. A trap party was constituted, arranged two independent witnesses i.e. Sh.Swami Nath PW-3 from Ministry of Health and Sh.Manmohan Kumar Pw-8 from DGS&D and by about 3 PM all the members of the raiding party, including witnesses and complainant were present in his room.

26. Further, he had deposed that complaint of Ashok Kumar PW-1 was shown to both the witness (Pw-3 and PW-8) and they also questioned the complainant regarding the allegations to satisfy themselves. The complainant produced a sum of ₹5000/- consisting of 50 GC notes of ₹100 denomination, whose, numbers were noted down in the annexure Ex.PW-1/B. Ensuring that these numbers had been correctly recorded. Thereafter, a practical demonstration was given after treating the GC notes with phenolphthalein powder, directing Sh.S.R.Singh, Inspector,(not examined) to explain the reaction that takes place between said phenolphthalein powder and

colourless solution of sodium carbonate. For that purpose witness Manmohan Kumar PW-8 was asked to touch these powder treated notes with his right hand finger and to wash in a colourless solution of sodium carbonate. On doing so by him the said colorless solution turned pink. It was thrown away after explaining the significance of the reaction. Personal search of the complainant was taken and he was not allowed to carry anything. The tainted amount of ₹5000/- was kept in his shirt's pocket and was directed to hand over the bribe amount to the accused on his specific demand of bribe. Swami Nath PW-3 was asked to accompany the complainant and remained with him so as to see the transaction and hear the conversation and also to give signal by scratching hair on his head with both hands. The left over phenolphthalein powder had been returned to malkhana. All other formalities were also conducted during these pre-trapped proceedings which were mentioned in handing over memo Ex.PW-1/C.

27. Thereafter, they all left CBI office for police station Jahangir Puri. They reached near the police station premises at

about 5:30 PM. Complainant PW-1 and shadow witness PW-3 were directed by him to go inside the police station to contact the accused. However, both of them came out and informed that accused was expected shortly on which he (PW-9) directed them (PW-1 and PW-3) to wait for the accused. The other members took suitable position around the police station premises which was housed in DDA Flats. At about 6 PM the complainant PW-1 and shadow witness PW-3 went inside the police station and came after meeting the accused who had told them to come around 7 PM.

28. It was observed that there was a rush of people who had come from adjoining areas to the police station and the accused was trying to remove the crowd from the premises of the police station. The trap team then mingled amongst the crowd. At about 7 PM when the crowd thinned and most of people had left. Complainant PW-1 and shadow witness PW-3 again went to the room of accused at the first floor. They were seen coming out of the room, to wait near the passage leading to the room on the first floor. After some time they both

entered the room again, while some people already sitting had left the room. At about 7:50 PM the pre-appointed signal was received from Sh.Swami Nath PW-3, the shadow witness. On signal, he along with other staff rushed to first floor. Entered in the room, Inspector Ved Prakash caught hold of accused Brij Pal Singh by the wrist of his left hand. Accused tried to loosen the grip on his left hand wrist and somehow he succeeded and inserted his right hand in the right side pocket of his pant and took away the bribe amount and started throwing towards passage. The accused threw the notes which fell on the asbestos roof of the room situated in the ground floor of rider to the SHO. Then, Inspector Sh.A.G.L.Kaul caught hold of accused by his right hand wrist. After disclosing his identity (PW-9), challenged Sh. Brij Pal Singh as to whether he had demanded and accepted the bribe.

29. PW-9 S.K.Peshin confirmed from shadow witness PW-3 Swami Nath that bribe was demanded and accepted by the accused. PW-9 arranged at spot presence of SHO and ACP who also had come to the first floor. They were apprised about the

happening in the first floor. The ACP left after directing the SHO to cooperate with CBI. PW-9 further deposed that in the meantime he also arranged for the presence of the photographer from the market. The independent witness PW-8 was asked to pick up the notes from the asbestos roof with the help of the shadow witness. Their photographs in process of picking-up notes were also taken. He identified Sh.Swami Nath PW-3 and Manmohan Kumar PW-8 in photograph Ex.PW-9/B. This witness also identified Sh.Manmohan Kumar PW-8 in Ex.PW-9/C and PW-9/C and deposed that they were visible as collecting the currency notes from the asbestos roof and that those photographs were taken by one person sent by J.K. studio. Three other photographs which were Ex.PW-9/E-1 to Ex. PW-9/E3 also show the scattered currency notes on the asbestos roof. Those photographs were also taken by under his direction by J.K.Studio and also bear the stamp of J.K.Studio along with signatures at point 'A' on the reverse of the photos.

30. Further, he deposed that after collecting the notes both the witnesses PW-3 and PW-8 compared the same annexure

prepared in CBI office earlier and confirmed that the numbers on these recovered notes collected from asbestos roof, were same. Colourless solution of sodium carbonate was prepared and accused was asked to wash his right hand finger in it. The solution turned pink in colour and was transferred into a neat and clean glass bottle which was sealed with the seal of CBI. The accused was asked to remove his pant and inner lining of right side pocket, the same was dipped in a freshly prepared colourless solution of sodium carbonate which also turned into pink colour and was transferred into another glass bottle, thereafter, was also sealed with CBI seal. Those bottles were marked as "RHW" and RPPW". The site plan Ex. PW-3/B was also prepared, search of the drawer of the table of accused was conducted and documents consisting of bank accounts were seized vide Ex.PW-3/D. The recovery memo pertains to post-raid proceedings Ex.PW-1/D was prepared at the spot.

31. It is amply clear that the prosecution had to rely mainly upon the testimony of the complainant PW-1 as made by him in his examination-in-chief on 02.03.1998, the testimony of S.K.

Peshin, DSP (TLO) PW-9 and other material witnesses i.e. PW-4 Sh. K.S. Chhabra, who gave positive reports Ex. PW-4/A of Tests for phenolphthalein and sodium carbonate, PW-5 Samey Singh whose complaint was under inquiry with the appellant, PW-6 P.D. Vasandhani, Deputy Manager, S.B.I. who proved ledger Ex. PW-6/A and PW-7 Inspector Ram Sewak, SHO, P.S. Jahangirpuri who confirmed the complaint Ex. PW-5/A made by Samey Singh.

32. The learned defence counsel Sh.Pradeep Kumar Arya has argued that the PW-2 Karnal Singh DCP had not applied his mind while granting sanction for the prosecution under Section 19 of P.C. Act. PW-2 had accorded sanction Ex. PW-2/A verbatim of charge sheet. The sanctioning authority was duty bound to apply independent mind which he failed to do.

33. The learned counsel Sh. A.K. Gautam has argued that Karnal Singh PW-2 had deposed that he was posted as DCP (North-west district), Delhi and in that capacity he was appointing-cum-disciplinary authority in relation to the Sub-Inspectors of police and could remove them from the service.

On 23.08.1995, he accorded sanction for prosecution of accused Brij Pal Singh, the then Sub-Inspector of police vide his detailed order Ex.PW-2/A. Further, he had deposed that he perused the SPs (CBI) report as well as the investigation record including statement of witnesses produced by the investigating officer of the case.

34. He further argued that the object for providing prior sanction under the Act is to safeguard a public servant against vicious and malicious prosecution to obtain well considered opinion of the superior authority. No doubt, on the one hand, this provision is intended to safeguard the public servant from any harassment of any fictitious proceedings, and to protect the interest of the State, on the other hand. When the moral of public services or when the integrity of one of his member is questioned, sanction provides for impartial scrutiny of the allegations by a competent authority, to satisfy itself that there is prima facie case against the person charged with an offence under the Act. He argued that PW-2 had rightly sanctioned the prosecution after going through the entire record. He was of

the opinion that the prima facie case is made against the accused.

35. Learned counsel for the appellant argued that the contents of sanction are verbatim to the contents of charge-sheet filed by the CBI against the appellant.

36. The learned counsel for the respondents (CBI) has relied upon the judgment of **M.S.Kuppuswami & Etc. Vs.State** 1990 INDLAW MAD 83 in para 21, wherein, observed that petitioner certainly has no opportunity during trial to disapprove the allegations made by the prosecution. The sanction to prosecute does contain repetition of the acts, found in the charge-sheet. Merely because the narration of the facts has been borrowed from the charge-sheet, it cannot automatically be concluded that there was non-application of mind before sanction was accorded. It would certainly be better if, after going through the facts, the Sanctioning Authority himself, on his understanding of the case gives a resume of facts in the order of sanction, without adopting to follow the very phraseology used by the investigating agency.

A mere reproduction of words, as far as the facts of the case are concerned, cannot in all cases indicate lack upon mind. Sanction is not an empty formality but intended to be a protection to a public servant when prosecuted for an offence which challenges his honesty and integrity. However, in the instant case on the perusal of order of sanction, it is prima facie apparent that the Sanctioning Authority had carefully examined the investigation report, other document, i.e. allegation and statements of witness before allowing the prosecution to be instituted.

37. The Courts have to see that the mind of sanctioning authority should not be under pressure from any quarter nor should any external force be acted upon it to take a decision one way or the other. Since, the discretion to grant or not to grant a sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous authority.

38. If the sanction granting authority failed to apply its mind to ascertain correct amount of illegal gratification to decide

question of sanction is material fact and is not mere error or irregularity but serious omission on its part tantamount to illegality affecting the validity of the order which cannot be cured by the aid of Section 465 of the Cr.P.C. In the case of **Tirath Prakash Vs. State** 1992 (2001) DLT 613 as was held that if competent authority had granted the sanction mechanically without application of mind, the sanction order would be rendered vide *ab initio* and the cognizance taken by the special Judge and subsequent trial in the case would be illegal.

39. The learned counsel for the appellant has relied upon the case of **R.S.Nayak Vs. A.R. Antulay** 1984 2 SCC 183 while dealing with this case the Supreme Court has referred a case of **Mohd. Iqbal Ahmad Vs.State of Andhra Pradesh** AIR 1979 SC 677 wherein it was held that a grant of sanction is not an ideal formality but a solemn sacrosanct act which removes the umbrella of protection of government servant against the frivolous prosecution and the aforesaid requirements must,

therefore, be directly complied with before any prosecution could be lodged against public servants.

40. This judgment is not relevant in the present situation, herein the sanctioning authority Mr.Karnal Singh PW-2 Deputy Commissioner had gone through the facts and material placed before him in regard to the said allegations, and having applied his mind to the facts and circumstances of the case, he was fully satisfied that prima facie a case under Section 7 and Section 13 (2) read with Section 13(1)(d) of the P.C. Act was made out against the accused, Sub-Inspector of Delhi Police.

41. In another case referred as **Periyasamy Vs. Inspector, Vigilance & anti-Corruption Department** 1994 CrI. L.J. 753 (Madras High Court) where in para 14 it was observed as under:-

“On a perusal of Ex.P13 sanction order, the sanction order does not confirm to the ratio decided by the Supreme Court and other High Courts. The sanction order does not reveal that the Sanctioning Authority had perused any records in support of this case. The sanction order does not also show as to how the Sanctioning Authority got himself satisfied with regard to the allegations against the accused. The Sanctioning Authority has not even given any reasons for his satisfaction in the Sanction Order. Therefore, I

find that the Sanction Order is not valid and it is not in accordance with law.”

42. On perusal of the para above, the facts of the instant case are totally different. In the present case, the Sanctioning Authority has gone through the entire records produced before him, and after complete application of mind he accorded the Sanction, therefore, above cited case has no bearing in the circumstances of the present case.

43. In my view as the law discussed above, I find no force in the arguments advance on behalf of the appellant against order of sanction. Additionally, I note that the appellant has not even challenged the validity of sanction in his statement under Section 313 Cr.P.C. and no suggestion was put to PW-2 while his cross-examination. Even, the appellant had not raised any issue on the first available opportunity i.e. at the time of framing of charge as per the requirement of Section 19 of P.C. Act. Therefore, there is no infirmity or irregularity in issuing the sanction order Ex.PW-2/A.

44. On merit the learned counsel for the appellant submits that filling of complaint with CBI by the complainant can not be

taken as a substitute for the evidence of proof of allegations. The prosecution was required to prove the allegation by convincing evidence, which is lacking in the instant case. The learned counsel for appellant has relied upon the case of **Roshan Lal Saini Vs. Central Bureau of Investigation** 2011(1) JCC 102 in para 12 observed as under:-

“There is no merit in the submission of the learned Prosecutor. Filing of complaint with CBI by the complainant cannot be taken as a substitute for the evidence of proof of allegations contained therein. The complaint Ex.PW-6/A is a document containing allegation of demand of illegal gratification made by the appellant M.N.Sharma. Prosecution was required to prove the allegations made in the complaint by convincing evidence, which the prosecution has failed to do. Therefore, I find it difficult to accept that the prosecution has been able to establish the initial demand.”

45. But, the facts of the case authority **Roshan Lal** (Supra) are totally also different from the present one. In the present case the case has been fully proved from the statement of PW-1, PW-6, PW-7 and PW-9. Therefore, the case cited by the learned counsel has no relevance.

46. In the case, as referred by the learned counsel for appellant, of **Sunil Kumar Mishra Vs.State (CBI)**, 2007

(139) DLT 407, (Delhi High Court), relied on para 12 of this case wherein it was observed as under:-

“All cases of corruption have two important aspects and they are (i) demand and (ii) acceptance. Unless demand and acceptance of illegal gratification by the public servant charged with under the Prevention of Corruption Act are proved by the prosecution beyond doubt, the presumption provided for in Section 20 of the Act cannot be drawn. Three cardinal principles of criminal jurisprudence are well settled and they are as follows:-

- i) that the onus lied affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness of falsity of the defence version while proving its case;
- ii) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and
- iii) that the onus of the prosecution shifts.”

47. Whereas, in the instant case there is a demand made by the appellant while dealing with the complaint of PW-5 and further demand in conversation at the time of conducting the raid. The appellant in the instant case has accepted the money which was proved by PW-7 and PW9 and examination-in-chief of PW-1. Therefore, the case of **Sunil Kumar Mishra** (supra) does not apply in the instant case.

48. In the case of **Prem Singh Yadav Vs. Central Bureau of Investigation** which was decided on 25.03.2011 in Crl.A.No.206/2002 referred para 14, reads as under:-

“In view of the above, it may not be safe to rely upon the testimonies of PW2, PW3, PW5 and PW6 regarding demand and acceptance of money by the accused. The recovery of tainted money alone is not sufficient to record the conviction. In the case of **Suraj Mal v. State (Delhi Administration)** (1979) 4 SCC 725 it was held that mere recovery of money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Mere recovery of money cannot prove the case of the prosecution against the accused in the absence of any instance to prove the payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

*The Supreme Court held that mere recovery of money from the accused by itself is not enough in the absence of substantive evidence of demand and acceptance. In this case the reliance was placed on a three-judge Bench judgment in **M.Narsinga Rao v. State of A.P.** wherein it was held as under:-*

“20. A three-Judge Bench in M. Narsinga Rao v. State of A.P. while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification.

24. ...we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned Counsel: (SCC p.577, para 12) „12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference

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

49. Whereas in the present case the prosecution has certainly proved recovery of money from the accused and fully corroborated by the other substantive evidence of the demand and acceptance, therefore, this judgment does not fit to the circumstances of the instant case.

50. In the case referred as **O.P.Chhabra Vs. State** 2010(175) DLT 374, he has referred in para as under:-

"7. A perusal of Sections 7 & 13 makes it clear that Sections do not talk of demand of bribe. They only talk of acceptance of bribe. There can be no acceptance unless there is demand that is why the Courts have always considered demand and acceptance together. There is no such requirement of law that this demand and acceptance of bribe has to be at the same time or demand must be made by spoken words at the time of trap laid by CBI or any investigating agency. It need not be emphasized that laying trap is in furtherance of investigation. Trap is laid only when demand is already there. If no demand for bribe has been made, no trap can be laid. When any person approaches CBI, he approaches CBI with a specific complaint about a public servant having demanded bribe and it is in that context

a trap is laid so that at the time of accepting bribe the person can be caught red handed. In this case the complainant PW-2 had categorically testified that he received notice from MTNL Exh. PW-2/A asking deposit of additional amount. This notice was received by him after expiry of the due date and in that context he met accused Om Prakash Chabra. It is quite reasonable to expect that when a customer meets an official, the official guides him as to what is the course of action. If the extension of time for deposit could have been done on just filing an application, Mr. Chabra/appellant when was approached by the complainant on 13.10.1998, would have handed him over a piece of paper and asked him to right a few lines application seeking extension of time and he would have passed an order for extension of time right there. And if it was not a case of extension of time, he would have told that he need not be contacted for extension of time as he could not extend the time and the money had to be deposited right away. The complainant categorically testified that he met the appellant on 13.10.1998. It is not the case of the appellant that the appellant had not met him on 13.10.1998. The plea taken that by the appellant is that complainant was not willing to deposit Rs.15,000/- the addition demand made by MTNL. If the complainant had not to deposit this amount, his telephone connection would have been disconnected because of non fulfillment of the demand notice. The complainant was running an STD booth and the amount demanded by demand notice was legitimate demand, payable by the complainant. Thus, there was no question of complainant saying that he would not deposit the money. In his written explanation under Section 313 Cr.P.C. the appellant had not taken this stand that the complainant was not willing to deposit the additional amount as demanded by MTNL. The complainant only wanted that he should be given some more time and it for this reason that the appellant asked complainant to pay Rs.500/- so that he may extend the time beyond due date. This has been proved by PW-2 in his testimony. There is no reason to disbelieve the testimony of PW-2. The complainant was not willing to pay this bribe money and approached CBI and lodged a complaint. Lodging of complaint does not make the complainant an untrustworthy witness or an

accomplice so as to need corroboration of his testimony. No person, who approaches CBI making complaint against a corrupt official about demand of his bribe, can be branded as accomplice."

51. This Court had considered as to whether a person making complaint regarding corruption can be considered as an accomplice or not in State v. P.K.Jain and Anr. 2007 Cri.L.J4137 and observed as under:

"10. I consider that observations of learned A.S.J brandishing the complainant in a trap case as accomplice amounts to discrediting the criminal justice system itself and portrays that the criminal justice system cannot respect the witnesses. This country is facing unprecedented rise in corruption. Situation has come to a stage that MCD officials, due to the corrupt practices, have turned the whole city into a slum by allowing all types of unauthorized construction, encroachment, squatting over public land. Engineers of local body who were supposed to check the unauthorized construction and encroachment of the public land, encroachment of roads, encroachment of pavements, turn a blind eye to all this, since their pockets are warmed and palms are greased. Similarly the observation of the trial Court that complainant and his son are interested witnesses and not trust worthy, is unfortunate. In case of a legitimate trap, the persons and police officials taking part in trap, in no sense can be said to be accomplice or un-credit worthy witnesses so that their evidence would require, under law to be corroborated by independent witness. The rule of corroboration is not a rule of law. It is only a rule of prudence and the sole purpose of this rule is to see that innocent persons are not unnecessarily made victim. The rule cannot be allowed to be a shield for corrupt. Moreover, the corroboration need not be by direct oral evidence and can be gathered from circumstantial evidence. The sole evidence of a complainant is sufficient to convict a person, if it is reliable, acceptable and trust worthy."

52. On merits, the learned counsel for appellant Mr.Pradeep Kumar Arya has mainly relied upon PW-1, PW-3 and PW-8 as they were declared hostile. The PW-1 complainant has completely taken u-turn from what he had deposed in the examination-in-chief, however, the learned counsel could not find out any lacuna in the deposition of PW-1 in examination-in-chief. Therefore, the trial Judge has not relied upon what he had deposed in cross-examination. It is a settled law that if any witness has taken complete u-turn from what he had deposed in examination-in-chief, then the chief-examination part of the witness cannot be thrown out. It is very pertinent to mention here that the learned trial Judge was compelled to proceed against the PW-1 under Section 344 Cr.P.C. separately on this issue.

53. Here, I appreciate the application of mind of the trial Judge, who had very rightly proceeded against complainant PW-1 while issuing notice under Section 344 Cr.P.C., therefore, the view taken by the trial Judge was correct, I find no infirmity on this issue. Therefore, I also concur the same.

54. In the case of **Khuji Vs. State of M.P.** AIR 1991, SC 1853 wherein the Supreme Court had held that statement of witness identifying all accused in examination-in-chief but contradicted in cross-examination, is nothing but an attempt to wriggle out of the first statement and that his evidence is reliable with regard to the facts as made earlier in his examination-in-chief. Observation made in para 7 squarely apply to the facts of the present case which reads as under:-

“The High Court came to the conclusion and, in our opinion rightly, that during the one month period that elapsed since the recording of his examination-in-chief, something transpired which made him shift his evidence on the question of identity to help the appellant. We are satisfied on a reading of his entire evidence that his statement in cross-examination on the question of identify of the appellant and his companion is a clear attempt to wriggle out of wht he had stated earlier in his examination-in-chief.

The Supreme Court further observed in this case,

Since the incident occurred at a public place, it is reasonable to infer that the street lights illuminated the place sufficiently to enable this witness to identify the assailants. We have, therefore, no hesitation in concluding that he had ample opportunity to identify the assailants of Gulab, his presence at the scene of occurrence is not unnatural nor in his statement that he had come to purchase vegetables unacceptable. We do not find any material contradictions in his evidence to doubt his testimony. He is a totally independent witness who had no cause to give false evidence against the appellant and his companions.

We are, therefore, not impressed by the reasons which weighed with the trial Court for rejecting his evidence. **We agree with the High Court that his evidence is acceptable regarding the time, place and manner of the incident as well as the identity of the assailants.”**

55. The law is settled that even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case, whether as a result of such cross-examination, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be credit-worthy and act upon it.

56. In **Koli Lakhmanbhai Chanabhai Vs.State of Gujarat** JT 1999 (9) SC 133, in para 5 where it was observed as under:-

“From the aforesaid evidence on record, in our view, it cannot be said that the High Court erred in relying

upon some portion of the evidence of PW-7 who was cross-examined by the prosecution. It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witnesses cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated by other reliable evidence. (**Re: Bhagwan Singh vs.State of Haryana (1976) 1 SCC 389 and Sat Paul v. Delhi Aministration (1976) 1 SCC 727**). In the present case, apart from the evidence of PW7 the prosecution version that he saw that appellant was having knife in his hand and was quarrelling with the deceased gets corroboration from the evidence of PWs 11 and 12 to whom he disclosed the incident immediately. On the basis of the said information, within one hour, FIR was lodged disclosing the name of the appellant as the person who has inflicted the knife blow. Number of incised wounds are found as per the Post-mortem report. The prosecution version gets further corroboration from discovery of Muddamal knife containing human blood Group 'A'. Further the bush-shirt and baniyan which were put on by the accused at the time of incident were having extensive blood stains which were also found containing human blood group 'A'. Learned counsel for the appellant, however, contended that accused is also having blood Group 'A' and that he was having injury on the thigh as per the evidence of the Doctor. In our view, there is no substance in his contention because as per the medical evidence, the injuries caused to the accused were minor and that because of such injuries, there would not because of such injuries, there would not be extensive bloodstains on the bush-shirt and baniyan put on by the accused. In his 313 statement also, accused has not explained how he got bloodstains on his bus-shirt and baniyan. He has also not denied the recovery of the said bush-shirt and baniyan from his person at the time of his arrest."

57. It is settled law that the evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed of a record. It remains admissible in the trial and there is not legal bar to pass his conviction upon his testimony if corroborated by other reliable evidence.

58. The learned counsel for the appellant has drawn the attention of this Court to the complaint dated 12.07.1995 Ex.PW-1/A towards the cutting of the date at point B. I have perused the complaint, and note that on the top the date is 12.07.1995. However, at the bottom, there are two dates, one is 12.07.1995 another has been cut (not readable), but the contents inside the complaint clearly reflect that **‘to close the file of the case the Sub-Inspector Brij Pal Singh, appellant had demanded ₹.12,000/- as bribe but at his request he reduced to ₹10,000/- and the appellant directed today 12.07.1995 to bring the money accordingly he is going to give ₹5000/- as installment’**. Since the contents of the complaint inside of dated 12.07.1995,

there are chances that while writing date 12, the pen might have slipped, otherwise, it was very easy to make from digit 10 to digit 12, even without any cutting. Therefore, I found no force in this argument also.

59. The learned counsel for appellant has further pointed out from the statement of PW-5 Samey Singh as he had deposed that he made a complaint in PS Jahangir Puri on 29.06.1995, in respect of an embezzlement of Rs.36,000/- from his account, whereas, PW-1 had deposed in his examination-in-chief that on 28.06.1995 accused Brij Pal SI called him to police station Jahangir Puri. He further argued that if the complainant PW-1 was called on 28.06.1995 then question does not arise the appellant would demand a money in the complaint dated 29.06.1995 which came day after he was called at police station. I feel this dated 28.06.1995 seems to be a typographical error, otherwise, the learned counsel for the appellant would have asked question on these two dates and would have clarified this date from PW-5 Samey Singh. This date had gone un-noticed, in my opinion this date written

wrongly has no relevance, when, other witnesses corroborated the incident, otherwise.

60. In defence, the appellant stated under Section 313 Cr.P.C against the question No.37 he replied as under:-

“Q.37 Why this case against you?

A. I have been falsely implicated in the instant case as the complainant was enemical to me and I have beaten at the instance of SHO, PS Jahangir Puri, once or twice.”

61. This statement of the appellant itself proves that the complainant PW-1 was harassed by the appellant and demanded bribe to favour the complainant in the complaint made by PW-5 Samey Singh. The complainant succumbed to his demand and had agreed to pay the bribe money on 12.07.1995 itself.

62. If I accept the testimony of PW-1 as made by him on 02.03.1998, in chief, then, the entire prosecution case as was deposed by the TLO, S.K.Peshin PW-9 finds full corroboration from related circumstances, i.e., hand wash and pant pocket wash of the appellant turning pink, solution whereof preserved

for CFSL analysis, giving positive test of phenolphthalein and sodium carbonate, doubtlessly indicating the fact the accused who was dealing the case of embezzlement against PW-1, the appellant, did accept the tainted money, kept in his pant pocket but later on becoming suspicious of the movement taking place throwing the same by taking out of the pocket which scattered at the asbestos sheet of the roof of the room of PA to SHO PW-7, who has deposed to the effect that as remained unshaken in the cross-examination. In this regard, the settled law in the case of **State of U.P. Vs. M.K. Anthony AIR 1985 SC 48**, wherein it was held that despite discrepancies in the statement made in the court by the material witnesses if their testimonies fully inculcate the accused, conviction can be based on such evidence. The observations were made by the Apex Court as under:-

“While appreciating the evidence of a witness the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities, pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the

witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matter not touching the core of the case, hyper technical approach by taking sentence torn out of context here and there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of evidence as a whole.”

Their Lordships further observed,

“Unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witness may differ in some details unrelated to the main incident because power of observation, retention, and reproduction differ with individuals. Cross-examination is an unequal dual between the rustic (witness) and refined lawyer.”

63. In another case of **Bharuda Broginbhai Harji Vs. State of Gujarat AIR 1983 SC 753** that discrepancies which do not go to the root of the matter and shake the basic version of the prosecution should not be attached undue importance. The reasons given in that judgment for arriving at this conclusion as under:-

- “1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
- 2) Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an

element of surprise. Thus, mental faculties, therefore, cannot be expected to be attuned to absorb the details.

3) The powers of observance differ from person to person, what one may notice, another may not. An object or movement might emboss image of one person's mind, whereas it might go unnoticed on the part of another.

4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

5) In regard to exact time of an incident or the time duration of an occurrence, usually, people make their estimates by guess work on spur of moment at the time of interrogation and one cannot expect people make very precise or reliable estimates in such matters. Again, it depends upon the time-sense of individuals which varies from person to person.

6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

7) A witness though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details of imagination on the spur of moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him perhaps it is a sort of psychological moment."

64. Putting the curtain down, admittedly the appellant was a public servant at the time of the occurrence. There was a demand since the appellant was dealing the complaint of PW-5

Samey Singh and the accused suspecting complainant Ashok Kumar PW-1 in that complaint. Again money was demanded at the time of trap as admitted by PW-1 and the money was accepted and thereafter recovered from the appellant. Since the appellant was dealing with the complaint of PW-5 Samey Singh and the complainant PW-1 was suspect, therefore, the appellant demanded money from the complainant PW-1 to favour him and to close the issue against him. This factor establishes the motive for demanding the bribe from the complainant.

65. Keeping the above evidence and discussion into view the bribe was demanded by the appellant from PW-1, again bribe was demanded and accepted at the time of trap. Bribe money was recovered from the appellant. Hand wash and pant was also proved. Motive for demanding bribe was proved beyond doubt.

66. Therefore, I find no discrepancies in the order/judgment passed by trial Judge, therefore, I confirm the same. The bail bonds and surety bonds are cancelled. The appellant is

directed to surrender before the Jail authority forthwith for remaining sentence.

67. The appeal is dismissed.

68. No costs.

MAY 06, 2011
'acm/mr'

SURESH KAIT, J